

149 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Southwest Power Pool, Inc.

Docket No. ER15-21-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued December 1, 2014)

1. On October 2, 2014, Southwest Power Pool, Inc. (SPP) filed revisions to Attachment AG (Market Monitoring Plan) of its Open Access Transmission Tariff (Tariff) to improve its process for monitoring and reporting physical withholding of resource capacity. In this order, we conditionally accept SPP's proposed revisions effective March 1, 2014, as requested, subject to a compliance filing.

I. Background

2. On October 18, 2012, the Commission conditionally accepted for filing, subject to further revisions, SPP's proposal to revise its Tariff to implement its Integrated Marketplace, effective March 1, 2014.¹ As conditionally accepted in the Integrated Marketplace Order, the Integrated Marketplace includes the following major market-design components: (1) day-ahead energy and operating reserve markets; (2) day-ahead and intra-day Reliability Unit Commitment processes; (3) a real-time balancing market; (4) price-based co-optimized energy and operating reserve procurement; (5) a market-based congestion management process including a market for transmission congestion rights and allocation of auction revenue rights; (6) consolidation of 16 Balancing Authority Areas in the SPP footprint into a single Balancing Authority Area operated by SPP; (7) a Multi-Day Reliability Assessment performed prior to the day-ahead market to manage the commitment of long-start resources; and (8) market monitoring and mitigation with an internal Market Monitoring Unit (MMU). The Commission found that the proposal, as conditioned, would result in significant enhancements to how energy and

¹ *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (Integrated Marketplace Order), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013) (Integrated Marketplace Rehearing Order).

operating reserves are provided throughout the SPP region, which would result in substantial benefits to stakeholders and customers throughout the region. On March 21, 2013, the Commission granted in part and denied in part requests for clarification and/or rehearing of the Integrated Marketplace Order.²

3. After a series of compliance filings and Commission orders addressing those compliance filings, the Commission found that SPP satisfied the outstanding compliance directives necessary to commence the Integrated Marketplace.³ On March 1, 2014, SPP commenced Integrated Marketplace operations.

II. SPP Filing

4. SPP explains that its current process for monitoring physical withholding of resource capacity generally aims to identify behavior by which a market participant intends to increase price by withholding generating capacity that relieves a congested transmission constraint. SPP adds that the process involves an automated screen of market data for potential physical withholding followed by analysis performed by SPP's MMU aiming to identify market power abuse. SPP states that it has determined that the physical withholding monitoring and reporting process in the Tariff is too broad to provide the MMU with information that is meaningful for purposes of identifying physical withholding.

5. SPP proposes four revisions to Attachment AG of its Tariff related to monitoring and reporting physical withholding. First, SPP proposes to add a new condition to the current list of conditions that the MMU uses to identify instances of physical withholding. Specifically, SPP proposes that a resource will not be found to be physically withholding unless the withheld capacity impacts prices or make whole payments in excess of an amount specified by a Market Impact Test, defined in Attachment AF (Market Power Mitigation Plan) of its Tariff.⁴ Second, SPP proposes that resources off-dispatch must exceed the Resource Operating Tolerance (i.e., uninstructed deviation charge threshold) to be considered the subject of a potential physical

² Integrated Marketplace Rehearing Order, 142 FERC ¶ 61,205 at P 15.

³ *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224 (2013); *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,050 (2014); *Southwest Power Pool, Inc.*, 147 FERC ¶ 61,212 (2014).

⁴ Proposed SPP Tariff, Attachment AG § 4.6.4.1.1(c). The Market Impact Test in Attachment AF will increase on a graduated scale until it reaches \$25/MWh. SPP Tariff, Attachment AF § 3.7.

withholding inquiry. SPP states that the changes would apply to resources both inside and outside of Frequently Constrained Areas.⁵ SPP states that the proposed revisions will focus the screening process on circumstances involving resources with local market power, potential price impacts, and potential impacts to make-whole payments. SPP adds that, without these changes, the screen fails to narrow the focus to the market participants that have the ability and incentive to abuse market power.

6. Third, SPP proposes to exempt Variable Energy Resources (VERs) from the physical withholding process for the day-ahead market. SPP explains that the output of VERs cannot be known with certainty at the time the day-ahead market offer period closes. SPP contends that, since the commencement of the Integrated Marketplace, the accuracy of the day-ahead wind forecast has not been sufficient for identifying potential physical withholding that could be categorized as an unverifiable derate or an outage. SPP adds that the circumstances are similar for non-wind VERs and SPP does not have a forecast for such resources. SPP states that this exclusion does not preclude the MMU from bringing to the Commission other suspected forms of market power abuse involving VERs in the day-ahead market.

7. Finally, SPP states that it is proposing to revise the requirement to report all screen failures to the Commission. Under the proposal, the MMU must report all suspected physical withholding after it has analyzed the screen failures of potential instances of physical withholding.⁶ SPP states that this change in no way precludes the MMU from bringing to the Commission any other suspected instances of market power abuse.

8. SPP requests waiver of the Commission's regulations to permit a March 1, 2014, effective date, which is the date the Integrated Marketplace commenced operations. SPP

⁵ SPP's Tariff defines Frequently Constrained Areas in section 3.1.1 of Attachment AF as follows:

[E]lectrical area identified by the Market Monitor that is defined by one or more binding transmission constraints or binding Reserve Zone constraints that are expected to be binding for at least five-hundred (500) hours during a given twelve (12)-month period and within which one (1) or more suppliers are pivotal. All Frequently Constrained Areas shall be listed in Addendum 1 of this Attachment AF. Any new or modifications to existing Frequently Constrained Areas are subject to prior Commission approval.

⁶ The MMU's analysis evaluates the verifiability of technical issues at the facility as well as the economic incentives of the market participant.

states that events and related information dating back to the commencement of the Integrated Marketplace remain subject to MMU review. Thus, for purposes of consistency and a more focused review by the MMU, SPP requests a March 1, 2014, effective date so that such data will be subject to the revised standards proposed in the filing.

III. Notice of Filing, Interventions and Protest

9. Notice of SPP's filing was published in the *Federal Register*, 79 Fed. Reg. 61,073 (2014), with interventions and protests due on or before October 23, 2014.

10. The following entities filed timely motions to intervene: Exelon Corporation; American Electric Power Service Corporation; Sunflower Electric Power Corporation; and Flat Ridge 2 Wind Energy LLC. Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and the City of Independence, Missouri (collectively, TDU Intervenors) filed a timely motion to intervene and protest. On November 13, 2014, the MMU filed a motion to intervene out of time and an answer to comments.

11. TDU Intervenors state that they appreciate SPP's goal to improve the efficiency of its market monitoring process and focus resources on activities most likely to be actual instances of physical withholding. TDU Intervenors note that SPP's proposal will reduce the number of situations that the MMU must investigate, by reducing the number of false positives produced by the automatic screens. TDU Intervenors do not object to certain of SPP's proposed changes, specifically, the proposals to apply a Resource Operating Tolerance to real-time deviations and to exempt VERs.

12. However, TDU Intervenors raise concerns regarding the other two aspects of SPP's proposal, stating that they will increase the risk that actual instances of physical withholding will go undetected and that SPP has not demonstrated that those aspects of its proposal will adequately protect consumers. TDU Intervenors assert that applying the Market Impact Test to physical withholding may be unjust and unreasonable and that SPP has failed to demonstrate its proposal to reduce the information the MMU reports to the Commission is just and reasonable.

13. TDU Intervenors state that SPP proposes to apply a Market Impact Test, which SPP has only applied to economic withholding, to physical withholding. TDU Intervenors observe that, under SPP's current Tariff, economic bids that fail a conduct test will only be mitigated if the market price, LMP, or make-whole payment without mitigation would exceed the corresponding price with mitigation by the impact test

threshold of \$10/MWh and will increase to \$25/MWh.⁷ TDU Intervenors argue that SPP has not shown that it is just and reasonable to apply the same type of impact thresholds to detect physical withholding.

14. TDU Intervenors state that physical withholding usually involves a market participant engaging in intentional and deceitful actions to exercise market power and includes behavior such as falsely declaring a derate or forced outage for a resource, operating a transmission facility to deliberately create a binding transmission constraint or local reliability issue, and deliberately producing less power in real-time than directed by the dispatch instruction.⁸ TDU Intervenors believe that, because physical withholding involves deliberate actions to exercise market power, SPP should continue to be vigilant about detecting and deterring physical withholding.

15. TDU Intervenors argue that applying the Market Impact Test to physical withholding may result in actual instances of physical withholding going undetected and unpunished. TDU Intervenors state that, under SPP's proposal, a market participant will not be found to be physically withholding even if it falsely declares a resource to be on a forced outage with the intent to increase prices, so long as the resulting price increase is less than \$25/MWh. TDU Intervenors assert that, on a market-wide basis, a \$25/MWh price increase is not trivial for ratepayers, and SPP has not demonstrated that its proposal produces just and reasonable rates.⁹

16. TDU Intervenors claim that, at a minimum, SPP has not demonstrated that the administrative benefits of applying the Market Impact Test outweigh the increased risk of market abuse going undetected. TDU Intervenors argue that SPP has not shown that applying the Market Impact Test to physical withholding is necessary. In particular, TDU Intervenors posit that applying the Resource Operating Tolerance to underdeliveries and exempting VERs may sufficiently reduce the number of screen failures that the MMU must analyze and that it would be more appropriate to assess the impact of these two reforms before considering whether it is necessary to apply another limiting factor in the form of the Market Impact Test to physical withholding. TDU Intervenors request that the Commission reject SPP's proposal to apply the Market Impact Test to physical withholding, without prejudice.

⁷ TDU Intervenors Protest at 7 n.8 (citing SPP Tariff, Attachment AF § 3.7).

⁸ *Id.* at 8 (citing Proposed SPP Tariff, Attachment AG §§ 4.6.4(a)-(f)).

⁹ *Id.* (citing *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984); *Cal. ex rel. Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004)).

17. TDU Intervenors further argue that SPP should be required to continue reporting all physical withholding screen failures to the Commission. TDU Intervenors state that, taken together, SPP's proposed revisions would (1) remove three categories of physical withholding (real-time deviations under the Resource Operating Tolerance, VERs, and withholding that does not pass the Market Impact Test) from its automatic screens, thus reducing the number of screen failures and number of situations reported to the Commission, and (2) require that the MMU report only those situations that the MMU considers to be "suspected physical withholding."¹⁰

18. TDU Intervenors express their concern that SPP's proposal too narrowly circumscribes the Commission's independent ability to assess potential exercise of market power by physical withholding. TDU Intervenors propose instead that the MMU should continue reporting all screen failures, but it should flag for the Commission those instances that the MMU suspects of being physical withholding. TDU Intervenors assert that the Commission would be able to make an independent assessment of which instances of screen failures are likely to be physical withholding, while still benefiting from the MMU's assessment.

19. The MMU responds to TDU Intervenors by stating that all the proposed Tariff revisions will make the monitoring for physical withholding more efficient and that narrowing the criteria will enable the MMU to more effectively identify market power abuse. The MMU states that since the commencement of the Integrated Marketplace, the MMU receives over 100 instances of potential physical withholding each day and that each instance must be analyzed to determine if it constitutes market power abuse. The MMU states that the proposed revisions clarify that the identification of potential physical withholding required not only an automated screen failure, but also MMU analysis.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motion to intervene of the MMU given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

¹⁰ *Id.* at 9 (citing Proposed SPP Tariff, Attachment AG § 4.6.4.3).

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the MMU's answer because it provides information that assisted the Commission in its decision-making process.

B. Substantive Matters

22. We conditionally accept the proposed Tariff revisions effective March 1, 2014, as requested. First, we find that SPP has not supported its proposal to add a Market Impact Test to the list of thresholds that the MMU uses to identify potential physical withholding. The Commission has previously ruled that using an impact test to identify potential physical withholding that is reported to the Commission is overly limiting.¹¹ Because SPP has not shown how its proposal addresses the Commission's concerns about the overly limiting nature of an impact test, we reject this proposed change. We direct SPP to submit a compliance filing within 30 days from the date of this order, removing the Market Impact Test from the list of thresholds that the MMU uses to identify potential physical withholding.¹²

23. Second, we find that SPP's proposal to clarify that resources operating within their respective Resource Operating Tolerance ranges will not be subject to a potential physical withholding inquiry is reasonable. We agree with SPP's reasoning that generator output routinely varies given the physical properties of the equipment. This variation within a resource's Resource Operating Tolerance, as defined in the Tariff, is unlikely to constitute an attempt to physical withhold capacity.

24. Third, we find SPP's proposal to except VERs from the physical withholding screens is reasonable because, as noted by SPP, a VER's output cannot be known with certainty in advance. As such, it would be reasonable to not consider VER generation that deviates from its day-ahead schedule, which is based on a forecast, as an act of physically withholding capacity. Finally, we find that SPP's proposal to have the MMU report to the Commission only suspected physical withholding instead of all screen failures is reasonable. The MMU will evaluate the screen failures by, among other things, discussing the circumstances with the market participants and report to the Commission only those screen failures that may constitute suspected physical withholding. We disagree with TDU Intervenors that all automated screen failures warrant Commission attention and resources. We are interested in the subset of automated screen failures that the MMU finds to constitute potential physical

¹¹ *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224 at P 379.

¹² Proposed SPP Tariff, Attachment AG § 4.6.4.1.

withholding. We emphasize that the MMU must still bring to the Commission any other suspected instance of Market Violations, as defined in section 35.28 of the Commission's regulations,¹³ and consistent with the SPP Tariff.¹⁴

25. Moreover, we grant the requested effective date for good cause shown.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby conditionally accepted for filing, effective March 1, 2014, as requested, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ 18 C.F.R. § 35.28(g)(3)(ii)(C) (2014). "Market Violation means a tariff violation, violation of a Commission approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies." 18 C.F.R. § 35.28(b)(8) (2014).

¹⁴ Proposed SPP Tariff, Attachment AG § 3.7.