

126 FERC ¶ 61,135  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-149-001

ORDER DENYING CLARIFICATION

(Issued February 19, 2009)

1. On October 28, 2008, SPP filed revised tariff sheets incorporating various changes to its Energy Imbalance Services Market (Energy Imbalance Market) (October 28 Filing). On December 18, 2008, the Commission conditionally accepted SPP's October 28 Filing subject to SPP submitting a compliance filing.<sup>1</sup> On January 21, 2009, SPP requested clarification of the December 18, 2008 Order. For the reasons discussed below, the Commission denies SPP's request for clarification.

**Background**

2. SPP's request for clarification involves a long-running dispute between SPP, John Deere Renewables, LLC (John Deere), and Xcel Energy Services, Inc. (Xcel) over the proper treatment of John Deere's wind generation facilities in SPP's Energy Imbalance Market. The John Deere facilities at issue are classified as Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>2</sup> As such, they are entitled to sell 100 percent of their output to the purchasing utility (in this case Xcel) at an avoided cost rate.

3. In the instant filing, SPP seeks guidance from the Commission on how it should proceed in light of two Commission orders: a March 22, 2007 Order finding that SPP had improperly registered John Deere's QFs to Xcel for participation in the Energy

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<sup>1</sup> *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314 (2008) (December 18, 2008 Order).

<sup>2</sup> 16 U.S.C. § 824a-3 (2006).

Imbalance Market;<sup>3</sup> and the December 18, 2008 Order, which, among other things, conditionally accepted SPP's proposal to grant itself the authority to register resources in its Energy Imbalance Market.

4. In the March 22, 2007 Order, the Commission found that SPP did not have the authority under its Open Access Transmission Tariff (Tariff) to unilaterally register a resource as a Market Participant in the Energy Imbalance Market, and that such authority would have to be granted before SPP could do so.<sup>4</sup>

5. Subsequently, SPP sought to give itself this right by proposed new section 1.2.2(g) of Attachment AE in its October 28 Filing. Specifically, the proposal would have allowed SPP to unilaterally register all loads or resources (including Behind-the-Meter Generation<sup>5</sup> of 10 MW or greater) to its Energy Imbalance Market, so that the refusal or failure to register as a Market Participant would not exempt a unit from registration and operational obligations. SPP's proposal also would have allowed it to file an unexecuted Market Participant agreement with the Commission if the resource was not otherwise registered by another Market Participant.<sup>6</sup> SPP justified its proposal by explaining its need to have specific scheduling and supply information for each resource in its footprint in order to reliably operate the Energy Imbalance Market and properly account for all energy flows into and out of the transmission grid.

6. In the December 18, 2008 Order, the Commission generally agreed with the information-gathering aspect of SPP's proposed registration requirement.<sup>7</sup> However, the Commission stated that to the extent that SPP's proposed registration requirement triggers any charges that change what a QF recovers under PURPA's purchase obligation, as implemented by the state regulatory authority, that requirement is unjust

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<sup>3</sup> See *Xcel Energy Services, Inc. v. Southwest Power Pool, Inc.*, 118 FERC ¶ 61,232, at P 19-31 (2007) (March 22, 2007 Order).

<sup>4</sup> See *id.*

<sup>5</sup> SPP defines Behind-the-Meter Generation as: “[A] generation unit that is connected on the load side of a load Meter Settlement Location and is agreed to by the load Market Participant that is the registered owner of the Meter Settlement Location to serve all or part of its capacity, energy or Ancillary Service needs.” See SPP Tariff at Attachment AE, section 1.1.2(a).

<sup>6</sup> See October 28 Filing at 7.

<sup>7</sup> See December 18, 2008 Order at P 36, 40.

and unreasonable.<sup>8</sup> The Commission accordingly concluded that SPP may not compel participation in the Energy Imbalance Market by, or otherwise trigger deviation charges for, QFs exercising their PURPA rights to deliver all of their power to their host utilities.<sup>9</sup> Therefore, the Commission conditioned acceptance of SPP's proposed registration requirement on SPP submitting a compliance filing that removes any obligation for QFs to participate in the Energy Imbalance Market or to pay Energy Imbalance Market charges that stem from the registration.<sup>10</sup>

### **Request for Clarification**

7. SPP states that, as a result of the March 22, 2007 Order and the December 18, 2008 Order, it is unclear whether the December 18, 2008 Order permits SPP to modify its Tariff to allocate imbalance charges associated with QF generation to the utility purchasing the QF generation. SPP requests that the Commission clarify that this method of cost allocation is permissible.

8. SPP states that the December 18, 2008 Order only finds that QFs themselves may not be subject to any Energy Imbalance Market charges. However, SPP notes the Commission's recognition that registration in an imbalance services market may be factored into the avoided cost analysis for a QF. SPP contends that this implies that it would be reasonable for a utility purchasing the QF generation to be responsible for any imbalance costs incurred by the QF.

9. SPP states that, if it is unable to assign QF generation imbalance charges to the purchasing utility, SPP will have to allocate the costs to all other Market Participants through SPP's Energy Imbalance Market uplift charge.<sup>11</sup> SPP asserts that this result would be unreasonable as only utilities with the requirement to purchase a QF's generation have the opportunity to have such imbalance costs factored into the avoided cost analysis before a state regulatory commission. In addition, SPP states that this would also be inconsistent with the Commission's previous concerns about excessive uplift costs in the Energy Imbalance Market.<sup>12</sup> Therefore, SPP seeks a determination by

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<sup>8</sup> *Id.* P 38.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* P 40.

<sup>11</sup> Citing SPP Tariff at Attachment AE, section 5.6 (providing for the revenue neutrality calculation for each Market Participant).

<sup>12</sup> Citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 at P 128, *order on reh'g*, 116 FERC ¶ 61,289 (2006).

the Commission that it can adopt tariff provisions that would permit SPP to allocate to the purchasing utility and imbalance charges associated with QF generation.

### **Discussion**

10. We find that SPP's request for clarification of the December 18, 2008 Order raises issues beyond the scope of the issues in this proceeding and, accordingly, we reject it. In its October 28 Filing, SPP proposed new section 1.2.2(g) to Attachment AE of its tariff, which required all resources (including behind-the-meter generation of 10 MW or more) to register in SPP's Energy Imbalance Market. SPP supported this proposal by arguing that this registration requirement would give SPP the information it needed to satisfy its reliability and accounting requirements.

11. In the December 18, 2008 Order, the Commission found that "SPP's proposal, as formulated now, would require more than just the provision of operational information from non-participating resources."<sup>13</sup> That proposal would have had the effect of requiring QF resources to actively participate in the Energy Imbalance Market in violation of the rights afforded QFs by PURPA and the Commission's implementing regulations. Therefore, the Commission found that "[t]o the extent that SPP's proposed registration requirement triggers any charges that change what a QF recovers under PURPA's purchase obligation, as implemented by the state regulatory authority, that requirement is unjust and unreasonable."<sup>14</sup>

12. In its request for clarification, SPP does not seek any further explanation of the Commission's decision. Rather, SPP seeks the Commission's guidance on the nature of a subsequent filing that it may make (for example, a filing under section 205 of the Federal Power Act). That is, it seeks the Commission's opinion on a possible future proposal to allocate imbalance charges associated with QF generation to the utility purchasing that generation pursuant to PURPA. Not only would such guidance be outside the scope of the present proceeding, it also puts the Commission in the inappropriate position of opining on a proposal not presently before it and without the benefit of the views of other interested persons.<sup>15</sup> Such a proposal, with any appropriate tariff language and with supporting explanation and necessary documentation, should be made in a way that

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<sup>13</sup> December 18, 2008 Order at P 36.

<sup>14</sup> *Id.* P 38.

<sup>15</sup> SPP filed its request for clarification pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2008), which does not allow for the filing of answers.

would allow for other interested parties to comment. Therefore, we deny SPP's request for clarification of the December 18, 2008 Order.

The Commission orders:

SPP's request for clarification is hereby denied.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.