

149 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Eric S. Morris

Docket No. EL14-85-000

v.

Southwest Power Pool, Inc.

ORDER DISMISSING COMPLAINT

(Issued December 5, 2014)

1. In this order, we dismiss a complaint filed on July 31, 2014 by Mr. Eric S. Morris against Southwest Power Pool, Inc. (SPP).¹ As discussed below, the Complaint fails to satisfy the requirements of Rule 206 of the Commission's Rules of Practice and Procedure.² Mr. Morris similarly has failed to submit a pleading that meets the Commission's filing requirements contained in Rule 203.³

¹ Complaint, Docket No. EL14-85-000, filed July 31, 2014 (Complaint). The Complaint does not provide page or paragraph numbers. Therefore, we refer to the page numbers attributed by the Portable Document Format version on the Commission's website.

² 18 C.F.R. § 385.206 (2014).

³ 18 C.F.R. § 385.203 (2014).

I. Complaint

2. The Complaint alleges that SPP has violated Paragraph 472 of Order No. 890 and Paragraph 864 of Order No. 890-A.⁴ Specifically, Mr. Morris claims that, from 2009 to 2014, SPP failed to comply with the Commission's requirement that transmission providers make an annual informational filing on any unreserved use and late study penalties imposed. Mr. Morris requests that the Commission clarify whether it requires transmission providers to submit these filings on an annual basis or only once a transmission provider has identified unreserved use and plans to distribute unreserved use penalties.

3. Mr. Morris also alleges that SPP potentially has failed to properly implement and enforce its Open Access Transmission Tariff (Tariff) sections 13.7(c) and 14.5, which impose penalties for using the SPP transmission system without, or in excess of, a valid transmission service reservation. Mr. Morris cites to various Commission proceedings that he believes involve unreserved use penalties, and he expresses disbelief that these cases represent the only times since 2009 that SPP's transmission system has experienced unreserved use.⁵ Mr. Morris alleges that SPP either has never attempted to determine systematically and methodically whether there is unreserved use, or it has found instances, but decided they were too administratively burdensome to pursue.

4. Mr. Morris further asserts that, if his contention that SPP never attempted to determine systematically and methodically all instances of unreserved use of its system is true, then SPP's attempts to impose penalties against Midcontinent Independent System Operator, Inc. (MISO) in Docket Nos. EL14-21, ER14-1174, EL11-34, and EL14-30 violate the Commission's prohibitions against energy market manipulation. Mr. Morris argues that SPP's actions have had an effect on electricity prices. In turn, Mr. Morris avers that he is "potentially affect[ed]" by "higher energy prices and having to pay unreserved use charges."⁶

⁴ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). The Complaint inverts the paragraph numbers referenced for Order Nos. 890 and 890-A, which we correct here.

⁵ Complaint at 1 (citing Docket Nos. EL14-57, EL14-21, ER14-1174, EL11-34, EL14-30, and ER13-1032).

⁶ *Id.* at 2.

II. Notice of Filings and Responsive Pleadings

5. Notice of the Complaint was published in the *Federal Register*,⁷ with interventions and protests due on or before August 20, 2014. SPP filed an answer to the Complaint on August 20, 2014.

III. SPP's Answer

6. SPP requests that the Commission dismiss the Complaint because Mr. Morris failed to establish standing and failed to comply with the basic requirements of Rules 203 and 206 of the Commission's Rules of Practice and Procedure.⁸ To the extent that the Commission does not dismiss the Complaint, SPP requests that the Commission deny the Complaint as speculative and unsupported.⁹

7. SPP asserts that the Complaint fails to satisfy the basic procedural requirements of Rule 206 to establish standing because it does not allege or demonstrate that Mr. Morris is a customer of SPP or that he is financially affected in any way by SPP's alleged failure to assess unreserved use charges under the SPP Tariff.¹⁰ SPP further states that, as a non-customer of SPP, Mr. Morris fails to demonstrate how he is adversely affected by SPP's alleged failure to assess additional unreserved use charges.¹¹ Rather, SPP alleges, Mr. Morris provides the "unsupported and speculative statement" that he potentially may be affected by higher energy prices and may have to pay unreserved use charges.¹² SPP counters that there is nothing in the Complaint that indicates that Mr. Morris would be subjected to any higher rate as a result of SPP's assessment of unreserved use charges on

⁷ 79 Fed. Reg. 46,790 (2014).

⁸ Answer of Southwest Power Pool, Inc., Docket No. EL14-85-000, at 2, filed Aug. 20, 2014.

⁹ *Id.* at 1.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4 (citing *Cont'l Res., Inc. v. Bridger Pipeline, LLC*, 113 FERC ¶ 61,178, at P 8 (2005); *R. Gordon Gooch v. Colonial Pipeline Co.*, 142 FERC ¶ 61,220, at PP 14-15 (2013); *Southern Union Gas Co. v. Northern Natural Gas Co.*, 71 FERC ¶ 61,198, at 61,717 (1995)).

¹² *Id.* at 4-5.

MISO. In addition, SPP argues that issues addressing SPP's unreserved use charges on MISO should be raised in the pending proceeding in Docket No. EL14-21.¹³

8. SPP further contends that Mr. Morris has not made a good faith effort to quantify the financial impact or burden created for himself as a result of the alleged action, as required by Rule 206(b)(4). SPP criticizes Mr. Morris for merely stating that the financial impact or burden "will have to be determined through discovery."¹⁴

9. SPP also claims that Mr. Morris fails to satisfy Rule 206(b)(9) because he did not state sufficiently whether he used alternative dispute resolution or other informal procedures or provide reasons for failing to use them. SPP contends that the Commission should dismiss the Complaint to send a clear message that individuals may not abuse the complaint process by not using informal methods before bringing issues to the Commission.¹⁵

10. SPP states that Mr. Morris similarly fails to comply with Rule 203, and the Complaint should be dismissed for failure to include relevant facts and "the basis in fact and law for [complainant's] position."¹⁶

11. SPP also argues that the Complaint should be denied because its allegations are unsupported. SPP states that Mr. Morris cites no facts warranting a Commission investigation.¹⁷ SPP concludes that the fact that SPP did not submit an annual report of unreserved use charges and distribution until 2014 and that SPP has only imposed penalties in three "big ticket" cases is not sufficient evidence to support Mr. Morris's claims that SPP is violating the Commission's orders and the SPP Tariff.¹⁸ SPP challenges Mr. Morris's assertion that it is "highly unlikely" that other instances of unreserved use have not occurred, stating that market participants are aware of the requirements to reserve and pay for transmission service, and the Commission would have imposed harsher requirements than the unreserved use penalties if it had expected

¹³ *Id.* at 5.

¹⁴ *Id.* at 6 (quoting Complaint at 3).

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 8-9.

rampant unreserved use.¹⁹ SPP states that Mr. Morris's bald assumption that there must be other unreserved use is no substitute for actual evidence.²⁰

12. SPP disputes Mr. Morris's claim that SPP has engaged in market manipulation, stating that SPP is required by law to enforce its Tariff, which includes enforcing the unreserved use provision. SPP notes that Mr. Morris argues, without evidence, that SPP is not enforcing its unreserved use provisions, while simultaneously arguing that enforcement of SPP's Tariff constitutes market manipulation.

IV. Commission Determination

13. The Commission's Rules of Practice and Procedure require a complaint to meet certain minimum requirements. Specifically, Rule 203 requires that all pleadings filed with the Commission must contain the "relevant facts,"²¹ and the "position taken by the participant . . . and the basis in fact and law for such position."²² In addition, Rule 206 requires that a complaint must "[m]ake a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction[.]"²³ Furthermore, Rule 206 provides that a complainant must state whether the complainant has used certain informal dispute resolution procedures, the reasons they were not used (if applicable), whether the complainant believes that alternative dispute resolution could successfully resolve the complaint, what types of procedures could be used, and any process that has been agreed on to resolve the complaint.²⁴

¹⁹ *Id.* at 9.

²⁰ *Id.* at 10. SPP states that it has "identified a few other instances of unreserved use for which penalties *were* assessed but may not have been reported to the Commission. SPP will separately address elsewhere its failure to report these few instances." *Id.* at 10 n.21 (emphasis in original). We anticipate that SPP will fulfill its commitment, using the mechanism to distribute penalty revenues collected by SPP for unreserved use, which was accepted in Docket No. ER14-596. *Southwest Power Pool, Inc.*, Docket No. ER14-596-000 (Jan. 14, 2014) (delegated letter order).

²¹ 18 C.F.R. § 385.203(a)(6) (2014).

²² 18 C.F.R. § 385.203(a)(7) (2014).

²³ 18 C.F.R. § 385.206(b)(4) (2014).

²⁴ 18 C.F.R. § 385.206(b)(9) (2014).

14. We agree with SPP that Mr. Morris has failed to satisfy the requirements under our rules to sustain the Complaint. Specifically, we find that Mr. Morris has failed to provide sufficient relevant facts, as required by Rule 203(a)(6). Mr. Morris alleges that SPP failed to make annual report filings, determine if there is any unreserved use on its system, or assess penalties for unreserved use. Instead of providing relevant facts to support these allegations, Mr. Morris concludes that “it seems highly unlikely” that the proceedings in Docket Nos. EL14-57, EL14-21, ER14-1174, EL11-34, EL14-30, and ER13-1032 are the only times since 2009 that SPP has experienced unreserved use.²⁵ Further, Mr. Morris “suggest[s] the absence of evidence imposing these penalties on members” demonstrates that SPP has failed to determine instances of unreserved use.²⁶ These allegations are insufficient to sustain the Complaint against SPP. Similarly, we find that Mr. Morris has failed to provide a sufficient basis in fact or law for his position, as required by Rule 203(a)(7), and only has provided speculative allegations of SPP’s failure to identify unreserved use and assess penalties.²⁷

15. Given the deficiencies in the Complaint, we dismiss the Complaint for failure to comply with the Commission’s Rules of Practice and Procedure. Because we dismiss the Complaint, we will not address other issues raised in the Complaint.

²⁵ Complaint at 1.

²⁶ *Id.*

²⁷ The Complaint fails for other reasons as well. For example, Mr. Morris did not provide a sufficient quantification of any financial impact or burden created for Mr. Morris as a result of the alleged action, as required by Rule 206(b)(4). Instead, he states that SPP’s alleged violations potentially affect him in “higher energy prices and having to pay unreserved use charges” and that any financial impact or burden “will have to be determined through discovery.” *Id.* at 2-3. In addition, Mr. Morris failed to explain (1) whether he believes that alternative dispute resolution under the Commission’s supervision could successfully resolve the complaint; or (2) what types of alternative dispute resolution procedures could be used, as required by Rule 206(b)(9). Mr. Morris also failed to provide a principal place of business, as required by Rule 203(b)(2), and contact information for the purposes of service, as required by Rule 203(b)(3).

The Commission orders:

The Complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.