

129 FERC ¶ 61,163  
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. ER09-1050-000  
ER09-748-000  
ER09-1192-000

(Not  
consolidated)

ORDER ON COMPLIANCE FILING

(Issued November 20, 2009)

1. On April 28, 2009, in Docket No. ER09-1050-000, Southwest Power Pool, Inc. (SPP) submitted a compliance filing in response to Order No. 719<sup>1</sup> that proposes revisions to its Open Access Transmission Tariff (tariff). SPP requests that its proposed tariff revisions be made effective June 28, 2009. In this order, the Commission accepts in part, and rejects in part, SPP's compliance filing, including its revised tariff sheets, to be effective June 28, 2009, and will require a further compliance filing within ninety days of the date of issuance of this order, as discussed below.

I. **Background**

A. **Order No. 719**

2. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets<sup>2</sup> and amended its regulations under the

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<sup>1</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719 or Final Rule).

<sup>2</sup> Organized market regions are areas of the country in which a regional  
(continued...)

Federal Power Act (FPA)<sup>3</sup> in the areas of: (1) demand response, including pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission stated that these reforms are intended to improve wholesale competition to protect consumers by providing more supply options, encouraging new entry and innovation, spurring deployment of new technologies, removing barriers to demand response, improving operating performance, exerting downward pressure on costs, and shifting risk away from consumers.<sup>4</sup>

3. In the area of demand response, the Commission in Order No. 719 required each RTO and ISO to: (1) accept bids from demand response resources in the RTO's or ISO's markets for certain ancillary services, on a basis comparable to other resources; (2) eliminate, during a system emergency, a charge to a buyer that takes less electric energy in the real-time market than it purchased in the day-ahead market; (3) in certain circumstances, permit an aggregator of retail customers (ARC) to bid demand response on behalf of retail customers directly into the organized energy market; and (4) modify its market rules, as necessary, to allow the market-clearing price, during periods of operating reserve shortage, to reach a level that rebalances supply and demand so as to maintain reliability while providing sufficient provisions for mitigating market power.<sup>5</sup>

4. Additionally, the Commission recognized that further reforms may be necessary to eliminate barriers to demand response in the future. To that end, the Commission required each RTO or ISO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction. The Commission further required each RTO's or ISO's Independent Market Monitor to submit a report describing its views on its RTO's or ISO's assessment to the Commission.<sup>6</sup>

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transmission organization (RTO) or independent system operator (ISO) operates day-ahead and/or real-time energy markets. The following Commission-approved RTOs and ISOs have organized markets: PJM Interconnection, L.L.C. (PJM); New York Independent System Operator, Inc.; Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO New England); California Independent System Operator Corp.; and Southwest Power Pool, Inc. (SPP).

<sup>3</sup> 16 U.S.C. § 824, *et seq.* (2006).

<sup>4</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

<sup>5</sup> *Id.* P 4, 15.

<sup>6</sup> *Id.* P 274.

5. With regard to long-term power contracting, Order No. 719 required each RTO and ISO to dedicate a portion of its website for market participants to post offers to buy or sell power on a long-term basis.<sup>7</sup>

6. To improve market monitoring, the Commission in Order No. 719 directed each RTO and ISO to provide its Market Monitoring Unit with access to market data, resources and personnel sufficient to carry out its duties. The Commission further required the Market Monitoring Unit (or the external Market Monitoring Unit in a hybrid structure and, in some cases, the internal Market Monitoring Unit) to report directly to the RTO or ISO board of directors.<sup>8</sup> In addition, the Commission required that the Market Monitoring Unit's functions include the core functions of: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's behavior may require investigation.

7. The Commission also established the following requirements with regard to Market Monitoring Units: (1) expanding the list of recipients of Market Monitoring Unit recommendations regarding rule and tariff changes, and broadening the scope of behavior to be reported to the Commission; (2) modifying Market Monitoring Unit participation in tariff administration and market mitigation to require each RTO and ISO to include ethics standards for Market Monitoring Unit employees in its tariff and require each RTO and ISO to consolidate all its Market Monitoring Unit provisions in one section of its tariff; and (3) expanding the required dissemination of Market Monitoring Unit market information to a broader constituency (with reports to be made on a more frequent basis than in the past) and reducing the time periods before energy market bid and offer data are released to the public.

8. Finally, in Order No. 719 the Commission established an obligation for each RTO and ISO to establish a means for customers and other stakeholders to have a form of direct access to the RTO or ISO board of directors, to increase responsiveness to customers and other stakeholders. The Commission stated that it will assess each RTO's or ISO's compliance filing using four responsiveness criteria: (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.

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<sup>7</sup> *Id.* P 301.

<sup>8</sup> The use of the phrase "board of directors" herein also includes the board of managers, board of governors, and similar entities.

9. The Commission required the RTOs and ISOs to make compliance proposals to implement the reforms adopted in Order No. 719. In each of the four areas described above, the Commission required each RTO or ISO to consult with its stakeholders and make a compliance filing within six months of the date that the Final Rule was published in the *Federal Register*.<sup>9</sup> The compliance filings were required to explain how the RTO's or ISO's existing practices comply with the Final Rule's reforms, or to describe the entity's plans to attain compliance.<sup>10</sup> In Order No. 719, the Commission also required RTOs and ISOs to assess the technical feasibility and value to the market of smaller demand response resources providing ancillary services and report to the Commission within one year of the date that the Final Rule is published in the *Federal Register* (*i.e.*, on or before Oct. 28, 2009).<sup>11</sup>

10. On July 16, 2009, the Commission issued an Order on Rehearing, Order No. 719-A.<sup>12</sup> With few exceptions, the Commission denied the requests for rehearing.<sup>13</sup>

**B. Docket No. ER09-748-000**

11. On February 24, 2009, in Docket No. ER09-748-000, SPP filed proposed revisions to its tariff to modify its real-time Energy Imbalance Service Market (February 24 Filing)<sup>14</sup> in compliance with the Commission's directives in the *SPP Market Rehearing*

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<sup>9</sup> Order No. 719 was published in the *Federal Register* on Oct. 28, 2008. Thus, the RTO/ISO compliance filings were due to be filed on or before Apr. 28, 2009.

<sup>10</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 8, 578-83.

<sup>11</sup> *Id.* P 97, 581. *See also* Errata Notice, Docket No. RM07-19-000 (Mar. 23, 2009) (clarifying deadline).

<sup>12</sup> *Wholesale Competition in Regions with Organized Electric Markets, Order on Rehearing*, 74 Fed. Reg. 37,776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719-A).

<sup>13</sup> Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, at P 69 (2009). Each RTO and ISO is required to make a compliance filing within 180 days of the issuance date of Order No. 719-A; accordingly these compliance filings are required to be filed on or before January 16, 2010 and will be addressed by the Commission in subsequent orders.

<sup>14</sup> SPP operates a real-time Energy Imbalance Service Market, and at this time does not operate a day-ahead energy and ancillary services market.

*Order*.<sup>15</sup> Specifically, SPP's proposal allows the participation of demand response resources in SPP's Energy Imbalance Service Market.

12. SPP asserted that, operationally, there will be no difference between participation of demand response resources and generation resources. SPP proposed to revise Attachment AE (the attachment governing the operation of the Energy Imbalance Service Market) of its tariff to define a Variable Dispatch Demand Response Resource (Variable Dispatch Demand Resource) as a dispatchable resource that can respond to interval level dispatch instructions issued by SPP to reduce the withdrawal of energy from the transmission grid. SPP also proposed to revise Attachment AE to provide that the demand response provided by the Variable Dispatch Demand Resource will be calculated and sent directly to SPP. SPP stated that its proposed revisions are consistent with the requirements of Order No. 719.

13. In an order issued on July 24, 2009, the Commission accepted and suspended SPP's demand response proposal in its February 24 Filing, to be effective April 25, 2009, subject to refund and subject to further order and the outcome of SPP's Order No. 719 compliance proceeding.<sup>16</sup>

**C. Docket No. ER09-1192-000 (SPP Bylaws Filing)**

14. On May 22, 2009, in Docket No. ER09-1192-000 (SPP Bylaws Filing), SPP filed revisions to its Bylaws that included, *inter alia*, changes in attendance and quorum requirements for organizational group meetings and changes to reflect Order No. 719 market monitoring requirements.

15. Specifically, SPP proposed changes within section 3.2 of its Bylaws that established an attendance requirement for voting representatives in SPP organizational groups. The revision specified that a representative must resign his or her seat if he or she does not attend three consecutive organizational group meetings, absent express waiver by the chair of the organizational group. SPP proposed additional changes to

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<sup>15</sup> *SPP Market Rehearing Order*, 116 FERC ¶ 61,289 at P 62.

<sup>16</sup> *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,085 (2009). SPP made two additional proposals in the February 24 Filing: (1) revisions to Attachment AE to change the defined phrase "Economic Maximum/Minimum Limit" to "Dispatchable Maximum/Minimum Limit" to clarify the dispatchable range used in the application of more discrete ramp rates; and (2) removal of a provision requiring SPP to remove from the Energy Imbalance Service Market resources that fail to follow SPP's dispatch instructions for six consecutive intervals. The Commission accepted these additional proposals.

section 3.2 modifying organizational group proxy rules to permit voting members to appoint a substitute representative for no more than three consecutive meetings, although there is opportunity for waiver. The revision also specified that if the substitute representative was an authorized individual who did not currently serve as a representative for the organizational group, then that proxy's attendance would count toward the meeting's quorum requirement. However, if the substitute representative was an individual who currently served as a representative for the organizational group, that proxy's attendance would not count toward a quorum. SPP proposed revisions to section 3.8 to indicate that a quorum must be established and maintained throughout a meeting for an organizational group to take any binding action. SPP asserted these changes were just and reasonable and specifically requested by organizational group chairs to ensure that members attend meetings on a consistent basis.<sup>17</sup>

16. SPP also proposed revisions to section 3.17 of its Bylaws governing its market monitoring practices, including changes that: (1) reflect SPP's internal Market Monitoring Unit structure, (2) indicate that the internal Market Monitoring Unit reports to the SPP Board, (3) clarify that market monitoring applies to all market participants rather than just SPP members, (4) reflect that the RTO conducts market mitigation while the internal Market Monitoring Unit may recommend mitigation plans, and (5) correct various typographical and ministerial errors. SPP asserted that these changes were just and reasonable as they reflected current SPP market monitoring and mitigation practices, complied with the requirements in Order No. 719, and were consistent with tariff revisions in the SPP Order No. 719 compliance filing.<sup>18</sup>

17. In an order issued on September 17, 2009, the Commission accepted and nominally suspended the revisions to sections 3.17, 3.2, and 3.8 of the SPP Bylaws, subject to refund, and subject to the outcome of SPP's Order No. 719 compliance filing.<sup>19</sup> The Commission sought to avoid a piecemeal review of Bylaw changes with Order No. 719 implications while at the same time allowing SPP's proposals to go into effect. The Commission asserted that its conditional acceptance was subject to, and without prejudice to, the outcome of the current Order No. 719 proceeding.<sup>20</sup>

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<sup>17</sup> SPP Bylaws Filing at 8.

<sup>18</sup> *Id.*

<sup>19</sup> *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,245, at P 14, 16 (2009).

<sup>20</sup> *Id.*

**D. Docket No. ER09-1050-000 (Order No. 719 Compliance Filing)**

18. On April 28, 2009, SPP submitted its compliance filing in the instant proceeding proposing revisions to its tariff in response to Order No. 719. SPP's filing refers to its February 24 Filing (submitted in Docket No. ER09-748-000) as complying in part with the requirements of Order No. 719. According to SPP, Attachment AE of the tariff sets forth the parameters for administration of the Energy Imbalance Service Market and does not differentiate between generation resources and demand response resources.<sup>21</sup> SPP further maintains there is no distinction in the tariff or market protocols between supply-side resources and demand-side resources, including aggregators of retail customers ("ARCs").<sup>22</sup> SPP maintains that its filing in the instant docket, together with its February 24 Filing in Docket No. ER09-748-000, satisfy the requirements of Order No. 719.

**II. Notice of Filing and Responsive Pleadings**

19. Notice of SPP's filing in ER09-1050-000 was published in the *Federal Register*, 74 Fed. Reg. 21,795 (2009), with interventions, comments and protests due on or before May 26, 2009. A notice of intervention was filed by Arkansas Public Service Commission. In addition, timely motions to intervene were filed by Arkansas Electric Cooperative Corporation (AECC) (with comments), Calpine Corporation, CPower, Inc., Electric Power Supply Association (EPSA) (with comments), Electricity Consumers Resource Council (ELCON) (with comments), EnerNOC, Inc., Exelon Corporation, Golden Spread Electric Cooperative, Inc., Occidental Permian Ltd., *et al.* (Occidental) (with protest), Oklahoma Gas & Electric Company, Southwest Industrial Customer Coalition (SwICC),<sup>23</sup> TDU Intervenors,<sup>24</sup> Wal-Mart Stores, Inc. (Wal-Mart) (with comments), and Xcel Energy Services, Inc. In addition, late-filed motions to intervene were filed by American Electric Power Service Corporation (AEP), Industrial Consumers (with protest),<sup>25</sup> and Western Farmers Electric Cooperative (Western Farmers). On June 10, 2009, SPP filed an answer to the protests and comments.

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<sup>21</sup> SPP Compliance Filing at 6.

<sup>22</sup> SPP Compliance Filing at 13.

<sup>23</sup> This group describes itself as an ad hoc coalition of industrial customers with one or more manufacturing facilities located within the SPP footprint.

<sup>24</sup> Lincoln Electric System, Missouri Joint Municipal Electric Utility Commission and the West Texas Municipal Power Agency collectively filed comments as "TDU Intervenors."

<sup>25</sup> Industrial Consumers comprises Portland Cement Association and ArcelorMittal  
(continued...)

### **III. Discussion**

#### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and 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) (2009), the Commission will grant the late-filed motions to intervene given these entities' interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. The Commission will accept SPP's answer because it has provided information that assisted us in our decision-making process.

22. The Commission takes administrative notice of the proposals, comments and protests filed in Docket No. ER09-748-000 to the extent those pleadings pertain to SPP's demand response programs that the Commission is addressing in this proceeding. The Commission finds that, while these proposals and arguments were advanced in Docket No. ER09-748-000, the instant proceeding is the appropriate forum to address these issues.

#### **B. Substantive Matters**

23. The Commission finds that SPP's filing, with certain exceptions, complies with the requirements the Commission established in Order No. 719. Accordingly, the Commission accepts in part, and rejects in part, SPP's filing, to be effective June 28, 2009, and will direct SPP to make a further compliance filing within ninety days of the date of issuance of this order.

24. As to SPP's proposal in Docket No. ER09-748-000, which provides for the participation of demand resources in its Energy Imbalance Service Market, as discussed further below, we find SPP's filing to be insufficient and we will direct SPP to submit a compliance filing that rectifies these deficiencies. As to SPP's proposal in Docket No. ER09-1192-000, to revise section 3.17 of its Bylaws to better reflect its market monitoring practices, we accept SPP's proposal in part and direct SPP to make additional

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USA, Inc. Its protest referenced all six proceedings involving Order No. 719 ISO/RTO compliance filings, as well as the Order No. 719 rulemaking proceeding at RM07-19-000.

changes to this Bylaw, as described later in this order. As to SPP's proposal in Docket No. ER09-1192-000 to revise sections 3.2 and 3.8 in the SPP Bylaws to establish attendance, proxy, and quorum requirements, this order makes no findings as to whether these provisions comply with the fourth area of reforms identified in Order No. 719: *i.e.*, the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission recently issued a notice announcing that its staff will hold a technical conference in the near future to provide a forum for interested participants to discuss that topic.<sup>26</sup> Following that technical conference, the Commission will issue a separate order addressing SPP's compliance with this aspect of Order No. 719.

1. **Demand Response and Pricing during Periods of Operating Reserve Shortages in Organized Markets**

a. **Ancillary Services Provided by Demand Response Resources**

25. In Order No. 719 the Commission required each RTO and ISO to accept bids from demand response resources, on a basis comparable to any other resources, for ancillary services (energy imbalance, spinning reserves, supplemental reserves, reactive and voltage control, and regulation and frequency response) that are acquired in a competitive bidding process, if such demand response resources: (1) are technically capable of providing the ancillary service within the response time requirements and meet reasonable requirements adopted by the RTO or ISO as to size, telemetry, metering and bidding; and (2) submit a bid under the generally-applicable bidding rules at or below the market-clearing price, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. All accepted bids would receive the market clearing price. Further, the Order required each RTO and ISO to establish policies and procedures in cooperation with customers and other stakeholders to ensure that demand response resources are treated comparably to supply-side resources.<sup>27</sup>

26. Additionally, in Order No. 719 the Commission directed each RTO and ISO to file, as part of its compliance filing, a proposal to adopt reasonable standards necessary for system operators to call on demand response resources, together with mechanisms to measure, verify, and ensure compliance with any such standards.<sup>28</sup> Further, in Order

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<sup>26</sup> See First Notice of Technical Conference on RTO/ISO Responsiveness, Docket Nos. ER09-1048-000, *et al.*, 74 Fed. Reg. 59159 (Nov. 13, 2009).

<sup>27</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 47, 49, 50.

<sup>28</sup> *Id.* P 61.

No. 719 the Commission required RTOs and ISOs to describe their efforts to develop adequate customer baselines.<sup>29</sup> The Commission also required RTOs and ISOs to coordinate with their stakeholders and each other in the development of technical requirements for demand response resources participating in ancillary services markets, and provide the Commission with a technical and factual basis for any necessary regional variations.<sup>30</sup>

27. Order No. 719 required RTOs and ISOs to perform an assessment, in cooperation with their customers and other stakeholders, of the technical feasibility and value to the market of smaller demand response resources providing ancillary services, within one year from the date that Order No. 719 is published in the *Federal Register*, including whether (and how) smaller demand resources can reliably and economically provide operating reserves.

28. Finally, Order No. 719 required each RTO and ISO to allow demand response resources to specify limits on the duration, frequency and amount of their service in their bids to provide ancillary services or their bids into the joint energy-ancillary services markets in the co-optimized RTO or ISO markets.<sup>31</sup>

**i. SPP's Filing**

29. SPP states that its Energy Imbalance Service Market, as structured, accommodates the participation of demand response resources. SPP states that it has recently proposed, and proposes in this filing, modifications to its Energy Imbalance Service Market to enhance participation in, and comparable treatment of, demand response resources in the Energy Imbalance Service Market. For example, in Docket No. ER09-748-000, SPP filed (February 24 Filing) revisions to its tariff to modify its Energy Imbalance Service Market and implemented market protocols to facilitate demand response participation in the Energy Imbalance Service Market.<sup>32</sup> SPP states that the proposed changes in the February 24 Filing coupled with existing Energy Imbalance Service Market features and the provisions proposed in this filing, satisfy the Commission's requirements for demand response participation in RTO ancillary services markets as outlined in Order No. 719.

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<sup>29</sup> *Id.* P 57.

<sup>30</sup> *Id.* P 59.

<sup>31</sup> *Id.* P 81.

<sup>32</sup> *See* Submission of Revisions to Open Access Transmission Tariff to Modify Energy Imbalance Service Market of Southwest Power Pool, Inc., Docket No. ER09-748-000 (February 24, 2009).

30. SPP maintains that its Energy Imbalance Service Market, as modified by the February 24 Filing and the revisions proposed herein, provides for comparable treatment of demand response resources. SPP states that Attachment AE, Energy Imbalance Services Market, of the SPP tariff sets forth the parameters for administration of the Energy Imbalance Service Market, and does not differentiate between generation resources and demand response resources in its implementation of the Energy Imbalance Service Market. For example, SPP points to Attachment AE that currently defines “Resources” as:

Assets which are defined within the Energy Imbalance Service Market systems which inject energy into the transmission grid, or which reduce the withdrawal of energy from the transmission grid, and may be self-dispatched or directly dispatchable by the transmission provider.

31. SPP also states that the February 24 Filing incorporated a definition of Variable Dispatch Demand Resource that was intended to clarify the Energy Imbalance Service Market’s treatment of demand response resources that are dispatchable on a five minute interval required in the Energy Imbalance Service Market and to provide for the calculation and communication of the Variable Dispatch Demand Resource’s demand reduction to SPP and the appropriate Balancing Authority.

32. SPP asserts that, because its tariff and market protocols currently allow demand response resources to register and participate in the Energy Imbalance Service Market in the same manner as any other resource, the set of technical requirements for demand response resources is the same as those for generation resources. Therefore, SPP argues that system operators can call on demand response resources using the same criteria as other resources and measure, verify, and ensure compliance in the same manner. SPP offers the example of a system operator being able to call on a demand response resource using the same criteria as other resources and having the ability to measure, verify and ensure compliance in the same manner as for generation resources.<sup>33</sup> SPP states that, under Attachment AE, demand response resources are required to meet the same telemetry, metering, and bidding requirements applicable to other generation resources. Therefore, SPP states it does not propose any modifications to its Energy Imbalance Service Market to specify demand response resources-specific requirements for size, telemetry, metering, and bidding.

33. In developing the February 24 Filing, SPP states that its stakeholders voted to modify the market protocols applicable to market participants registering demand

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<sup>33</sup> See Attachment AE § 4 of SPP tariff (establishing real-time period activities including dispatch and verification of Energy Imbalance Service Market resources).

response resources to require that the registered owner of the load settlement location for the demand response resource and the respective meter agent agree on a methodology to calculate the Resource's Actual Resource Production. In establishing the Actual Resource Production calculation methodology, SPP states that the demand response resource, the load settlement location owner, and the meter agent will reach agreement on the method for determining the customer's baselines. In response to the Commission's request for clarification on the subject of measurement and verification, SPP states that load reduction (*i.e.*, Actual Resource Production) will be determined by a metering algorithm agreed upon by the Metering Agent, Balancing Authority, and the demand response resource.<sup>34</sup>

34. Under Attachment AE, SPP states that demand response resources are required to submit a resource plan like any resource. SPP states that in the February 24 Filing, it modified its market protocols governing the contents of Resource Plans submitted by Energy Imbalance Service Resources to allow for the submission of multiple ramp rates by market participants and to modify parameters for specifying the resource's minimum and maximum capacity limits. Resource plans are required to include: (1) the resource's physical, economic, and emergency minimum and maximum sustainable capacity limit in megawatts per hour for each Operating Hour; (2) the resource's planned output in megawatts per hour independent of its Energy Imbalance Service deployment (for demand response resources, this value is zero); and (3) the resource's status for SPP dispatch for the next seven days. SPP states that the resource plans are submitted with an hourly "granularity" and may be changed each hour, including the resource's availability to the market.<sup>35</sup> SPP states that, together, Attachment AE and the market protocols satisfy the Commission's requirement that RTOs and ISOs allow demand response resources to specify limits on the duration, frequency, and amount of their service in their bids.

35. SPP filed a report on small demand response resource participation on October 28, 2009.<sup>36</sup>

## **ii. Protests and Comments**

36. In its protest in Docket No. ER09-748-000, Westar states that it fully supports SPP's effort to incorporate demand response into the Energy Imbalance Service Market.

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<sup>34</sup> See *Southwest Power Pool, Inc.*, Docket No. ER09-748-000, Submission of Response to Request for Additional Information, Exhibit 1 at 3 (May 26, 2009).

<sup>35</sup> SPP Compliance Filing at 9.

<sup>36</sup> This report will be addressed in a subsequent proceeding.

However, Westar contends that SPP's efforts are inadequate and should be rejected as written. Westar states that SPP's proposed tariff revisions are not understandable and provide minimal information to implement the desired demand response changes. For example, Westar states that the definition of Variable Dispatch Demand Resource is the only language that describes how a demand response resource can participate and how it will be settled in the Energy Imbalance Service Market. Westar argues that this definition does not provide sufficient explanation for how demand response will actively participate in the market.<sup>37</sup>

37. Westar states that the Commission should also require SPP to address: (1) the relationship and coordination of a demand response resource with its host balancing authority and retail electric supplier; (2) the definition of the "value" that is sent directly to the transmission provider and which is the actual calculated amount of load reduction (the Actual Resource Production); (3) the eligibility of a demand response resource to participate in the wholesale Energy Imbalance Service Market if the demand response resource is owned and/or operated by a retail customer within SPP and is subject to state laws and regulations governing retail end users of electricity in the state; and (4) the identification of the party responsible for verifying that a demand response resource, if dispatched by SPP to provide demand response, actually provided the demand response.<sup>38</sup>

38. In comments filed in Docket No. ER09-748-000, SwICC contends that SPP should include in its tariff the provisions that are currently in the market protocols concerning the participation of demand response resources in the Energy Imbalance Service Market. Specifically, SwICC states that the Commission should require SPP to incorporate language from section 3.6.3 of its market protocols into its tariff. The cited language clarifies that the market participant, meter agent, and an owner of load settlement location "will agree" to provide information necessary to allow SPP to account correctly for Variable Dispatch Demand Resource participation in the Energy Imbalance Service Market.<sup>39</sup>

39. In its comments in Docket No. ER09-1050-000,<sup>40</sup> ELCON encourages the Commission to scrutinize the provisions relating to demand response in each of the

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<sup>37</sup> Westar Protest at 3-4.

<sup>38</sup> *Id.* at 4.

<sup>39</sup> SwICC Comments at 5-6.

<sup>40</sup> ELCON filed the same comments in each of the RTO and ISO compliance filing proceedings.

compliance filings to ensure they meet Order No. 719's "comparable terms" and "reasonableness" criteria. ELCON maintains that despite Order No. 719's clear mandate to improve demand response access to markets, the compliance filings of each RTO and ISO do not implement either the directives or the overarching principles enumerated in Order No. 719. ELCON maintains that the RTOs and ISOs have not granted comparable treatment and have not established reasonable terms for demand response. Accordingly, the primary shortcoming of the demand response protocols is that the RTOs and ISOs appear to have incorrectly equated "comparable treatment" to "identical treatment."

40. ELCON maintains that RTOs and ISOs have proposed to place conditions and requirements on demand response providers identical to those for generators, based on systems and practices originally established to meet the specific needs of generation, and it argues that applying such a one-size-fits-all standard will inhibit demand response. Instead of blindly applying standards designed for generation resources, ELCON argues that RTOs and ISOs should recognize that a policy of identical conditions does not result in equivalent opportunities, because demand response resources and generation resources have fundamentally different attributes. Finally, ELCON asserts that when implementing "comparable treatment," the protocols for demand response providers should not be based on the limitations of generators but instead on a source-neutral basis that also reflects concern for system reliability.

41. In addition, ELCON states that RTOs and ISOs should pursue nationwide uniformity with respect to the treatment of demand response resources. ELCON maintains that the lack of standardization among the RTOs and ISOs with respect to demand response protocols imposes significant costs on the large industrial consumers who likely will provide the bulk of demand response resources. ELCON states that large industrial customers typically have many facilities throughout the country and often have major loads within the footprints of more than one RTO or ISO. ELCON maintains that it is a tremendous burden for demand response-capable loads to respond to the different, often conflicting, rules and procedures. According to ELCON, the complexity and burden of addressing regionally-disparate demand response programs on a case-by-case basis inhibits the participation of demand response resources. However, through standardization, RTOs and ISO can reduce delays, inefficiencies, and transaction costs for demand response providers. In its comments, ELCON suggests that it is not too late for the Commission to revisit the issue to adopt *pro forma* tariff language that would promote demand response consistently on a nationwide basis. ELCON also supports a national conference among the six RTOs and ISOs to discuss consistency with respect to demand response resources.

### **iii. SPP Answer**

42. In its answer, SPP states that the comments opposing SPP's compliance filing, as it relates to demand response, are without merit and should be rejected. SPP maintains

that through its stakeholder process, it has developed tariff revisions that, when coupled with existing practices, provide comparable treatment for demand response resources in the Energy Imbalance Service Market.

43. SPP asserts that ELCON's generic comments in opposition to the demand response programs of all RTOs and ISOs should be rejected. SPP states that ELCON's objection to RTO and ISO requirements that demand response resources meet the same requirements as generators ignores the Commission's requirement that demand response resources be permitted to participate in ancillary services markets if they "are technically capable of providing the ancillary service and meet the necessary technical requirements."<sup>41</sup> SPP asserts that the most effective way to maintain reliability and proper functioning of the Energy Imbalance Service Market would be to require that demand response resources meet the same requirements as generators.

44. In addition, SPP asserts that ELCON's call for a national *pro forma* demand response tariff or other uniform standards ignores the Commission's findings in Order No. 719 and the inherent differences in the market structures of RTOs and ISOs. SPP states that the proper venue for ELCON's request for reconsideration is through a request for rehearing of Order No. 719, rather than this compliance filing.

#### **iv. Commission Determination**

45. At the outset, we agree with ELCON that "comparability" is not necessarily achieved by setting conditions for demand response resources the same as those set for generating resources. We address a few specific issues in this order and require SPP to adequately address "comparability" in a way which enables demand response resources to participate on terms that both address the characteristics of demand response resources and ensure reliable operations.

46. The Commission finds SPP's current bidding parameters for demand response resources, specifying the limits of duration, frequency and amount of their service in their bids, to be consistent with the requirements of Order No. 719. However, the Commission notes that SPP's bidding parameters are included in its market protocols and not in its tariff. By having these requirements in the SPP market protocols, SPP could change these provisions at any time and without Commission approval. The Commission employs a "rule of reason" analysis to determine whether a specific provision should be included in the transmission provider's tariff or may remain in its business practices (e.g., market protocols). The Commission maintains that if the rules, standards, and practices significantly affect rates, terms and conditions of transmission service, such provisions must be filed pursuant to section 205 of the Federal Power Act, approved by the

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<sup>41</sup> SPP Answer at 6, *citing* Order No. 719 at P 47.

Commission and included in the transmission provider's tariff.<sup>42</sup> The Commission finds that SPP's bidding parameters affect the terms and conditions of acquiring transmission service and need to be incorporated in SPP's tariff. The Commission believes that having such bidding parameters in the tariff will ensure greater transparency and consistency for all customers bidding into the Energy Imbalance Service Market, especially participating demand response resources. Therefore, the Commission directs SPP to incorporate its bidding parameters into its tariff within ninety days of the issuance of this order.

47. With respect to acceptance of bids for ancillary services from demand response resources on a basis comparable to any other resource, the Commission finds SPP's filing to be insufficient. Except for the specific area identified in the previous paragraph, the filing lacks substantive discussion of the technical requirements, policies and procedures needed for demand response resource participation in the Energy Imbalance Service market. Aside from general statements that they are the same as for generation resources, SPP did not explain what the technical requirements are for demand response resources, including, but not limited to the technical requirements for size, telemetry, and metering. It did not justify why technical requirements, policies, and procedures tailored for generation resources are reasonable and appropriate for accommodating the characteristics of technically capable demand response resources.

48. As suggested by ELCON's comments, SPP did not demonstrate any consideration of whether re-tailoring such requirements would ensure comparable treatment for technically capable demand response resources. Further, the Commission agrees with Westar that SPP did not provide sufficiently detailed explanations to show how, under its market, bids from demand response resources would be accepted on a basis comparable to any other resources, nor did it explain the roles and relationships of all parties needed for demand response resource market transactions (i.e., the roles of the demand response resource, the load settlement location owner, and the meter agent and how each will contribute to reaching an agreement on determining the actual production of the resource). In short, it is unclear what each entity will do and what their relationship to one another is with respect to providing demand response. The Commission, therefore, directs SPP to submit a compliance filing within ninety days of the date of issuance of this order that includes revising Attachment AE to its tariff to accept bids from technically capable demand response resources on a basis comparable to other resources. The compliance filing must contain sufficient detail, including resolution of those

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<sup>42</sup> See generally, *California Indep. System Operator*, 128 FERC ¶ 61,265, P 46, n.52 (2009); and *Public Serv. Comm'n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987); *Midwest Indep. Transmission Sys. Operator, Inc.*, 98 FERC ¶ 61,137, at 61,401 (2002).

deficiencies identified in this and the preceding paragraph, to demonstrate that its tariff revisions will accomplish this requirement.

49. The Commission rejects SPP's proposed methodology for determining a customer's baseline. While SPP proposes that the demand response resource, load settlement location owner, balancing authority, and the meter agent will agree on a method for determining a customer's baseline, the Commission finds that SPP does not provide any additional information on how the parties will reach such agreement, nor does SPP demonstrate that the resulting method for baseline calculations will be just and reasonable and not unduly discriminatory. As outlined in Order No. 719, the Commission finds that the establishment of a baseline will help system operators measure and verify load reductions, and will give RTOs and ISOs the ability to determine if demand response resources being provided to the market show up, and what the proper value of a specific demand reduction would be.<sup>43</sup>

50. The Commission also finds that SPP does not propose a measurement and verification standard as required by Order No. 719.<sup>44</sup> The Commission believes that leaving creation of a verification standard to others creates the strong potential for confusion among market participants, metering agents, and balancing authorities. For example, one local balancing authority or metering agent could develop a standard for one demand response resource and a different standard for another demand response resource. Such case-by-case development of measurement and verification processes by separate entities, including those that may be market competitors (*e.g.*, an ARC negotiating such a process with a Local Balancing Authority that is also a Load Serving Entity (LSE) in competition for demand response customers) also creates the potential for unduly discriminatory behavior.

51. Therefore, the Commission directs SPP to submit a compliance filing within ninety days of the date of issuance of this order that provides baseline, measurement and verification methodologies for demand response resources and a timeline for implementation of these methodologies. Among other features, these overlapping methodologies should be uniform, depict as accurately as possible a demand response resource's normal (baseline) load on a given day, reliably measure the "Actual Resource Production," and verify performance and compliance with dispatch instructions. The roles, responsibilities, and associated payments of all participating parties must be clearly defined.

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<sup>43</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 57.

<sup>44</sup> *Id.* P 61.

52. With respect to coordinating SPP's technical requirements with those of other RTOs and ISOs, the Commission finds that the demand response matrix and the North American Energy Standard Board (NAESB) submission of "Measurement and Verification Demand Response Products" are steps toward promoting demand response consistently in all regions.<sup>45</sup> The development of the matrix enables ISO/RTO Council members to compare market designs and other features such as bidding thresholds of demand resource participation in the wholesale markets. Moreover, it is consistent with Order No. 719's requirement that RTOs and ISOs confer with each other on bidding parameters and methods, and it provides a factual basis for regional variations at this stage of the process.<sup>46</sup> The ISO/RTO Council has also developed a service comparison matrix that includes information beyond measurement and verification (*e.g.*, product and service definitions).

53. ELCON also requests that the Commission pursue uniform demand response standards. In Order No. 719, the Commission specifically chose not to develop "a standardized set of minimum requirements for minimum size bids, measurement, telemetry and other factors, and instead allowed RTOs and ISOs to develop their own minimum requirements, including bidding parameters."<sup>47</sup> It would be inappropriate to use the compliance filing process as a forum to reconsider that determination in the Final Rule. However, we note that NAESB has adopted Phase I business practice standards for the measurement and verification of demand response, a first step in a process that may lead to greater standardization through the NAESB consensus process.<sup>48</sup> The Commission will continue to examine the need for further generic policy reforms to identify and eliminate barriers to comparable treatment of demand response, and ELCON's concerns with standardization may be raised in relevant future Commission proceedings.

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<sup>45</sup> See the ISO/RTO Council matrix at:  
<http://www.isorto.org/site/c.jhKQIZPBlmE/b.2603295/k.BEAD/Home.htm>.

<sup>46</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 86.

<sup>47</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 87.

<sup>48</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Notice of Proposed Rulemaking, 74 FR 48173 (Sep. 22, 2009), FERC Stats. & Regs. ¶ 32,646 (Sep. 17, 2009).

**b. Eliminating Deviation Charges during System Emergencies**

54. In Order No. 719, the Commission required RTOs and ISOs to modify their tariffs to eliminate a deviation charge to a buyer in the energy market for taking less electric energy in the real-time market than was scheduled in the day-ahead market. This charge would be eliminated only during a real-time market period for which the RTO or ISO declares an operating reserve shortage or makes a generic request to reduce load in order to avoid an operating reserve shortage.<sup>49</sup> Order No. 719 also directed RTOs and ISOs to modify their tariffs to eliminate deviation charges for virtual purchases, during the same period as they are eliminated for physical purchases, unless the RTO or ISO makes a showing upon compliance that it would be appropriate to assess such deviation charges for virtual purchases during this period.<sup>50</sup>

**i. SPP's Filing**

55. In its proposal, SPP states that because it only operates a real-time Energy Imbalance Service Market and not a day-ahead energy market, there are no deviation charges in SPP's tariff that SPP would assess to a buyer for taking less energy in the real-time market than was scheduled in the day-ahead market. Additionally, because SPP operates only a real-time market that does not accommodate virtual transactions, SPP states that deviation charges to virtual purchases do not apply in the Energy Imbalance Service Market. However, SPP states that any future market design, including a possible future day-ahead market, will comply with this requirement. SPP's proposal was unopposed.

**ii. Commission Determination**

56. The Commission accepts SPP's compliance proposal and finds that, because SPP has no day-ahead market, the requirements in Order No. 719 to eliminate deviation charges for a buyer taking less energy in the real-time market than was scheduled in the day-ahead market do not apply to SPP at this time. Currently, SPP only operates one market, its Energy Imbalance Service Market, where all market operations, including the scheduling and purchasing of energy occur in real-time. The Commission also finds that the requirement to eliminate deviation charges for virtual purchases does not pertain to SPP, as SPP's Energy Imbalance Service Market does not accommodate virtual purchases. The Commission notes, however, that while this change is not necessary for its Energy Imbalance Service Market, SPP should comply fully with this requirement if

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<sup>49</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 111.

<sup>50</sup> *Id.* P 127.

and when it institutes a day-ahead energy market, where day-ahead energy schedules submitted in the day-ahead market are financially binding in real-time.

c. **Demand Response Resource Participation and Aggregation of Retail Customers in the Energy Imbalance Service Market**

57. Order No. 719 required RTOs and ISOs to accept bids for ancillary services from demand response resources, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. Similarly, the Order also required RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response directly into the RTO's or ISO's organized markets on behalf of retail customers, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate. The Commission determined that allowing an ARC to act as an intermediary for many small retail loads that cannot individually participate in the organized market would reduce a barrier to demand response participation.<sup>51</sup>

58. The Commission directed RTOs and ISOs to submit compliance filings to propose amendments to their tariffs or otherwise demonstrate how their existing tariffs and market rules comply with the Final Rule.<sup>52</sup> The Commission indicated that tariff revisions are to be made in accordance with certain specified criteria and flexibilities:<sup>53</sup>

(1) The ARC's demand response bid must meet the same requirements as a demand response bid from any other entity, such as a load-serving entity. For example:

- Its aggregate demand response must be as verifiable as that of an eligible load-serving entity or large industrial customer's demand response that is bid directly into the market;
- The requirements for measurement and verification of aggregated demand response should be comparable to the requirements for other providers of demand response resources, regarding such matters as transparency, ability to be documented, and ensuring compliance;

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<sup>51</sup> *Id.* P 154.

<sup>52</sup> *Id.* P 163.

<sup>53</sup> *Id.* P 158.

- Demand response bids from an ARC must not be treated differently from the demand response bids of a load-serving entity or large industrial customer.
- (2) The bidder has only an opportunity to bid demand response in the organized market; it does not have a guarantee that its bid will be selected.
  - (3) The term “relevant electric retail regulatory authority” means the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission.
  - (4) An ARC can bid demand response either on behalf of only one retail customer or multiple retail customers.
  - (5) Except for circumstances where the laws and regulations of the relevant retail regulatory authority do not permit a retail customer to participate, there is no prohibition on who may be an ARC.
  - (6) An individual customer may serve as an ARC on behalf of itself and others.
  - (7) The RTO or ISO may specify certain requirements, such as registration with the RTO or ISO, creditworthiness requirements, and certification that participation is not precluded by the relevant electric retail regulatory authority.
  - (8) The RTO or ISO may require the ARC to be an RTO or ISO member if its membership is a requirement for other bidders.
  - (9) Single aggregated bids consisting of individual demand response from a single area, reasonably defined, may be required by RTOs and ISOs.
  - (10) An RTO or ISO may place appropriate restrictions on any customer’s participation in an ARC-aggregated demand response bid to avoid counting the same demand response resource more than once.
  - (11) The market rules shall allow bids from an ARC unless this is not permitted under the laws or regulations of relevant electric retail regulatory authority.<sup>54</sup>

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<sup>54</sup> On rehearing of the Final Rule, the Commission modified its rules for ARC participation. *See* Order No. 719-A. SPP’s compliance with the revised rules will be addressed in a subsequent compliance proceeding.

**i. SPP's Filing**

59. To ensure that demand response resources participating in the Energy Imbalance Service Market are not precluded from doing so by application of retail laws or regulations, SPP proposes to revise the definition of “market participant” in its tariff to include “any retail customer or eligible person that is not precluded under the laws or regulations of the relevant electric retail regulatory authority including state-approved retail tariff(s) from participating in demand response programs and that is technically qualified to offer controllable load into the Energy Imbalance Service Market.”<sup>55</sup> SPP also proposes to modify section 1.2.2 of Attachment AE’s asset application and registration requirements to require market participants (including, by extension, ARCs) wishing to offer controllable load as a resource in the Energy Imbalance Service Market to include in their application and registration a certification, by means of a declaration by the relevant electric retail regulatory authority, that the controllable load’s participation is not precluded under applicable laws or regulations of the relevant electric retail regulatory authority and that its controllable load meets all requirements applicable to other resources offered into the Energy Imbalance Service Market.<sup>56</sup>

60. SPP proposes to add a new section 1.2.10 to Attachment AE stating that ARCs may aggregate demand response of multiple end-use customers unless participation in demand response by such customers is precluded by the laws or regulations of the relevant electric retail regulatory authority. Section 1.2.10 also requires that (1) end-use customers aggregated into a single resource must be located at the same physical and electrically equivalent withdrawal point and must be served by the same retail provider; and (2) all end-use customers in an aggregation shall be specifically identified. SPP states that it will treat ARCs comparably to other market participants offering resources in the Energy Imbalance Service Market. SPP maintains there is no distinction between the treatment of supply-side resources and demand-side resources, including ARCs.

**ii. Protests and Comments**

61. TDU Intervenors states that SPP’s filing should be found compliant with Order No. 719’s directives relating to ARCs. In particular, TDU Intervenors asserts that its understanding of SPP’s proposal (from SPP’s transmittal letter) is that SPP will include in its market participant definition “any retail customer... that is not precluded under the laws or regulations of the relevant electric retail regulatory authority... from participating in demand response programs ... .” TDU Intervenors asserts that SPP does not intend to extend Market Participant status to retail customers that are permitted to participate in

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<sup>55</sup> Third Revised Sheet No. 22 of SPP tariff.

<sup>56</sup> SPP Compliance Filing at 9, 11, 12.

demand response programs undertaken by wholesale Market Participant load-serving entities.

62. TDU Intervenors further states that it is its understanding that SPP would honor existing and future LSE-administered demand response programs that are used to maintain reliability, reduce planning reserve requirements, avoid or defer generation investment, or otherwise secure market savings. TDU Intervenors states that it is its understanding that SPP intends to respect the relevant electric retail regulatory authority's laws and regulations, including those that choose to bar retail customers from participating in SPP market demand response programs directly or through third-party aggregators, while permitting an LSE to manage the demand response of its retail customers. TDU Intervenors maintain that such respect is consistent with the Commission's willingness to accommodate the discretion of the relevant electric retail regulatory authority to determine how loads subject to their supervision may participate in demand response programs by RTOs and ISOs.<sup>57</sup>

63. In its comments, AECC supports SPP's proposal to permit ARCs to bid demand response on behalf of retail customers directly into the organized markets of the RTOs, "unless the laws or regulations of the relevant electric retail regulatory authority does not permit a customer to participate." AECC asserts that SPP's filing is consistent with the Commission's stated intention "not to interfere with the operation of successful demand response programs, place an undue burden on state and local retail regulatory agencies, or to raise new concerns regarding federal and state jurisdiction."<sup>58</sup>

64. AECC supports SPP's proposed requirement that the demand response resource must obtain certification from the relevant electric regulatory retail authority to participate in the SPP market as a demand response resource. AECC maintains that, if, instead, ARCs could bid retail customers' demand response into the SPP Energy Imbalance Service Market without first obtaining such a declaration, there would be an unreasonable burden on the relevant electric retail regulatory authority. AECC states that it would require significant numbers of cooperative boards, local city councils, and state regulators to expand resources to adopt laws, regulations, orders, ordinances and board resolutions prohibiting an ARC from aggregating retail customers' demand response.

65. Furthermore, AECC states that a relevant electric retail regulatory authority may have many reasons for not allowing ARCs to aggregate retail customers, especially in regions with limited customer choice. AECC asserts that third-party aggregation by ARCs may undercut the demand response programs already in place by cooperatives or

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<sup>57</sup> TDU Intervenors Comments at 3-4.

<sup>58</sup> AECC Comments at 4, *citing* Order No. 719, P 155.

other LSEs by “cherry-picking” the demand response potential of specific retail customers, thereby reducing the savings to the customers of the public power system accruing from such programs. In addition, AECC asserts that allowing ARCs to choose LSE demand response resources selectively also deprives those LSEs of important resources used to keep rates down for all consumers.

66. Occidental urges the Commission to reject SPP’s proposal to require that a demand response resource obtain a declaration from the relevant electric retail authorities stating that it is not prohibited from participating in the market. Occidental argues that because such a requirement would not apply to generation resources, SPP’s proposal would provide unequal treatment to generation resources and demand response resources, and it would erect a barrier to full participation of demand response resources in the Energy Imbalance Service Market. Moreover, Occidental states that requiring such regulatory declarations would be so procedurally cumbersome and time consuming as to be impractical for an independent demand response resource. For example, Occidental states that a single demand response resource provider may be required to obtain affirmative declarations from multiple regulatory authorities, and the process of obtaining required declarations could drag on indefinitely.

### **iii. SPP Answer**

67. In response to Occidental’s comments, SPP asserts that the Energy Imbalance Service Market accommodates participation by demand response resources on a basis comparable to generation resources. SPP maintains that its proposed tariff provisions governing the registration of demand response resources do not erect any barriers to entry, and they differ from the provisions governing registration by generators only to the extent necessary to reflect the inherent legal and regulatory differences between generation and demand resources. SPP maintains that in Order No. 719, the Commission permitted RTOs and ISOs to place reasonable registration requirements on demand resources, including certification that the resource’s participation is not precluded by the relevant retail laws and regulations. SPP argues that its proposal to require demand response resources to include in their market registration a declaration by the relevant electric retail regulatory authority enables demand response resources to participate in the Energy Imbalance Service Market while protecting SPP and load-serving entities from having to make determinations regarding whether a demand response resource is eligible to participate in the Energy Imbalance Service Market under retail laws and regulations of the relevant electric retail regulatory authority.

68. Further, SPP maintains that the onus must be placed upon the resource itself to demonstrate that it is capable of and eligible to participate in the market. SPP states that its stakeholders determined that requiring a declaration by the relevant electric retail regulatory authority would insulate SPP and its stakeholders from improper Energy Imbalance Service Market participation by ineligible demand response resources and

would prevent SPP from being in the position of interpreting retail laws and regulations, without placing an undue burden on market participants.

69. SPP states that Occidental's complaint that large demand response market participants may have to obtain multiple declarations from multiple regulatory bodies misses the mark. SPP states that it must possess the means to ensure that it does not permit ineligible retail consumers to participate in its markets, but it cannot dictate to retail regulators how they interpret applicable laws and regulations to determine eligibility. SPP maintains that it must have a mechanism to protect itself and its stakeholders from the possibility of demand response resources in the Energy Imbalance Service Market participating in violation of retail laws or regulations. SPP states that it has developed this declaration requirement through its stakeholder process to provide such protection.

#### iv. Commission Determination

70. In Section III.B.1.a. of this order the Commission found SPP's compliance filing to be insufficient with respect to accepting bids for ancillary services from demand response resources on a basis comparable to any other resource due to a lack of substantive discussion and detail of technical requirements, policies, and procedures. As ARCs represent an aggregation of demand response resources, the Commission likewise finds inadequate SPP's proposal to accept ARCs as comparable to supply side resources. In addition, SPP must explain why end-use customers aggregated into a single resource must be located at the same physical and electrically equivalent withdrawal point and must be served by the same retail provider. Consistent with Section III. B.1.a. above, the Commission directs SPP to submit a compliance filing within ninety days of the date of issuance of this order that includes revising Attachment AE to its tariff to accept bids from ARCs on a basis comparable to supply side resources. The compliance filing must contain sufficient detail to demonstrate that its tariff revisions will accomplish this requirement.

71. SPP proposes that market participants wishing to offer controllable load as a resource in the Energy Imbalance Service Market be required to include in their registration applications a declaration from the relevant electric retail regulatory authority certifying that their participation in the wholesale market is not precluded by applicable laws. Order No. 719 allowed RTOs and ISOs to specify requirements for ARCs' participation in the markets, including a certification that participation is not precluded by the relevant electric retail regulatory authority.<sup>59</sup> SPP's proposal to require an ARC to submit a declaration of authorization from the relevant retail regulatory authority appears

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<sup>59</sup> Order No. 719, P 158 and n.212.

to impose an unnecessary burden on retail regulatory authorities. Accordingly, we will reject that proposal to the extent the certification required of the ARC includes a declaration from the relevant electric retail regulatory authority. SPP, when it files to comply with the instant order, may require an ARC to include in its registration application a certification by the ARC that its participation is not precluded by the relevant electric retail regulatory authority.

72. The Commission directs SPP to modify the language in section 1.2.2 of Attachment AE to its tariff (the language requiring a market participant wishing to offer controllable load to obtain a declaration from the relevant electric retail regulatory authority certifying that their participation in the wholesale market is not precluded by applicable laws) to comply with the criteria outlined in Order No. 719 and Order No. 719-A. As indicated above, the Commission directs SPP to submit a compliance filing adopting this change within ninety days of the issuance of this order.

73. Regarding TDU Intervenors' comments, the Commission disagrees with the idea that SPP should not extend market participant status to retail customers that are allowed to participate in demand response programs undertaken by wholesale market participant load-serving entities. Order No. 719 does not limit the types of retail customers that are allowed to become market participants, except for those that may be prohibited by the laws or regulations of the relevant electric retail regulatory authority.

74. The Commission rejects SPP's compliance filing with respect to how measurement and verification methods for ARCs are established. As we found above in Section III. B.1.a. of this order, leaving these methods for others to create, on a case-by-case basis, creates the potential for confusion and discriminatory practices among ARCs, metering agents, and load balancing authorities. Thus, we direct SPP to submit measurement and verification methodologies for ARCs in a compliance filing within ninety days of the date of issuance of this order. Among other features, these methodologies should be uniform, reliably measure the "Actual Resource Production," and verify performance and compliance with dispatch instructions. The roles and responsibilities of all participatory parties must be clearly defined within these methodologies.

**d. Market Rules Governing Price Formation during Periods of Operating Reserve Shortage**

75. In Order No. 719, the Commission established reforms to remove barriers to demand response by requiring RTOs and ISOs to reform their market rules in such a way that prices during operating reserve shortages more accurately reflect the value of energy during such shortages. Order No. 719 required each RTO or ISO to reform or

demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage.<sup>60</sup> As such, it stated that each RTO or ISO may propose in its compliance filing one of four suggested approaches to pricing reform during an operating reserve shortage, or develop its own alternative approach to achieve the same objectives.<sup>61</sup> Each RTO or ISO must address how its selected method of shortage pricing interacts with its existing market design.<sup>62</sup>

76. Order No. 719 also required each RTO or ISO to provide adequate factual support for its compliance filing. To that end, the Commission outlined six criteria it will consider in reviewing whether the factual record compiled by the RTO or ISO meets the requirements of the rule.<sup>63</sup> The Commission allowed an RTO or ISO to phase in any new pricing rules over a few years, provided that this period is not protracted.<sup>64</sup> The phase-in period must be justified as part of the RTO's or ISO's overall proposal to change its pricing rules.

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<sup>60</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 194.

<sup>61</sup> The four approaches are: (1) RTOs and ISOs would increase the energy supply and demand bid caps above the current levels only during an emergency; (2) RTOs and ISOs would increase bid caps above the current level during an emergency only for demand bids while keeping generation bid caps in place; (3) RTOs and ISOs would establish a demand curve for operating reserves, which has the effect of raising prices in a previously agreed-upon way as operating reserves grow short; and (4) RTOs and ISOs would set the market-clearing price during an emergency for all supply and demand response resources dispatched equal to the payment made to participants in an emergency demand response program. *Id.* P 208.

<sup>62</sup> *Id.* P 204.

<sup>63</sup> The six criteria are: (1) improve reliability by reducing demand and increasing supply during periods of operating reserve shortages; (2) make it more worthwhile for customers to invest in demand response technologies; (3) encourage existing generation and demand resources to continue to be relied upon during an operating reserve shortage; (4) encourage entry of new generation and demand resources; (5) ensure that the principle of comparability in treatment of and compensation to all resources is not discarded during periods of operating reserve shortage; and (6) ensure market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages including, but not limited to, showing how demand resources discipline bidding behavior to competitive levels. *Id.* P 246-47.

<sup>64</sup> *Id.* P 258.

**i. SPP's Filing**

77. SPP states that its current pricing provisions fully satisfy the requirements of Order No. 719. It states that this is evidenced by the fact that offers only rarely reach the over-all market price cap.

78. SPP's current pricing rules mitigate market power through two different offer caps. The first caps generators in a load pocket during times of transmission constraint. This offer cap is based on the cost of new entry. As the hours of constraint increase, the offer cap tightens. SPP also has an over-all "safety net" offer cap that applies region-wide and at all times, and this cap is set at \$1000/MWh.<sup>65</sup>

79. According to SPP's external market advisor, in 2007, offers were accepted within 5 percent of the \$1000/MWh offer cap in only 0.028 percent of all opportunities. Additionally, while SPP had to impose its constraint-driven offer cap in more than 20 percent of all offering opportunities, offers were accepted within 5 percent of a cap in only 0.0195 percent of such opportunities.<sup>66</sup> SPP cites this as evidence that while there are offer caps in the Energy Imbalance Service Market, they rarely bind, and therefore the market is allowed to reach equilibrium.

80. SPP asserts that its current rules comply with the six criteria laid out in Order No. 719 that apply to any RTO or ISO's current or proposed rules. SPP states that its current rules meet the first criterion, improving reliability by reducing demand and increasing generation during periods of operating reserve shortage. Because prices so rarely reach offer-cap levels, this shows that prices are able to rise to a level that will reduce consumer reliance on the Energy Imbalance Service Market while at the same time encouraging generation to participate in the market. According to SPP, because the offer cap is so seldom reached, the caps are not inhibiting the working of the market.

81. SPP also states it meets the second criterion by making it more worthwhile for customers to invest in demand response technologies. SPP reiterates its argument that prices in its markets are high enough to deter customers' reliance on the Energy Imbalance Service Market and adds that recent proposed changes in Docket No. ER09-748-000 to better integrate demand response resources into its Energy Imbalance Service Market will encourage participation of demand resources.

82. The third criterion requires that the RTO or ISO's current or proposed shortage pricing rules encourage existing generation and demand resources to continue to be relied

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<sup>65</sup> SPP Compliance Filing at 15.

<sup>66</sup> *Id.* at 16.

upon during an operating reserve shortage. SPP reiterates that potential high prices in the Energy Imbalance Service Market encourage LSEs to serve their load through long-term contracts, offer excess energy and other resources into the market, and ensure deliverable resources. Similarly, the fourth criterion requires the rules to encourage entry of new generation and demand resources. Because SPP's offer cap is based on the cost of entry of a new gas-fired peaking facility, SPP argues that this guarantees that the cap will not suppress entry into the market by new generation. SPP cites the Commission's order approving the Energy Imbalance Service Market as support for this argument.<sup>67</sup> Again, SPP reiterates that potential high prices in the Energy Imbalance Service Market will encourage customers to invest in demand response technology.

83. SPP states that its current pricing rules ensure that the fifth criterion, the principle of comparability in treatment of and compensation to all resources, is not disregarded during periods of operating reserve shortage. SPP states that because its offer cap applies to all resources participating in the Energy Imbalance Service Market, all resources are treated comparably. Demand response resources are defined as a "Resource" in the Energy Imbalance Service Tariff and market protocols and are required to meet the same telemetry, metering, and bidding guidelines.

84. Finally, the sixth criterion requires that the RTO and ISO's pricing rules ensure market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages. To demonstrate compliance, the RTO or ISO may show how demand resources discipline bidding behavior to competitive levels, among other things. SPP defends its market power mitigation based on the Commission's acceptance of SPP's original Energy Imbalance Service Market proposal in 2007.<sup>68</sup> SPP argues that, in that order, the Commission found the offer caps sufficient to protect against market power because LSEs would be procuring the majority of their power outside the Energy Imbalance Service Market. SPP states that, on rehearing, the Commission found the caps appropriate because there are no other sources of revenue for generators in the SPP region and this shortage pricing regime would offer appropriate revenues.

## **ii. Protests and Comments**

85. TDU Intervenors supports SPP's view that its existing price mitigation provisions satisfy the shortage pricing requirements specified in Order No. 719.<sup>69</sup>

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<sup>67</sup> SPP Compliance Filing, n.2 (*citing Southwest Power Pool, Inc.*, 118 FERC ¶ 61,055 (2007)).

<sup>68</sup> *Id.*

<sup>69</sup> TDU Intervenors Comments at 4.

### iii. Commission Determination

86. The Commission finds that SPP has not fully complied with the requirements of Order No. 719 with regard to pricing during periods of operating reserve shortage because it does not explicitly require the market monitor to monitor for physical withholding and unavailability of facilities during such periods and because its proposed rules for demand response resource participation have been found deficient, as described above. SPP has not shown that it has provisions that allow for mitigation of market power and deterring gaming behavior, including, but not limited to, the use of demand resources during a period of operating reserve shortage. In its Answer to TDU Intervenors on issues related to removal of sections 4 and 5 in the Mitigation Plan, SPP states that because participation in the Energy Imbalance Service Market is voluntary, it is unnecessary for SPP to include provisions for mitigation of physical withholding or unavailability of facilities; and that such provisions are not appropriate in SPP's Market Power Mitigation Plan.<sup>70</sup> However, we find that the lack of an explicit requirement to monitor for physical withholding and unavailability of facilities causes SPP to violate the sixth criterion that the Commission considers in reviewing whether the factual record compiled by the RTO or ISO meets the requirements of Order No. 719, because SPP is not ensuring that market power is mitigated and gaming behavior is deterred and SPP cannot show that demand resources are able to serve this purpose.<sup>71</sup> Without monitoring and referral to the Commission, if appropriate, a resource owner may attempt to create a false operating reserve shortage by not offering available generation into the Energy Imbalance Service Market, including by claiming false outages. Such behavior could lead to, or exacerbate, an operating reserve shortage. Accordingly, SPP's tariff must (1) explicitly provide for monitoring for physical withholding and (2) contain provisions addressing mitigation of market power and deterring gaming behavior during a period of

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<sup>70</sup> SPP Answer at 8. *See* associated discussion in this Order at paragraphs 130-131.

<sup>71</sup> The Commission recognizes that SPP is a voluntary market and that sellers may choose not to offer into the market for a variety of reasons, including but not limited to an outage, using the resource to serve load, selling the output under a bilateral contract outside of the market, and not offering the resource if the owner would lose money in the event the offer cleared. However, because the Energy Imbalance Service Market is a voluntary market, we would expect any monitoring and referral to focus on physical withholding that may be part of a scheme of manipulation as that term is defined in FERC's regulations, in which case SPP's market monitor must refer the suspected behavior to the Commission's Office of Enforcement for possible violation of 18 CFR § 1c.2. In addition, we note that the Commission is not suggesting that SPP mitigate for physical withholding.

operating reserve shortage, including, but not limited to, showing how demand response resources discipline bidding behavior to competitive levels.

87. We find that the existing offer caps are not problematic, as SPP's current market rules do not restrict prices to any significant degree. Higher offer caps will not change market outcomes in any significant manner or change incentives for existing generation and demand response. Currently, offers are rarely accepted near the offer caps, and higher offer caps would be unlikely to result in additional offers during periods of operating reserve shortages or in additional investment. Further, demand response currently plays a very small role in SPP's market. When SPP complies with Order Nos. 719 and 719-A, there will be greater access for demand response. In addition, the Commission is aware that SPP is in the process of developing day-ahead and ancillary services markets. The Commission believes that development of these markets will be beneficial to SPP and only the revisions discussed above are necessary at this time to increase offers during operating reserve shortages, and provide incentives for generation, thereby increasing reliability. However, at the point when SPP does file proposed rules for these new markets, it must demonstrate to the Commission that its existing rules and any new rules conform to the requirements of Order Nos. 719 and 719-A.

88. Regarding the other criteria for the Commission to review in determining if an RTO or ISO is in compliance with Order No. 719 with respect to shortage pricing,<sup>72</sup> we find that SPP has adequately demonstrated that it is in compliance with the first, third and fourth criteria. These are met by the current rules, as evidenced by those rules not inhibiting prices. However, SPP has failed to comply with the second and fifth criteria because these depend on the ability of demand response resources to participate in the market, and thus rely on SPP's compliance with the other provisions of Order No. 719, which SPP has not yet met.

89. As stated above, we find that SPP's shortage pricing rules are not sufficient. SPP must provide explicitly for monitoring of physical withholding. We therefore direct SPP to file, within ninety days of the issuance of this Order, proposed changes to its tariff that modify its Monitoring Plan to explicitly provide for monitoring of physical withholding in its Energy Imbalance Service Market.

e. **Reporting on Remaining Barriers to Comparable Treatment of Demand Response Resources**

90. Order No. 719 required each RTO and ISO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction, and to submit its findings and any proposed solutions to the

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<sup>72</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 239.

Commission, along with a timeline for implementation.<sup>73</sup> The Commission required RTOs and ISOs to identify all known barriers, to provide an in-depth analysis of those that are practical to analyze in the allotted compliance time frame, and to supply a time frame for analyzing the remainder, including, but not limited to, technical requirements and performance verification limitations.<sup>74</sup> Order No. 719 required each RTO and ISO to identify any significant minority views in its report. It also required each RTO or ISO's Independent Market Monitor to submit a report describing its views to the Commission.

**i. SPP's Filing**

91. In its transmittal letter, SPP maintains that demand response resources are treated comparably to other resources in the Energy Imbalance Service Market. SPP states that it has facilitated registration by demand response resources offering behind-the-meter generation and load response, and such resources have participated in the Energy Imbalance Service Market. SPP's internal Independent Market Monitor did not file a report on this topic.

**ii. Protests and Comments**

92. Wal-Mart asserts that SPP's demand response proposal appears to be a first step toward increasing demand response participation in the Energy Imbalance Service Market.

93. ELCON cites a recent Government Accountability Office (GAO) Report that argues that the Commission relies heavily on the stakeholder process to raise concerns and guide ISO and RTO decision making and that the Commission does not always conduct independent analysis. Under these circumstances, ELCON states that the Commission should heed the GAO comments and conduct a thorough and independent analysis of the Order No. 719 compliance filings to ensure that the ISOs and RTOs come into compliance with the requirements of Order No. 719.

94. Industrial Consumers argues that none of the RTO demand response programs offers a level playing field for the participation of demand response products in organized markets. They argue that the barriers to entry in all of these markets (including SPP) need to be removed.

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<sup>73</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 274.

<sup>74</sup> *Id.* P 275.

**iii. SPP Answer**

95. SPP asserts that ELCON's call for a national *pro forma* demand response tariff or other uniform standards ignores the Commission's findings in Order No. 719 and the inherent differences in the market structures of RTOs and ISOs. SPP states that ELCON asks that the Commission reverse its findings in Order No. 719, where the Commission explicitly rejected ELCON's request for mandatory standardized requirements for demand response participation. SPP states, however, that the proper proceeding for ELCON to request reconsideration of the Commission's findings would be in a request for rehearing of Order No. 719, rather than in this compliance filing.<sup>75</sup>

**iv. Commission Determination**

96. The Commission finds SPP to be in partial compliance with respect to the reporting requirement on existing barriers to comparable treatment. The Commission understands that SPP's demand response program is in its nascent stages in the Energy Imbalance Service Market, and at this time SPP may not have sufficient information regarding any known barriers to comparable treatment of demand response resources, including minority views, however, both SPP and its market monitoring unit will need to file their reports within six months of the date of this order.<sup>76</sup>

97. Regarding ELCON's request that the Commission conduct thorough, independent analyses of all Order No. 719 compliance filings, we note that the Commission is required, under section 205 of the FPA,<sup>77</sup> to ensure that rates are just and reasonable and not unduly discriminatory or preferential, and the instant filing in this proceeding is no exception.

**2. Long-Term Power Contracting in Organized Markets**

98. In Order No. 719, the Commission required each RTO and ISO to dedicate a portion of its website for market participants to post offers to buy and sell electric energy on a long-term basis.<sup>78</sup> The Commission did not mandate any specific form for the

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<sup>75</sup> SPP Answer at 7.

<sup>76</sup> This report will provide information that will be considered by the Commission staff in its evaluation of remaining barriers to demand response participating in wholesale markets.

<sup>77</sup> 16 U.S.C. § 824d.

<sup>78</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 277. The Commission defined "long-term" as one year or more but stated that RTOs and ISOs may include

(continued...)

website but instead allowed each RTO and ISO to work with its stakeholders to implement the website. This discretion includes decisions over the type and amount of data to be posted by participants, whether participants must include a proposed price in their posting, and password and security requirements.<sup>79</sup> Order No. 719 directed each RTO and ISO to explain in its compliance filing the actions it has taken to comply with these requirements and to provide information on the bulletin board that it has chosen to implement.<sup>80</sup>

**a. SPP's Filing**

99. SPP states it has participated in discussions with other RTOs and ISOs on development of a nationwide bulletin board to facilitate long-term power contracting, to be hosted by PJM, with links to other RTO and ISO sites. SPP states that a nationwide bulletin board – as opposed to a patchwork of regional bulletin boards – will be more effective in facilitating long-term contracts between parties. SPP referred the Commission to PJM's Order No. 719 compliance filing for more details on this proposal.<sup>81</sup> SPP's proposal was unopposed.

**b. Commission Determination**

100. We accept SPP's explanation on its compliance with this Order No. 719 requirement. We agree that a nationwide bulletin board will facilitate long-term power contracts between parties effectively, and we encourage participating ISOs and RTOs to work cooperatively in the development of this effort. We will address this issue in the order we will issue in Docket No. ER09-1063-000 addressing PJM's Order No. 719 compliance filing.

**3. Market Monitoring Policies**

**a. Structure and Tools**

101. In Order No. 719, the Commission declined to mandate a specific structure for the Market Monitoring Unit. Instead, it required each RTO and ISO, through its stakeholder

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offers for contracts of less than a year on their websites as well. *Id.*

<sup>79</sup> *Id.* P 303.

<sup>80</sup> *Id.* P 309.

<sup>81</sup> SPP Compliance Filing at 20. PJM submitted its Order No. 719 compliance filing on April 29, 2009, in Docket No. ER09-1063-000.

process, to decide on its own Market Monitoring Unit structure – external, internal, or hybrid.<sup>82</sup> Additionally, Order No. 719 required each RTO and ISO to include provisions in its tariffs: (1) obliging the RTO or ISO to provide its Market Monitoring Units with access to market data, resources, and personnel sufficient to enable it to carry out its duties; (2) granting Market Monitoring Units full access to the RTO or ISO database; and (3) granting Market Monitoring Units exclusive control over any Market Monitoring Unit-created data.<sup>83</sup>

**i. SPP's Filing**

102. SPP states that it fulfills its market monitoring obligations through an internal Market Monitoring Unit (internal market monitor) and the assistance of an “external market advisor” (external advisor).<sup>84</sup> SPP states that its contract with its external advisor, Boston Pacific, is included as Attachment AJ to the SPP tariff (External Advisor Agreement). SPP explains that its contract with the external advisor has evolved. SPP asserts that before the launch of the Energy Imbalance Service Market, Boston Pacific served as an external market monitor. SPP states that after the Energy Imbalance Service Market was launched, SPP and Boston Pacific revised the agreement to remove certain “outdated provisions” and to reflect Boston Pacific’s duties in the Energy Imbalance Service Market. SPP states that the agreement with Boston Pacific has been revised on two occasions. SPP asserts that through these filings, its relationship with Boston Pacific has evolved into an advisory relationship and that SPP’s market monitoring is being conducted by its internal market monitor.<sup>85</sup>

103. When describing the tools it provides to the Market Monitoring Unit, SPP focuses on the internal market monitor and Attachment AG in its tariff (Monitoring Plan), which governs the internal market monitor. With respect to SPP providing the Market Monitoring Unit with access to the appropriate data, resources, and personnel and granting it full access to the RTO database, SPP states that section 3.1 of its existing tariff complies with the Commission requirements.<sup>86</sup> With respect to SPP granting the Market Monitoring Unit full access to the RTO or ISO database, SPP asserts that section 8.2 of

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<sup>82</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 326.

<sup>83</sup> *Id.* P 328.

<sup>84</sup> SPP Compliance Filing at 20.

<sup>85</sup> *Id.* at 20-21.

<sup>86</sup> *Id.* at 21-22.

the Monitoring Plan currently complies with this Commission requirement.<sup>87</sup> With respect to SPP granting the Market Monitoring Unit exclusive control over any Market Monitoring Unit-created data, SPP proposes to adopt a new section 8.5 to the Monitoring Plan that would grant exclusive control to the internal market monitor of any data created by the internal market monitor, including any reconfiguration of data or information obtained by SPP or market participants.<sup>88</sup> Additionally, SPP proposes to allow the internal market monitor, at its sole discretion, to share data with SPP or market participants on a non-discriminatory basis.

104. SPP's compliance filing also explains the type of information that the external advisor receives.<sup>89</sup> According to SPP, the External Advisor Agreement provides that the SPP internal market monitor will provide the external advisor with data that are gathered or generated by SPP in the course of its operations. The External Advisor Agreement also requires SPP to aid the external advisor in obtaining all data relevant to its tasks from the market participants as provided in the tariff. Section 6 of the External Advisor Agreement provides for Boston Pacific's ownership of all intellectual property it "conceives, makes, develops, creates, or reduces to practice" in the course of performing its work under the contract. SPP argues that together, the Monitoring Plan and the External Advisor Agreement, as revised, provide the internal market monitor and the external advisor with the proper tools and sufficient access to data and information to perform their functions in accordance with the requirements specified in Order No. 719. No parties, including the internal market monitor and the external advisor, commented on or protested SPP's market monitoring structure or the tools it provides its internal market monitor and its external advisor.

## ii. Commission Determination

105. We note that SPP originally chose a hybrid market monitoring structure with an internal and external market monitor.<sup>90</sup> The Commission conditionally accepted this proposal, directing SPP to articulate the split of functions between its internal and external market monitors.<sup>91</sup> SPP complied with this directive when it submitted its first

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<sup>87</sup> *Id.* at 22.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 129-30, *order on reh'g*, 116 FERC ¶ 61,289 (2006).

<sup>91</sup> *Id.* at P 134.

contract with Boston Pacific.<sup>92</sup> At that time, SPP referred to Boston Pacific as its external market monitor as opposed to its external advisor. When SPP implemented its Energy Imbalance Service Market in February 2007, it changed the name of the external market monitor to an external advisor.<sup>93</sup>

106. We note that Order No. 719 gives SPP a choice in deciding the structure of its Market Monitoring Unit. If SPP has an internal Market Monitoring Unit structure, that internal market monitor should be responsible for carrying out all core market monitoring functions as articulated in Order No. 719, which we discuss later in this order. Among these core functions is the reviewing and reporting on the performance of the wholesale markets to RTOs and ISOs, the Commission, and other interested entities such as state commissions and market participants.<sup>94</sup> This core function includes the responsibility to prepare and file an annual State of the Market Report.<sup>95</sup> Our review of the External Advisor Agreement shows that the external advisor, and not the internal Market Monitoring Unit, is responsible for preparing SPP's annual State of the Market Report. If SPP has an internal Market Monitoring Unit structure, its internal market monitor should be carrying out this responsibility, rather than its external advisor to be compliant with the Order No. 719 core reporting function.

107. In order for SPP's market monitoring structure to be Order No. 719 compliant, we will give SPP two options to proceed. The first option is for SPP to retain its internal Market Monitoring Unit structure by assigning the task of preparing the annual State of the Market Report to its internal market monitor and allowing the external advisor to remain in a consulting role. The second option is for SPP to assume a hybrid market monitoring structure by clearly reestablishing Boston Pacific as an external market monitor. SPP must inform the Commission, in a compliance filing due within ninety days of the issuance of this order, which of these options it is choosing. If SPP chooses the first option, its internal market monitor must perform the core monitoring functions as articulated in Order No. 719. If SPP chooses the second option and deems Boston Pacific to be an external market monitor, we will require SPP to make subsequent compliance filings indicating how the new external market monitor satisfies the requirements of Order No. 719. If SPP chooses a hybrid structure, it may allow its external market monitor to become more involved in carrying out the core market monitoring functions

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<sup>92</sup> *Southwest Power Pool, Inc.*, 115 FERC ¶ 61,051, at P 1 (2006).

<sup>93</sup> *Southwest Power Pool, Inc.*, Docket No. ER08-732-000 (May 16, 2008) (unpublished letter order).

<sup>94</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

<sup>95</sup> *Id.* at P 424.

articulated in Order No. 719, including, but not limited to, preparation of the annual State of the Market report. However, if SPP chooses a hybrid structure, it must clearly articulate which core functions and tasks it is assigning to each monitor. We find that giving SPP the choice outlined above is consistent with the Commission's conclusion in Order No. 719 that each RTO and ISO should have the ability to choose which structural relationship it desires for its Market Monitoring Unit. Thus, SPP must choose either to: (1) assign the task of preparing the annual State of the Market Report to the internal market monitor; or (2) indicate that SPP is choosing a hybrid structure and indicate how the new external market monitor satisfies the requirements of Order No. 719 in a compliance filing due within ninety days of the issuance of this order.

108. Finally, with respect to SPP's Monitoring Plan and its External Advisor Agreement, the Commission finds that both are compliant with the Order No. 719 market monitoring tools requirements.

**b. Oversight**

109. Order No. 719 required each Market Monitoring Unit, for purposes of supervision over their market monitoring functions, to report to its RTO's or ISO's board of directors, rather than management, with management representatives on the board excluded from this oversight function. An RTO or ISO may permit its Market Monitoring Unit to report to management for administrative purposes (*i.e.*, pension management and payroll).<sup>96</sup> For hybrid Market Monitoring Units (*i.e.*, Market Monitoring Units with both an external and internal Market Monitoring Unit), the Commission stated that an internal Market Monitoring Unit may report to management, provided that, if the internal Market Monitoring Unit is responsible for carrying out any core Market Monitoring Unit functions,<sup>97</sup> both it and the external Market Monitoring Unit must report to the board.<sup>98</sup>

**i. SPP's Filing**

110. SPP states that its market monitoring structure currently complies with Order No. 719's requirements for Market Monitoring Unit oversight.<sup>99</sup> SPP explains that section

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<sup>96</sup> *Id.* at P 339.

<sup>97</sup> Core Market Monitoring Unit functions include identifying ineffective market rules, reviewing the performance of the markets providing annual State of the Market Reports, and making referrals to the Commission.

<sup>98</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 341.

<sup>99</sup> SPP Compliance Filing at 23.

3.1 of the Monitoring Plan states that the internal market monitor is an organization within SPP reporting to the Board of Directors (Board) with duties and responsibilities assigned by the Board. SPP argues that in order to strengthen the independence of the internal market monitor, SPP proposes to add language to section 3.1 specifying that the Board's oversight of the internal market monitor excludes SPP management representatives from serving on the Board. SPP states that this proposed revision makes clear that the internal market monitor has the required separation from SPP management to maintain independence in compliance with Order No. 719.<sup>100</sup> SPP also indicates that its external advisor reports directly to the SPP Board.<sup>101</sup>

111. SPP further explains that the internal market monitor reports to RTO management for administrative purposes such as pension management, payroll, and similar functions. SPP argues that Order No. 719 expressly authorizes RTOs and ISOs to allow this type of reporting for administrative functions.<sup>102</sup> SPP's proposal is unopposed in this respect.

**ii. Commission Determination**

112. We find that the SPP Monitoring Plan complies with Order No. 719 oversight requirements. However, while the External Advisor Agreement does specify that the external advisor reports directly to the Board, there is no language within the External Advisor Agreement excluding management representatives on SPP's Board from oversight of the external advisor. If SPP chooses to designate the external advisor as an external market monitor, we will require SPP to revise the External Advisor Agreement, its Bylaws and/or any other appropriate documents, and make any necessary filings with the Commission within ninety days of the date of this order, to state that management representatives on its Board are excluded from participating in oversight of the external market monitor.

**c. Functions**

113. Order No. 719 required each RTO and ISO to assign the following functions to its Market Monitoring Unit in its tariff:

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at n.114 (*citing* SPP tariff, Attachment AJ, Exhibit A, Rights and Obligations, § 1).

<sup>102</sup> SPP Compliance Filing at 23 (*citing* Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 339).

(1) Evaluating existing and proposed market rules, tariff provisions, and market design elements and recommending proposed rule and tariff changes to the RTO or ISO, the Commission's Office of Energy Market Regulation, and other interested entities (*i.e.*, state commissions and market participants);

(2) Reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities (*i.e.*, state commission and market participants);<sup>103</sup> and

(3) Identifying and notifying the Commission's Office of Enforcement of instances in which a market participant's behavior, or that of the RTO or ISO, may require investigation, including suspected tariff violations, violations of Commission-approved rules and regulations, market manipulation, and inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies.<sup>104</sup>

**i. SPP's Filing**

114. With respect to the Market Monitoring Unit's responsibility to evaluate existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the RTO or ISO and to the Commission and other interested parties, SPP states that sections 1.3 and 4 of the Monitoring Plan set forth the respective objectives of the internal market monitor and the markets to be monitored.<sup>105</sup> SPP further states that section 3.2 of the Monitoring Plan currently provides that the internal market monitor at any time may bring any matter to the attention of the SPP Board, SPP management, the Commission, or any affected state regulatory authorities. According to SPP, the provision also indicates that after any initial investigation of market design or policies, the internal market monitor shall notify the SPP Board, the President of SPP, and Commission staff as soon as practicable if it identifies a significant market problem that may require further investigation, a change to the tariff, or other action by the Commission. SPP proposes to add language to section 3.2 to include other interested entities such as relevant state regulatory commissions and market participants. However, SPP adds that in the event the internal market monitor believes that broader dissemination could lead to exploitation, the internal market monitor may limit

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<sup>103</sup> Order No. 719 provided that an RTO or ISO may require its Market Monitoring Unit to submit its reports in draft form to the RTO or ISO for review, but may not alter the reports generated by the Market Monitoring Unit or dictate its conclusions. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 360.

<sup>104</sup> *Id.* P 354.

<sup>105</sup> SPP Compliance Filing at 24.

distribution of its identifications and recommendations to the Board of Directors, the President of SPP, and FERC staff with an explanation as to why further dissemination should be avoided at that time.<sup>106</sup> SPP also proposes adding similar language to section 6.2 of the Monitoring Plan governing corrective actions for market design.<sup>107</sup>

115. SPP next addresses Order No. 719's requirements regarding the function of reviewing and reporting on the wholesale markets. SPP states that currently, the internal market monitor prepares a monthly State of the Market Report that is posted on the SPP website and available to the public. SPP adds that the report is discussed with Commission staff and reviewed at SPP's monthly Market Working Group<sup>108</sup> meeting following publication.

116. SPP's compliance filing also addresses Order No. 719's third Market Monitoring Unit function pertaining to identifying and notifying the Commission's Office of Enforcement of behaviors, tariff violations, violations of Commission-approved rules and regulations, market manipulation, and inappropriate dispatch.<sup>109</sup> SPP states that the existing section 3.2 of the Monitoring Plan permits the internal market monitor to "at any time bring any matter to the attention of the Board of Directors, the officers of SPP, FERC, or any affected state regulatory authorities, as the Market Monitor may deem necessary or appropriate."<sup>110</sup> SPP states that the Monitoring Plan also requires the internal market monitor to monitor for compliance with Market Behavior Rules specified by the Commission in Order No. 670<sup>111</sup> and the Commission's conditions for public utility market-based rate authorization.<sup>112</sup> Finally, SPP explains that the Monitoring Plan

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<sup>106</sup> *Id.* at 24-25.

<sup>107</sup> *Id.* at 25.

<sup>108</sup> SPP's Market Working Group is a committee responsible for the development and coordination of the changes necessary to support any SPP administered wholesale market(s), including energy, congestion management, and market monitoring consistent with direction from the SPP Board and the Commission's Order No. 2000. The Market Working Group has a number of task force subgroups that cover issues such as demand response and market implementation. *See* [http://www.spp.org/committee\\_detail.asp?commID=24](http://www.spp.org/committee_detail.asp?commID=24)

<sup>109</sup> SPP Compliance Filing at 25.

<sup>110</sup> *Id.* at 24-25 (*citing* SPP tariff, Attachment AG § 3.2).

<sup>111</sup> *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202, *reh'g denied*, 114 FERC ¶ 61,300 (2006).

also provides for the internal market monitor to monitor and to report on market manipulation, transmission market power, uneconomic production, and strategic withholding.<sup>113</sup>

117. SPP argues that in order to strengthen the internal market monitor's authority to monitor and report violations, SPP proposes to modify sections 4.3 and 4.4 of the Monitoring Plan to include violations of the SPP tariff as violations on which the internal market monitor will monitor and report, and to clarify that the internal market monitor will monitor for suspected violations by both market participants and SPP.<sup>114</sup> SPP also proposes to clarify section 4.5 of the Monitoring Plan to indicate that a referral to the Commission will be on a confidential basis and that such information will not be released to other parties unless the Commission so directs.<sup>115</sup>

118. With respect to submitting draft reports to the RTO for review and comment, SPP proposes to revise section 7.1 of the Monitoring Plan to state that SPP and market participants (through the SPP stakeholder process) may comment on the internal market monitor's periodic reports and updates but that the internal market monitor shall remain free to disregard suggestions with which it disagrees.<sup>116</sup>

## ii. Commission Determination

119. SPP states that its Monitoring Plan (section 1.3, section 3.2, and section 4) satisfies Order No. 719 requirements regarding the functions performed by Market Monitoring Units. We disagree. With respect to the Order No. 719 requirement to evaluate existing and proposed market rules, SPP's Monitoring Plan does not state specifically that the internal market monitor shall evaluate existing and proposed market rules, tariff provisions, and market design elements and recommend proposed rule and tariff changes to the RTO or ISO, the Commission's Office of Energy Market Regulation staff, and other interested entities such as state commissions and market participants, even though this should be one of its core functions. Instead, SPP's Monitoring Plan contains general non-specific provisions that do not meet the specific requirements of Order No. 719. Thus, we direct SPP to modify its Monitoring Plan to incorporate the

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<sup>112</sup> *Id.* at 26 (*citing* Attachment AG § 4.3).

<sup>113</sup> *Id.* (*citing* Attachment AG §§ 4.4, 4.5, 4.6.1, and 4.6.2, respectively).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

language set forth in the Order No. 719 requirements regarding the responsibility to evaluate rules, tariff provisions, and market design elements and to recommend proposed changes to the Commission's Office of Energy Market Regulation staff and to other interested entities in a compliance filing due within ninety days of the issuance of this order.<sup>117</sup>

120. We also find that SPP's Monitoring Plan fails to satisfy the Order No. 719 requirement regarding the Market Monitoring Unit's responsibility to review and report on the performance of the wholesale market, which is also a Market Monitoring Unit core function. We find that SPP is noncompliant with the second core function. As stated previously in Section III.B.3a of this order, we find that an external advisor cannot take responsibility for preparing the annual State of the Market Report, which is part of this second core function. Thus, if SPP chooses to keep its internal market monitoring structure intact, it should give this responsibility to its internal market monitor. However, if SPP chooses a hybrid market monitoring structure, Boston Pacific (as the external market monitor) may retain this task.

121. In addition, the SPP Monitoring Plan does not contain a specific requirement to review and report on performance of the wholesale market. Thus, we direct SPP to modify its Monitoring Plan to include this responsibility, as well as the requirement that this reporting function be directed to the RTO, the Commission, and other interested entities. We note that both the Monitoring Plan (section 7.1.2) and the External Advisor Agreement (Exhibit A, section 4) are compliant with the Order No. 719 requirement that the Market Monitoring Unit may disregard suggestions to its reports with which it disagrees.

122. We also find that SPP's Monitoring Plan does not satisfy the Order No. 719 requirement that the market monitor identify and notify the Commission's Office of Enforcement staff of certain events. Section 3.2 of the SPP Monitoring Plan contains a general provision that the internal market monitor "may at any time bring any matter to the attention of the Board of Directors, the officers of SPP, FERC, or other affected state regulatory authorities ...." However, this language does not satisfy the Order No. 719 requirement that the Market Monitoring Unit shall notify FERC's "Office of Enforcement staff" of instances when certain market behavior may require investigation. In addition, while section 4.3 of the SPP Monitoring Plan states that the Market Monitoring Unit shall monitor for violations of the Commission's Market Behavior Rules and the conditions for public utility market-based rate authorization holders, the

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<sup>117</sup> Further, when SPP refers to specific Commission Offices such as the Office of Energy Market Regulation, it should also add the language "or its successor organization."

Monitoring Plan does not include the broader requirement set forth in Order No. 719 that the Market Monitoring Unit shall report “suspected” violations of any Commission-approved rule and regulation. Finally, SPP’s Monitoring Plan is not compliant with the Order No. 719 requirement that the Market Monitoring Unit shall identify and notify the Commission’s Office of Enforcement staff of instances where inappropriate dispatch may require investigation. Accordingly, we direct SPP to modify its Monitoring Plan to become compliant with respect to these findings in a compliance filing due within ninety days of the issuance of this order.

**d. Mitigation and Operations**

123. In Order No. 719, the Commission expressed concern that the conduct of mitigation by Market Monitoring Units makes them subordinate to RTOs and ISOs and raises conflict of interest concerns. However, it also acknowledged that there were a number of advantages, such as expertise and impartiality, in retaining Market Monitoring Unit input in the mitigation process. The Commission adopted a balanced approach that allows modified participation by the Market Monitoring Units in mitigation while protecting against the conflict of interest and subordination concerns inherent in their participation. Specifically, the Commission drew a distinction between prospective and retrospective mitigation and directed that a sole internal or sole external Market Monitoring Unit may only conduct retrospective mitigation, not prospective mitigation.<sup>118</sup> However, in the event an RTO or ISO employs a hybrid Market Monitoring Unit structure, it may authorize its internal Market Monitoring Unit to conduct either or both types of mitigation but only if it also assigns to its external Market Monitoring Unit the responsibility, and gives it adequate tools, to monitor the quality and appropriateness of that mitigation.<sup>119</sup>

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<sup>118</sup> Prospective mitigation can affect market outcomes on a forward-going basis, such as by altering prices or physical parameters of offers (*i.e.*, ramp rates and start-up times) at or before the time they are considered in a market solution. All other mitigation is retrospective. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 375.

<sup>119</sup> The Commission explained that if an RTO employs a hybrid market monitoring structure, the internal MMU may conduct prospective and retrospective mitigation as long as the external MMU is charged with the responsibility of reviewing the quality and appropriateness of the mitigation conducted by the internal market monitor. The Commission reasoned that in such situations, the internal MMU is part of the RTO or ISO and allowing it to conduct mitigation adequately separates it from the monitoring duties of the external market monitor by placing mitigation with the RTO or ISO itself. *Id.* P 374-75.

124. Order No. 719 also provided that a Market Monitoring Unit may be permitted to provide inputs to its respective RTO or ISO to assist the latter in conducting prospective mitigation, including determining reference levels, identifying system constraints, and developing cost calculations.<sup>120</sup> Further, Order No. 719 provided that purely administrative matters, such as enforcement of late fees, should be conducted by the RTO or ISO, not by the Market Monitoring Unit, regardless of the Market Monitoring Unit structure.<sup>121</sup>

125. Finally, Order No. 719 directed RTOs and ISOs to specify in their tariffs which functions are to be performed by Market Monitoring Units and which are to be performed by RTOs and ISOs. It also required RTOs and ISOs to review their mitigation tariff provisions (whether performed by the Market Monitoring Unit or by the RTO or ISO) with a view to making them as non-discretionary as possible and to reflect any needed changes in their compliance filing.<sup>122</sup>

**i. SPP's Filing**

126. SPP states that under its existing tariff, the external advisor performs no mitigation activities while SPP's internal market monitor performs "limited" mitigation activities outlined in section 6 of the Market Power Mitigation Plan contained in Attachment AF to the SPP tariff (Mitigation Plan).<sup>123</sup> For example, SPP states that the internal market monitor currently calculates the offer cap and calculates the fixed and variable costs. SPP proposes several revisions to the Mitigation Plan to transition mitigation functions from the internal market monitor to RTO personnel. First, SPP proposes to modify the Mitigation Plan to specify that the transmission provider, rather than the internal market monitor, shall implement the Mitigation Plan. According to SPP, these revisions effectively remove the internal market monitor from participating in market mitigation.

127. SPP proposes further revisions that it states are designed to avoid confusion regarding the respective mitigation roles of the internal market monitor and SPP. First, SPP proposes to delete section 2.2 of the Mitigation Plan (which addresses an "initial assessment" of market power that was to be conducted prior to the February 1, 2007 start of the Energy Imbalance Service Market) to reduce confusion, given that this provision is

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<sup>120</sup> *Id.* P 375.

<sup>121</sup> *Id.* P 377.

<sup>122</sup> *Id.* P 379.

<sup>123</sup> SPP Compliance Filing at 27.

now moot. SPP also proposes to delete sections 4<sup>124</sup> and 5<sup>125</sup> of the Mitigation Plan, which govern physical withholding and unavailability of facilities, respectively, because they are non-mitigation market monitoring functions that are already outlined in the Monitoring Plan. SPP proposes to revise section 1.2 of the Monitoring Plan to remove market mitigation from the internal market monitor's responsibilities with respect to the Monitoring Plan. Finally, SPP proposes to modify section 6 of the Monitoring Plan to clarify that the internal market monitor will be responsible for reporting, rather than remedying, actual or potential abuses of market power or market design inefficiencies, and to revise the internal market monitor's duties regarding compliance and corrective actions.<sup>126</sup>

## ii. Protests and Comments

128. The TDU Intervenors take issue with SPP's deletion of sections 4 and 5 in the Mitigation Plan, as well as SPP's assertion that the Monitoring Plan covers monitoring functions involving physical withholding and unavailability of facilities.<sup>127</sup> The TDU Intervenors state that the general market monitoring policies within the Monitoring Plan do not clearly encompass the monitoring functions set forth in the Mitigation Plan.<sup>128</sup>

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<sup>124</sup> Section 4 of the SPP Mitigation Plan states:

No mitigation is necessary or warranted for Physical Withholding in the EIS Market as the market is voluntary. The Market Monitor will monitor participation to determine whether decisions to participate in the EIS Market have a significant adverse impact on market outcomes.

<sup>125</sup> Section 5 of the SPP Mitigation Plan states:

No mitigation is necessary or warranted for Unavailability of Facilities in the EIS Market, since participation in the market is voluntary. The Market Monitor will monitor for any potential instances of Unavailability of Facilities and shall report on any such instances.

<sup>126</sup> SPP Compliance Filing at 28.

<sup>127</sup> TDU Intervenors Comments at 5.

<sup>128</sup> *Id.* at 6. Specifically, TDU Intervenors claim that section 4.4 of the Monitoring Plan – which provides for monitoring of potential instances of market manipulation – is a narrower directive than that provided for in section 4 of the Mitigation Plan, which directs the internal market monitor to monitor whether decisions to participate in the Energy Imbalance Service Market have significant adverse effects on outcomes. TDU Intervenors make a similar argument regarding section 4.6.2 in the Monitoring Plan, –

(continued...)

Accordingly, the TDU Intervenors request that the Commission require SPP to move sections 4 and 5 of the Mitigation Plan to the Monitoring Plan.<sup>129</sup>

**iii. SPP's Answer**

129. SPP asserts that the TDU Intervenors' suggestion that SPP has weakened its market monitoring and mitigation provisions is mistaken. SPP states that because participation in the Energy Imbalance Service Market is voluntary, it is unnecessary to include provisions for mitigation against physical withholding or unavailability of facilities in Attachment AE. SPP maintains that while the Monitoring Plan does not expressly state that the internal market monitor will monitor for instances of physical withholding or unavailability of facilities, monitoring for these conditions is understood to be within the scope and duties articulated in section 4.2 of the Monitoring Plan. SPP states that the internal market monitor is able to review and analyze resource participation in the market to ascertain whether resource operators are having a significant adverse impact on market outcomes.<sup>130</sup>

**iv. Commission Determination**

130. SPP proposes to remove its internal market monitor from involvement in market mitigation. Accordingly, we find that SPP's revised Mitigation Plan is compliant with Order No. 719. However, we direct SPP to modify section 1.2 of its Monitoring Plan to remove a reference to its Mitigation Plan in a compliance filing due within ninety days of the issuance of this order.<sup>131</sup>

131. We agree with TDU Intervenors that the substance of sections 4 and 5 in the SPP Mitigation Plan should be moved to the Monitoring Plan. In its answer, SPP asserts that

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which restricts the internal Market Monitoring Unit's ability to examine instances where commonly-owned or controlled resources on the importing side of a constraint have a specified impact on the locational imbalance price, because the provisions of this section fail to encompass the broader scope of sections 4 and 5 of the Mitigation Plan. TDU Intervenors also claims that section 4.5 of the Monitoring Plan does not cover sections 4 and 5 in the Mitigation Plan, as it is directed toward transmission market power.

<sup>129</sup> TDU Intervenors Comments at 7.

<sup>130</sup> SPP Answer at 7-9.

<sup>131</sup> We note that SPP did revise section 1.2 of its Monitoring Plan to remove reference to Attachment AF. However, SPP neglected to delete another reference within this section to its Mitigation Plan.

sections 4.2 (market monitoring scope) and 4.4 (monitoring for potential Energy Imbalance Service Market manipulation) are sufficiently broad to include monitoring of the Energy Imbalance Service Market for physical withholding and unavailability of facilities. SPP's Monitoring Plan does not sufficiently ensure that market power is fully mitigated during shortage events absent an explicit requirement to monitor for physical withholding. Therefore, we direct SPP to modify the Monitoring Plan to clarify that the market monitor must monitor for and report suspected instances of physical withholding and unavailability of facilities to the Commission. We disagree with SPP's argument that, because the Energy Imbalance Service Market is voluntary, there cannot be physical withholding. A seller attempting to raise market prices may withhold capacity from the market. Whether the seller does this by submitting an artificially high bid that will not be accepted in the market or by simply not offering into the market at all does not matter. Both behaviors are withholding and can have the effect of artificially raising prices. The market monitor has an obligation to monitor for such behavior and make a referral to the Commission's Office of Enforcement, if appropriate.

e. **Ethics**

132. In Order No. 719, the Commission adopted minimum ethical standards for Market Monitoring Units and Market Monitoring Unit employees that RTOs and ISOs must include in their tariffs.<sup>132</sup> Under these standards, the Market Monitoring Unit and its employees: (1) must have no material affiliation with any market participant; (2) must not serve as an officer, employee, or partner of a market participant; (3) must have no material financial interest in any market participant or affiliate, with potential exceptions for mutual funds and non-directed investments; (4) must not engage in any market transactions other than the performance of their duties under the tariff; (5) must not be compensated, other than by the Commission-approved RTO or ISO that retains or employs the Market Monitoring Unit, for any expert witness testimony or other commercial services, either to the Commission-approved RTO or ISO or to any other party, in connection with any legal or regulatory proceeding or commercial transaction relating to the RTO or ISO or to its markets; (6) may not accept anything of value from a market participant in excess of a *de minimis* amount; and (7) must advise a supervisor in the event they seek employment with a market participant and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participants. RTOs and ISOs are free to propose more stringent ethics standards in their compliance filings.<sup>133</sup>

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<sup>132</sup> 18 C.F.R. § 35.28(g)(3)(vi) (2009).

<sup>133</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 384.

133. Order No. 719 clarified that these minimum ethics standards do not prohibit employees of Market Monitoring Units from performing independent monitoring for entities other than RTOs and ISOs. However, if the employing entity is a market participant in the RTO or ISO for whom the Market Monitoring Unit performs market monitoring, the proposed work would entail the same conflict of interest as would any other consulting services. The Commission directed each RTO and ISO to notify the Commission of such engagements in its compliance filing and to propose a transition plan for dealing with conflicts in a manner consistent with Order No. 719.<sup>134</sup> Finally, Order No. 719 directed each RTO and ISO to specify that the market monitoring ethics standards apply to the Market Monitoring Unit itself as well as to its employees.<sup>135</sup>

**i. SPP's Filing**

134. While SPP states that its Standards of Conduct contain many of the same ethical requirements mandated in Order No. 719, it proposes to rename section 3.3 in the Monitoring Plan to “Independence and Ethics Standards” and to adopt the seven ethical standards specified in Order No. 719. SPP also proposes revising section 3.3 to state that in the event there is a conflict between the Monitoring Plan and the SPP Standards of Conduct, the Monitoring Plan language will control. In regard to its external advisor, SPP states that the Code of Ethics in the External Advisor Agreement reflects ethical requirements similar to those in Order No. 719.<sup>136</sup> There were no comments on or protests to SPP’s proposed ethical standards and revisions to section 3.3.

**ii. Commission Determination**

135. We accept SPP’s proposed revisions to section 3.3 in the Monitoring Plan, with some modifications. Within its Monitoring Plan, SPP must define what a “material affiliation” is as that term is used in the ethical standard in section 3.3(a), as required in Order No. 719.<sup>137</sup> We also direct SPP to revise section 3.3 to include a statement that the ethical standards in section 3.3 apply to the Market Monitoring Unit itself as well as to its employees, as required by Order No. 719, in a compliance filing due within ninety days

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<sup>134</sup> *Id.* P 385.

<sup>135</sup> *Id.*

<sup>136</sup> SPP Compliance Filing at 28.

<sup>137</sup> Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 380.

of the issuance of this order.<sup>138</sup> We find that the proposed language specifying that the ethical standards in SPP's Monitoring Plan will control in the event of a conflict between section 3.3 and SPP's Standards of Conduct will be helpful in avoiding unnecessary uncertainty.

136. In section 3.3 of the Monitoring Plan, SPP states its internal market monitor shall require any external consultants or experts to certify compliance with its ethical policies. Accordingly, the External Advisor Agreement should be Order No. 719 compliant, regardless of the market monitoring structure SPP chooses. We find the ethics standards in Exhibit D and Attachment D-1 in the External Advisor Agreement are partially compliant with Order No. 719. However, there are two Order No. 719 ethics standards missing from this section. The first is the requirement that the external advisor and its employees may not accept anything of value from a market participant in excess of a *de minimis* amount. The second is the requirement that external advisor employees must advise a supervisor in the event they seek employment with a market participant and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participant. Accordingly, at the time that SPP files any subsequent or updated External Advisor Agreement with the Commission, SPP should include these Order No. 719 ethical standards in that agreement.

137. We also note that in Exhibit D<sup>139</sup> and Standard 3 of Attachment D-1,<sup>140</sup> it appears that SPP's Board may allow the external advisor to have a material affiliation, as a consultant, with entities that have business interests within the SPP footprint, provided

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<sup>138</sup> *Id.* P 387.

<sup>139</sup> The section titled "Engagements to Clear" in Exhibit D of the External Advisor Agreements states:

Before the EMA accepts any engagement that involves clients with SPP-related business interests or clients with business interests in markets inextricably connected to SPP, it must inform the SPP Board of Directors of such potential engagement and obtain the Board's determination that such engagement would not present a conflict of interest or result in the material appearance of conflict before accepting such engagement.

<sup>140</sup> Standard 3 in the code of ethics in attachment D-1 of the External Advisor Agreement states:

I will not work on any engagement related to the electricity business within the SPP footprint without the approval of the SPP Board of Directors or its delegates.

the Board determines there is no conflict of interest or appearance of a conflict of interest. We will defer making a finding on the merits of this ethics standard pending our review of SPP's compliance filing in response to Order No. 719-A. We remind SPP of its obligation to comply with any new standards set forth in Order No. 719-A.

**f. Tariff Provisions**

138. Order No. 719 directed RTOs and ISOs to place all of their Market Monitoring Unit provisions in one centralized location of their tariffs, and to include, in the introductory portion of that section, a mission statement setting forth the goals to be achieved by the Market Monitoring Unit, including the protection of both consumers and market participants by the identification and reporting of market design flaws and market power abuses.<sup>141</sup>

**i. SPP's Filing**

139. SPP explains that its Market Monitoring Unit provisions are centralized in the Monitoring Plan, which provides that the internal market monitor will monitor SPP's markets and services and submit recommendations to the Commission and the Board.<sup>142</sup> SPP proposes modifying section 1.3 of the Monitoring Plan to clarify that the internal market monitor's mission and objectives conform to the existing provisions in Order No. 719. SPP also proposes to add a new section 1.5 to the Monitoring Plan indicating that the Monitoring Plan will control in the event of a conflict between the Monitoring Plan and another tariff provision. Because the relationship between the external advisor and SPP must be governed by an agreement executed by both parties, SPP has chosen to outline these external advisor provisions in a separate tariff section in the External Advisor Agreement. SPP contends that this provides clarity to interested parties, as future changes to either tariff section would signal whether changes are being made to the internal market monitor or to the external advisor.<sup>143</sup> No comments or protests addressed SPP's proposal regarding these tariff provisions.

**ii. Commission Determination**

140. We accept SPP's proposed mission statement and similar language provisions in its tariff. We find SPP's proposed market monitoring mission statement in section 1.3.1

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<sup>141</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 392.

<sup>142</sup> SPP Compliance Filing at 29.

<sup>143</sup> *Id.* at 29.

of its Monitoring Plan to be compliant with Order No. 719.<sup>144</sup> We also find proposed section 1.5 compliant with the Order No. 719 requirement that states SPP must indicate that the Monitoring Plan language will control in the event of a conflict between the Monitoring Plan and any other provision in the SPP tariff.

141. We find that the choice of SPP's market monitoring structure will affect its compliance with the Order No. 719 requirement that SPP centralize all of its Market Monitoring Unit provisions in one location in its tariff. As discussed earlier in section III.B.3a of this Order, we will not allow an external market advisor to be designated as responsible for core monitoring functions. However, if SPP chooses to use an external market monitor that is responsible for core market monitoring functions, such as developing the annual State of the Market Report, we will require SPP to revise its Monitoring Plan to: (1) define clearly the relationship between the internal and external market monitors, (2) delineate clearly the responsibilities of the external market monitor, and (3) indicate where the contract between SPP and the external market monitor is located within the SPP tariff. As the External Advisor Agreement is generally renewed on an annual basis, we find SPP's explanation that including this contract in a separate tariff section to signal that changes are being made to this contract and not to the Monitoring Plan is reasonable.

**g. Enhanced Information Dissemination**

142. Order No. 719 required each RTO and ISO to include in its tariff a requirement that the Market Monitoring Unit prepare an annual State of the Market Report on market trends and the performance of the wholesale market, as well as less extensive quarterly reports. These reports must be disseminated to Commission staff, staff of interested state commissions, the management and board of the RTO or ISO, and market participants, with the understanding that dissemination may be accomplished by posting on the RTO's or ISO's website.<sup>145</sup> Order No. 719 also directed that Market Monitoring Units be

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<sup>144</sup> SPP's proposed mission statement in section 1.3.1 of the Monitoring Plan states:

The mission of the Market Monitor is to (a) monitor and report on possible abuses of horizontal and vertical market power and gaming in SPP's Markets and Services by any Market Participant, (b) identify market design flaws and recommend any changes in design to improve the operation of SPP's Markets and Services for the benefit of consumers and Market Participants, and (c) monitor Market Participants' compliance with market rules.

<sup>145</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 424.

available for regular conference calls, which may be attended by the Commission, state commissions, representatives of the RTO or ISO, and market participants. The information to be provided in the Market Monitoring Unit reports and in the conference calls may be developed on a case-by-case basis, but is generally to consist of market data and analyses of the type regularly gathered and prepared by the Market Monitoring Unit in the course of its business, subject to appropriate confidentiality restrictions.<sup>146</sup>

143. Additionally, Order No. 719 required RTOs and ISOs to release offer and bid data on a three-month lag. An RTO or ISO may propose a shorter lag time for the release of offer and bid data and provide accompanying justification. If the RTO or ISO demonstrates a potential collusion concern, it may propose a four-month lag period or some other mechanism to delay release of the data if it were otherwise to occur in the same season as reflected in the data.<sup>147</sup> The identity of market participants must remain masked, although the RTO or ISO may propose a time period for eventual unmasking. Order No. 719 requires RTOs and ISOs to include in their compliance filings a justification of their policies on the aggregation of offer and cost data (or the lack thereof), which should include a discussion of participant harm, collusion, and transparency.<sup>148</sup>

**i. SPP's Filing**

144. SPP states its internal market monitor and its external advisor provide reports more frequently than required by Order No. 719. Currently, the external advisor prepares an annual State of the Market Report as specified in exhibit A of the External Advisor Agreement. This annual report is presented to SPP's Board, filed with the Commission, and posted on the SPP website. The internal market monitor prepares monthly reports that SPP provides to Commission staff, posts on the SPP website, and reviews at SPP Market Working Group meetings.<sup>149</sup> SPP proposes revising section 7 of the Monitoring Plan to require that the internal market monitor prepare its periodic reports at least quarterly, as well as clarify the dissemination of those reports to comply with Order No. 719.<sup>150</sup>

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> SPP Compliance Filing at 30.

<sup>150</sup> *Id.* at 31 and n.166.

145. SPP states that it currently conducts regular conference calls with Commission staff to discuss market monitoring reports and other market monitoring issues. SPP's Market Working Group meets on a monthly basis, and SPP asserts that a representative from the internal market monitor is typically present at these meetings to discuss monthly reports, either through conference call or in person. SPP notes these Market Working Group meetings are open to any interested individuals, including Commission staff, state regulators, and SPP customers.<sup>151</sup> SPP proposes new language to section 7 in the Monitoring Plan to specify who may attend conference calls held by the internal market monitor related to its reports.<sup>152</sup>

146. Currently, SPP does not post bids or offers. SPP proposes to modify its Energy Imbalance Service Market provisions in Attachment AE of its tariff to provide for the release of offer curve data for dispatchable resources within three months.<sup>153</sup> SPP states it is appropriate to include this provision in Attachment AE as opposed to the Monitoring Plan, because SPP – not the internal market monitor – will be releasing these data.<sup>154</sup> SPP states that in developing a data posting policy, SPP and its stakeholders will consider issues such as transparency, data aggregation, and potential harm to participants from collusion.<sup>155</sup> There were no comments or protests addressing this proposal.

## ii. Commission Determination

147. We find that the choice of SPP's market monitoring structure will affect its compliance with some of the Order No. 719 information sharing requirements. As discussed in section III.B.3a above, we find that preparation of the annual State of the Market Report is a core function of the Market Monitoring Unit.<sup>156</sup> Thus, we direct SPP

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<sup>151</sup> *Id.* at 31.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* The proposed language in section 6 of Attachment AE states, in its entirety:

The Transmission Provider will release the hourly Offer Curves for Dispatchable Resources within three months. Such information released by the Transmission Provider will not include the identity of the Market Participant that submitted the Offer Curve.

<sup>154</sup> *Id.* n.169.

<sup>155</sup> *Id.* n.169.

<sup>156</sup> Specifically, the Market Monitoring Unit should review and report on the performance of the wholesale markets to SPP, the Commission, and other interested

(continued...)

to give the responsibility for preparing and disseminating the annual State of the Market Report to its internal market monitor if it chooses to continue with an internal market monitoring structure. However, if SPP chooses a hybrid market monitoring structure, Boston Pacific may continue to prepare the annual State of the Market Report on the condition that it becomes an external market monitor with all its associated requirements, such as reporting directly to the SPP Board.<sup>157</sup> We find SPP's proposed revisions to section 7 of the Monitoring Plan in compliance with Order No. 719's dissemination and quarterly reporting requirements, with modifications discussed below.

148. We will require SPP to modify proposed section 7.2.3 in the Monitoring Plan.<sup>158</sup> Proposed section 7.2.3 specifies which parties may be present during conference calls initiated by the internal market monitor. While Order No. 719 does state that parties such as Commission representatives and market participants may be present during conference calls, it does not limit this participation to conference calls initiated by the Market Monitoring Unit. Accordingly, we direct SPP in a compliance filing due within ninety days of the issuance of this order to modify section 7.2.3 to state that conference calls with the Market Monitoring Unit relating to the internal market monitor's reports may be attended by the parties currently specified in that section, regardless of which party originates the call. Order No. 719 also requires that the Market Monitoring Unit make one or more of its staff members available for regular conference calls. We direct SPP to modify section 7.2.3 to reflect this Order No. 719 requirement accurately.

149. We find it reasonable for SPP to include the provision related to release of offer curve data within Attachment AE of the SPP tariff because SPP as transmission provider will be releasing this information, not the internal market monitor. However, we find proposed section 6 in Attachment AE noncompliant with Order No. 719. This proposed section states, in part:

The Transmission Provider will release the hourly Offer Curves for Dispatchable Resources within three months.

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entities such as state commissions and market participants. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

<sup>157</sup> *Id.* P 340.

<sup>158</sup> Proposed section 7.2.3 in the Monitoring Plan states:

Conference calls held by the Market Monitor related to the Market Monitor reports may be attended by SPP, the Board of Directors, FERC Staff and other affected regulatory authorities, Regional State Committee, and Market Participants.

150. Order No. 719 states the lag time for the release of offer and bid data should extend for three months, although an RTO or ISO may propose a shorter period if it provides an appropriate justification.<sup>159</sup> The language “within three months,” as proposed by SPP, appears to allow for release of this information prior to the three month milestone. We direct SPP to, in a compliance filing due within ninety days of the issuance of this order, either provide justification for a shorter release period or to modify its proposed section 6 in Attachment AE to state that offer curves for dispatchable resources will be released three months after the day for which the offer was submitted. In addition, SPP did not provide justification of its policy regarding the aggregation of offer and cost data (or lack thereof) and indicated that it was still developing a data posting policy. We direct SPP to provide this justification in the compliance filing required by the Commission pursuant to this order.

**h. Tailored Requests for Information**

151. In Order No. 719, the Commission stated that Market Monitoring Units are to entertain state commissions’ tailored requests for information regarding general market trends and performance of the wholesale market, but they are not required to entertain requests for information designed to aid state enforcement actions. The Commission noted that granting or refusing such requests is at the Market Monitoring Unit’s discretion, based on its agreements with the RTO or ISO and the states, or otherwise based on time and resource availability.<sup>160</sup> Order No. 719 also directs RTOs and ISOs to develop confidentiality provisions to protect commercially sensitive material that may be included in responses to tailored requests for information.<sup>161</sup>

**i. SPP’s Filing**

152. Currently, Attachment AE of the SPP tariff governs the disclosure of information by SPP and the internal market monitor and outlines confidentiality protections for disclosure of sensitive information, including requests by an “authorized agency.”<sup>162</sup> SPP proposes a new section 8.4.5 to Attachment AE that addresses limitations on disclosed information to state commissions as required by Order No. 719. SPP also proposes additional language to Attachment AE providing that the internal market

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<sup>159</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 424.

<sup>160</sup> *Id.* P 424, 459.

<sup>161</sup> *Id.* P 459.

<sup>162</sup> SPP Compliance Filing at 31.

monitor is not required to respond to tailored information requests that are unduly burdensome or that do not pertain to general market trends.<sup>163</sup> SPP states it has kept information regarding tailored information requests within Attachment AE, with appropriate references to Attachment AE within section 8 of the Monitoring Plan. SPP prefers to keep these extensive provisions within Attachment AE as they apply to SPP's RTO function. SPP also states it wants to avoid duplication within its tariff.<sup>164</sup>

## **ii. Protests and Comments**

153. EPSA states that the proposed section 8.4.5 in Attachment AE only addresses two issues: that the request not be unduly burdensome for the internal market monitor and that it is not designed to aid in state enforcement actions.<sup>165</sup> EPSA claims that SPP's proposal fails to speak to the issue of market participants being allowed to review an information request and provide contextual information before the internal market monitor processes it, as directed by Order No. 719.<sup>166</sup> EPSA also asserts that the proposed section 8.4.5 and the existing tariff language fail to subject tailored information requests to redaction by market participants, as also required by Order No. 719.<sup>167</sup> EPSA cites section 3.3(b)(iii) of ISO New England's Information Policy as a template for complying with these Order No. 719 requirements.<sup>168</sup>

## **iii. SPP's Answer**

154. SPP claims EPSA's concerns regarding market information disclosure and confidentiality provisions are unfounded. SPP states it has adopted language in section 8.4.5 of Attachment AE indicating that,

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<sup>163</sup> *Id.* at 32.

<sup>164</sup> *Id.* at 33.

<sup>165</sup> EPSA Comments at 7.

<sup>166</sup> *Id.* at 8.

<sup>167</sup> *Id.* at 8-9.

<sup>168</sup> *Id.* ISO New England allows market participants full review of a market monitor's answer in order to contest or contextualize the information being sent to a requesting state.

[w]hen an information request pertains to a Market Participant, the affected Market Participant may request that clarifying information be included in the response.

SPP states this proposed language expressly provides for market participants to review an information request and provide contextual information before processing by the internal market monitor.<sup>169</sup>

155. SPP asserts that Order No. 719 does not mandate that RTOs and ISOs adopt tariff language requiring redaction of all confidential information in response to a tailored information request. SPP contends that Order No. 719 is silent on this issue and instead directs RTOs and ISOs to work with their stakeholders to develop confidentiality provisions for disclosure of information in tailored information requests. SPP states that disclosure requirements applicable to requests from state agencies are set forth in section 8.4 of Attachment AE, as revised in its Order No. 719 compliance filing, and these requirements are no more restrictive than necessary to protect confidential information.<sup>170</sup>

#### iv. Commission Determination

156. We find the proposed language within section 8 of Attachment AE to be largely compliant with Order No. 719 with respect to tailored requests for information, although we will require one modification. In the section 8 preamble, the tariff states that the confidentiality provisions in section 8 shall be applicable only to confidential information referenced within Attachment AE, Attachment AF, and Attachment AG. We will require that SPP also add Attachment AJ (which contains the External Advisor Agreement) to this list. We also direct SPP to revise section 8 of Attachment AJ-1 in its External Advisor Agreement to refer to confidentiality provisions in section 8 of Attachment AE, as this section incorrectly refers to section 7 of Attachment AE, in a compliance filing due within ninety days of the issuance of this order. We agree with SPP that keeping confidentiality provisions within Attachment AE will help to avoid duplication within its tariff.

157. We disagree with EPSA that proposed section 8.4.5 of Attachment AE fails to allow market participants to review an information request and provide contextual information. Proposed language in section 8.4.5(e) of Attachment AE provides for affected market participants to request that clarifying information be included in a response to an information request. We find that this satisfies the contextual information requirement in Order No. 719. Further, we disagree with EPSA that Order No. 719

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<sup>169</sup> SPP Answer at 9-10.

<sup>170</sup> *Id.* at 9-11.

requires tailored information requests be subject to redaction by market participants. Order No. 719 merely states that market participants are free to contest the content of information to be released.<sup>171</sup> We find there are several provisions within section 8 of Attachment AE – particularly section 8.4.5(e) and section 8.5 – that allow for such contesting of content.<sup>172</sup>

158. We note that the choice of market monitoring structure may affect the External Advisor Agreement and the Monitoring Plan, in terms of confidentiality and information request provisions. For example, if SPP chooses a hybrid market monitoring structure, it must designate whether the internal market monitor, the external market monitor, or both, must respond to information requests. We also note that choosing a hybrid market monitoring structure may affect other tariff sections relating to confidentiality and information requests. For example, section 8.2 of Attachment AE may need to be revised to indicate that references to the market monitor refer to both the internal and external market monitors. Accordingly, we will require SPP to incorporate such changes to its Monitoring Plan if it chooses a hybrid market monitoring structure in a compliance filing due within ninety days of the issuance of this order.

**i. Commission Referrals**

159. Order No. 719 adopted protocols for referrals by Market Monitoring Units to the Commission of suspected market violations and perceived market design flaws to be included in RTO and ISO tariffs. These are set forth at 18 C.F.R. § 35.28(g)(iv)(v). By Commission rule, all information and documents obtained during the course of an investigation are non-public and may not be released except to the extent the Commission directs or authorizes in a given instance, unless the material is already made public during an adjudicatory proceeding or disclosure is required by the Freedom of Information Act.<sup>173</sup>

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<sup>171</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 459.

<sup>172</sup> Section 8.4.5(e) of Attachment AE allows for affected market participants, SPP, or its internal market monitor to object to an information request. Section 8.5 affords a disclosing party the right to pursue appropriate actions to prevent or contest the removal of confidential status from its confidential information.

<sup>173</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 465 (*citing* 18 C.F.R. § 1b.9).

**i. SPP 's Filing**

160. SPP proposes revisions to sections 4.3 and 4.5 of the Monitoring Plan to clarify the confidential nature of referrals to the Commission. SPP proposes language that states that referrals by the internal market monitor to the Commission will be on a confidential basis and that no information included in such reports will be released to any other party, except to the extent the Commission directs such release or unless the information is already in the public domain.<sup>174</sup> The Commission received no comments on or protests to SPP's proposal regarding these tariff provisions.

**ii. Commission Determination**

161. We find the proposed language in sections 4.3 and 4.5 of the Monitoring Plan is largely compliant with this Order No. 719 requirement. If SPP chooses a hybrid market monitoring structure, SPP must include in its compliance filing due within ninety days of the issuance of this order, tariff language clearly specifying whether the internal and external market monitors will share or divide responsibility to make referrals to the Commission.

162. While largely compliant with the requirements of Order No. 719, we find that SPP's Monitoring Plan does not include any language referencing the Commission's protocols for referrals to the Commission for suspected market violations and for perceived market design flaws and recommended tariff changes.<sup>175</sup> Accordingly, we will require SPP to include in its compliance filing due within ninety days of the issuance of this order, proposed tariff language that includes a reference to the regulation that sets forth the Commission's protocols for referrals to the Commission.

**j. Market Monitoring Bylaw**

163. In Docket No. ER09-1192-000, SPP filed revisions to its Bylaws that included, *inter alia*, changes to section 3.17 of the Bylaws governing SPP market monitoring. SPP stated that these changes were necessary to reflect its current market monitoring and mitigation practices and to comply with Order No. 719 market monitoring requirements.<sup>176</sup> In an order issued on September 17, 2009, the Commission accepted and nominally suspended the revisions to section 3.17 of the SPP Bylaws, subject to

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<sup>174</sup> SPP Compliance Filing at 33.

<sup>175</sup> See *Market Monitoring Units in Regional Transmission Organizations and Independent System Operators*, 111 FERC ¶ 61,267 at App. A (2005).

<sup>176</sup> SPP Bylaws Filing at 8.

refund, and subject to the outcome of SPP's Order No. 719 compliance filing in the current proceeding.<sup>177</sup>

**i. Commission Determination**

164. In regard to oversight of the internal market monitor, proposed section 3.17 of the SPP Bylaws states:

The market monitoring unit shall report to the Board of Directors.

We direct SPP to clarify that SPP management representatives on the Board are excluded from oversight of the internal market monitor, consistent with Order No. 719.<sup>178</sup>

165. In regard to enhanced information dissemination, proposed section 3.17 states:

Any public reports submitted shall be provided to the Board of Directors and concurrently to the appropriate regulatory body or bodies.

We direct SPP to clarify that these reports shall be provided to the Board, Commission staff, staff of interested state commissions, SPP management, and market participants, consistent with Order No. 719.<sup>179</sup>

166. Section 3.17 of the SPP Bylaws also contains an extensive list of market monitoring functions. We direct SPP to revise section 3.17 to reference the market monitoring functions described in its tariff, including the three core market monitoring functions required by Order No. 719.<sup>180</sup> We find that referencing these functions within the Bylaw will give a broader picture of the market monitoring functions performed by the internal market monitor, increase consistency between SPP's tariff and Bylaws, and decrease complexity if changes are made to these functions in the future.

167. We accept SPP's proposed revisions to section 3.17 of its Bylaws in part and request that SPP make additional changes, as described above, in its compliance filing to this order. We note that further revisions may be necessary depending on SPP's choice of market monitoring structure, and we direct SPP to submit proposed changes for review based on its structural choice.

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<sup>177</sup> *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,245, at P 14, 16 (2009).

<sup>178</sup> Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 339.

<sup>179</sup> *Id.* at P 424.

<sup>180</sup> *See id.* P 354.

The Commission orders:

(A) SPP's compliance filing is hereby accepted in part and rejected in part, effective June 28, 2009, as discussed in the body of this order.

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

(C) SPP is hereby directed to submit a compliance filing, within six months of the date of this order, reporting on barriers to comparable treatment of demand response resources.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.