127 FERC ¶ 61,119
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 6, 2009

In Reply Refer To:
Southwest Power Pool, Inc.
Regional Transmission
Organization
Docket No. PA08-2-000

Wright & Talisman, P.C.
1200 G Street, NW, Suite 600
Washington, DC 20005

Attention: Barry S. Spector
Counsel for Southwest Power Pool, Inc. Regional Transmission Organization

Dear Mr. Spector:

1. In this order, the Commission approves the attached Audit Report (Report) prepared by the Division of Audits in the Office of Enforcement's (OE). The Report contains staff's findings and recommendations with respect to Southwest Power Pool, Inc.'s (SPP) Regional Transmission Organization (RTO) operations. The audit evaluated SPP's compliance with: (1) SPP's Bylaws[1] (Bylaws); (2) the SPP Membership Agreement; (3) the transmission provider obligations described in SPP's Open Access Transmission Tariff (OATT)[2]; and (4) other Commission approved obligations and responsibilities.

2. On October 4, 2007, OE staff issued a public letter to SPP in this docket announcing that they were commencing an audit to determine whether SPP was complying with Commission requirements mentioned above. During the audit, OE staff issued data requests, conducted analyses, performed site visits, and held many meetings and interviews with SPP's officials and staff. When the audit fieldwork was completed, OE staff sent SPP a draft audit report on March 10,

[1] Southwest Power Pool, Inc., Open Access Transmission Tariff, Fifth Revised Volume No. 1.

[2] Southwest Power Pool, Inc., Bylaws, Original Volume No. 4.

2009, and gave SPP until March 27, 2009, to respond to the audit findings and recommendations. SPP responded on time to the draft audit report and representatives from OE staff discussed the draft audit report and response with SPP. Based on these discussions, OE modified the draft audit report to reflect SPP's comments and issued SPP a revised draft audit report on April 7, 2009. SPP responded to the revised draft audit report on April 10, 2009.

3. The Report found that SPP did not (1) notify its customers of its inability to complete System Impact Studies and Facilities Studies before the deadlines specified in its OATT; (2) conduct any audits of participants in its Energy Imbalance Service Market to determine their compliance with data retention requirements, as required by its OATT; (3) follow its travel policy for the use of chartered or private aircraft, including the verification of costs it is charged for use of a plane owned by its Chief Executive Officer (CEO) and Chief Financial Officer (CFO) through a limited liability corporation, Off We Go, LLC; and (4) adopt Standards of Conduct governing non-monetary gratuities and review potential conflicts of interest affecting a Board of Directors (Board) member who is also affiliated with a law firm doing business with public utilities operating in the SPP service territory and a member of a company that insures nuclear power plants operated by SPP members.

4. The Report includes recommended remedies to address the areas of concern and to help ensure SPP's future compliance. The Report recommends that SPP: (1) develop and employ appropriate notification procedures to ensure that transmission customers are properly notified of delays in processing System Impact Studies and Facilities Studies related to their requests for Point-to-Point and Network Transmission Service; (2) develop a schedule for conducting data retention compliance audits regarding its Energy Imbalance Service and inform the Commission of its audit schedule; (3) follow its existing travel policy for compensating the company owned by two SPP officers (or develop and submit for staff review a new policy consistent with the existing travel policy); (4) perform an analysis to validate the fairness and reasonableness of any cost factors submitted by the CEO or CFO for reimbursement (or use a widely-accepted independent reimbursement rate such as that set by the General Services Administration); (5) require an appropriate SPP official, other than the CEO or CFO, to (a) provide prior written approval and justification for use of a chartered or private aircraft (except when the Board has approved such travel by an SPP officer) primarily using factors such as time or cost savings for SPP staff relative to alternative transportation options, as indicated by its travel policy, and (b) approve all invoices for payment of chartered or private flights; (6) modify its existing Standards of Conduct to address non-monetary gratuities; and (7) assess whether a Board member with potential conflicts of interest should continue his affiliation with a law firm doing business with public utilities operating in the SPP service territory and as a member of a company that insures nuclear power plants

operated by SPP members and notify audit staff of the results of this assessment, including any actions that SPP takes with respect to this potential conflict.

5. On April 10, 2009, SPP responded to the draft audit report and agreed to adopt all the audit recommendations although it did not agree with certain aspects of the principal findings and conclusions in the Report. First, while not contesting that it did not formally notify its customers within the time required by its OATT when it was unable to complete System Impact Studies and Facilities Studies by the deadline, SPP states that there are numerous other communications vehicles to enable SPP's customers to be fully aware of the status of SPP's ability to complete System Impact Studies and Facilities Studies. Second, SPP agrees with the Report finding that SPP's Market Monitoring Unit has not yet conducted any audits of participants in its Energy Imbalance Service market to determine their compliance with data retention requirements. However, SPP states that its OATT does not include a specific time period for conducting such audits. Third, SPP agrees that improved decision-making and documentation of decisions related to the use of private aircraft would be beneficial although SPP states it believes that its employees complied with its travel policy and that it has not had any reason to question the reasonableness of rates it paid. Finally, SPP acknowledges that its Standards of Conduct (SOC) are silent regarding the issue of non-monetary gratuities and agrees to revise its SOC to address the issue. SPP also agrees to assess whether one of its Board members should continue to serve on the SPP Board because of potential conflicts with SPP's SOC. SPP maintains that this Board member is a non-equity partner of a law firm whose energy clients are either inactive or have minimal participation in SPP and is neither a consultant nor a contractor to any SPP member.

6. SPP does not concur that any compliance issue has been identified regarding SPP conducting audits of Market Participants' data retention requirements because its OATT does not specify a time period for conducting such audits.[3] The Commission is concerned that, although SPP's energy imbalance market has been in operation since February 1, 2007, SPP had no plan or schedule in place to audit market participants' data retention requirements. Therefore, the Commission will require SPP to comply with the audit recommendation in the Report to develop a schedule for conducting data retention audits.

7. In regard to the Report's finding regarding the use of the private airplane, SPP contends that it had no reason to question the reasonableness of the rates paid for the use of the private airplane.[4] The Commission notes that SPP's Travel Policy states that SPP will reimburse employees for all "fair and reasonable

[3] SPP's Response at 2.

[4] SPP's Response at 2 and 3

expenditures" incurred by employees while conducting SPP business and that employees "should neither lose nor gain money as a result of reimbursement." The Commission is concerned that the private airplane is owned by SPP's CEO and CFO and that an independent analysis was not performed by SPP to attest to the fairness and reasonableness of the cost charged to SPP. Further, the Commission notes that SPP's travel policy states that the decision to engage or charter an aircraft will depend on many factors "including primarily cost and timesaving." Consistent with the audit recommendations in the Report, SPP must take immediate corrective actions to ensure that the cost for use of the private aircraft is independently validated and that travel is approved only when use of a private plane is consistent with SPP's travel policy, focusing especially on the relative cost and timesavings.

8. While not agreeing with all of the Report's principal findings and conclusions, SPP agreed to adopt all of the recommendations in the April 7, 2009 draft audit of the Report. OE staff modified the Report to reflect SPP's comments and the Report was finalized on April 15, 2009. Consequently, SPP has agreed or already begun to undertake all of the corrective actions. The recommendations in the Report are intended to assure that SPP's future operations comply with its OATT, travel policy, and Standards of Conduct. The Commission expects SPP to comply with all of the recommended actions in the Report, and we direct OE staff to report to the Commission any failure of SPP to comply.

<u>The Commission orders</u>:

(A) The attached Report is approved in its entirety without modification.

(B) SPP is hereby directed to implement the corrective actions recommended in the Report.

(C) SPP is directed to submit a compliance plan outlining the steps it will take to implement the recommendations in the Report within 30 days of the issuance of the final audit report in this docket.

(D) SPP must make non-public quarterly submissions in this Docket PA08-2-000 detailing its progress in implementing the corrective actions until all the corrective actions are completed. The submissions must be made no later than

30 days after the end of each calendar quarter, beginning with the first quarter after the submission of the compliance plan and continuing until SPP completes all the recommended corrective actions.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Federal Energy Regulatory Commission

Audit of Southwest Power Pool, Inc. (SPP) Regional Transmission Organization

Docket No. PA08-2-000 (RTO)
April 15, 2009

Office of Enforcement
Division of Audits

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I. Executive Summary

A. Overview

The Office of Enforcement's (OE) Division of Audits has completed an audit of Southwest Power Pool, Inc.'s (SPP) Regional Transmission Organization (RTO) operations. The audit determined SPP's compliance with the: (1) SPP Bylaws; (2) the SPP Membership Agreement; (3) the transmission provider obligations described in SPP's Open Access Transmission Tariff, and (4) other obligations and responsibilities as approved by the Commission. The audit covered the period from February 1, 2007 through November 30, 2008.

Audit staff concluded that SPP generally complied with its Bylaws, Membership Agreement, OATT, and other obligations and responsibilities approved by the Commission. However, audit staff determined that SPP should implement corrective actions to remedy four areas of concern that audit staff identified during the course of the audit. First, SPP should implement corrective actions to timely notify its transmission customers when it is unable to complete System Impact Studies and Facilities Studies related to Point-to-Point and Network Transmission Service requests within the 60-day deadline prescribed in its OATT. Second, SPP should make plans to perform audits to determine whether market participants are in compliance with data retention requirements with regard to its Energy Imbalance Service. Third, SPP should follow its company's travel policy for use of a plane owned by two SPP senior officials. Fourth, SPP needs to (a) modify its Standards of Conduct to address non-monetary gratuities; and (b) assess whether a Board member is in compliance with its Standards of Conduct because of potential conflicts of interest. OE's findings and recommendations are summarized below in sections C and D of this audit report, and discussed comprehensively in section III of this report.

On January 15, 2009, the Commission issued an order approving a prior audit report of SPP's performance as a Regional Entity on January 15, 2009.[5] This Regional Entity audit was conducted by OE's Division of Audits, working with the Office of Electric Reliability (OER), and the period covered by the audit was May 18, 2007 through August 2008.

B. Southwest Power Pool

The Commission approved SPP as a Regional Transmission Organization on October 1, 2004. Based in Little Rock, Arkansas, SPP has approximately 345

[5] *Southwest Power Pool*, 126 FERC ¶ 61,045 (2009).

employees.[6] SPP manages transmission for 255,000 square miles in eight states: Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, Texas and Nebraska.

SPP's footprint includes 16 balancing authorities (BAs) and 40,364 miles of transmission. It has more than 50 members serving 4.5 million customers, including 12 investor-owned utilities, nine municipal systems, 11 generation and transmission cooperatives, four state authorities, four independent power producers, 11 power marketers, and two independent transmission companies.

SPP has administered a regional OATT for its member Transmission Owners (TOs) since 1998. Pursuant to its OATT, SPP provides firm and non-firm point-to-point and network transmission service.[7] SPP's 345 kV lines form the backbone of the transmission system in much of SPP. There are also two 500 kV transmission lines, one connecting the Oklahoma Gas & Electric control area with Entergy Corp.'s 500 kV high-voltage system, the other connecting Entergy Corp. with Cleco Corp. The lowest voltage line, 69 kV, is the most prevalent voltage level in use throughout SPP. Five Direct Current (DC) ties connect SPP to Electric Reliability Council of Texas, Inc. and Western Electricity Coordinating Council.

SPP's footprint has 451 generating plants with a capacity of 50,392 MW. Coal (43 percent) and natural gas (42 percent) are the dominant fuels, with small contributions from hydro, nuclear and oil. SPP's record peak demand, 43,304 MW, was set in 2007. The SPP region has wind potential in Kansas, Oklahoma, New Mexico, and the Texas panhandle. SPP has 1,800 MW of wind in-service, with more than 50,000 MW proposed and under study. SPP is studying how a "transmission superhighway" of extra high voltage lines would enable it deliver this wind potential into the electric grid.

Governance

SPP is governed by a seven-member Board of Directors (Board): six elected by the members to serve three-year terms, plus the SPP president, who is elected by the Board. The Board meets at least three times annually. Also present at the Board meetings is the Members Committee, which provides input to the Board through straw votes on all actions pending before the Board. Members also provide input through subcommittees reporting to the Board.

The Members Committee is comprised of up to 18 persons including: four representatives from investor-owned utilities; four representatives of cooperatives; two

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[6] SPP 2008 Budget.

[7] *Southwest Power Pool*, 106 FERC ¶ 61,110 (1994).

representing municipal members; three representing independent power producers and marketers; one representing state and federal power agencies; two representing alternative power and public interest members; one representing large retail customers (non-residential end-use customers with individual or aggregated loads of 1 megawatt or more) and one representing small retail customers (individual or aggregated loads of less than 1 megawatt).

The Board is required to consider the Members Committee's straw vote as an indication of the level of consensus among members in advance of taking any actions other than those occurring in executive session.

Market Monitoring

SPP has a hybrid structure for market monitoring, including an internal Market Monitoring Unit and an external Market Monitor (Boston Pacific Co., Inc.) that acts as an outside consultant. Both external and internal market monitors report directly to the SPP Board. The internal Market Monitoring Unit is responsible for all of the duties and responsibilities except those delegated to the external Market Monitor under its contract. The external Market Monitor's primary duties are designing market power mitigation measures and SPP's Market Monitoring Plan, and producing an Annual State of the Market Report to assess the performance of the markets administered by SPP and advising the SPP Board on the design and implementation of future markets.

Compliance

The Vice President of Process Integrity and the Chief Administrative Officer are appointed by the Board, and oversee SPP's Director of Compliance. The Director of Compliance is responsible for ensuring that the RTO adheres to national and regional reliability standards, commercial business practice standards, FERC-approved tariff provisions and other compliance-related provisions. The Director of Compliance meets quarterly with the Board's Oversight Committee.[8]

C. Summary of Compliance Findings

Audit staff identified four areas where SPP did not follow Commission requirements or its own corporate polices and procedures. Our audit findings and recommendations are based on materials provided by SPP in response to data requests,

[8] The Oversight Committee (OC), comprised of three members of the Board, is responsible for overseeing the process of monitoring compliance to SPP and the North American Reliability Corporation (NERC) policies, including market monitoring and internal compliance with NERC operating Standards.

interviews, site visits, and review of publicly available documents. Below is a summary of audit staff's compliance findings. A more detailed discussion of audit staff's compliance findings is included in section III.

- *Notification to Transmission Customers of Late Studies Related to their Point-to-Point and Network Transmission Service Requests*: SPP did not notify its customers of its inability to complete System Impact Studies and Facilities Studies before the deadlines specified in its OATT.

- *Audits of Market Participants' Data Retention Requirements*: SPP's Market Monitoring Unit has not conducted any audits of participants in SPP's Energy Imbalance Service market to determine their compliance with data retention requirements, as required by SPP's OATT.

- *Travel Policy for use of Chartered or Private Aircraft*: SPP did not follow its travel policy for use of chartered or private aircraft and failed to verify the costs it is charged for use of a plane owned by SPP Inc.'s Chief Executive Officer (CEO) and Chief Financial Officer (CFO) through a limited liability corporation named Off We Go, LLC Off We Go.

- *SPP's Standards of Conduct*: SPP's Standards of Conduct prohibit cash gratuities but are silent on the issue of non-monetary gratuities. In addition, one member of SPP's Board is affiliated with a law firm doing business with public utilities operating in the SPP service territory. This same Board member also is a member of a company that insures nuclear power plants operated by SPP members.

D. Summary of Recommendations

In order for SPP to comply fully with Commission requirements and its own corporate policies and procedures, audit staff recommends SPP take the following corrective actions to remedy the audit findings in this report:

- Develop and employ appropriate notification procedures to ensure that transmission customers are properly notified of delays in processing System Impact Studies and Facility Studies related to their requests for Point-to-Point and Network Transmission Service.

- Develop a schedule for conducting data retention compliance audits regarding its Energy Imbalance Service and inform the Commission of its audit schedule.

- Follow its existing Travel Policy for compensating Off We Go (or develop a new policy, consistent with the existing Travel Policy, and submit it to audit staff for review) and perform an analysis to validate the fairness and reasonableness of any cost factors submitted by the CEO or CFO for purposes of reimbursement. This analysis shall be conducted independent of the CEO and CFO and shall include a review of the prior year's expenses and usage. Alternatively, SPP should use a widely-accepted independent reimbursement rate such as that set by the U.S. General Services Administration.

- Require an appropriate SPP official other than the CFO or CEO to: (a) provide prior written approval and justification for use of chartered or private aircraft, primarily using factors such as time or cost savings for SPP staff relative to alternative transportation options as indicated by its Travel Policy, and (b) approve all invoices for payment of chartered or private plane flights. The requirement for prior approval shall not apply to travel by the CFO or CEO or other officers if so authorized by the SPP Board of Directors.

- Modify its existing Standards of Conduct to address non-monetary gratuities; and

- Assess whether the Board member with potential conflicts of interest should continue to serve as a SPP Board member in accordance with SPP's Standards of Conduct which prohibits a director from being an employee, director, consultant or contractor to any transmission customers or transmission provider under the SPP tariff. SPP should notify audit staff of the results of this assessment, including actions, if any, that SPP may take with respect to this potential conflict.

E. Compliance and Implementation of Recommendations

Audit staff further recommends that SPP submit for audit staff's review a plan for implementing audit staff's recommendations. SPP should provide this plan to audit staff within 30 days of the issuance of the final audit report in this docket. SPP must make non-public quarterly reports in this docket to OE describing its progress in implementing the corrective actions until audit staff determines that all corrective actions are completed. SPP should make the quarterly submissions no later than 30 days after the end of each calendar quarter, beginning with the first quarter after the final audit report in this docket is issued, and continuing until SPP completes all the recommended corrective actions.

II. Introduction

A. Objectives

The objectives of this audit were to determine whether SPP is operating in compliance with (1) the SPP Bylaws, (2) the SPP Membership Agreement, (3) the transmission provider obligations described in SPP's OATT, and (4) other obligations and responsibilities as approved by the Commission. Audit staff evaluated SPP's compliance during the period from February 1, 2007 through November 30, 2008.

B. Scope and Methodology

Audit staff issued data requests and conducted numerous interviews in person and via telephone in conducting this audit. Specifically, the audit procedures audit staff performed included the following:

- Familiarized itself with SPP's operations by reviewing publicly-available materials; FERC's e-Library for company filings, Commission orders and formal complaints. Audit staff also reviewed the Enforcement Hotline log for complaints made against the company, and trade press articles to identify significant developments and occurrences that arose during the audit period.

- Conducted its initial visit to SPP, Inc. headquarters on October 29-31, 2007, during which it participated in NERC's compliance audit of SPP's reliability coordinator function. Staff accompanied the NERC auditors on tours of SPP's main and back-up control centers to gain an understanding of the transmission system and its layout. On audit staff's second site visit, February 4-7, 2008, audit staff interviewed RTO and Regional Entity management and staff to understand their job functions. Those interviewed included the following:

    - Vice President, Process Integrity
    - Vice President and General Counsel
    - Executive Director, Interregional Affairs
    - Executive Director for Compliance (Regional Entity)
    - Regional Entity Counsel
    - Director, Market Development & Analysis
    - Manager, Reliability Coordination
    - Director of Operations
    - Standards Compliance Manager
    - Director of Transmission Policy

  - Manager Market Operations
  - Director of Settlements
  - Director of Engineering

- Observed a demonstration of electronic databases used by control room operators to log information related to the operation of the transmission grid.

- Sampled 30 personnel files, representing approximately 10 percent of SPP's workforce, for signed Standards of Conduct compliance statements.

- Interviewed RTO employees involved in the oversight and daily activities of market operations to gain an understanding of their responsibilities.

- Interviewed SPP's director of transmission policy regarding SPP's compliance with Commission rulings on grandfathered transmission contracts.

- Tested the *Daily Operations Reliability Report* from February 4-6, 2008, to ensure compliance with §2.1.3 (Transmission Maintenance) and §2.1.4 (Generation Maintenance) of SPP's OATT.

- Interviewed employees in the Market Operations, Settlement, and Operations Engineering functions regarding validation of Locational Imbalance Prices (LIP), LIP re-pricings, and posting requirements to understand the price re-calculation and posting process.

- Sampled 15 OASIS postings to ensure compliance with price correction posting requirements set forth in Attachment AE (Energy Imbalance Service Market) of SPP's OATT.

- Examined causes of errors in the initial calculation of LIPs to determine whether proper controls have been implemented to reduce the incidence of these errors.

- Reviewed SPP's process for notifying its transmission customers of delinquent facility and system impact studies related to point-to-point and network transmission service requests to determine compliance with Sections 19.3-19.4 of SPP's OATT.

- Evaluated the number of transmission service requests received and percentage granted and/or confirmed during the audit period; the resources (e.g., full time equivalent employees) devoted to the processing of transmission service requests during this period; and any changes implemented in the processing of these requests during the period of July 1, 2004 through June 30, 2008 or currently contemplated.

- Assessed the timeliness and accuracy of SPP's practices and methodology for conducting and posting Available Transfer Capability studies.

- Reviewed the timeliness of SPP's tariff revisions filings for new transmission service business practices.

- Evaluated the reasons for the revenue neutrality uplift values for the months of March 2007, June 2007, and December 2007.

- Assessed how SPP staff and balancing authorities validate the adequacy of operating reserves on a daily basis.

- Reviewed recalled transmission service requests to ensure compliance with SPP's business practices.

- Reviewed SPP's relationship with the partnership that owns the Cirrus airplane used to transport SPP executives.

- Evaluated whether the clients of SPP's external Market Monitor, Boston Pacific Co., Inc. (Boston Pacific), have financial relationships with parties that have an interest in SPP's market or affiliated markets.

- Interviewed Boston Pacific principals to clarify its contractual duties, relationship, and work product processes with SPP.

- Assessed SPP's market monitoring functions to ensure compliance with all duties as set forth in Attachment AG of SPP's OATT.

- Analyzed itemized bills sent from Boston Pacific to SPP and reviewed disputed charges.

- Reviewed instances when the internal Market Monitoring Unit or Boston Pacific challenged SPP policies or market results.

- Tested for reports on abuses of horizontal and vertical market power in SPP's markets and services by any market participant, and recommended changes by the internal Market Monitoring Unit with regard to the design and implementation of SPP's markets and services.

- Reviewed the verification process used by the Market Monitoring Unit to ensure that balancing authorities activate the reserve sharing system on a non-discriminatory basis.

- Determined whether the internal Market Monitoring Unit has conducted any audits of market participants to gauge market participants' compliance with data retention requirements established in the Market Monitoring Plan.

- Examined minutes and handouts for Board and Committee meetings.

- Reviewed annual surveys of committee and working group members and annual stakeholder surveys of SPP members in 2006-2008 to identify recurring complaints and concerns.

- Reviewed the business relationships, financial interests, and other affiliations of Board members for compliance with the conflict of interest provisions in SPP's Standards of Conduct.

- Examined SPP's compliance with Section 4.2.3 of its Bylaws to determine how SPP ensures that its Board members have no direct business relationship, financial interest in, or other affiliation with any SPP member or customer of services provided by SPP.

- Requested records documenting the voting (including calculations of the weighting of the votes) at the meetings of the Market and Operations Policy Committee and discussed policies related to voting and retention of ballets with SPP's Corporate Secretary.

III. Findings and Recommendations

A. Notification to Transmission Customers of Late Studies Related to Requests for Point-to-Point and Network Transmission Service

SPP did not notify its customers of its inability to complete System Impact Studies and Facilities Studies within the 60-day deadline included in its OATT.

Pertinent Guidance

Section 19.3 of SPP's OATT states:

> Upon receipt of an executed System Impact Study Agreement, the Transmission Provider, in coordination with the appropriate Transmission Owner(s), will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, the Transmission Provider shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies.

Section 19.4 of SPP's OATT states:

> Upon receipt of an executed Facilities Study Agreement, the Transmission Provider in coordination with the appropriate Transmission Owner(s) will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider together with the affected Transmission Owner(s) are unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study.

Section 32.3 of SPP's OATT states:

> Upon receipt of an executed System Impact Study Agreement, the Transmission Provider, in coordination with the appropriate Transmission Owner(s), will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify any system constraints and

> redispatch options, additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies.

Section 32.4 of SPP's OATT states:

> Upon receipt of an executed Facilities Study Agreement, the Transmission Provider in coordination with the affected Transmission Owner(s) will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider together with the affected Transmission Owner(s) are unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study.

Background

In 2007 and 2008, SPP did not provide the required notifications to its customers that it would be delinquent in completing System Impact Studies and Facilities Studies.

According to section 1.43a of SPP's OATT, a System Impact Study is a coordinated assessment by the Transmission Provider and the affected Transmission Owner(s) of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service or (ii) to determine the Attachment Facilities, other Direct Assignment Facilities, and system upgrades that are needed to accept power into the grid at the interconnection receipt point, required to accommodate a request for generation interconnection in accordance with Attachment V and (iii) whether any additional costs may be incurred in order to provide transmission service or generation interconnection.

Section 1.12 of SPP's OATT defines a Facility Study as an engineering study conducted by the Transmission Provider in collaboration with the affected Transmission Owner(s) to determine the required modifications to the Transmission System, including the cost and scheduled completion date for such modifications that will be required to provide the requested transmission service or Generation Interconnection Service.

In the fourth quarter of 2007, SPP did not complete 124 System Impact Studies within the 60-day deadline. SPP did not provide the required notification to the customers that it would not meet the 60-day deadline for completing their System Impact Studies. SPP stated that it advised the Transmission Owners via e-mail on December 20, 2007, that the 124 studies would be late. However, SPP acknowledged it did not notify its transmission customers as required by SPP's OATT. SPP posted an aggregate study evaluating the requests of the 124 customers on December 21, 2007.

In addition, SPP was late in completing 68 Facility Studies in the fourth quarter of 2007, and SPP did not notify these customers of the delays it was experiencing in completing the Facility Studies within the 60-day requirement.

SPP did not timely complete 64 Facility Studies in the first and second quarters of 2008. SPP also did not inform its customers that it would not meet the 60-day deadline for completing the Facility Studies. SPP stated that its transmission customers are aware of the study backlog and rely on telephone communications with SPP staff regarding study status. Audit staff is concerned that SPP's reliance on customers to inquire about study delays via telephone communication with SPP staff is not sufficient to ensure that all customers are properly notified of the study delays, as required by its OATT.

SPP should have ensured that all customers were properly notified when it was unable to complete System Impact Studies and Facility Studies within the 60-day requirement.

Recommendation

1. Audit staff recommends that SPP develop and employ appropriate notification and alert procedures to ensure that all customers are properly notified of delays in completing System Impact Studies and Facility Studies.

B. Audits of Market Participants' Data Retention Requirements

SPP's Market Monitoring Unit has not conducted any audits of participants in SPP's Energy Imbalance Service market to determine their compliance with data retention requirements, as required by SPP's OATT.

Pertinent Guidance

Section 8.4 of Attachment AG (Market Monitoring Plan) to SPP's OATT states:

> The Market Monitor shall, from time to time, audit Market Participants to ensure compliance with the data retention requirements established in the Market Monitoring Plan. Market Participants shall cooperate with the Market Monitor in such audits. The Market Monitor will annually destroy, and certify such destruction to the Board of Directors, information in its possession which is no longer reasonably necessary.

Background

SPP's energy imbalance market was launched on February 1, 2007. In the two years since the market's inception, SPP's Market Monitoring Unit has not conducted any audits of market participants to determine their compliance with data retention requirements. SPP indicated to audit staff in a data response that it has neither any such audits in progress nor any planned for the future. Audit staff believes that this is not consistent with SPP's OATT and that SPP should begin an audit cycle to meet this requirement within three years of the launch of the market.

Recommendation

2. Audit staff recommends that SPP develop a schedule for conducting data retention compliance audits regarding SPP's Energy Imbalance Service and inform the Commission of its audit schedule.

C. Travel Policy for Use of Airplane

SPP has failed to follow its Travel Policy's requirement that SPP consider factors such as cost and savings of staff time in determining when to use private air travel rather than commercial air travel or other transportation options. SPP also has failed to verify that the formula under which it is charged for use of the airplane (plane) owned by SPP Inc.'s CEO and CFO is fair and reasonable.

Pertinent Guidance

SPP's Travel Policy states in part

> Employees may utilize chartered aircraft when traveling on SPP business. The decision to engage or charter an aircraft will depend on many factors including primarily cost and timesaving. The use of a chartered aircraft must be approved by the department director or above. Flights must be carried out by recognized charter operators that meet and abide by the FAA's FAR [Federal Aviation Administration's Federal Aviation Regulations] or, if in a private aircraft, the flight must be in an IFR [instrument flight rules] rated aircraft, completed under instrument flight rules and on an instrument flight plan by a pilot holding an IFR rating and meets the currency requirements outlined in the FAA FARs.

Background

In 2002, SPP's CEO and CFO formed a limited liability corporation, Off We Go, LLC, (Off We Go) for the purpose of purchasing a used Cirrus SR20, a single-engine, 4-seat airplane. The CEO and CFO, who are licensed pilots, use the plane for personal travel and as an alternative to commercial air travel or driving personal cars for official SPP travel. The CEO and CFO also permit other SPP employees to use the plane for official SPP travel. An SPP engineer, a licensed pilot, flies the plane when it is not used by the CEO or CFO.

No formal contract exists between Off We Go and SPP. According to the CFO, the CEO and CFO discussed the matter with SPP Board members, who "concurred that the plane may serve as an alternative mode of travel with expenses submitted as they would be for any form of travel (commercial airfare or mileage)."

SPP pays Off We Go for use of the plane at an hourly rate based on flight time. Off We Go billed SPP $38,280 in 2007 for 47 trips at a rate of $201 per hour and $28,323 for 29 trips from January-July 2008 at a rate of $212 per hour. The increased hourly rate from 2007 to 2008 reflected an increase in projected fuel costs and property taxes and a reduction in insurance and inspection costs.

In an interview with audit staff, the CFO stated that the hourly rates were set by him based on a spreadsheet created by the Aircraft Owners and Pilots Association. The 2008 rate included direct operating costs (oil, fuel and routine maintenance) of $110 per hour and $18.88 per hour in reserve costs for projected engine and propeller overhauls. The remainder of the hourly rate reflected an allocation to cover fixed costs (insurance, property tax, loan payments, etc.) totaling $30,725 per year. Including fixed costs, the CFO calculated the "true" per-hour cost at $231 based on 300 hours of flight time for the year. According to the CFO, SPP averaged 307 hours of flight time per year between 2003 and 2007. This accounts for 86 percent of the total hours the plane was used during this period, with the remaining hours being attributable to personal use of the plane.

SPP has not independently verified the estimated costs compiled by the CFO associated with this related-party transaction to ensure that the estimated costs are fair and reasonable. Moreover, SPP has no formal system for ensuring that decisions on use of the plane be based on factors such as cost or timesaving. Audit staff found numerous instances in which it appears SPP staff could have reached their destinations more cheaply via commercial flights without an appreciable increase in travel time. SPP told staff that it conducts no such analysis in deciding when to use the plane.

In Spring 2008, SPP management began discussing with Arkansas Electric Cooperatives Corp. (AECC) the joint purchase of a larger, more comfortable plane. On July 29, 2008, SPP's Board approved a staff proposal to lease a 6-seat Piper Mirage Airplane from AECC with SPP responsible for 70 percent of the plane's fixed operating costs and AECC responsible for the remaining 30 percent. The percentages reflect the expected use of the plane. According to an analysis by BKD, LLP, ordered at the request of SPP's Finance Committee, the structure of the deal was changed from a joint purchase because, for regulatory purposes, SPP did not want to show ownership of an airplane on its balance sheet. SPP officials told audit staff in February 2008 that the purchase has been tabled indefinitely because of problems obtaining insurance.

In April 2008, while the plane purchase with AECC was being discussed, the CFO and CEO asked SPP for a travel allowance of $14,700 each ($29,400 total), plus an additional amount for taxes, to cover 90 percent of the fixed costs of the plane. Under the proposal, Off We Go would eliminate the fixed costs from the calculation of the hourly rate charged to SPP. The proposal noted that SPP's CEO and CFO are at risk for covering all of the fixed costs associated with ownership not otherwise recovered through the charges to SPP.

The request was approved by SPP's Finance Committee on April 4, 2008 and the Human Relations Committee on April 14, 2008, and forwarded to the Board for consideration on April 22, 2008. To date, the Board has taken no action on the proposal.

Audit staff believes that SPP's Travel Policy in effect during the audit period represents a reasonable approach to govern the use of Off We Go's plane. However, audit staff is concerned that SPP has not followed its Travel Policy when it used Off We Go's plane. In cases in which direct commercial flights were available and the cumulative costs of those flights was less expensive than use of Off We Go's plane, SPP should have provided other justification for using Off We Go. In addition, SPP should have conducted an independent review of the inputs and methodology the CFO used to determine the reimbursement rate for use of the plane.

Recommendations

Audit staff recommends that SPP follow its existing Travel Policy for compensating Off We Go or develop a new policy and submit it to audit staff for review within 30 days of the issuance of the final audit report in this docket. Specifically, audit staff recommends SPP:

3. Perform an analysis to validate the fairness and reasonableness of any cost factors submitted by the CEO or CFO for purposes of reimbursement. This analysis shall be conducted independent of the CEO and CFO and shall include a review of the prior year's expenses and usage. Alternatively, SPP should use a widely-accepted independent reimbursement rate such as that set by the U.S. General Services Administration.[9]

4. Require an appropriate SPP official other than the CFO or CEO to: (a) provide prior written approval and justification for use of chartered or private aircraft, primarily using factors such as time or cost savings for SPP staff relative to alternative transportation options as indicated by its Travel Policy, and (b) approve all invoices for payment of chartered or private plane flights. The requirement for prior approval shall not apply to travel by the CFO or CEO or other officers if so authorized by the SPP Board of Directors.

[9] The GSA rate for use of a privately owned airplane effective Jan. 1, 2009 is $1.24 per mile. *See* http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=9646.

D. SPP's Standards of Conduct

SPP's Standards of Conduct were deficient because it prohibits cash gratuities but is silent on the issue of non-monetary gratuities. Audit staff also questions whether SPP is in compliance with its Standards of Conduct because one member of SPP's Board is employed by a law firm doing business with public utilities operating in SPP service territory. This same Board member also serves on the Board of a company that insures nuclear power plants operated by SPP members.

Pertinent Guidance

Section 7.4 of SPP's Standards of Conduct for employees, states in part:

> SPP employees shall not accept any form of gratuity involving cash.

Section 7.4 of SPP's Standards of Conduct for Directors, states in part:

> SPP Directors shall not accept any form of gratuity involving cash.

Section 7.1 of the SPP's Standards of Conduct for Directors, states in part:

> No SPP Director may be an employee, director, consultant or contractor to any transmission customer or transmission provider under the Tariff.

Background

Standards of Conduct – Gifts

Audit staff observed during its review of SPP's Standards of Conduct that the Standards are silent on non-monetary gratuities. SPP told audit staff there is no reason that the prohibition in Section 7.4 is limited to cash and that SPP was considering revising the section to prohibit any non-cash gratuity worth more than $25.

The General Counsel of SPP (General Counsel) informed audit staff that SPP officers in the internal policy group have been talking about changing the provision and that any change would apply to SPP employees and directors. As of February 3, 2009, no changes had been made to the Standards of Conduct regarding non-monetary gratuities.

Standard of Conduct – Board of Directors

SPP requires Board members to execute a Standards of Conduct form upon election to the Board and annually thereafter. SPP has a Board member who joined the law firm of Potter Anderson & Corroon LLP (Potter Anderson) in 2005, two years after joining the SPP Board. According to Potter Anderson's website, the firm represents SPP member NRG; El Paso Corp. (El Paso), parent company of SPP member El Paso Merchant Energy, LP; and The Williams Cos. (Williams), former parent company of SPP member Williams Power Co.

The SPP Board member informed audit staff he was unaware his firm represented the energy companies until audit staff raised the issue with SPP's General Counsel. The Board member said the firm had 80 lawyers and provides advice on Delaware corporate law and representation in corporate litigation. He said the firm does no regulatory work for NRG, El Paso or Williams and he does not believe the law firm's representation of the energy companies made it a contractor. Moreover, he said he does not represent electric utility clients. He said 40 percent of his practice is commercial mediation and arbitration and the remainder of his time is spent as court-appointed monitor for the State of Delaware prisons. Finally, he said he is a non-equity partner and does not share in the profits or losses of the firm.

The General Counsel told audit staff that El Paso and Williams are inactive in SPP but have not formally withdrawn because of the withdrawal cost. The companies pay $6,000 per year in membership dues. El Paso has not been a customer of SPP since March 2000. NRG remains a member and paid SPP $4,700 in transmission revenues in 2007.

The Board member also is a member of the Board of Directors of Nuclear Electric Insurance Ltd., (NEIL) which provides accident insurance for nuclear power plant operators, including SPP members AEP, El Paso Electric Co., Entergy, Exelon, Kansas City Power & Light Co., Kansas Electric Power Cooperative, Inc. and TXU.

The General Counsel told audit staff that SPP uses an executive search firm to find board candidates. The search firm has a copy of the Standards of Conduct and is responsible for vetting the candidates. The General Counsel did not believe NEIL's sale of nuclear accident insurance to SPP members made it a contractor under the SPP Standards of Conduct.

Audit staff is concerned that SPP's Standards of Conduct does not address non-monetary gratuities and that this gap should be immediately resolved. Additionally, audit staff is concerned that one of its Board appears to have conflicts of interest since he is employed by a law firm that provides services to public utilities in SPP's service territory and is a standing Board member of a nuclear insurance company that provides insurance services to SPP members.

Recommendation:

Audit staff recommends that SPP:

5. Modify its existing Standards of Conduct to address non-monetary gratuities; and

6. Assess whether the Board member with potential conflicts of interest should continue to serve as a SPP Board member in accordance with SPP's Standards of Conduct which prohibits directors from being an employee, director, consultant or contractor to any transmission customers or transmission provider under the SPP tariff. Notify audit staff of the results of this assessment including actions, if any, that SPP may take with respect to this potential conflict.

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April 10, 2009 ***Via Electronic Mail***

Bryan K. Craig
Director, Division of Audits
Office of Enforcement
Federal Energy Regulatory Commission
888 First St. N.E.
Washington, D.C. 20426

Re: Southwest Power Pool, Inc., Docket No. PA08-2-000

Dear Mr. Craig:

Southwest Power Pool, Inc. ("SPP") provides the following response to the April 7, 2009 Draft Audit Report ("Draft Audit Report" or "Report") of the Division of Audits of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Office of Enforcement ("Audit Staff") related to SPP's function as a Regional Transmission Organization ("RTO").

I. SPP RESPONSE

SPP has reviewed the Draft Audit Report and has carefully considered its recommendations. Based on the Draft Audit Report and the response provided herein, SPP believes that Audit Staff and SPP can reach a mutually acceptable resolution regarding the audit of SPP's RTO functions. While SPP may not necessarily agree with all of the individual findings included in the Draft Audit Report, SPP generally is able to agree to the recommendations, as described below.

A. Response to Findings and Recommendations (Section III of Report)

1. Notification to Transmission Customers of Late Studies Related to Requests for Point-to-Point and Network Transmission Service

Recommendation 1: Audit staff recommends that SPP develop and employ appropriate notification and alert procedures to ensure that all customers are

properly notified of delays in completing System Impact Studies and Facility Studies.

While numerous communication vehicles enable SPP's customers to be fully aware of the status of SPP's ability to complete System Impact Studies and Facilities Studies, SPP does not contest the Draft Audit Report's finding that SPP did not formally notify its customers of its inability to complete System Impact Studies and Facilities Studies within the 60-day deadline included in sections 19.3, 19.4, 32.3, and 32.4 of its open access transmission tariff ("OATT"). Draft Audit Report at 10-12.

SPP therefore concurs with the Draft Audit Report's recommendation with respect to this issue and will develop procedures to ensure that all customers are properly notified of delays in completing System Impact Studies and Facility Studies. Draft Audit Report at 12.

2. Audits of Market Participants' Data Retention Requirements

Recommendation 2: Audit staff recommends that SPP develop a schedule for conducting data retention compliance audits regarding SPP's Energy Imbalance Service and inform the Commission of its audit schedule.

SPP agrees with the Draft Audit Report's finding that SPP's Market Monitoring Unit has not yet conducted any audits of participants in SPP's Energy Imbalance Service market to determine their compliance with data retention requirements, as specified in section 8.4 of Attachment AG to SPP's OATT. Draft Audit Report at 13. SPP notes, however, that section 8.4 of Attachment AG does not stipulate a specific time period for conducting such audits, and SPP's Energy Imbalance Market has only been in operation for two years.

Although SPP does not concur that any compliance issue has been identified at this time, consistent with Recommendation 2, SPP does not object to developing a plan for conducting data retention compliance audits, to the extent this requirement remains in the SPP Tariff.[1]

3. Travel Policy for Use of Airplane

The Draft Audit Report finds that SPP failed to follow its Travel Policy's requirement that SPP consider factors such as cost and savings of staff time in determining when to use private air travel rather than commercial air travel or other transportation options. The Draft Audit Report further finds that SPP failed to verify that the formula under which it is charged for use of the airplane owned by SPP Inc.'s CEO and CFO is fair and reasonable. Draft Audit Report at 14. While SPP believes that its employees have adhered to the Travel Policy, including their use of Off We Go, LLC's airplane, SPP agrees that improved decision-making

[1] By agreeing to develop such a plan, SPP does not waive its right to seek modifications to the SPP Tariff regarding the requirement that such audits of all market participants be conducted.

and documentation of decisions related to the use of private aircraft would be beneficial. SPP therefore agrees to take the measures outlined in the Draft Audit Report's recommendations, as described below.

> **Recommendation 3. Perform an analysis to validate the fairness and reasonableness of any cost factors submitted by the CEO or CFO for purposes of reimbursement. This analysis shall be conducted independent of the CEO and CFO and shall include a review of the prior year's expenses and usage. Alternatively, SPP should use a widely-accepted independent reimbursement rate such as that set by the U.S. General Services Administration.**

While SPP has not had any reason to question the reasonableness of the rates that have been paid for the use of Off We Go, LLC's airplane, on a going forward basis, SPP agrees to conduct an independent analysis to validate the fairness and reasonableness of any cost factors submitted by the CEO and CFO for purposes of reimbursement, as contemplated in the recommendation.

> **Recommendation 4. Require an appropriate SPP official other than the CFO or CEO to: (a) provide prior written approval and justification for use of chartered or private aircraft, primarily using factors such as time or cost savings for SPP staff relative to alternative transportation options as indicated by its Travel Policy, and (b) approve all invoices for payment of chartered or private plane flights. The requirement for prior approval shall not apply to travel by the CFO or CEO or other officers if so authorized by the SPP Board of Directors.**

While, as noted above, SPP believes that its employees have complied with the SPP Travel Policy, SPP concurs with this recommendation. SPP will implement measures to ensure that an SPP official other than the CFO or CEO provides prior written approval and justification for use of private aircraft by SPP staff and that such an SPP official approves invoices for payment of private plane flights. Provided that the SPP Board of Directors so authorizes, prior approval shall not apply to travel by the CFO or CEO or other officers.

4. SPP's Standards of Conduct

> **Recommendation 5: Modify its existing Standards of Conduct to address non-monetary gratuities.**

The Draft Audit Report finds that SPP's Standards of Conduct are deficient because section 7.4 of the standards prohibits cash gratuities but is silent on the issue of non-monetary gratuities. Draft Audit Report at 18. SPP acknowledges that the Standards of Conduct are silent regarding the issue of non-monetary gratuities.

As the Draft Audit Report recites, SPP officers have been discussing modifying section 7.4 to prohibit non-cash gratuities with a specified value, although no final decision has yet been made. Draft Audit Report at 18. Therefore, SPP concurs with this recommendation and will revise its Standards of Conduct to address non-monetary gratuities.

Recommendation 6. Assess whether the Board member with potential conflicts of interest should continue to serve as a SPP Board member in accordance with SPP's Standards of Conduct which prohibits directors from being an employee, director, consultant or contractor to any transmission customers or transmission provider under the SPP tariff. Notify audit staff of the results of this assessment including actions, if any, that SPP may take with respect to this potential conflict.

Audit Staff questions whether SPP is in compliance with its Standards of Conduct because a member of the SPP Board of Directors is an attorney with Potter Anderson & Corroon LLP ("Potter Anderson"), a law firm that Audit Staff asserts is doing business with public utilities in the SPP service territory. In addition, Audit Staff questions the same Board member's position on the board of Nuclear Electric Insurance Ltd. ("NEIL"), a company that provide insurance to companies that own and operate nuclear power plants, some of which are operated by SPP members. Draft Audit Report at 18-19.

SPP notes that the board member is a non-equity partner of Potter Anderson (and thus does not share in the profits or losses of the firm) and that he does not personally represent electric utility clients of the firm. Further, as the Draft Audit Report recognizes, the utility clients represented by Potter Anderson are either inactive or have minimal participation in SPP. Draft Audit Report at 19.[2] Although NEIL provides insurance to SPP members that operate nuclear plants, the board member himself is not a "consultant or contractor" to any SPP member.

Nonetheless, in light of the concerns raised in the Draft Audit Report, SPP agrees to assess whether this Board member should continue to serve on the SPP Board, and SPP will notify Audit Staff of the results of this assessment and any actions SPP may take based on the assessment.

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[2] Although members of SPP, El Paso Corp. and The Williams Companies were inactive as customers of SPP throughout the audit period and remain inactive, while NRG purchased only an estimated $4,700 of transmission service in both 2007 and 2008.

II. CONCLUSION

As noted above, while SPP disagrees with some of the findings in the Draft Audit Report, SPP concurs with the recommendations prescribed in the Draft Audit Report.

Respectfully submitted,

/s/ Amanda Riggs Conner
Barry S. Spector
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Attorneys for Southwest Power Pool, Inc.

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