

144 FERC ¶ 61,251  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER13-2091-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued September 30, 2013)

1. On August 1, 2013, Southwest Power Pool, Inc. (SPP) filed revisions to its Open Access Transmission Tariff (Tariff)<sup>1</sup> to incorporate changes allowing SPP and its market participants to qualify for an exemption of specified market transactions from the provisions of the Commodity Exchange Act (CEA)<sup>2</sup> and Commodity Futures Trading Commission (CFTC) regulations. As discussed below, we conditionally accept SPP's proposed revisions, subject to a compliance filing, to be effective March 1, 2014, as requested.

**I. Background**

2. SPP states that, on March 28, 2013, the CFTC issued an order<sup>3</sup> granting certain Regional Transmission Organizations (RTO) and Independent System Operators (ISO) exemptive relief from CFTC regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>4</sup> SPP explains that the CFTC Final Order

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<sup>1</sup> The eTariff designations for SPP's proposal are contained in the Appendix.

<sup>2</sup> 7 U.S.C. § 1 *et seq.* (2006), as amended by Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> *See* Final Order in Response to a Petition from Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas from Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (April 2, 2013) (CFTC Final Order).

<sup>4</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

contained certain conditions that RTOs and ISOs must meet in order to be eligible for the exemption, including: (1) the RTO or ISO tariff authorizes the sharing of market data and information with the CFTC without notice to market participants; and (2) the transactions are entered into by (i) “appropriate persons,” as defined in the CEA;<sup>5</sup> (ii) “eligible contract participants,” as defined in the CEA;<sup>6</sup> or (iii) persons who are in the business of either generating, transmitting, or distributing electric energy, or providing electric energy services that are necessary to support the reliable operation of the transmission system.<sup>7</sup>

3. SPP states that it was not among the original applicants for the CFTC exemption because it did not yet operate energy markets with products that would give rise to the need for the exemption.<sup>8</sup> However, with the implementation of the Integrated Marketplace,<sup>9</sup> SPP is now in the process of seeking similar exemptive relief from the CFTC. Accordingly, prior to the implementation of the Integrated Marketplace, SPP is proposing to comply with the conditions imposed on other RTOs and ISOs in the CFTC Final Order.

## II. SPP Filing

4. SPP proposes a new section 3.1.1.8.1 in Attachment X<sup>10</sup> of its Tariff that establishes minimum eligibility requirements that market participants must meet to participate in the Integrated Marketplace. Specifically, SPP proposes incorporating language that would address the CFTC requirement that transactions be entered into by (i) “appropriate persons,” (ii) “eligible contract participants,” or (iii) persons who are in

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<sup>5</sup> 7 U.S.C. § 6(c)(3) (2006).

<sup>6</sup> 7 U.S.C. § 1a(18). *See also* Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596 (May 23, 2012).

<sup>7</sup> CFTC Final Order, 78 Fed. Reg. 19,880 at 19,897.

<sup>8</sup> SPP Transmittal at 5.

<sup>9</sup> As part of its Integrated Marketplace reforms, SPP will implement Day-Ahead and Real-Time energy markets and an operating reserve market. SPP submitted its Integrated Marketplace proposal on February 29, 2012 in Docket No. ER12-1179-000, which the Commission conditionally accepted in an October 2012 Order. SPP anticipates a March 1, 2014 launch date for the Integrated Marketplace. *See Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012), *order on reh’g*, 142 FERC ¶ 61,205 (2013), *order on compliance*, 144 FERC ¶ 61,224 (2013).

<sup>10</sup> SPP Tariff, Attachment X contains SPP’s credit policy.

the business of either generating, transmitting, or distributing electric energy, or providing electric energy services that are necessary to support the reliable operation of the transmission system. SPP explains that, while its Tariff already includes minimum criteria for market participation in compliance with Order No. 741,<sup>11</sup> these provisions do not fully address the conditions imposed by the CFTC on other RTOs and ISOs for exemptive relief.<sup>12</sup>

5. SPP also proposes language in section 3.1.1.8.1a of Attachment X to provide examples of how a market participant may qualify as an “appropriate person” under section 3.1.1.8.1a.<sup>13</sup> Additionally, SPP proposes language in section 3.1.1.8.1 of Attachment X providing that if a market participant is unable to meet the minimum eligibility requirements, it must immediately notify SPP and cease transacting in the Integrated Marketplace. Further, proposed section 3.1.1.8.1 specifies that, upon such notification or if SPP determines that a market participant no longer meets minimum eligibility requirements, SPP will immediately terminate the market participant’s transaction rights and may take actions regarding the market participant’s open or forward positions, such as liquidation, transfer, assignment, or sale.

6. SPP also proposes revisions to the attestation of risk management capabilities in section 3.1.1.6 of Attachment X to require that market participants certify that they meet the minimum eligibility requirements in section 3.1.1.8.1. SPP proposes revising its risk management verification process, set forth in section 3.1.1.9 of Attachment X, to specify that SPP will review and verify market participants’ eligibility for market participation based on the minimum eligibility requirements specified in section 3.1.1.8. Additionally, SPP proposes conforming revisions in Attachment X consistent with modifications relating to the proposed minimum eligibility requirements set forth in sections 3.1.1.8.1 and 3.1.1.9.

7. SPP asserts that the proposed modifications to Attachment X enhance SPP’s existing minimum market participation eligibility criteria and credit requirements consistent with the conditions imposed on other RTOs and ISOs in the CFTC Final Order.<sup>14</sup> According to SPP, the revisions will further minimize risk in SPP’s Integrated Marketplace, consistent with the purposes of Order No. 741.<sup>15</sup>

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<sup>11</sup> *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, FERC Stats. & Regs. ¶ 31,317 (2010), *order on reh’g*, Order No. 741-A, FERC Stats. & Regs. ¶ 31,320 (2011), *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

<sup>12</sup> SPP Transmittal at 6.

<sup>13</sup> *Id.* at 7.

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

8. In addition to the proposed minimum eligibility requirements, SPP proposes revisions relating to information and data sharing in Attachment AE of its Tariff, which contains market rules for the Integrated Marketplace. These revisions specify that SPP (and its Market Monitor) will provide information to the CFTC and that this information sharing will not require market participant notification. SPP also proposes new language in section 11 of Attachment AE specifying that SPP will request that any shared confidential information be treated as confidential and non-public by the CFTC and its staff. These revisions further specify that, in instances where the CFTC or its staff provide notice to SPP or the Market Monitor that the CFTC will release confidential information, SPP or the Market Monitor will notify an affected market participant. SPP states that these proposed modifications extend information sharing rules to the CFTC that are similar to those that apply when SPP and its Market Monitor share information with the Commission and are consistent with the conditions imposed on other RTOs and ISOs in the CFTC Final Order.<sup>16</sup>

9. Finally, SPP proposes revisions to section 8.2 of Attachment AE, which sets forth provisions for bilateral settlement schedules<sup>17</sup> in SPP's Integrated Marketplace. The revisions clarify that bilateral settlement schedules must be for physical delivery and tied to the physical capabilities of the transmission system. SPP states that these revisions are necessary to ensure that these transactions meet a requirement in the CFTC Final Order specifying that exempted transactions be inextricably linked to the physical delivery of energy.<sup>18</sup> SPP also asserts that its proposed revisions are consistent with similar physicality requirements for bilateral transactions in other RTOs and ISOs.<sup>19</sup>

10. SPP requests that the proposed tariff provisions become effective on March 1, 2014, to coincide with the commencement of the Integrated Marketplace. However, SPP requests that the Commission issue an order no later than October 1, 2013 so that the proposed rules are in place in time for certain pre-market implementation activities,

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<sup>15</sup> *Id.* at 7-8.

<sup>16</sup> *Id.* at 8.

<sup>17</sup> A bilateral settlement schedule is an arrangement between two market participants for transfer of energy or operating reserve obligations. SPP Tariff, Attachment AE § 1.1.

<sup>18</sup> SPP Transmittal at 9 (citing CFTC Final Order, 78 Fed. Reg. 19,880 at 19,880; 19,887-19,888; 19,903; and 19,909).

<sup>19</sup> *Id.* (citing, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,084 (2009); *DC Energy LLC v. Interconnection, L.L.C.*, 144 FERC ¶ 61,024 (2013); and PJM Tariff, Attachment K, Appendix §§ 1.7.10, 1.7.19B).

including the initial allocation of Auction Revenue Rights and Transmission Congestion Rights.<sup>20</sup>

### **III. Notice of Filing and Responsive Pleadings**

11. Notice of SPP's filing was published in the *Federal Register*, 78 Fed. Reg. 49,503 (2013), with interventions and protests due on or before August 22, 2013. East Texas Cooperatives<sup>21</sup> submitted a timely motion to intervene. No protests were filed.

### **IV. Discussion**

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

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), East Texas Cooperatives' timely, unopposed motion to intervene serves to make it a party to this proceeding.

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

13. As modified below, we find SPP's proposed tariff revisions to be just and reasonable and not unduly discriminatory. Accordingly, we conditionally accept SPP's proposed tariff revisions to become effective March 1, 2014, as requested.

14. In Order No. 741, the Commission gave each RTO and ISO discretion to develop minimum participation criteria through their individual stakeholder processes.<sup>22</sup> Upon further consideration, we find that the minimum criteria for participation in the organized wholesale electric markets set forth in the CFTC Final Order are appropriate. The proposed tariff provisions are designed to address the requirements of the CFTC Final Order and strengthen the minimum criteria for participation in the Integrated Marketplace. Therefore, we find that the proposed tariff revisions are consistent with the requirements of Order No. 741. We also find consistent with Order No. 741 provisions in Attachment X requiring market participants to certify that they meet minimum eligibility criteria, as well as provisions communicating consequences for failing to meet the criteria. Further, SPP explains that the proposed revisions in Attachment AE section 8.2 require that bilateral settlement schedules be linked to the physical delivery of energy.

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<sup>20</sup> SPP Transmittal at 1.

<sup>21</sup> Collectively, the East Texas Cooperatives are: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

<sup>22</sup> Order No. 741, FERC Stats. & Regs. ¶ 31,317 at P 132.

15. SPP states that the proposed tariff revisions in Attachment AE regarding information requests treat requests made by the CFTC and its staff in a manner similar to requests made by the Commission and its staff. However, the insertion of the phrase “from a source other than the CFTC or its staff,” without similarly identifying the Commission or its staff, in section 11.2(3) of Attachment AE—thus effectively requiring the Market Monitor to notify parties of, e.g., subpoenas from the Commission or its staff—appears to allow for dissimilar treatment and is unjust and unreasonable.<sup>23</sup> Accordingly, we direct SPP to modify this phrase to state “from a source other than the Commission or its staff or the CFTC or its staff” in a compliance filing due 30 days from the date of this order.

The Commission orders:

SPP’s proposed tariff revisions are hereby conditionally accepted for filing, subject to a compliance filing due 30 days from the date of this order, to be effective March 1, 2014, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>23</sup> As proposed, section 11.2(3) of Attachment AE states, in part:

Upon receipt of a subpoena or other compulsory process from a source other than the CFTC or its staff for the disclosure of Confidential Information, the Market Monitor shall promptly notify the affected Disclosing Party(ies) that originally provided the data and shall provide all reasonable assistance requested by the affected Disclosing Party(ies) to prevent the disclosure, and if possible under the terms of the subpoena or other compulsory process shall not release the data until the affected Disclosing Party(ies) provide written consent or until the affected Disclosing Party(ies’) legal avenues to prevent disclosure are exhausted.

(proposed revision highlighted).

Appendix  
Southwest Power Pool, Inc. Designations—Docket No. ER13-2091-000

Southwest Power Pool, Inc.  
FERC FPA Electric Tariff  
Open Access Transmission Tariff, Sixth Revised Volume No. 1

Attachment X Article 1, Attachment X Article 1, 1.1.0

Attachment X Article 3, Attachment X Article 3, 4.1.0

Attachment X Article 4, Attachment X Article 4, 2.1.0

Attachment X Appendix E, Attachment X Appendix E, 3.0.0

Attachment AE (MPL) 1.1 C, Attachment AE (MPL) § 1.1 C, 1.1.0

Attachment AE (MPL) 8.2, Attachment AE (MPL) § 8.2, 0.3.0

Attachment AE (MPL) 11, Attachment AE (MPL) § 11, 0.1.0

Attachment AE (MPL) 11.1.5, Attachment AE (MPL) § 11.1.5, 0.1.0

Attachment AE (MPL) 11.2, Attachment AE (MPL) § 11.2, 0.1.0

Attachment AE (MPL) 11.3, Attachment AE (MPL) § 11.3, 0.1.0

Attachment AE (MPL) 11.6, Attachment AE (MPL) § 11.6, 0.1.0