

136 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket No. ER10-1269-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued July 21, 2011)

1. Nebraska Public Power District (NPPD), East Texas Cooperatives<sup>1</sup> and Joint Protestors<sup>2</sup> (collectively, Rehearing Parties) seek rehearing of the July 15, 2010 order in this proceeding,<sup>3</sup> which conditionally accepted Southwest Power Pool, Inc.'s (SPP) proposal to implement the Integrated Transmission Plan (ITP).<sup>4</sup> East Texas Cooperatives also request clarification of one aspect of the July 15 Order. As discussed below, the Commission denies the requests for rehearing and grants clarification of the July 15 Order.

**I. Background**

2. On May 17, 2010, SPP filed proposed revisions to its Open Access Transmission Tariff (Tariff) to incorporate the ITP, a modified transmission planning process, into

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<sup>1</sup> East Texas Cooperatives are East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

<sup>2</sup> Joint Protestors are Empire District Electric Co., Omaha Public Power District, City Utilities of Springfield, Missouri, and Lincoln Electric System.

<sup>3</sup> *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,042 (2010) (July 15 Order).

<sup>4</sup> The Commission directed SPP to make certain modifications to its proposal, which are unrelated to the issues raised on rehearing. On August 16, 2010, SPP submitted its compliance filing, which was accepted for filing by delegated authority on February 2, 2011. *Southwest Power Pool, Inc.*, Docket No. ER10-2244-000 (Feb. 2, 2011) (delegated letter order).

Attachment O (Transmission Planning Process) of its Tariff (ITP Filing). SPP proposed to use the ITP process to determine its near-term and long-term transmission needs to maintain reliability and provide economic benefits in the SPP region. SPP explained that the ITP is an iterative planning process that includes 20-year, 10-year, and Near Term Assessments. For the longer-term planning horizons, the ITP focuses on higher-voltage facility solutions—i.e., transmission facilities of 300 kV and above for 20-year Assessments; and 100-300 kV for 10-year Assessments. SPP also explained that the primary purpose of the ITP's Near Term Assessment is to meet reliability needs and comply with North American Electric Reliability Corporation standards. Under the ITP, the 10-year and 20-year Assessments will be initiated every three years, while the Near-Term Assessment will be conducted annually.

3. SPP also proposed to conduct transmission planning forums with its stakeholders to define the scope of each assessment. SPP proposed to use a comprehensive cost-effectiveness analysis in order to determine a draft list of projects for review and approval by SPP's Markets and Operating Policy Committee (MOPC)<sup>5</sup> and Board of Directors. SPP's proposal provided that all potential solutions will be evaluated based on a comparison of their relative cost-effectiveness and that SPP and its stakeholders will assess the cost-effectiveness of each of the proposed solutions in accordance with the ITP Manual, which SPP will develop in consultation with its stakeholders. SPP's Tariff revisions called for the ITP Manual to be approved by SPP's MOPC and posted on SPP's website. In its Tariff revisions, SPP proposed a 40-year financial modeling time frame for this analysis and proposed that the cost-effectiveness analysis include quantification of the benefits resulting from dispatch savings, loss reductions, avoided projects, applicable environmental impacts, reduction in required operating reserves, interconnection improvements, congestion reduction, and other benefit metrics developed through the SPP stakeholder process.<sup>6</sup>

4. In response to SPP's Filing, protesters asserted that SPP had not supported the ITP proposal adequately and requested that the Commission reject SPP's Filing, or in the alternative hold the proceeding in abeyance and provide other relief. In particular, protesters argued that the Commission should reject the ITP proposal because SPP was still in the process of developing the ITP Manual. Protesters also argued that the

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<sup>5</sup> The MOPC consists of a representative officer or employee from each SPP member and reports to the SPP Board of Directors. Its responsibilities include recommending modifications to the SPP Tariff. *See* SPP Bylaws at section 6.1.

<sup>6</sup> SPP Tariff Attachment O, section III.8(e).

Commission should require SPP to file the ITP Manual rather than only posting it on its website.

5. In the July 15 Order, the Commission rejected most of the protestors' arguments and conditionally accepted the ITP Tariff revisions subject to a compliance filing.

6. NPPD and Joint Protestors filed requests for rehearing and East Texas Cooperatives filed a request for rehearing and clarification. SPP filed an answer to the requests for rehearing and East Texas Cooperatives filed an answer to SPP's answer.

## **II. Discussion**

### **A. Procedural Matters**

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011), prohibits answers to requests for rehearing. Accordingly, we will reject SPP's answer and dismiss East Texas Cooperatives' answer to SPP's answer.

### **B. Substantive Issues**

#### **1. Definition of Cost-Effectiveness and Other Terms**

##### **a. Requests for Rehearing**

8. Rehearing Parties contend that the Commission erred in accepting SPP's ITP proposal without requiring SPP to provide a definition for the term "cost-effectiveness" in its Tariff. In terms of defining cost-effectiveness, Rehearing Parties request that SPP provide details such as the factors SPP will include and how SPP will weigh each factor in the cost-effectiveness evaluation and the standards or thresholds projects must surpass for SPP to deem a project cost-effective.<sup>7</sup> NPPD also alleges error in the Commission's acceptance of SPP's Tariff revisions because, in its view, certain "key classifications, definitions, practices and other terms that significantly affect rates, charges and service subject to the Commission's jurisdiction under the Federal Power Act (FPA)" should have been included in the Tariff.<sup>8</sup> Similarly, East Texas Cooperatives assert that the Commission failed to provide a reasoned basis for accepting the ITP proposal "despite

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<sup>7</sup> East Texas Cooperatives Request for Rehearing at 7; *see also* NPPD Request for Rehearing at 9, 19, 23.

<sup>8</sup> *See id.* at 2.

SPP's failure to provide necessary methodology, standards, and criteria that will be applied in determining the cost-effectiveness of potential transmission projects.”<sup>9</sup>

9. Rehearing Parties argue that the Commission should not have accepted SPP's proposal to define “cost-effectiveness” in the ITP Manual, which will be posted on SPP's website, but which had not been written at the time of the July 15 Order.<sup>10</sup> NPPD also argues that SPP's Tariff provisions list some, but not all, of the factors and considerations SPP will evaluate in determining whether particular projects are or are not cost-effective. East Texas Cooperatives contend that Attachment O to SPP's Tariff provides only broad categories of factors SPP will take into consideration in evaluating cost-effectiveness.<sup>11</sup> NPPD and East Texas Cooperatives assert that SPP's ITP provisions are not just and reasonable, because SPP did not include such details as the weight each of the factors will be given, how all of the factors will be synthesized into a coherent cost-effectiveness analysis, and what standards or thresholds have to be met before a project can be considered cost-effective.<sup>12</sup> NPPD argues that in *PJM Interconnection, LLC*,<sup>13</sup> the Commission rejected PJM's compliance filing that modified its transmission planning process for economic transmission expansions because PJM had not provided a “discernable method by which it plans to weigh, consider and/or combine the various metrics it proposes for determining the net economic benefit of a project.”<sup>14</sup>

10. NPPD also argues that to the extent the Commission found that SPP's Tariff defines “cost-effective,” such finding is “clearly erroneous and internally inconsistent.”<sup>15</sup> According to NPPD, the conclusion the Commission reaches in the July 15 Order with respect to the definition or meaning of “cost-effectiveness” is not clear. NPPD states that in paragraph 48 of the July 15 Order the Commission acknowledges that SPP's stakeholders specifically considered but declined to include a definition of “cost-

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<sup>9</sup> East Texas Cooperatives Request for Rehearing at 1.

<sup>10</sup> See NPPD Request for Rehearing at 9.

<sup>11</sup> East Texas Cooperatives Request for Rehearing at 7.

<sup>12</sup> *Id.*; see also NPPD Request for Rehearing at 9.

<sup>13</sup> 119 FERC ¶ 61,265, at P 30 (2007), *order on reh'g and compliance*, 123 FERC ¶ 61,051 (2008) (*PJM*).

<sup>14</sup> NPPD Request for Rehearing at 9-10 (citing *PJM*, 119 FERC ¶ 61,265, at P 30 (2007)).

<sup>15</sup> *Id.* at 11.

effectiveness” in the Tariff, which means that the Commission did not find that SPP’s Tariff defines the term. NPPD observes that paragraph 55 of the July 15 Order appears to suggest the opposite because the Commission stated that “SPP has identified in its tariff the specific costs and benefits that will be identified on a regional, zonal, and state-specific basis . . . .” NPPD argues that if this statement reflects a finding that the ITP Filing included Tariff language defining the term “cost-effectiveness,” such a finding is erroneous.

11. In addition, Joint Protesters and NPPD contend that cost-effectiveness is the linchpin of the ITP process affecting which projects will be built. NPPD adds that the methodology, criteria and assumptions to be used for the 20-year, 10-year and Near-Term Assessments must be included in the Tariff as well because “[f]inding the appropriate investments is dependent on the assumptions used to represent possible future outcomes.”<sup>16</sup> To support its argument that cost-effectiveness is significant, NPPD identifies several definitions it states SPP could assign to the term cost-effectiveness: (1) an overall benefit-to-cost (B/C) ratio of 1.0 or higher across the entire SPP region over a 10-year period; (2) a B/C ratio of 1.0 or higher in each SPP zone over a 10-year period; (3) variations of (1) and/or (2) with different B/C thresholds or different time periods.<sup>17</sup>

12. NPPD also notes that forecasting uncertainties increase substantially as one moves from the 10-year forecast associated with the existing Balanced Portfolio provisions of the Tariff to the 40-year forecasts called for in SPP’s proposed 20-year and 10-year ITP Assessments and in the cost-effectiveness analysis.<sup>18</sup> NPPD asserts that under the ITP, SPP will engage in forecasts of economic benefits that will require SPP to speculate about the location and intensity of future congestion and transmission losses—as well as speculate about the future value of mitigating congestion and losses—over the 50-year economic life of transmission upgrades. NPPD contends that congestion can, and often does, disappear in response to factors such as changes in load growth, relative fuel prices, or additions of generators and transmission upgrades.

13. NPPD argues that the Commission erred by not addressing NPPD’s argument in its protest that the imprecision and speculative nature of benefits that are forecasted far into the future make it more likely that SPP will erroneously find a positive benefit/cost

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<sup>16</sup> *Id.* at 26.

<sup>17</sup> *Id.* at 23.

<sup>18</sup> *Id.* at 34-35.

ratio and build a transmission project that produces no benefits, or benefits that are outweighed by costs.<sup>19</sup>

14. In addition, Rehearing Parties argue that the Commission erred in applying the “rule of reason” in the July 15 Order. East Texas Cooperatives assert that the Commission “erred by determining that the information in the ITP Manual will not significantly affect transmission service even though the manual has not been completed.”<sup>20</sup> East Texas Cooperatives argue that the cost-effectiveness analysis will significantly affect transmission rates, because SPP will use the cost-effectiveness analysis to determine the projects it will include in the ITP and the costs of those projects will be included in rates.<sup>21</sup> NPPD argues that due to the direct nexus between the cost-effectiveness analysis and the approval and construction of new transmission facilities, the costs of which will be allocated to NPPD and other SPP Members through Attachment J to the Tariff, the manner in which cost-effectiveness is defined will indisputably have a significant effect on rates, charges, and services under the SPP Tariff.<sup>22</sup>

15. Additionally, Rehearing Parties assert that the Commission’s determination that the ITP Manual does not need to be filed is premature under the rule of reason because the final version of the manual does not yet exist. According to East Texas Cooperatives, in *California System Operator Corporation, Inc.*,<sup>23</sup> “as the California ISO was in the process of developing business practice manuals with its stakeholders to supplement the tariff, the Commission directed staff to convene a technical conference to assist the Commission ‘in the determination of which practices or details remaining in the Business Practice Manuals might appropriately belong in the . . . tariff.’”<sup>24</sup> NPPD asserts that “[t]he Commission’s ‘rule of reason’ precedent is unequivocal that the *only* way to determine whether terms in a utility’s unfiled manual need not be included in that utility’s

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<sup>19</sup> *Id.*

<sup>20</sup> East Texas Cooperatives Request for Rehearing at 3

<sup>21</sup> *Id.* at 4.

<sup>22</sup> NPPD Request for Rehearing at 22.

<sup>23</sup> 116 FERC ¶ 61,274 (2006) (*CAISO MRTU*).

<sup>24</sup> East Texas Cooperatives Request for Rehearing at 4 (citing *CAISO MRTU*, 116 FERC ¶ 61,274 at P 1370).

tariff is to evaluate the actual language of the manual and compare that language to the provisions of the tariff.”<sup>25</sup>

16. NPPD also argues that, pursuant to the rule of reason, the definition of cost-effectiveness and the specific methodology, criteria and assumptions to be used in the ITP Assessments must be filed with the Commission because they are realistically susceptible of specification.<sup>26</sup> According to NPPD, existing language in the SPP Tariff requires that a Balanced Portfolio achieves a positive benefit/cost ratio for each SPP zone and requires use of a ten-year period for evaluating zonal benefits based on interpolating benefits calculated in three specific annual periods.<sup>27</sup> NPPD argues that these Tariff provisions foreclose reasonable debate regarding whether a definition of cost-effectiveness for ITP-related transmission project proposals are realistically susceptible of specification. NPPD further asserts that in *Pacific Gas & Electric Company*,<sup>28</sup> the Commission rejected proposed rate schedule language in part because the utility did not define cost-effective. Citing *City of Cleveland*, NPPD argues that “[i]f the term ‘cost-effective’ were ‘so generally understood in any contractual arrangement as to render recitation superfluous,’ the Commission presumably would not have rejected PG&E’s filing. NPPD adds that SPP’s statements regarding the ‘fluid, changing nature of the concept of ‘cost-effectiveness,’ further evidences that the meaning of ‘cost-effectiveness’ is not generally understood, and thus needs to be defined in the Tariff.”<sup>29</sup>

17. Finally, East Texas Cooperatives and Joint Protestors argue that the Commission’s finding that SPP must revise its Tariff to provide criteria for determining whether a waiver will be granted for cost allocation for dual voltage equipment while not requiring the methods, assumptions, and data to be used in evaluating cost-effectiveness is contrary to the “rule of reason.” East Texas Cooperatives and Joint Protesters argue that it is illogical for Commission to find that waiver criteria affecting part of a project (i.e., a

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<sup>25</sup> NPPD Request for Rehearing at 39 (citing *CAISO MRTU*, 116 FERC ¶ 61,274 at P 1370 (“We find that our ‘rule of reason’ test *requires* a case-by-case analysis, *comparing what is in the MRTU Tariff against what is in the Business Practice Manuals.*”) (emphasis by NPPD)).

<sup>26</sup> *Id.* at 19 & n.11 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*); *PJM*, 119 FERC ¶ 61,265).

<sup>27</sup> *Id.* (citing SPP Tariff, Attachment O, sections IV.6.e.ii and IV.6.d.iv).

<sup>28</sup> 101 FERC ¶ 61,079 (2002) (*PG&E*).

<sup>29</sup> NPPD Request for Rehearing at 20 (citing SPP Answer at 13).

transformer) must be filed, but that the methods, assumptions and data to be used in evaluating the cost-effectiveness of the project as a whole do not have to be filed.<sup>30</sup>

**b. Determination**

18. The Commission finds Rehearing Parties' arguments to be unpersuasive. Rehearing Parties allege that SPP's Tariff provisions are unjust and unreasonable because details of the cost-effectiveness analysis and other terms will be included in the ITP Manual, which will be available on the SPP website,<sup>31</sup> rather than in the Tariff. Rehearing Parties also argue that the ITP proposal does not meet the filing requirements of the "rule of reason." Rehearing Parties are mistaken that the Commission erred in accepting SPP's ITP proposal. As we found in the July 15 Order, the Tariff provisions detail a comprehensive, iterative process for transmission planning in the SPP region designed to enhance SPP's existing planning efforts and better coordinate reliability assessments, economic analyses, and long-term transmission evaluations.<sup>32</sup>

19. Our review of SPP's plan to reform its Attachment O transmission planning process was guided by our statutory obligations under section 205 of the FPA as well as the Commission's transmission planning principles set forth in Order No. 890.<sup>33</sup> One of the Commission's primary reforms in Order No. 890 was to address the lack of

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<sup>30</sup> East Texas Cooperatives Request for Rehearing at 5-6; Joint Protesters Request for Rehearing at 9-10.

<sup>31</sup> The first draft of the ITP Manual was posted on the SPP website on January 7, 2011 *available at* [http://www.spp.org/publications/Draft%20Integrated%20Transmission%20Planning%20Manual\\_20110107.doc](http://www.spp.org/publications/Draft%20Integrated%20Transmission%20Planning%20Manual_20110107.doc).

<sup>32</sup> July 15 Order, 132 FERC ¶ 61,042 at P 75. The Commission notes that it issues today a final rule regarding cost allocation and transmission planning, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011). To the extent this final rule requires changes to SPP's ITP provisions, SPP will need to make such changes; this order does not exempt SPP from complying with the final rule.

<sup>33</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed each transmission provider to develop a transmission planning process that satisfies nine principles and to describe that process clearly in a new attachment to its Open Access Transmission Tariff. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate, must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.<sup>34</sup>

20. SPP originally submitted its transmission planning process to comply with Order No. 890 under Attachment O of its Tariff, which the Commission has found to be in compliance with Order No. 890.<sup>35</sup> As noted in the July 15 Order, in January 2009, the SPP Board of Directors established the Synergistic Planning Project Team (SPPT)<sup>36</sup> to recommend improvements to SPP's regional transmission planning process and cost allocation methodology. This initiative was in response to SPP's annual stakeholder survey from previous years and anticipated changes in national energy policy. In a report of its findings, the SPPT noted that SPP's staff and members "have become frustrated in managing the complexity of the many different planning processes that have evolved over the past several years."<sup>37</sup>

21. With the ITP Filing, SPP submitted a refined Attachment O transmission planning process to replace its existing process for planning for reliability purposes with a new process that addresses reliability and economic purposes under an integrated, longer-term framework. Protests of the ITP Filing centered around three aspects of transmission planning emphasized in Order No. 890—transparency, comparability, and openness. Rather than allowing SPP to work with its stakeholders to refine implementation of the

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<sup>34</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

<sup>35</sup> See *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028 (2008), *order on compliance filing*, 127 FERC ¶ 61,032, *order on compliance filing*, 127 FERC ¶ 61,171 (2009).

<sup>36</sup> Membership in the SPPT includes: two state regulatory commissioners; one representative each from the investor-owned utility, transmission-dependent utility, and market segments of the SPP membership; an outside investor; an industry consultant; and a senior SPP staff member.

<sup>37</sup> Southwest Power Pool, Report of the Synergistic Project Planning Team at 4 (Apr. 30, 2009), *available at* <http://www.spp.org/publications/SPPT%20Report%20Version%20v6-1.pdf>.

ITP over time and provide these details on the SPP website, Rehearing Parties insist that SPP should be required to provide more details in its Tariff. However, Rehearing Parties misconstrue Order No. 890's requirements with regard to what a transmission provider must provide to have a transparent and open transmission planning process.

22. Order No. 890's transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans in order to ensure that standards are consistently applied.<sup>38</sup> The transparency principle does not require that all rules and practices related to the details of transmission planning be included in a transmission provider's tariff or filed with the Commission. As the Commission found in the July 15 Order, SPP has identified in its Tariff the specific types of costs and benefits that SPP and its stakeholders will identify on a regional, zonal, and state-specific basis, including dispatch savings, loss reductions, avoided projects, reduction in required operating reserves, interconnection improvements, and congestion reduction.<sup>39</sup>

23. SPP has also made clear that in each iteration of the 20-year, 10-year, and Near Term Assessments, SPP and its stakeholders will determine the years to be studied,<sup>40</sup> and the methodology, criteria, assumptions, and data<sup>41</sup> to be used in the assessments through stakeholder sessions. Section V.2(b) of Attachment O provides that the related study results, criteria, assumptions, and underlying data shall be posted on the SPP website. Accordingly, the Commission found that because SPP's Attachment O identifies the specific types of costs and benefits that will be identified and requires SPP to post the study results, criteria, assumptions, and underlying data on the SPP website, SPP's Tariff reduces to writing and makes available the basic methodology, criteria, and processes used to develop transmission plans under the ITP consistent with the transparency principle of Order No. 890.<sup>42</sup>

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<sup>38</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471.

<sup>39</sup> See July 15 Order, 132 FERC ¶ 61,042 at P 5 (citing SPP Tariff, Attachment O, section III.8(e)).

<sup>40</sup> SPP Tariff, Attachment O, section III.3(b) ( 20-year); section III.4(b) (10-Year).

<sup>41</sup> *Id.* at section III.3(e) ( 20-year); section III.4(e) (10-Year); section III.5(c) (Near Term).

<sup>42</sup> We note that the initial draft 20-year Assessment has been posted on the SPP Website. See [http://www.spp.org/publications/ITP20\\_Report\\_01-26-11.pdf](http://www.spp.org/publications/ITP20_Report_01-26-11.pdf)

24. With regard to comparability, Order No. 890 requires that each transmission provider identify how it will treat resources on a comparable basis and, therefore, it must identify how it will determine comparability for purposes of transmission planning. For example, tariff language can state that solutions will be evaluated against each other based on a comparison of their relative economics and effectiveness of performance.<sup>43</sup> In the July 15 Order, the Commission found that sections III(8)(c) through (e) of Attachment O provide that SPP will assess solutions based on their cost-effectiveness, and the Tariff identifies a list of metrics that SPP will use in determining cost-effectiveness.<sup>44</sup> The Commission also found that the ITP Tariff provisions provide that, in addition to recommended upgrades, SPP will consider, on a comparable basis, any alternative proposals, including generation options, demand response programs, “smart grid” technologies, and energy efficiency programs, and that SPP will evaluate such solutions against each other based on a comparison of their relative effectiveness of performance and economics.<sup>45</sup> The Commission concluded that SPP had complied with the comparability principle of Order No. 890, and nothing in the requests for rehearing persuades us that this conclusion is in error. As clarified below, if a party believes it has not been treated on a comparable basis, it could avail itself of its rights under section 206 of the FPA.

25. Concerning openness, Order No. 890 requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Section III.1 of Attachment O (Commencement of the Process) provides that:

At the beginning of each calendar year the Transmission Provider shall notify stakeholders as to which part(s) of the integrated transmission planning cycle will take place during that year and the approximate timing of activities required to develop the SPP Transmission Expansion Plan. Notice of commencement of the process shall be posted on the SPP website and distributed via email distribution lists.

26. Section III.2 of Attachment O (Transmission Planning Forums) describes the planning summits, which will be open to all entities as well as when the planning summits will be held, and provides for notice of meetings to be posted on the SPP

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<sup>43</sup> *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,171, at P 54 n.54 (2009).

<sup>44</sup> July 15 Order, 132 FERC ¶ 61,042 at P 60.

<sup>45</sup> *Id.* P 61.

website and distributed via email distribution lists.<sup>46</sup> In the July 15 Order the Commission found that SPP's Tariff, as amended in the ITP Filing, continued to comply with the openness principle because section III(2)(b) of Attachment O provides that all meetings of the stakeholder working groups, planning summits, and sub-regional planning meetings are open to all entities.<sup>47</sup> Accordingly, based on our review of the ITP Tariff provisions we concluded and hereby affirm that SPP's Tariff details the basic methodology, criteria, and assumptions, plans for evaluating comparable alternatives, and provisions for stakeholder participation consistent with the transparency, comparability, and openness principles of Order No. 890.

27. SPP chose to file the basic methodology, criteria, and assumptions of the ITP process in the SPP Tariff and determine with its stakeholders the specific implementation details, including the details of how cost-effectiveness analyses will be conducted, in each iteration of a planning assessment. While Rehearing Parties would prefer more implementation details in the Tariff, SPP's Tariff provides sufficient detail for SPP, its members, and interested stakeholders to participate actively in the transmission planning process. We therefore reject Rehearing Parties' assertions that the ITP Tariff provisions should be rejected for failing to define "cost-effectiveness" and other terms they find lacking.

28. As to NPPD's complaint that the SPP Tariff lists some but not all of the factors to be used in each cost-effectiveness analysis and East Texas Cooperatives' concern that SPP has provided only broad categories of factors, we find these arguments to be insufficient as bases for rejecting the ITP Tariff provisions. The Tariff provides sufficient detail of the factors to be considered in the cost-effectiveness analysis,<sup>48</sup> and it provides notice to interested stakeholders to allow them to participate in the development of the Near Term, 10-year, and 20-year Assessments.<sup>49</sup> Allowing SPP and its stakeholders flexibility to develop the details of the cost-effectiveness analysis based on the factors listed in the Tariff as they gain experience with the ITP process does not give SPP unfettered discretion. Rather, as discussed above, the ITP Tariff provisions allow for open and active participation by interested stakeholders in the development of the ITP Manual which will provide implementation details for the ITP process.

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<sup>46</sup> See SPP Tariff, Attachment O, section III.2.

<sup>47</sup> July 15 Order, 132 FERC ¶ 61,042 at P 59.

<sup>48</sup> See SPP Tariff, Attachment O, section III.8.e.

<sup>49</sup> *Id.* at section III.1 and III.2.

29. NPPD also argues that *PJM* supports its argument that SPP should be required to supplement the details of its Tariff with weights for each of the factors SPP and its stakeholders will consider in the cost-effectiveness analysis. We disagree. PJM's metrics were intended to apply only to economic projects proposed to be included in PJM's regional transmission expansion plan. Here, the cost-effectiveness evaluation applies to projects considered not only to provide economic benefits but also to provide reliability benefits and to meet public policy requirements. While the benefits of projects considered purely for economics (e.g. adjusted production cost savings) may be quantified readily and included in a formula, reliability benefits and benefits derived from meeting public policy requirements may not be so readily quantifiable and detailed, and thus cannot easily be included in a formula. Moreover, SPP is not required to demonstrate that its proposed ITP process is superior to any other transmission planning method. Rather, its burden under section 205 of the FPA is to demonstrate that the specific Tariff revisions it proposes are just and reasonable, which SPP has done.<sup>50</sup>

30. Additionally, NPPD lists several benefit/cost thresholds as potential definitions of cost-effectiveness. However, we will not require SPP to specify a benefit-cost ratio as NPPD seems to suggest, because the ITP applies to projects that are not only considered for their economic benefits, but are also considered for reliability benefits and public policy requirements. Because of the ITP's integrated approach of considering reliability in addition to economic projects, it is plausible that the ITP process will result in projects or a group of projects that, while cost-effective, do not have a quantifiable benefit-cost ratio in the range suggested by NPPD. We find this result just and reasonable, because while economic projects are primarily considered based on a benefit-cost ratio greater than one, the same is not true for projects also considered for reliability benefits and to meet public policy requirements, which provide benefits that are not readily quantifiable.

31. NPPD also argues that benefits that are forecasted far into the future make it more likely that SPP will erroneously find positive benefit/cost ratios for transmission projects. However, as the Commission found in the July 15 Order, the lifetime of the facilities

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<sup>50</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,185, at P 25 (“[T]he mere fact that the methodology can be refined does not undercut our conclusion that the overall method affords a just and reasonable rate for transmission customers. As the court noted . . . ‘reasonableness is a zone, not a pinpoint.’”); see also *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984) (agreeing with the Commission that “its authority to review rates under [the FPA is] limited to an inquiry into whether the rates proposed by a utility are reasonable—and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”).

developed under the ITP will likely extend beyond even the 40-year benefit horizon and benefits of such projects will accrue over the lives of the facilities. Thus, limiting the forecast of benefits to 10 years as NPPD suggests would exclude from the assessments benefits that are likely to accrue over the remaining lives of the facilities. Further, the Commission recognizes that the ability to forecast precise benefits over a 10 year period, as recommended by NPPD, is greater than the ability to forecast precise benefits near the end of a 40-year benefit horizon. Nonetheless, it is just and reasonable to account for all of the benefits expected to accrue over the 40-year benefit horizon because 40 years better reflects the life of the facilities than a 10-year benefit horizon. Furthermore, NPPD provides no evidence for its claim that with a 40-year benefits horizon SPP will erroneously find positive benefit/cost ratios for transmission projects. NPPD also provides no other evidence to show that the accuracy of benefits forecasts over a 40-year period is so diminished that the 40-year benefits period is unjust and unreasonable. Accordingly, we deny rehearing on this issue.

32. With regard to Rehearing Parties' arguments that the Commission misapplied the rule of reason we disagree. The D.C. Circuit has summarized the rule of reason as follows:

The statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous. It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.<sup>51</sup>

33. As Rehearing Parties point out, in Order No. 890, the Commission affirmed the use of a rule of reason to determine what rules, standards, and practices significantly affect transmission service and, as a result, must be included in the transmission provider's OATT.<sup>52</sup> In Order No. 890, the Commission disagreed with parties who argued that all of a transmission provider's rules, standards, and practices should be incorporated into its OATT, finding that such a requirement would be impractical and potentially administratively burdensome. Instead the Commission requires transmission providers to post on their public websites all rules, standards, and practices that relate to

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<sup>51</sup> See *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (emphasis in original).

<sup>52</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649.

transmission service and provide a link to those rules, standards, and practices on Open Access Same-Time Information System.<sup>53</sup>

34. We hereby clarify how SPP's ITP proposal meets the rule of reason. The actual cost-effectiveness analysis of a particular project or group of projects affects rates, because the results are used to determine the specific projects to be constructed, and the construction costs are ultimately reflected in rates. SPP provides information in its Tariff about when and how a cost-effectiveness analysis will be conducted, leaving only the implementation details of the calculations to the ITP Manual. SPP lists in the Tariff the policy, reliability, and economic input requirements for its evaluation in section III.6 of Attachment O and describes the methodology it will use in its evaluation in section III.8(e) of Attachment O. Accordingly, we find that the Tariff provides sufficient guidance on how the cost-effectiveness analysis will be conducted to satisfy the rule of reason and that the implementation details of the cost-effectiveness analysis are properly included in the ITP Manual instead of the Tariff.

35. Further, as we have discussed above, SPP's Tariff sets forth an open and transparent process for SPP and its stakeholders to work collaboratively to conduct the cost-effectiveness analysis. Specifically, SPP will present the results of the cost-effectiveness analysis to and solicit feedback from its stakeholders.<sup>54</sup> SPP will also post the final draft list of projects on its website and e-mail notice of such posting to its stakeholders at least ten days prior to a meeting at which the SPP Board is expected to take action on the list.<sup>55</sup> Accordingly, the cost-effectiveness analysis, conducted under the process delineated in the ITP provisions of SPP's Tariff and implemented according to the ITP Manual, is subject to an open and transparent stakeholder process before the projects are included in rates.<sup>56</sup>

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<sup>53</sup> *Id.* P 1651-52.

<sup>54</sup> *See* SPP Tariff, Attachment O, section III.8.f-h.

<sup>55</sup> *Id.* at section V.3.f.

<sup>56</sup> *See PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,066, at P 69 (2011) (finding that "while many of the details of the calculations can be placed in the manual, the Tariff needs to set forth the method and inputs that PJM will use."); *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 54-55 (2008) (accepting tariff revisions regarding SPP's High Priority Projects providing that the projects would be studied in accordance with the Transmission Network Economic Modeling and Methods manual including quantification of benefit to cost and analysis of the sensitivity of the economics of the project to changes in assumptions).

36. NPPD cites the Balanced Portfolio provisions that specify a benefit-cost ratio greater than one for each SPP zone, a 10-year time horizon, and the benefit metric to be used, as proof that the definition of cost-effectiveness is realistically susceptible to specification. While the ITP provisions specify the time horizon and the benefit metrics to be used, SPP does not specify a benefit-cost ratio. As discussed above, we will not require SPP to specify a benefit-cost ratio as NPPD requests, because the ITP provisions address a broader spectrum of projects than do the Balanced Portfolio provisions. That is, while the Balanced Portfolio is intended to apply only to economic projects, the ITP applies not only to economic projects but also to reliability projects and projects proposed to meet public policy requirements. As discussed above, because of the ITP's integrated approach, it is plausible that the ITP process will result in a group of projects that, while cost-effective, does not have a quantifiable benefit-cost ratio greater than one. We find this result just and reasonable, because while economic projects necessarily must have a quantifiable benefit-cost ratio greater than one, the same is not true for reliability projects and projects intended to meet public policy requirements under an approved tariff—both of which provide benefits that may not be readily quantifiable.

37. The Commission also finds that the details of the cost-effectiveness evaluation are properly included in the ITP Manual instead of the Tariff because some of the details are not “realistically susceptible of specification.” such as reliability benefits and benefits derived from meeting public policy mandates. As we discuss above with regard to *PJM*, while the benefits of projects considered purely for economics (e.g. adjusted production cost savings) may be quantified readily and included in a formula, reliability benefits and benefits derived from meeting public policy requirements may not be so readily quantifiable and detailed, and thus cannot easily be included in a formula.<sup>57</sup> Further, study assumptions and parameters are likely to change over time as planners gain experience in implementing the new planning procedures. Thus, rigid specifications or formulas set out in the Tariff would likely lead to less reliable assessments due to the inability of planners to adapt to changing circumstances. While the ITP Manual would allow the parties flexibility in shaping the specifics, as discussed above, the ITP Manual and any amendments thereto would still need to be consistent with the Tariff.

38. We also disagree with Rehearing Parties' assertion that *CAISO MRTU* supports their position that the rule of reason requires the Commission to review the ITP Manual and determine that it need not be filed prior to finding the proposed ITP Tariff provisions to be just and reasonable. In that case, the California Independent System Operator Corporation (CAISO) sought to implement its Market Redesign and Technology Upgrade (MRTU) proposal to fix a flawed market design, enhance the reliability of the CAISO-

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<sup>57</sup> See *supra* P 29.

controlled grid, and improve market power mitigation to protect California and the entire Western markets from a repeat of the California energy crisis of 2000-2001.<sup>58</sup> The CAISO stated that it intended to develop and issue Business Practice Manuals addressing various subjects including settlements, bidding process, mitigation, billing, resource adequacy, credit policy and forecasting. Some commenters expressed concern that because the Business Practice Manuals had not been developed and filed with the Commission, it was impossible for market participants and the Commission to determine the justness and reasonableness of the MRTU Tariff or ensure that the manuals are consistent with the MRTU Tariff. In response, the Commission stated that:

We find that our “rule of reason” test requires a case-by-case analysis, comparing what is in the MRTU Tariff against what is in the Business Practice Manuals. Given that the CAISO is still developing the Business Practice Manuals, we find that such an analysis is premature at this time. We direct the CAISO to continue working with stakeholders to develop the Business Practice Manuals.<sup>59</sup>

39. The Commission also directed the CAISO to file any required revisions to its tariff once the stakeholder process was completed, after which the Commission would schedule a period for comments and convene a technical conference to assist in the determination of which practices or details remaining in the Business Practice Manuals might appropriately belong in the MRTU Tariff.<sup>60</sup>

40. As NPPD correctly points out the Commission applies the rule of reason on a case-by-case basis. However, Rehearing Parties are mistaken that *CAISO MRTU* should be read to require that the Commission examine the ITP Manual before finding SPP’s proposed ITP Tariff provisions to be just and reasonable. First, as the Commission found in the July 15 Order and affirms above, SPP’s Tariff provides sufficient detail for SPP, its members, and interested stakeholders to participate actively in the ITP transmission planning process. SPP also provides information in its Tariff about when and how a cost-effectiveness analysis will be conducted, leaving only the implementation details of the calculations to the ITP Manual.

41. Second, as noted above, the rule of reason requires the inclusion in the tariff of only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual

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<sup>58</sup> See *CAISO MRTU*, 116 FERC ¶ 61,274, at P 3.

<sup>59</sup> *Id.* P 1370.

<sup>60</sup> See *id.* P 1370.

arrangement as to render recitation superfluous. The Commission, even in the *CAISO MRTU* proceeding, however, has not interpreted this rule as requiring the Commission to examine the contents of a manual before accepting proposed tariff provisions.<sup>61</sup> Generally, parties have brought to the Commission's attention, for the Commission to consider on a case-by-case basis, particular provisions in manuals that they believe significantly affect rates, terms, and conditions of service, thus warranting inclusion in a tariff.<sup>62</sup> To the extent a party is concerned that a particular provision of the completed ITP Manual,<sup>63</sup> belongs in the SPP Tariff, it may bring it to our attention by filing a complaint under section 206 of the FPA.<sup>64</sup>

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<sup>61</sup> Cf. *CAISO MRTU*, 116 FERC ¶ 61,274 (conditionally accepting CAISO tariff prior to holding technical conference). *Accord Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 490-494, *order on reh'g*, 123 FERC ¶ 61,297 (2008) (accepting tariff proposal and finding "no reason to require the Midwest ISO to supplement its tariff with Business Practice Manuals that are synchronized to the tariff. To the extent the Business Practice Manuals contain greater detail than the tariff (e.g., regarding eligibility criteria for DRRs), the greater detail supplements the tariff and does not override the tariff.").

<sup>62</sup> For example, in response to the stakeholder process and comment period established in *CAISO MRTU*, CAISO submitted proposed revisions to its tariff to include information previously included in its Business Practice Manuals and Commission Staff convened a technical conference to discuss provisions in the manuals, which, in parties' view, should be included in the CAISO tariff. *See Cal. Indep. Sys. Op. Corp.*, 122 FERC ¶ 61,271 at P 23.

<sup>63</sup> As noted above, the first draft of the ITP Manual was posted on the SPP website on January 7, 2011 available at [http://www.spp.org/publications/Draft%20Integrated%20Transmission%20Planning%20Manual\\_20110107.doc](http://www.spp.org/publications/Draft%20Integrated%20Transmission%20Planning%20Manual_20110107.doc).

<sup>64</sup> *Cal. Indep. Sys. Op. Corp.*, 133 FERC ¶ 61,224 at P 159 & n.138 (2010) ("While, presently, we find it acceptable to place the mentioned details used to determine policy-driven elements in the Business Practice Manual, if, once drafted, a party is concerned that these provisions could significantly affect rates and service, it can bring this issue to the Commission's attention under section 206 of the FPA.").

42. Accordingly, given the level of detail regarding the cost-effectiveness analysis provided in the ITP Tariff provisions and our broad bounds of discretion in applying the rule of reason,<sup>65</sup> we deny rehearing on this issue.

43. NPPD also argues that the Commission rejected the filing in *PG&E* in part because the tariff did not define the term cost-effective. NPPD asserts that the Commission should grant rehearing and reject the ITP proposal on the same grounds. In *PG&E*, the utility proposed to reserve the right to challenge credits for any particularly high cost network upgrades, if the utility or the CAISO determined that these upgrades were not cost-effective.<sup>66</sup> The Commission rejected PG&E's proposal because, among other things, PG&E failed to provide the standards it would use to determine whether a network upgrade is cost-effective.<sup>67</sup>

44. The circumstances in *PG&E* differ from those in the instant proceeding. In *PG&E*, the utility failed to provide the standards it would use to determine whether a network upgrade is cost-effective. In the instant proceeding SPP's tariff lists the standards it will consider in determining cost-effectiveness.<sup>68</sup> Further, in *PG&E*, the utility did not propose to include the details of its cost-effectiveness assessment in a business practice manual; whereas, here SPP's Tariff indicates that SPP will provide the details of its cost-effectiveness assessment in the ITP Manual. Thus, we find NPPD's reliance on *PG&E* to be unpersuasive and inapposite.

45. Finally, we disagree with East Texas Cooperatives and Joint Protesters that the Commission's acceptance of the ITP Tariff provisions is inconsistent with our determination to require SPP to adopt criteria for evaluating waiver requests for dual voltage transformers. In the July 15 Order, the Commission noted that SPP stated that its proposed dual voltage transformer waiver process is substantially similar to SPP's current waiver provisions for facilities that do not satisfy the Base Plan Upgrade criteria in Attachment J. In addition, the Commission found that the Attachment J waiver provisions for Base Plan Upgrades provide factors that SPP will consider in evaluating waiver requests, which SPP had not provided for the dual voltage transformer waiver.

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<sup>65</sup> *City of Cleveland*, 773 F.2d at 1376 (“It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.”).

<sup>66</sup> *PG&E*, 101 FERC ¶ 61,079 at P 37.

<sup>67</sup> *Id.* at 37-42.

<sup>68</sup> SPP Tariff, Attachment O, section III.8(d).

The Commission found that, as with the Attachment J waiver provisions, a waiver for a dual voltage transformer determines the rate treatment for the facility and the parties ultimately responsible for paying for the cost of the facility.<sup>69</sup> The Commission directed SPP to revise its Tariff to provide for criteria for determining dual voltage waivers for cost allocation purposes because of the significant effect on rates of a waiver for dual voltage transformers.

46. Accordingly, it was reasonable for the Commission to find that SPP must revise its Tariff to provide specific criteria for dual voltage transformers because of the direct effect a waiver determination has on cost allocation and rates. Moreover, the waiver provisions for facilities that do not satisfy the Base Plan Upgrade criteria—which SPP likened to its proposed dual voltage transformer waiver process—describe factors that SPP will consider in evaluating waivers.<sup>70</sup> Thus, the general criteria to be followed in evaluating a request for a dual voltage transformer waiver not only affect rates but are also “realistically susceptible of specification.” Conversely, as we found above, some of the details of the cost-effectiveness analysis are not “realistically susceptible of specification.” Accordingly, the Commission’s acceptance of the ITP Tariff provisions was not inconsistent with its finding that SPP must revise its Tariff to provide the factors to be used to evaluate a request for waiver for a dual-voltage facility for cost allocation purposes.

## 2. Subsidizing Benefits to Generators

### a. Request for Rehearing

47. NPPD alleges that the Commission erred in not considering the arguments NPPD made in its protest that the ITP will force customers to subsidize benefits to generators. According to NPPD, the July 15 Order is silent on this issue. NPPD asserts that the ITP violates cost causation requirements by forcing load within SPP to pay for transmission facilities that will primarily benefit interconnecting generators.<sup>71</sup> NPPD notes that the ITP Process Document,<sup>72</sup> which SPP included as part of its ITP Filing, provides that

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<sup>69</sup> July 15 Order, 132 FERC ¶ 61,042 at P 87.

<sup>70</sup> See SPP Tariff, Attachment J at section III.C.2 (listing four factors to be considering in granting waivers).

<sup>71</sup> NPPD Request for Rehearing at 55-56.

<sup>72</sup> SPP and its stakeholders developed the ITP Process Document to describe the ITP and how it will be implemented. See July 15 Order, 132 FERC ¶ 61,042 at P 6.

“identifying solutions that provide more capacity than that which is necessary to simply ‘keep the lights on’ will actually enable more generator interconnection and transmission service requests to be accommodated.”<sup>73</sup> NPPD asserts that the ITP process will relieve service applicants of many of the up-front cost burdens and economic forecasting responsibilities they now face, by authorizing construction of transmission capacity based on forecasts of economic benefits without requiring any demonstration of need based on reliability criteria.

48. NPPD also asserts that the lower costs to generators will be obtained at the expense of SPP’s existing transmission customers, many of whom will neither cause nor benefit from economic based transmission upgrades. According to NPPD, lower costs for interconnecting generators and their customers will be granted because SPP’s Highway/Byway cost allocation methodology<sup>74</sup> provides regional cost allocation for EHV projects at or above 300 kV, thereby unfairly shifting the costs of economic upgrades away from the interconnecting generator to SPP members and customers who neither cause the need for, nor benefit from, the upgrade project.

**b. Determination**

49. NPPD points to isolated language in the ITP Process Document to support its argument that the ITP violates cost causation requirements by forcing load within SPP to

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<sup>73</sup> NPPD Request for Rehearing at 55 (citing ITP Filing, Ex. SPP-2 at 7).

<sup>74</sup> On June 17, 2010 in Docket No. ER10-1069-000, the Commission accepted SPP’s proposal to implement a “Highway/Byway” cost allocation methodology under which costs of Base Plan Upgrades will be allocated as follows: (1) the costs of facilities operating at 300 kV and above are allocated 100 percent across the SPP region on a postage stamp basis; (2) the costs of facilities operating at 100 kV and below 300kV are allocated one-third on a regional postage stamp basis and two-thirds to the zone in which the facilities are located; and (3) the costs of facilities operating at or below 100 kV are allocated 100 percent to the zone in which the facilities are located. *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010). Base Plan Upgrades are defined as follows:

Those upgrades included in and constructed pursuant to the SPP Transmission Expansion Plan in order to ensure the reliability of the Transmission System. Base Plan Upgrades shall also include: (i) those Service Upgrades required for new or changed Designated Resources to the extent allowed for in Attachment J to this Tariff, (ii) ITP Upgrades that are approved for construction by the SPP Board of Directors, and (iii) high priority upgrades, excluding Balanced Portfolios, that are approved for construction by the SPP Board of Directors. *See* SPP Tariff at 1.3g.

pay for transmission facilities that will primarily benefit interconnecting generators. However, while the ITP Process Document was intended to guide the development of the tariff revisions implementing the ITP, the ITP Process Document is not a filed tariff or rate schedule, and it does not take precedence over the Tariff revisions submitted in the ITP Filing and approved by the Commission.<sup>75</sup> Moreover, the ITP proposal does not relieve proponents of generator interconnection and transmission service requests of their obligations under the SPP Tariff to pay for the upgrades they cause.<sup>76</sup> Under SPP's tariff, generators are directly assigned the cost of the upgrades necessary to interconnect and obtain transmission service.<sup>77</sup> The ITP proposal did not relieve generators of these obligations. Further, NPPD has not demonstrated that the ITP proposal relieves generators of their obligations under the SPP Tariff.

50. In addition, we find that NPPD's argument with respect to the implications of SPP's Highway/Byway cost allocation methodology is beyond the scope of SPP's ITP proposal at issue in this proceeding. NPPD's argument is a collateral attack on the Commission's order approving that cost allocation method.<sup>78</sup> Thus, we find NPPD's concerns to be misplaced and deny rehearing on this issue.

### **3. Forum Shopping**

#### **a. Request for Rehearing**

51. NPPD contends that the Commission erred in rejecting its arguments that the ITP would create incentives for a transmission project proponent to engage in improper forum shopping and gaming to seek out the least rigorous cost-benefit analysis requirements for its project. As an example, NPPD asserts that gaming can arise when a transmission developer whose project does not qualify under the Balanced Portfolio provisions' cost-benefit analysis test, resubmits that project under the ITP without improving or correcting

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<sup>75</sup> See July 15 Order, 132 FERC ¶ 62,042 at P 68.

<sup>76</sup> See, e.g., SPP Tariff, Attachment Z1, sections V and VI (addressing cost recovery for network upgrades associated with transmission service and interconnection requests, respectively); SPP Tariff, Attachment J, section 1 (addressing recovery of direct assignment facilities associated with transmission service requests); SPP Tariff Attachment V (addressing responsibility for direct assignment facilities associated with interconnection requests).

<sup>77</sup> SPP Tariff, Attachment O, section III.7.

<sup>78</sup> *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 (2010), *reh'g pending*.

the aspect of its project that disqualified it for consideration under the Balanced Portfolio provisions.<sup>79</sup>

52. NPPD also takes issue with the Commission's statement that "under the Balanced Portfolio provisions of SPP's Tariff, it is the balanced portfolio, comprising a group of economic projects, that must have a positive benefit/cost ratio, not an individual project," and that "it is not unreasonable for a project to be considered in one or more planning processes under SPP's Tariff." NPPD contends that these statements serve to confirm NPPD's forum shopping argument that the omission of a definition of "cost effectiveness" from the Tariff improperly offers transmission developers an easier path toward project approval.

**b. Determination**

53. We deny rehearing. We disagree with NPPD that it is necessarily improper for a project that does not meet the requirements of one transmission planning process under the SPP Tariff, such as the Balanced Portfolio, to be resubmitted under another process, such as the ITP. A project proponent's decision to resubmit a project is not necessarily indicative of an attempt to "game" the planning process or to "forum shop." Because SPP's planning processes are based on the aggregate needs of the SPP transmission system at a specific time, an individual project that may not be suited for inclusion in a process at a particular time based on the mix of other approved projects may well be appropriate in another process or at another time. Furthermore, the ITP considers a wider spectrum of benefits and has broader objectives than the Balanced Portfolio does. Thus, while a project may not be included in a Balanced Portfolio for economic reasons, it may be an appropriate candidate for inclusion in the ITP due to its reliability and public policy benefits. Moreover, if a party believes that SPP allows a project proponent to avoid fully meeting the requirements of its Tariff, that party can file a complaint under section 206 of the FPA.<sup>80</sup> Accordingly, we deny rehearing.

**4. SPP Board Discretion**

**a. Request for Rehearing**

54. Joint Protesters argue that it was clear error for the Commission to reject Joint Protestors' concerns about excessive discretion vested in the SPP Board of Directors

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<sup>79</sup> NPPD Request for Rehearing at 33.

<sup>80</sup> See *Sacramento Municipal Utility Dist. v. FERC*, 616 F.3d 520, 542 (D.C. Cir. 2010) (*SMUD v. FERC*).

under section V.3.c of Attachment O.<sup>81</sup> Joint Protestors state that although the introduction to section V of Attachment O provides that a project will be included in the SPP Transmission Expansion Plan (STEP) only if it has been approved or endorsed through its “proper process,” section V.3.c of Attachment O authorizes the SPP Board of Directors to approve projects for construction that have not been subjected to a specified evaluation process pursuant to the STEP process.<sup>82</sup> Joint Protestors argue that in the July 15 Order, the Commission appears to have accepted SPP’s assertion that the Board’s discretion to approve upgrades other than those recommended by the MOPC existed in the Tariff prior to the ITP Filing. According to Joint Protestors, the existing Tariff language SPP appears to have relied upon provides that the list of upgrades approved by the Board “may be modified throughout the year by the SPP Board of Directors ....”<sup>83</sup> Joint Protestors assert that modifying the list of approved upgrades (e.g., in response to changed conditions) is a different matter from SPP having the discretion to reject the MOPC’s upgrade recommendations and approve a different set of upgrades, which Joint Protestors argue did not exist in the then-current SPP Tariff.

55. Joint Protestors also assert that “[w]hat appears to have been even more important to the Commission, however, is its belief that an exercise of the Board’s discretion to approve projects other than those recommended by the MOPC can be challenged by stakeholders ‘in an appropriate forum.’”<sup>84</sup> While Joint Protestors state that they agree with the Commission’s determination that SPP Board actions are subject to review for consistency with the Bylaws, Tariff and other governing authorities, Joint Protestors argue that the problem is that none of these authorities subject the Board’s exercise of its section V.3.c discretion to any specific or identifiable substantive standard.<sup>85</sup> Joint Protestors argue that, for example, there is no requirement that a project the Board might decide to add to the MOPC-recommended list be “cost-effective.” Joint Protestors conclude that under these circumstances, it was clear error for the Commission to reject Joint Protestors’ concerns about the excessive discretion vested in the SPP Board of Directors by section V.3.c of Attachment O.<sup>86</sup>

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<sup>81</sup> See Joint Protestors Request for Rehearing at 13.

<sup>82</sup> *Id.* at 11-13.

<sup>83</sup> *Id.* at 13 (*citing* SPP Answer at 15-16).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

**b. Determination**

56. We confirm our finding that the ITP Filing did not increase the discretion of the SPP Board to approve transmission projects. Joint Protesters object to the following provision, which SPP added to Attachment O in the ITP Filing, because they believe it increases the Board's discretion to decide which transmission upgrades will be pursued as part of the regional transmission expansion plan:

If the SPP Board of Directors approves a list of ITP Upgrades, upgrades within Balanced Portfolios, or high priority upgrades other than those recommended by the Markets and Operations Policy Committee, the explanation for the deviation shall be included in the SPP Transmission Expansion Plan.<sup>87</sup>

57. Joint Protesters disagree with the Commission's finding that prior to the ITP Filing, the Board had the authority to approve a different set of upgrades than that recommended by the MOPC. However, Attachment O section V.3(f),<sup>88</sup> which existed prior to the ITP Filing, provides that:

The list of approved reliability upgrades, upgrades within approved Balanced Portfolios, approved high priority upgrades, and endorsed Sponsored Upgrades may be modified throughout the year by the SPP Board of Directors provided that such action shall be posted and noticed pursuant to this section.

58. Joint Protesters argue that modifying the list of approved projects (as provided under subsection V.3(f)) is different from Board discretion to reject the MOPC's upgrades and approve a different set of upgrades. We find Joint Protesters' distinction to be incorrect. Allowing the Board to modify the list of approved upgrades throughout the year, subject to posting and notice pursuant to section 3, can reasonably be interpreted as equivalent to approving a list of upgrades other than that recommended by the MOPC, subject to providing an explanation for the deviation in the STEP. The discretion with which Joint Protesters disagree existed prior to the ITP Filing and, Joint Protesters have not supported their argument in this proceeding that the Commission should limit the Board's discretion.

59. Furthermore, regarding Joint Protesters' assertion that the Board's discretion is not subject to any specific or identifiable substantive standard, as the Commission found in

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<sup>87</sup> SPP Tariff, Attachment O, section V.3(c).

<sup>88</sup> SPP relabeled this subsection to subsection g in the ITP Filing and replaced "reliability upgrades" with "ITP Upgrades."

the July 15 Order, and as Joint Protesters acknowledge, the SPP Board's discretion is limited by SPP Bylaws and its Tariff.<sup>89</sup> The Bylaws specifically require SPP's Board to be independent of its members,<sup>90</sup> and the Commission has previously confirmed the Board's independence.<sup>91</sup> In addition, if a party believes any such Board decision is unjust, unreasonable, or unduly discriminatory it may avail itself of its rights under section 206 of the FPA.<sup>92</sup> Finally, as the Commission stated in the July 15 Order, while the pre-existing Tariff language grants the Board the ability to modify the list of upgrades included in the STEP, the proposed addition makes any such action transparent by requiring the Board to include an explanation in the STEP.<sup>93</sup> Accordingly, we deny Joint Protesters' request for rehearing on this issue.

## 5. Unintended Consequences

### a. Requests for Rehearing

60. NPPD alleges that the Commission erred in rejecting protesters' concerns that SPP's revisions to the "unintended consequences" provisions of its Tariff fail to protect SPP members from inequitable outcomes. According to NPPD, in so ruling, the Commission agreed with SPP that the Highway/Byway Order considered and rejected arguments in that proceeding that were similar to arguments protesters made in the instant proceeding. NPPD asserts, however, that the Commission erred in failing to address a critical change that the ITP makes to the unintended consequences provisions. NPPD contends that the Commission accepted SPP's proposed revisions to the unintended consequences Tariff provisions based on a then-existing process in which SPP and stakeholders reviewing proposed transmission projects were obligated to determine the "least cost" solution to address reliability issues. However, NPPD argues, the ITP Filing changed that "least cost" standard to the new "cost effective" language in Attachment O to the Tariff.<sup>94</sup> NPPD contends that the new Tariff language in the ITP

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<sup>89</sup> July 15 Order, 132 FERC ¶ 61,042 at P 63.

<sup>90</sup> SPP Bylaws section 4.2.1 (requiring that directors shall be independent of any Member).

<sup>91</sup> *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003, at P 27 (2004).

<sup>92</sup> *See SMUD v. FERC*, 616 F.3d 520, 542 (D.C. Cir. 2010).

<sup>93</sup> SPP Tariff, Attachment O, section V.3(c).

<sup>94</sup> *See* NPPD Request for Rehearing at 57.

Filing changed the central element of the unintended consequences review in a most significant way, from an objective “least cost” standard to an amorphous, undefined “cost-effective” standard. NPPD concludes that the Commission erred by failing to address this important change in the unintended consequences provisions.<sup>95</sup>

**b. Determination**

61. We affirm the Commission’s findings in the July 15 Order regarding the unintended consequences provisions. NPPD argues that the Commission did not consider adequately how the change from a “least cost” to a “cost-effectiveness” standard would affect an unintended consequences analysis. We disagree. As noted in the July 15 Order, SPP proposed several revisions to the pre-existing unintended consequences provisions of Attachment J to its Tariff.<sup>96</sup> In the July 15 Order, the Commission stated that “[b]ased on our review of the modifications SPP proposes to the unintended consequences provisions, we find that the newly-submitted revisions clarify and refine the language the Commission accepted in the Highway/Byway Order.”<sup>97</sup> Although NPPD is correct that the Commission found arguments concerning the unintended consequences provisions to be similar to those raised previously in the Highway/Byway proceeding, the Commission also agreed with protesters that acceptance of the unintended consequences provisions in the Highway/Byway Order should not be relied upon as a basis to accept the revisions to those provisions in the instant proceeding.<sup>98</sup> Accordingly, the Commission reviewed the revisions to the unintended consequences proposed in the instant proceeding on the basis of the record in the instant proceeding. In doing so the Commission stated:

Based on this review of the proposed revisions to the unintended consequences provisions we do not believe that the addition of the ITP process adversely affects the unintended consequences provisions. Rather, we find that the change from the existing planning process to the ITP will not alter the usefulness of the unintended consequences provisions. This is

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<sup>95</sup> *Id.*

<sup>96</sup> *See* July 15 Order, 132 FERC ¶ 61,042 at P 19-20. For example, SPP proposed revisions to section III.D.4 of Attachment J to clarify how analytical methods used in unintended consequences reviews will be defined, specifying that the RSC, not the RSC’s Cost Allocation Working Group, will work with SPP’s MOPC to define the analytical methods to be used. *Id.* P 20.

<sup>97</sup> *Id.* P 94.

<sup>98</sup> *Id.* P 95.

so because the unintended consequences provisions are intended to remedy unintended outcomes, regardless of the planning process in use.<sup>99</sup>

62. In other words, the change in the standard for reviewing projects considered in the transmission planning from a “least cost” approach to a “cost-effectiveness” analysis is unrelated to the question of whether the revised unintended consequences provisions address adequately how unintended cost allocation outcomes may be remedied. Accordingly, we will deny NPPD’s request for rehearing.

**6. Request for Clarification**

**a. East Texas Cooperatives**

63. East Texas Cooperatives request clarification that the Commission’s determination in the July 15 Order in no way limits the ability of a party to bring a complaint under section 206 of the FPA relating to practices in the ITP Manual once the manual has been completed. East Texas Cooperatives state that “[e]ven though the Commission ruled that the ITP Manual will not significantly affect transmission service and therefore does not need to be filed, it is nevertheless possible that the criteria and processes detailed in the manual, when put into practice, could have an unjust or unreasonable affect [sic] on the SPP’s rates.”<sup>100</sup> East Texas Cooperatives request that the Commission clarify that, in such a circumstance, the July 15 Order does not preclude a party from bringing a section 206 complaint.

**b. Determination**

64. The Commission grants East Texas Cooperatives’ request for clarification. As discussed above, the ITP Manual supplements the ITP Tariff terms delineated in section III of Attachment O to SPP’s Tariff. Accordingly, we clarify that our determinations in this proceeding do not limit a party’s ability to file a complaint under section 206 of the FPA relating to practices in the ITP Manual if it believes that the implementation processes detailed in the ITP Manual, when put into practice, have an unjust, unreasonable or unduly discriminatory effect on SPP’s rates or services.<sup>101</sup>

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<sup>99</sup> *Id.* P 94-95.

<sup>100</sup> East Texas Cooperatives Request for Rehearing at 9.

<sup>101</sup> *See California Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 at P 159 n.138.

The Commission orders:

(A) The requests for rehearing filed by Joint Protesters, NPPD, and East Texas Cooperatives are denied, as discussed in the body of this order.

(B) East Texas Cooperatives' request for clarification is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.