

127 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER08-1419-001
ER08-1419-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 18, 2009)

1. On November 17, 2008, Southwest Power Pool, Inc. (SPP) filed a request for clarification or, in the alternative, rehearing of the Commission's October 16, 2008 order in this proceeding¹ accepting, subject to compliance, SPP's proposal to establish a process for including a "balanced portfolio" of economic upgrades in the SPP Transmission Expansion Plan.² On December 15, 2008, SPP also filed a compliance filing pursuant to the October 16 Order. As discussed below, the Commission denies SPP's request for clarification, or in the alternative, rehearing of the October 16 Order, and accepts SPP's compliance filing, subject to modification.

I. Background

2. On August 15, 2008, SPP filed proposed revisions, primarily to Attachment O (Transmission Planning Process) of its Open Access Transmission Tariff (OATT) to establish a process to evaluate a group, or portfolio, of economic upgrades to be included in SPP's Transmission Expansion Plan, rather than evaluate the benefits of individual upgrades (balanced portfolio proposal). SPP stated that its proposed balanced

¹ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,054 (2008) (October 16 Order).

² The SPP Transmission Expansion Plan includes transmission upgrades relating to transmission service requests, generation interconnection service requests, and satisfaction of reliability criteria, as well as transmission upgrades that provide economic benefits.

portfolio approach is more likely to result in benefits to the entire system than a project-by-project approach and it will alleviate potential disputes that may arise if the construction of a single project benefits one SPP zone but not others. SPP's proposal provided that if a portfolio is determined to be cost-beneficial and balanced, the entire cost of the included upgrades will be allocated to the SPP zones on a postage stamp basis. In addition, the proposal outlined the requirement that the benefits of the upgrades, as determined by an adjusted production cost formula, must equal or exceed the costs of the upgrades in each SPP zone over a ten-year time frame in order for a portfolio to be "balanced."

3. In the October 16 Order, the Commission accepted SPP's balanced portfolio proposal, subject to two modifications. First, the Empire District Electric Company (Empire) noted that upgrades included in a balanced portfolio may cause security limit violations on a system adjacent to SPP, and the affected utility may seek to recover the costs of upgrades to its system from the bordering SPP transmission owner or zone. The Commission agreed with Empire that if an SPP transmission owner or zone is required to fund such third party upgrades, the costs of these upgrades should be factored into the balanced portfolio cost-benefit analysis. Therefore, the Commission directed SPP to amend its tariff language to clarify that costs incurred by a transmission owner or zone due to third-party impacts are included among the "other factors affecting the revenue requirement associated with the economic upgrade."³

4. Second, ITC Great Plains, LLC (ITC) argued that contrary to the transparency principle of Order No. 890,⁴ it would not be possible to review the system design software ("Promod") results to check the consistency of the assumptions that drive the adjusted production cost-benefit metrics used in the cost-benefit analysis of upgrades included in a potential balanced portfolio. The Commission stated that it is important for market participants to be able to review the system design software results to check the application of the assumptions in creating the adjusted production cost-benefit metrics. The Commission noted that Order No. 890 requires "transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans...[and] that this information should enable customers, other stakeholders, or an independent third-party to replicate the results of

³ See October 16 Order, 125 FERC ¶ 61,054 at P 25.

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

planning studies.”⁵ Accordingly, the Commission directed SPP to create a mechanism that allows for market participants such as ITC to review the system design software results, subject to signing confidentiality agreements or other needed arrangements to protect sensitive information.⁶

II. SPP’s Request for Clarification, or in the Alternative, Rehearing

5. SPP states that the Commission should clarify that existing provisions of the SPP OATT comply with the Commission’s requirement in the October 16 Order that SPP provide a mechanism that allows for market participants to review the results of the system design software, including appropriate arrangements to protect sensitive information, and that no further tariff amendments are necessary. SPP states that in the October 16 Order, the Commission appears to order SPP to modify its OATT to comply with the transparency principle of Order No. 890 while finding in an order issued on July 11, 2008⁷ that the SPP OATT complies with the transparency and information exchange principles of Order No. 890.⁸

6. SPP asserts that its Attachment O already includes provisions that meet the Commission’s directives in the October 16 Order. Specifically, SPP states that section VI.6(b) of Attachment O provides that SPP will post related study results, criteria, assumptions and data underlying the studies used to develop the list of reliability and economic projects on its website with password protected access if required to preserve the confidentiality of information.⁹ SPP notes that this section also provides instructions for acquiring a complete version of the SPP Transmission Expansion Plan.

7. SPP states that the Commission specifically referenced section VI.6(b) in the SPP Planning Order.¹⁰ In addition, SPP states that in the SPP Planning Order the

⁵ October 16 Order, 125 FERC ¶ 61,054 at P 37 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471).

⁶ See October 16 Order, 125 FERC ¶ 61,054 at P 37.

⁷ *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028 (2008) (SPP Planning Order).

⁸ SPP Request for Clarification at 2 & n.9.

⁹ *Id.* at 3 (citing SPP OATT, Attachment O, section VI.6(b) (Original Sheet No. 300I as accepted in SPP Planning Order)).

¹⁰ *Id.* at 5 (citing SPP Planning Order, 124 FERC ¶ 61,028 at P 25).

Commission accepted section X.7¹¹ of Attachment O, which SPP states it included to maintain the confidentiality of certain data due to information exchange principles of Order No. 890. Section X.7 provides as follows:

Confidentiality Requirements

- a) The Transmission Provider shall make all reasonable efforts to preserve the confidentiality of information in accordance with the provisions of the Tariff and the SPP Membership Agreement.
- b) For those entities that have executed a confidentiality agreement, the Transmission Provider shall provide password protected access to confidential information related to the SPP Transmission Expansion Plan and the underlying studies and models via the SPP website.
- c) The form of confidentiality agreement shall be posted on the SPP website.
- d) Resource specific data shall not be made available by the Transmission Provider if the data has been designated confidential by the data provider or if the data can be used to:
 - (i) Determine security constrained unit commitment or economic dispatch for resources; or
 - (ii) Perform an economic evaluation of costs and benefits.
- e) Other transmission planning information shall be posted on the SPP website and may be password protected, as appropriate.
- f) Confidentiality agreements shall be required for Members and Market Participants to receive data where the owner of the data has given permission to the Transmission Provider to release the data.

¹¹ In its August 15, 2008 filing, SPP renumbered Attachment O such that section X (Information Exchange), which the Commission referred to in the SPP Planning Order and SPP refers to in its request for clarification, is now section IX. For the purposes of discussing SPP's request for clarification, we will refer to this information exchange provision as section X. For the purposes of discussing SPP's compliance filing below, we will refer to it as section IX as it is currently numbered in Attachment O of SPP's OATT.

8. SPP states that it is required to abide by the confidentiality provisions of its Attachment O. For example, SPP states, under section X.7(d) SPP is not permitted to provide resource specific data if the data has been designated confidential by the data provider or if the data can be used to determine security constrained unit commitment or economic dispatch for resources. SPP states that this provision was accepted by the Commission in the SPP Planning Order and is consistent with prior Commission precedent.¹²

9. Furthermore, SPP states, the Commission found that SPP's Attachment O complied with the information exchange principle of Order No. 890 and that any concern "regarding access to confidential information was satisfied by SPP's statement that it will provide confidential data to entities that have executed a confidentiality agreement."¹³ SPP notes that the Commission did not require SPP to make any modifications or changes to either of these two provisions (i.e., sections VI.6(b) and X.7).

10. SPP also states that in its balanced portfolio proposal, SPP revised section VI.6(b) to clarify that the related study results, criteria, assumptions, and data underlying the studies used to develop the list of upgrades within proposed balanced portfolios would be made available pursuant to appropriate confidentiality mechanisms.¹⁴

11. SPP adds that balanced portfolios are considered "High Priority Studies" for which SPP will issue a report and post the report and related studies and the criteria, assumptions, and data on the SPP website with password protected access to preserve

¹² SPP Request for Clarification at 7 n.19 (citing *U.S. Dept. of Energy – Bonneville Power Admin.*, 124 FERC ¶ 61,054, at P 38 (2008) ("In Order No. 890-A, the Commission made clear that customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer, and that the transmission provider must maintain the confidentiality of this information."); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 87 (2008) (same); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,165, at P 20 (2008) (same)).

¹³ *Id.* at 5 (quoting SPP Planning Order, 124 FERC ¶ 61,028 at P 32).

¹⁴ SPP replaced "reliability and economic projects" with "upgrades within proposed Balanced Portfolios and proposed reliability upgrades" in section IV.6(b). See First Revised Sheet No. 300I.

confidentiality.¹⁵ SPP reiterates that it is committed to make public as much information as possible regarding its transmission planning process, of which the balanced portfolio is a part, consistent with protecting the confidentiality of customer information in compliance with the transparency principles of Order No. 890.

12. Finally, SPP states that in the event the Commission fails to clarify that additional tariff modifications are unnecessary to provide a mechanism that allows for market participants to review the results of the system design software, SPP seeks rehearing of the October 16 Order as contrary to Commission precedent to the extent that it requires such additional tariff modifications.

III. Commission Determination

13. For the reasons discussed below, we deny SPP's request for clarification and, alternatively, rehearing.

14. SPP argues that because the Commission accepted its Attachment O transmission planning process as compliant with the transmission planning principles outlined in Order No. 890, its Attachment O is inherently compliant with the Commission's directives in the October 16 Order. We disagree. While the Commission accepted SPP's Attachment O confidentiality provisions, it did so inadvertently, not having before it an interpretation of those provisions that might restrict market participant review of SPP's planning analyses. As the Commission noted in the October 16 Order, in Order No. 890 the Commission required "transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans ... [and] that this information should enable customers, other stakeholders, or an independent third-party to replicate the results of planning studies."¹⁶ Section IV.6(b) of Attachment O of the SPP OATT provides as follows (in pertinent part):

The related study results, criteria, assumptions and data underlying the studies used to develop the list of upgrades within proposed Balanced Portfolios and proposed reliability upgrades shall be posted on the SPP website, with password protected access if required to preserve the confidentiality of

¹⁵ SPP Request for Clarification at 6 (citing SPP August 15, 2008 Filing, proposed First Revised Sheet No. 300C, Original Sheet No. 300C.01, and Attachment O, section IV(3)(g)).

¹⁶ October 16 Order, 125 FERC ¶ 61,054 at P 37 (quoting Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471).

information in accordance with the provisions of the Tariff and the SPP Membership Agreement and to address CEII requirements.

15. However, section X.7(d) prohibits SPP from making resource specific data available if the data has been designated confidential by the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and benefits. We find that restricting access to resource specific data denies access to data that market participants need to replicate the results of transmission planning studies in general, and balanced portfolios specifically, and, therefore, is inconsistent with the transparency requirement that stakeholders have sufficient information to replicate all transmission planning studies.¹⁷

16. With regard to SPP's statement that section X.7 of Attachment O to SPP's OATT is consistent with Commission precedent,¹⁸ the Commission finds that none of the orders cited address a provision similar to section X.7. Rather, the language SPP cites reflects the Commission's description in Order No. 890-A of the requirements of the information exchange principle—i.e., the requirement that transmission providers maintain information as confidential. Our action here is consistent with this requirement. Maintaining information as confidential is one matter. Releasing confidential information under appropriate confidentiality agreements is another. The two are not inconsistent.

17. Even if the language was consistent with the requirements of Order No. 890, we would reject it here because it prevents access to data that is necessary to ensure that the

¹⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471. The Commission also noted that without certain generator dispatch and economic information, it becomes difficult or impossible to conduct meaningful load flow studies for some transmission planning purposes. The Commission therefore required disclosure of criteria, assumptions, data and other information that underlie transmission plans. *Id.* P 478. We note that in orders being issued concurrently with this order, addressing Order No. 890 transmission planning process compliance filings of participants in the Southeast Inter-Regional Planning Process, the Commission is directing revisions to the transmission planning processes to remove identical restrictions on information sharing. *See e.g., Entergy Services, Inc.*, 127 FERC ¶ 61, 272 (2009).

¹⁸ *See* SPP Request for Clarification at 7 n.19 (citing *U.S. Dept. of Energy – Bonneville Power Admin.*, 124 FERC ¶ 61,054, at P 38 (2008); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 87 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,165, at P 20 (2008).

balanced portfolio provisions result in just and reasonable cost allocations. Market participants must by necessity have access to such data, subject to appropriate confidentiality arrangements, so that they can verify that the results of the balanced portfolio studies are reasonable and consistent with the OATT. Accordingly, we deny SPP's request for the Commission to clarify that existing provisions of the SPP OATT comply with the Commission's requirement in the October 16 Order.

IV. SPP's Compliance Filing

18. To comply with the Commission's directive in the October 16 Order to provide a mechanism that allows for market participants to review the analysis of balanced portfolios, SPP states that it has added a new subsection (f) to section IV.6 of Attachment O. SPP states that the proposed subsection provides that in developing a potential balanced portfolio, SPP will publish a timely report, including but not limited to, the study input assumptions, the estimated costs included in the potential balanced portfolio, and the expected economic benefits of the potential balanced portfolio. SPP also notes in the new subsection that the proposed report will comply with the information sharing and reporting requirements in section IX (Information Exchange) and section IV(3) (High Priority Studies) of Attachment O, including the requirements for treatment of confidential information.¹⁹

19. To address the Commission's directive regarding third-party impacts, SPP states that it has included proposed new subsections 6(b)(iv), 6(c)(iv), and 6(c)(v) to part IV of Attachment O. SPP explains that the purpose of the new subsections is to take into account in the cost-benefit analysis potential third-party impacts required to relieve congestion on a neighboring system, and include in the cost-benefit analysis all costs necessary to support the balanced portfolio.

20. Specifically, SPP states that proposed subsection IV.6(b)(iv) provides that the evaluation of each economic upgrade to be included in the balanced portfolio

[w]ill include an evaluation of the costs of the upgrade, including any cost impacts potentially allocable to the Transmission Provider or a Zone(s) from third-party upgrade(s) required to relieve congestion on a neighboring system due to the construction of the potential Balanced Portfolio.²⁰

¹⁹ SPP Compliance Filing at 3-4 (citing SPP OATT, Attachment O, proposed section IV.6(f)).

²⁰ *Id.* at 5 (citing SPP OATT, Attachment O proposed subsection IV.6(b)(iv)).

21. In addition, SPP states that proposed subsection IV.6(c)(iv) lists the costs that will be included in the fixed-charge rate that will be used to estimate the revenue requirements for each upgrade in the balanced portfolio. SPP states that these costs include, but are not limited to, operation and maintenance expenses, depreciation, property and payroll taxes, income taxes, if applicable, return on investment, and any other factors affecting the revenue requirement. SPP states that these costs were identified in a footnote in its balanced portfolio proposal but not specifically identified in the tariff. Therefore, SPP states for clarity and to avoid confusion, it is proposing to include this list of costs in new subsection IV.6(c)(iv).

22. Further, SPP states that proposed subsection IV.6(c)(v) specifically provides that the costs of third-party impacts of upgrades included in a balanced portfolio will be included in the revenue requirements used in the cost-benefit analysis used to evaluate proposed balanced portfolios.

23. SPP also states that including the cost of third-party impacts in the cost-benefit analysis required several changes to Attachment J (Recovery of Costs Associated With New Facilities) of its OATT. Specifically, SPP proposes to amend subsections IV.A.1 and IV.A.2 of Attachment J to account for the actual costs of third-party impacts attributable to the balanced portfolio in implementing the reallocation of revenue requirements from deficient zones and determining the final reallocation and true-up of reallocated revenue requirements. Similarly, SPP proposes to amend subsection IV.B.1(ii) of Attachment J to include increases in the costs of third-party impacts as an unintended consequence that may result in a recommendation to reconfigure a previously-approved balanced portfolio. SPP asserts that this revision is appropriate because now that the cost of third-party impacts are considered in the cost-benefit analysis for a balanced portfolio, increases in such costs should be considered in determining whether a previously-approved balance portfolio should be reconfigured.

24. Consistent with the October 16 Order, SPP requests an effective date of October 17, 2008 for the compliance filing.

V. Notice of Filing and Responsive Pleadings

25. Notice of SPP's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 79,462 (2008), with interventions and protest due on or before January 5, 2009. TDU Intervenors,²¹ Xcel Energy Services, Inc. (Xcel) on behalf of Southwestern Public Service Company (SPS), and Golden Spread Electric Cooperative, Inc. (Golden Spread)

²¹ TDU Intervenors are the Oklahoma Municipal Power Authority, the Missouri Joint Municipal Electric Utility Commission, and the West Texas Municipal Power Agency.

filed protests. Occidental Permian Ltd. and Occidental Power Marketing, L.P. (collectively, Occidental) filed a timely motion to intervene and protest. On January 6, 2009, Golden Spread filed an erratum to its protest. On January 21, 2009, SPP filed an answer.

VI. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits answers 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

1. Third-Party Impacts

a. Protests

27. TDU Intervenors contend that SPP's proposed tariff language may unduly burden SPP customers with costs external to the SPP system, which could impede the development of balanced portfolios and diminish the likelihood of transmission construction. TDU Intervenors request that the Commission require SPP to make two revisions to its proposed language. First, TDU Intervenors state that SPP's proposed subsection IV.6(c)(v) should make clear that any third-party impact costs to be included in the revenue requirements for purposes of developing a balanced portfolio must be net of any prospective reimbursements from third parties.

28. Second, TDU Intervenors assert that the Commission should require greater specificity as to what constitutes a "third party" for the purposes of this provision. TDU Intervenors contend that it is unclear whether SPP considers entities that participate to a limited extent, or not at all, in SPP to be potential sources of third-party impact costs in determining a balanced portfolio.²² TDU Intervenors also state that SPP should be

²² TDU Intervenors note that Entergy Corporation and Cleco Power Corporation are listed as SPP members but do not participate in SPP and their transmission facilities are not subject to the SPP OATT. In addition, TDU Intervenors state that SPP and the Southwestern Power Administration have a special agreement included as Attachment AD to SPP's OATT. *See* TDU Intervenors Protest at 3.

required to clarify the scope of its proposed subsection IV.6(c)(v) to ensure that it is no broader than necessary.

b. Answer

29. In response, SPP clarifies that any projection of costs to be incurred as a result of third-party impacts that are included in the balanced portfolio cost-benefit analysis would be net of any prospective third-party reimbursements. In addition, SPP further clarifies that third parties are non-tariff first tier utilities, which include, among others, Entergy Corporation, Cleco Power Corporation, and the Southwestern Power Administration.

c. Commission Determination

30. We find that SPP's answer partially addresses TDU's concerns regarding third-party impacts. SPP clarifies that costs resulting from third-party impacts included in the balanced portfolio cost-benefit analysis will be net of any reimbursements resulting from such third-party impacts. Otherwise, as SPP states, an appropriate representation of "costs" would not be included in the analysis. In addition, SPP declares that for the purposes of including third-party impacts in a balanced portfolio cost-benefit analysis, third parties are limited to non-tariff first tier utilities. We find the clarification regarding reimbursements to be reasonable. However, we do not agree that third-party impacts should be limited to non-tariff first tier utilities because Order No. 890's regional participation principle does not include such a restriction.²³ Proposed section IV.6(c)(iv) provides that each economic upgrade to be included in a potential balanced portfolio "[w]ill include an evaluation of the costs of the upgrades, including any cost impacts potentially allocable to the Transmission Provider or a Zone(s) from third party upgrade(s) required to relieve congestion on a neighboring system due to the construction of the potential Balanced Portfolio." The Commission finds that this language, which does not restrict the inclusion of impacts from neighboring third-party systems to those of first tier utilities as SPP implies, complies with the Commission's directive in the October 16 Order requiring SPP to amend its tariff language to clarify that costs incurred by a transmission owner or zone due to third-party impacts are included in a potential balanced portfolio. The language is sufficiently clear and should be applied to include third party upgrades to relieve congestion that projects in the balanced portfolio cause on a neighboring system. Accordingly, we direct SPP to file a compliance filing within 60 days of the date of this order revising its Attachment O to specify that costs resulting from third-party impacts included in the balanced portfolio cost-benefit analysis will be net of any reimbursements resulting from such third-party impacts.

²³ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

2. Access to Data

a. Protests

31. Xcel, Occidental, and Golden Spread (collectively, Protestors) contend that SPP did not meet the Commission's direction in the October 16 Order to provide market participants access to the underlying data and assumptions such that market participants can replicate the data as the Commission intended in Order No. 890. Xcel states that because the burden of proof will be on the SPP transmission owners to explain and justify the recovery of costs in each of their respective jurisdictions, including costs assigned to the SPP transmission owner for upgrades included in a balanced portfolio, sufficient access to the underlying assumptions and data inputs is critical to stakeholders for adequate review, verification, and opportunity to challenge the results before any action is taken to adopt these projects.

32. Golden Spread points to current issues in the SPS zone, where most of Golden Spread's load is located, to demonstrate how critical it is to fully understand the details of the costs-benefit analysis to ensure that any balanced portfolio is just and reasonable. Golden Spread states that it appears that SPP is urging the adoption of a balanced portfolio which would add a single 345 kV transmission circuit internal to the SPS system, for which SPP estimates the cost over ten years has a net present value of \$44.3 million. However, Golden Spread contends, SPP estimates that this circuit will result in \$312 million in net present value production cost savings to the SPS zone over the study period without providing a detailed explanation of how it arrived at the assumptions underlying its production cost savings analysis.

33. Golden Spread states that this \$312 million in estimated production cost savings would subject transmission users in the SPS zone to additional transmission charges with a corresponding net present value of \$244 million, and the proposed transmission charge would be 550 percent higher than the cost of the line. Golden Spread states that SPS calculates that this would result in a 40 percent increase in its existing transmission rates. Golden Spread further states that it understands that SPS has not successfully replicated the SPP cost savings, and it does not appear that SPP's compliance filing would obligate SPP to provide data that would allow anyone to determine how those savings were calculated, or to verify the reasonableness of the assumptions behind the calculations.

34. Furthermore, Golden Spread states that it is concerned that SPP has elected not to consider construction of an additional 345 kV line interconnecting the SPS zone with SPP, which Golden Spread states would strengthen the severely limited SPP-SPS flowgate. Golden Spread states that while it is highly supportive of additional transmission infrastructure in the SPS zone, it is adamantly opposed to a process that relies on the dubious assumption that the benefits of alleviating a single internal constraint are sufficient to require customers in the SPS zone to subsidize hundreds of

millions of dollars in transmission elsewhere in SPP while leaving the SPP-SPS flowgate unchanged.

b. Answer

35. SPP states that the Protestors' assertions that the compliance filing is deficient because the balanced portfolio reports will not provide enough detail to replicate the analyses ignore existing provisions of the SPP OATT. SPP notes that the requirement to replicate study results comes from Order No. 890. SPP further states that as a result of the Commission acceptance of SPP's Order No. 890 compliance filing, the SPP OATT already contains provisions in section VI.6(b) of Attachment O that enable stakeholders access to data in order to replicate the results of the transmission planning studies, including balanced portfolio studies.

36. SPP also states that in the SPP Planning Order the Commission accepted its information exchange provision of Attachment O to maintain the confidentiality of certain data consistent with the information exchange principle of Order No. 890. SPP states that, for those entities that have executed a confidentiality agreement, SPP will provide password-protected access to confidential information related to the SPP Transmission Expansion Plan and the underlying studies and models on the SPP website. SPP states that this section prohibits SPP from making public resource-specific data that has been designated confidential by the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and benefits. SPP contends that its duty to keep such information confidential is consistent with prior Commission precedent.²⁴ Therefore, SPP argues, maintaining that duty does not render SPP non-compliant with the Commission's directives as Occidental suggests.²⁵

37. In addition, SPP states that balanced portfolios are considered "high priority studies" for which SPP will post on the SPP website with password protected access, a report and related studies, and the underlying criteria, assumptions, and data. Therefore, SPP states, even before the compliance filing, the SPP OATT provided mechanisms that gave stakeholders access to data and assumptions regarding balanced portfolio studies.

²⁴ See SPP Answer at 5 (citing *U.S. Dept. of Energy – Bonneville Power Admin.*, 124 FERC ¶ 61,054, at P 38 (2008); *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at P 87 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,165, at P 20 (2008).

²⁵ See SPP Answer at 8.

38. SPP asserts that it has provided the stakeholders significant information regarding the balanced portfolio studies by posting such password-protected information on its website and providing monthly updates to the SPP Cost Allocation Working Group.

c. Commission Determination

39. We find that SPP has not complied with the Commission's directive to ensure that market participants may review SPP's system design software results to check its application of assumptions in creating the adjusted production cost-benefits metrics used to analyze a balanced portfolio. As noted above, in the October 16 Order, the Commission specifically directed SPP "to create a mechanism that allows for market participants such as ITC [Great Plains] to review the system design software, subject to signing confidentiality agreements or other needed arrangements to protect sensitive information."²⁶ However, in its compliance filing, SPP references language in Attachment O of its OATT, which merely provides that in regard to developing a potential balanced portfolio, it will publish a timely report, including but not limited to, the study input assumptions, the estimated costs included in the potential balanced portfolio, and the expected economic benefits of the potential balanced portfolio.²⁷ SPP then states that such a report shall comply with its existing information sharing and reporting requirements of its Attachment O.

40. The Commission finds that SPP has not proposed in its compliance filing tariff language creating a mechanism that allows market participants to review the system design software results, subject to signing confidentiality agreements or other needed arrangements to protect sensitive information as directed in the October 16 Order.²⁸ Accordingly, we find that SPP has not complied with the Commission's directives in the October 16 Order. We direct SPP to submit, within 60 days of the date of this order, revised tariff sheets with provisions ensuring that system design software results needed for stakeholders to verify the application of the assumptions in creating the adjusted production cost-benefit metrics will be made available subject to the signing of confidentiality agreements or other needed arrangements to protect sensitive information.

41. Further, as the Commission explained above in response to SPP's request for clarification, the Information Exchange provisions of Attachment O prohibit SPP from making resource specific data available if the data has been designated confidential by

²⁶ October 16 Order, 125 FERC ¶61,054 at P 37.

²⁷ SPP OATT, Attachment O, proposed section IV.6(f)

²⁸ See October 16 Order at P 37.

the data provider or if the data can be used to (i) determine security constrained unit commitment or economic dispatch for resources; or (ii) perform an economic evaluation of costs and benefits. As discussed above, this provision is unjust and unreasonable because it restricts access to resource specific data that market participants need to verify that the results of the balanced portfolio studies are reasonable and consistent with the OATT. Moreover, it denies access to information that market participants need to replicate the results of transmission planning studies, and is, therefore, unduly discriminatory and inconsistent with the transparency requirement of Order No. 890. Accordingly, we hereby direct SPP to revise section IX.7, within 60 days of the date of this order, to provide that resource-specific data in the planning process be disclosed by SPP, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.

3. Mandatory Review Period

a. Protests

42. Xcel and Golden Spread allege that SPP's proposal to "timely" publish a data report is vague and open to interpretation. Xcel also contends that after approximately 12 months of developing the draft balanced portfolio, it is unjust and unreasonable that SPP transmission owners were only given 39 days to review and verify the final analysis underlying the balanced portfolio prior to its adoption by the SPP Board of Directors. Occidental further argues that SPP's compliance filing is deficient because it fails to provide a timeframe for market participants to evaluate the balanced portfolio information to be provided.

43. Therefore, Xcel and Occidental request that the Commission direct SPP to further modify Attachment O to include reasonable timeframes within which the underlying data will be made available by SPP and to state how much time will be allotted for stakeholder review before the approval process begins. For example, Xcel asserts that SPP should be required to make the underlying data available no more than 15 days after SPP has posted the proposed draft balanced portfolio results on its website. In addition, Xcel and Occidental state that SPP transmission owners should be given no fewer than 90 days to seek clarification or challenge results prior to a Board of Directors vote to adopt the balanced portfolio plan.

44. Xcel asserts that litigation, expense, and further delay could be avoided if appropriate time is allotted for stakeholder review and verification upfront. In addition, Xcel states that SPS could potentially see hundreds of millions of dollars in transmission costs assigned to the SPS zone and only have one \$44.3 million transmission project included in the initial slate of balanced portfolio projects, and thus, requests a reasonable time to review, verify, and challenge the underlying assumptions and balanced portfolio analysis and results.

b. Answer

45. SPP argues, the directives in the October 16 Order do not require that its tariff specify a timeframe for review and challenge prior to the SPP Board of Directors consideration of a balanced portfolio and that such amendments are beyond the scope of the compliance filing.

46. Furthermore, SPP again points out that it has provided market participants with substantial information throughout the balanced portfolio study process through the SPP Cost Allocation Working Group, and a “webinar” which provided an economic primer on data, modeling techniques, and assumptions to participants. In addition, SPP states that the final balanced portfolio analysis will be presented at a summit scheduled for March 24, 2009, and the balanced portfolio recommendations will be presented again to the SPP Cost Allocation Working Group, the SPP Markets and Operations Policy Committee, and the SPP Regional State Committee.

47. SPP argues that because the stakeholders have had such access to information throughout the balanced portfolio process, to add 105 days of review prior to consideration by the SPP Board of Directors is unnecessary and would delay implementation of the balanced portfolios without providing any additional benefit.

c. Commission Determination

48. We will not require SPP to institute a specified timeframe for stakeholders to review a potential balanced portfolio once SPP has posted it on its website. As SPP points out, stakeholders have many opportunities to gather, review, and respond to information regarding a balanced portfolio throughout the development process. We agree with SPP that the Commission did not require SPP to amend its proposal to provide particular timeframes; thus this issue is beyond the scope of this compliance filing.

4. Technical Conference**a. Protests**

49. Golden Spread and Occidental state that because SPP has failed to comply with the October 16 Order, the Commission should reject SPP’s compliance filing and direct SPP not to implement the balanced portfolio tariff provisions until SPP has filed, and the Commission has accepted, a compliance filing that provides customers with the ability to duplicate and verify SPP’s calculations of costs and benefits, and the assumptions behind those calculations. In addition, both Golden Spread and Occidental request that the Commission convene a technical conference because, given the complexity of production cost modeling, a conference would enable better understanding of the SPP analytical process and the development of tariff language acceptable to all stakeholders.

b. Answer

50. SPP submits that a technical conference as requested by Golden Spread and Occidental would be duplicative and unnecessary. However, SPP states that if the Commission orders a technical conference, SPP suggests that it be combined with existing SPP stakeholder process events (e.g., the balanced portfolio summit or a scheduled SPP Cost Allocation Working Group meeting to avoid duplication and delay).

c. Commission Determination

51. The Commission finds that when SPP complies with the Commission's directives, as discussed above, SPP will provide sufficient information for stakeholders to review and understand the balanced portfolio development process. We are not persuaded that a technical conference at this time will provide any additional benefit to stakeholders. Nor are we convinced that requiring SPP to stop implementing the balanced portfolio proposal as Golden Spread and Occidental request is warranted in light of the additional delay such a directive could cause.

The Commission orders:

(A) SPP's request for clarification, or in the alternative, rehearing is denied, as discussed in the body of this order.

(B) SPP's tariff revisions are accepted for filing, effective October 17, 2008, subject to a further compliance filing, as discussed in the body of this order, and the ordering paragraph below.

(C) SPP is hereby directed to submit a compliance filing, within sixty days of the date of issuance of this order to include tariff language ensuring that system design software results are made available in the balanced portfolio process, revising section IX.7 of Attachment O of its OATT, and clarifying that costs incurred by transmission owners or zones resulting from third-party impacts included in the balanced portfolio cost-benefit analysis will be net of any reimbursements resulting from such third-party impacts, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.