

150 FERC ¶ 61,047
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. ER15-509-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued January 23, 2015)

1. On November 26, 2014, pursuant to section 205 of the Federal Power Act (FPA),¹ Southwest Power Pool, Inc. (SPP) submitted proposed revisions to Attachment Y of its Open Access Transmission Tariff (Tariff) to refine processes related to its Transmission Owner Selection Process. In this order, we conditionally accept SPP's proposed Tariff revisions, subject to certain compliance requirements, as discussed below.

I. Background

2. SPP states that, in response to Order No. 1000,² it established a competitive bidding process,³ through which it will select, from competing responses to SPP-issued requests for proposals, qualified entities to construct, own, and operate new SPP-approved transmission facilities that qualify as "Competitive Upgrades."⁴ Under SPP's

¹ 16 U.S.C. § 824d (2012).

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, No. 12-1232, 2014 WL 3973116 (D.C. Cir. Aug. 15, 2014).

³ SPP calls its competitive bidding process the Transmission Owner Selection Process. Transmittal at 4.

⁴ The criteria for Competitive Upgrades are set forth in section I of Attachment Y of the SPP Tariff. *See* SPP Tariff, Attachment Y, § I.1-2. SPP states that, in general, Competitive Upgrades include, subject to certain limitations set forth in Order No. 1000 and the Tariff, new transmission facilities approved through SPP's regional transmission

(continued...)

competitive bidding process, SPP will issue a request for proposals for transmission facilities that have been selected in its regional transmission plan for purposes of cost allocation as Competitive Upgrades.⁵ Entities that have qualified under the Tariff qualification criteria may submit a bid in response to a request for proposals.⁶ SPP's Industry Expert Panel then evaluates the submitted bids using a scoring system, which awards points based on the following aspects of each bid: (1) engineering design; (2) project management; (3) operations; (4) rate analysis; and (5) finance. A transmission developer is also eligible for incentive points if it proposed the selected transmission project.⁷ The Industry Expert Panel recommends a transmission developer to the SPP Board, which ultimately selects the winning bid.⁸ The developer that submitted the winning bid becomes the Designated Transmission Owner, and SPP issues the Designated Transmission Owner a Notification to Construct the transmission project.⁹

II. SPP's Filing

3. SPP explains that, in the course of developing the business practices and procedures to implement its Transmission Owner Selection Process and related processes, SPP and its stakeholders identified several refinements to enhance flexibility for participants while allowing SPP to continue to ensure that its processes result in the promotion of more efficient, cost-effective, timely, and reliable transmission development. In addition, SPP states that it has identified errors in certain of its Tariff

planning process whose costs are allocated partially or totally on a postage-stamp basis across the SPP footprint. Transmittal at 2 n.3. The Commission issued orders conditionally accepting SPP's first and second Order No. 1000 regional compliance filings on July 18, 2013 and October 16, 2014. *See Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013) (First Compliance Order), *order on reh'g and compliance*, 149 FERC ¶ 61,048 (2014) (Second Compliance Order). SPP has a third Order No. 1000 regional compliance filing currently pending before the Commission in Docket No. ER13-366-004, *et al.*, which the Commission will address in a separate order.

⁵ SPP Tariff, Attachment Y, § III.2.a.

⁶ *Id.* § III.2.d.i.

⁷ *Id.* § III.2.f.

⁸ *Id.* § III.2.d.vii.

⁹ *Id.* § V.1-2.

provisions. SPP proposes to revise its Tariff to refine processes related to the Transmission Owner Selection Process and correct these errors.¹⁰

A. Assignment

4. SPP proposes changes to its Tariff to allow a Designated Transmission Owner that has been issued a Notification to Construct for a Competitive Upgrade to assign that Notification to Construct to an affiliate.¹¹ Currently, the Tariff prohibits a Designated Transmission Owner from being able to assign its rights and obligations to build a Competitive Upgrade to another entity.¹² SPP states that its proposal allows, at any time after accepting a Notification to Construct, a Designated Transmission Owner for a Competitive Upgrade to assign the Notification to Construct to an affiliate, provided that the affiliate is adjudged by SPP to satisfy SPP's qualification criteria and provided that other conditions are met. SPP argues that this proposal is just and reasonable because it provides flexibility to Designated Transmission Owners to structure their business arrangements in a manner to comply with regulatory, tax, financial, or other requirements that may arise, without compromising SPP's ability to ensure that any affiliate assignee is qualified and capable of completing the Competitive Upgrade, while retaining appropriate limitations on assignments.¹³

5. SPP proposes that, to assign a Notification to Construct for a Competitive Upgrade to an affiliate, the Designated Transmission Owner must have declared in its response to the request for proposal "its intent to seek to assign the Competitive Upgrade" if selected as the Designated Transmission Owner.¹⁴ According to SPP, this provision is necessary so that SPP and the Industry Expert Panel have notice that a bidder may assign the Competitive Upgrade if selected as the Designated Transmission Owner.¹⁵

¹⁰ Transmittal at 2.

¹¹ The Tariff defines affiliate as follows: "With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity." *Id.* at 13 n.40 (citing SPP Tariff § 1 (A – Definitions)).

¹² *Id.* at 12. SPP Tariff, Attachment Y, § III.2.d.xi.

¹³ Transmittal at 13.

¹⁴ SPP Tariff, Attachment Y, § VII.2.a.

¹⁵ Transmittal at 13.

6. SPP also proposes the following requirements for a Designated Transmission Owner that wishes to assign a Notification to Construct for a Competitive Upgrade to an affiliate: (1) the affiliate must be formed prior to approval of the assignment;¹⁶ (2) the affiliate has provided express written agreement that it will be bound by all aspects of the request for proposal and the Notification To Construct, including but not limited to being bound to the annual transmission revenue requirement set forth in the request for proposal or a lesser annual transmission revenue requirement;¹⁷ (3) the affiliate meets the financial requirements as specified in the Tariff;¹⁸ (4) the affiliate has signed or is capable and willing to sign the SPP Membership Agreement as a Transmission Owner;¹⁹ (5) the affiliate meets such other qualifications as specified in the relevant section of the Tariff;²⁰ (6) prior to starting its construction activity, the affiliate must have obtained all state regulatory authority necessary to construct, own, and operate transmission facilities within the state(s) where the project is located;²¹ (7) if, at any time, any of the conditions on assignments ceases to be satisfied, SPP can withdraw the Notification to Construct and

¹⁶ SPP Tariff, Attachment Y, § VII.2.b. SPP states that this provision is critical because it allows SPP to know the identity of the entity that will assume responsibility for the Competitive Upgrade. Transmittal at 14 n.45.

¹⁷ SPP Tariff, Attachment Y, § VII.2.c. SPP states that this provision is necessary to ensure that the assignment is achieved on terms comparable to and no less favorable than the original terms of the Competitive Upgrade as approved by the SPP Board of Directors, and that any such assignment does not negatively impact ratepayers, incumbent transmission owners (who may be relying on the Competitive Upgrade to satisfy reliability or state-imposed service requirements), other stakeholders, or system reliability and integrity. Transmittal at 14 n.46.

¹⁸ SPP Tariff, Attachment Y, § VII.2.d. This provision references the financial requirements in section III.1.b.ii of Attachment Y, which outlines the financial qualification requirements a transmission developer must meet to qualify to submit a bid in response to a request for proposals.

¹⁹ *Id.* § VII.2.e.

²⁰ *Id.* § VII.2.f. This provision references section III.1.b of Attachment Y, which outlines all the qualification requirements a transmission developer must meet to qualify to submit a bid in response to a request for proposals.

²¹ *Id.* § VII.2.g.

reevaluate the Competitive Upgrade;²² and (8) any assignment shall be subject to the approval of the SPP Board.²³

7. SPP contends that, because the affiliate may rely upon the same personnel and resources that the Designated Transmission Owner relied upon in its bid, the proposed Tariff language allows a Designated Transmission Owner to request that SPP rely on the information that the Designated Transmission Owner provided in its bid in evaluating the proposed assignment.²⁴ Finally, SPP states that it proposes Tariff language to make clear that SPP's approval of an assignment does not relieve the original Designated Transmission Owner from its obligations if the assignee fails to perform.²⁵

B. Joint Proposals

8. SPP proposes changes to its Tariff to provide explicitly that entities can join together to submit bids for Competitive Upgrades, and to ensure that SPP receives the information it needs to evaluate such joint proposals. SPP asserts that the Tariff is currently ambiguous regarding whether multiple parties may jointly submit a bid to develop a Competitive Upgrade and asserts that the proposed revisions provide greater flexibility to participants to structure their proposals and facilitate participation by smaller entities that may lack the resources or capability to develop bids on their own, by enabling them to pair with other entities (large or small) to compete in the Transmission Owner Selection Process.²⁶

²² *Id.* SPP states that this provision ensures that SPP has a mechanism to enforce these requirements after the assignment has been consummated, and enables SPP to rescind a Notification to Construct if necessary due to any failures of the original Designated Transmission Owner or affiliate to satisfy the conditions for assignments. Transmittal at 14 n.48.

²³ SPP Tariff, Attachment Y, § VII.3. SPP states that the requirement to obtain approval by the SPP Board will now also apply to an incumbent transmission owner's existing right to assign other (non-Competitive Upgrade) transmission projects constructed by incumbent transmission owners. Transmittal at 14 n.47 (citing SPP Tariff, Attachment Y, § IV).

²⁴ Transmittal at 15 (citing SPP Tariff, Attachment Y, § VII.2).

²⁵ *Id.* (citing SPP Tariff, Attachment Y, § VII.4).

²⁶ *Id.* at 5 (citing SPP Tariff, Attachment Y, § III.2.a.i, III.2.a.ii, III.2.a.ii.3).

9. To allow multiple parties to jointly submit a bid in response to a request for proposals, SPP proposes to create two new types of bids—Joint RFP Proposals and Multi-Owner RFP Proposals. SPP states that a Joint RFP Proposal is a proposal that involves two or more qualified transmission developers that each will be a Designated Transmission Owner for portions of the Competitive Upgrade if the proposal is chosen.²⁷ SPP states that a Multi-Owner RFP Proposal is a proposal that involves more than one entity, at least one of which must be a qualified transmission developer that will be the Designated Transmission Owner for the Competitive Upgrade if the proposal is chosen.²⁸ To implement these two new proposal types, SPP also proposes to define two types of entities that can be part of a bid made in response to a request for proposals—a Competitive Upgrade Participant and an RFP Respondent. Under the proposal, a Competitive Upgrade Participant is an entity that has signed or will sign the SPP Membership Agreement as a Transmission Owner that proposes to participate in a Competitive Upgrade but that will not be the Designated Transmission Owner for the Competitive Upgrade; an RFP Respondent is a qualified transmission developer involved in the submission of an RFP Proposal that proposes to be the Designated Transmission Owner for all or part of a Competitive Upgrade.²⁹

10. SPP also proposes to adopt several additional information requirements and other provisions for Joint RFP Proposals and Multi-Owner RFP Proposals to assist SPP in reviewing such proposals and ensuring that the responsible parties are capable of fulfilling all of the obligations for a Competitive Upgrade.³⁰ SPP proposes to require that a Joint RFP Proposal: (1) clearly and specifically identify each RFP Respondent's respective roles and responsibilities (as well as each RFP Respondent's respective percentage of responsibility) for finance, construction, ownership, operation, maintenance, and restoration of the Competitive Upgrade; (2) specify each RFP Respondent's qualifications and responsibilities for satisfying the requirements set forth in the request for proposals and demonstrate that each RFP Respondent possesses the necessary financial strength for the Competitive Upgrade; and (3) provide any agreements between or among the RFP Respondents governing the division of roles and responsibilities.³¹ Further, SPP proposes to require that each RFP Respondent participating in a Joint RFP Proposal acknowledge and agree that they each shall be

²⁷ *Id.* (citing SPP Tariff, Attachment Y, § III.2.a.i).

²⁸ *Id.* (citing SPP Tariff, Attachment Y, § III.2.a.ii).

²⁹ *Id.* at 6 (citing SPP Tariff, Attachment Y, § II).

³⁰ *Id.* at 7-9 (citing SPP Tariff, Attachment Y, § III).

³¹ SPP Tariff, Attachment Y, § III.2.c.xiii.

jointly and severally liable for all aspects of finance and construction of the Competitive Upgrade,³² and that the RFP Respondents identify a single point of contact who will represent all RFP Respondents in any communication with the Industry Expert Panel or SPP.³³ SPP proposes that Multi-Owner RFP Proposals shall provide sufficient detail to enable a thorough evaluation of the RFP Proposal, including information regarding: (1) the identity of each RFP Respondent and Competitive Upgrade Participant; (2) any division of ownership of or interest in the Competitive Upgrade; (3) any agreements between or among the RFP Respondents and Competitive Upgrade Participants regarding the ownership of or interest in the Competitive Upgrade sufficient to establish the ability of the RFP Respondent(s) to perform the obligations of a Designated Transmission Owner; and (4) the timing of any transfer of ownership or interest.³⁴ SPP also proposes to include a requirement that the RFP Respondent acknowledge and agree that notwithstanding any defaults of any Competitive Upgrade Participant on its obligations under any participation agreements, the RFP Respondent is responsible for all aspects of the Competitive Upgrade.³⁵ Further, SPP proposes a requirement that each RFP Respondent and Competitive Upgrade Participant shall agree to execute the SPP Membership Agreement as a Transmission Owner.³⁶

11. In addition, SPP proposes revisions to the RFP financial requirements and incentive point provisions for Detailed Project Proposals to accommodate Joint RFP Proposals and Multi-Owner Proposals.³⁷ SPP proposes that if a Competitive Upgrade Participant intends to file a revenue requirement for inclusion in the Tariff then it must comply with all financial information requirements. SPP also proposes that each response to a request for proposals must include an itemized revenue requirement calculation for each RFP Respondent and each Competitive Upgrade Participant that intends to recover its revenue requirements under the Tariff.³⁸ SPP also proposes that each response to a request for proposals must provide information to demonstrate that each RFP Respondent and applicable Competitive Upgrade Participant satisfies the

³² *Id.* § III.2.c.xiv.

³³ *Id.* § III.2.c.xv.

³⁴ *Id.* § III.2.c.xvi.

³⁵ *Id.* § III.2.c.xvii.

³⁶ *Id.* § III.2.c.xviii.

³⁷ Transmittal at 10-12 (citing SPP Tariff, Attachment Y, § III.2.c.v-vi & III.2.c.x).

³⁸ SPP Tariff, Attachment Y, § III.2.c.v.1.

financial strength requirements under the Tariff.³⁹ SPP proposes to revise its provisions regarding incentive points for Detailed Project Proposals to provide that regardless of how many participants are involved, a response to a request for proposals will be entitled to a maximum of 100 incentive points.⁴⁰

C. Response Window

12. SPP proposes to lengthen from 90 days to 180 days the amount of time after the date it issues a request for proposals that bids are due.⁴¹ However, SPP also proposes language stating that it may shorten the due date for bids to no less than 90 days based on, but not limited to, the Competitive Upgrade's need date or scope.⁴² SPP states that it is proposing these changes in response to stakeholders that expressed concern that 90 days may not afford sufficient time for the preparation and submission of a complete proposal. SPP asserts that these revisions are just and reasonable and should be accepted because they provide additional flexibility to entities wishing to submit bids while providing SPP with discretion to shorten response periods when necessary to ensure that approved Competitive Upgrades are completed in a timely manner to maintain reliable system operations.⁴³

D. Financial Strength Demonstration

13. SPP proposes to revise its existing alternative financial strength requirements to provide that, rather than requiring that an entity responding to a request for proposals secure financing in the form of a letter of credit or performance bond for 30 percent of the total cost of the competitive upgrade at the proposal stage, SPP will accept "conclusive evidence" of the respondent's ability to obtain financing in the form of a letter of credit or performance bond at the proposal stage.⁴⁴ For purposes of this requirement, SPP proposes that "conclusive evidence" shall mean a letter from a bonding agent or bank indicating approval of or willingness to provide the required performance

³⁹ *Id.* § III.2.c.vi.

⁴⁰ *Id.* § III.2.f.iv.

⁴¹ *Id.* § III.2.c.xix.

⁴² *Id.*; Transmittal at 15-16.

⁴³ Transmittal at 15-16.

⁴⁴ SPP Tariff, Attachment Y, § III.2.c.vi.2-3.

bond or letter of credit to the respondent.⁴⁵ Further, SPP proposes to specify what constitutes a lending or bonding institution acceptable to SPP that must issue the letter of credit or performance bond. According to SPP's proposal, an acceptable institution for a letter of credit is a financial institution that satisfies existing requirements under SPP's Credit Policy in Attachment X of the Tariff,⁴⁶ and for a performance bond, an insurance or surety company with a A.M. Best "Financial Strength Rating" of "Superior" (A++, A+) or "Excellent" (A, A-) and an adjusted "Policy Holder Surplus" of \$500,000,000 or more,⁴⁷ which SPP states are consistent with the ratings that SPP accepts for bonding letters as part of SPP's competitive bidding process.⁴⁸ SPP states that these changes are just and reasonable because they modify the financial strength requirements to eliminate what could be considered an onerous requirement to obtain financing for an entire project in order to submit a proposal for the project, but still enable SPP to assess whether the respondent has the financial strength to finance the project if selected to construct.⁴⁹

E. Refunds of Deposits

14. SPP states that, under the current Tariff, RFP Respondents must submit along with their bid a deposit to defray SPP's costs in administering the competitive bidding process and must agree to pay any additional costs not recovered by the deposits. SPP states, however, that the Tariff does not currently address what happens to a deposit if an RFP Respondent's proposal is incomplete. Therefore, SPP proposes to revise its Tariff to refund 90 percent of the deposit to an RFP Respondent that fails to submit a complete bid by the due date.⁵⁰ SPP states that it proposes to retain 10 percent of the deposit based on SPP's estimate of the costs associated with conducting an initial review of the bid for completeness and the proposal's share of the costs of developing the RFP. SPP states that, if SPP's experience in the future in implementing this proposal suggests that 10 percent either over- or under-recovers SPP's costs, SPP can propose a future Tariff change to adjust the percentage.⁵¹ SPP also proposes revisions to make clear that if an

⁴⁵ *Id.* § III.2.c.vi.3.

⁴⁶ *Id.*

⁴⁷ *Id.* § III.2.c.vi.2.

⁴⁸ Transmittal at 17 (citing SPP Tariff, Attachment Y, § III.1.b.ii.3).

⁴⁹ *Id.* at 16-17.

⁵⁰ SPP Tariff, Attachment Y, §§ III.2.d.iv & III.2.e. The refund will not include interest. *Id.*

⁵¹ Transmittal at 18.

RFP Respondent's proposal is incomplete, it shall be disqualified from further consideration.⁵²

F. Cost Estimates

15. SPP proposes Tariff revisions to allow SPP to reevaluate a Competitive Upgrade if all of the bids for the Competitive Upgrade include a cost estimate that exceeds SPP's cost estimate by 30 percent or more. In such a case, the SPP Board will determine whether to proceed with the evaluation of bids or whether to withdraw the request for proposals and reevaluate the Competitive Upgrade.⁵³ If the SPP Board withdraws a request for proposal, SPP will refund to each RFP Respondent 90 percent of its bid deposit.⁵⁴ SPP asserts that the proposed revisions are just and reasonable because they avoid the waste of time and resources involved in conducting an evaluation process for a Competitive Upgrade where all submitted cost estimates significantly exceed SPP's proposed cost estimate. SPP states that the revisions also comply with the Commission's cost causation principle by allowing SPP to refund deposit funds that exceed SPP's costs.⁵⁵

G. Other Proposed Changes

16. SPP also proposes revisions to correct certain errors from prior filings and clarify the applicability of its competitive bidding process.⁵⁶ First, SPP proposes to correct the introductory paragraph of section I of Attachment Y as follows:

The Transmission Provider shall designate a Transmission Owner in accordance with the process set forth in Section III of this Attachment Y for transmission facilities approved for construction ~~or endorsed by the SPP Board of Directors for which~~ by the Transmission Provider ~~issues a Notification to~~

⁵² SPP Tariff, Attachment Y, § III.2.d.iv.

⁵³ *Id.* § III.2.d.v.

⁵⁴ *Id.* § III.2.e.iv.

⁵⁵ Transmittal at 19.

⁵⁶ *Id.* at 20-22; SPP Tariff, Attachment Y, § I.

Construct after January 1, 2015 that meet all of the following criteria.^{57]}

SPP states that this revision corrects two errors in the paragraph that are inconsistent with the Commission's finding in the First Compliance Order that "it is reasonable to make the requirements of Order No. 1000 apply to Competitive Upgrades *approved for construction by the Board* in January 2015."⁵⁸ SPP explains that the current Tariff language ties the effective date to a project's "endorsement" by the SPP Board or issuance of a Notification to Construct, neither of which constitutes "approval" of a transmission project. Moreover, SPP explains that approval of a transmission project in SPP's regional transmission planning process occurs *before* a Notification to Construct is issued and that transmission projects that are "endorsed" in the annual SPP Transmission Expansion Plan do not require formal SPP Board approval prior to commencing construction.⁵⁹ SPP contends that the revision is just and reasonable because it more accurately reflects the Commission's findings in the First Compliance Order and clarifies the applicability of the Transmission Owner Selection Process.

17. Second, SPP proposes to revise its Tariff to specify that transmission facilities with a nominal operating voltage of "greater than 100 kV" rather than "100 kV or greater" are eligible to be Competitive Upgrades.⁶⁰ In response to the Commission's directive in the First Compliance Order to "revis[e] the definition of Competitive Upgrades to include Byway facilities,"⁶¹ SPP states it proposed in its Second Compliance Filing to revise section I.1(b) of Attachment Y to specify that Competitive Upgrades include projects with nominal operating voltages of "100 kV or greater."⁶² However, SPP states that under Attachment J of its Tariff, Byway facilities include those facilities with operating voltages "less than 300 kV but *greater than* 100 kV," meaning that the language in Attachment Y section I conflicts with the definition of Byway facilities in

⁵⁷ Transmittal at 20 (citing SPP Tariff, Attachment Y, § I.1 (introductory paragraph)).

⁵⁸ *Id.* (citing First Compliance Order, 144 FERC ¶ 61,059 at P 32 (emphasis added)).

⁵⁹ *Id.*

⁶⁰ *See* SPP Tariff, Attachment Y, § I.1(b).

⁶¹ Transmittal at 21 (citing First Compliance Order, 144 FERC ¶ 61,059 at P 153).

⁶² *Id.* (citing SPP, Compliance Filing, Docket No. ER13-366-002, at 11 (filed Nov. 15, 2013)).

Attachment J. SPP argues that the proposed revision harmonizes section I of Attachment Y with the definition of Byway facilities set forth in Attachment J, and is therefore just and reasonable.

18. SPP proposes that its Tariff revisions to section I of Attachment Y be made effective January 1, 2015. SPP proposes that all other proposed Tariff revisions to Attachment Y be made effective January 26, 2015. SPP contends that, because proposed revisions to section I of Attachment Y relate to the effective date and applicability of the Transmission Owner Selection Process, which SPP states the Commission has specified applies to projects approved after January 1, 2015, it seeks waiver of the Commission's prior notice requirement to permit these Tariff revisions to become effective January 1, 2015. SPP contends good cause exists to grant the request because these revisions are intended only to correct errors in existing language to reflect the Commission's determinations in the First Compliance Order and to provide clarity to the Tariff without material changes to the competitive bidding process or its applicability.

III. Notice of Filing

19. Notice of SPP's filing was published in the *Federal Register*, 79 Fed. Reg. 73,291 (2014), with interventions and protests due on or before December 17, 2014. NextEra Energy Transmission, LLC, Westar Energy, Inc., Exelon Corporation, and Ameren Services Company filed timely motions to intervene. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC timely filed a joint motion to intervene. On January 14, 2015, American Electric Power Service Corporation filed a motion to intervene out of time.

20. South Central MCN, LLC (South Central MCN) and Xcel Energy Services Inc. (Xcel), on behalf of its affiliate Southwestern Public Service Company (SPS), filed timely motions to intervene and comments in support of SPP's filing. ITC Great Plains, LLC (ITC Great Plains) and ITC South Central Development LLC (ITC-SCD) (together, ITC) jointly filed a timely motion to intervene and protest of SPP's filing. On January 12, 2015, SPP filed an answer to ITC's protest.

IV. Discussion

A. Procedural Issues

21. 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), we grant American Electric Power Service Corporation's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

22. 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 and answer unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

B. Protest

23. ITC argues that SPP's proposal to permit assignment of Competitive Upgrades is contrary to the core tenets of Order No. 1000 and will invariably lead to detrimental results to transmission customers, and should therefore be rejected by the Commission as unjust and unreasonable. ITC also asserts that by proposing to modify the Transmission Owner Selection Process to permit assignments in the middle of a planning cycle, SPP's proposal is severely discriminatory towards those SPP members who have abided by the SPP Tariff by qualifying affiliates as qualified bidders for participation in the 2015 Transmission Owner Selection Process.⁶³

24. ITC contends that SPP's proposal to permit the assignment of Notifications to Construct for Competitive Upgrades is inconsistent with Order No. 1000's foundational goal of creating a more open and transparent transmission planning process. ITC asserts that SPP's proposal would defeat the ability of customers to be confident that the benefits they receive are roughly commensurate with the costs.

25. ITC asserts that SPP's proposal to permit assignments would absolve assignees from having to obtain qualified bidder status. According to ITC, the qualification procedure is a rigorous, extensive evaluation of a potential bidder's ability to construct and maintain a Competitive Upgrade. ITC contends that meeting these criteria provides not only a useful assessment for SPP to ensure that bidders are qualified, but also a basis for transmission customers and stakeholders to confirm that a potential Designated Transmission Owner can actually deliver the benefits of a Competitive Upgrade. ITC argues that SPP's proposal to allow an affiliate of a qualified bidder to receive a Notification to Construct without becoming a qualified bidder itself leaves transmission customers and state commissions with no way to evaluate whether the affiliate will be able to deliver the economic, reliability, or public policy benefits which the Competitive Upgrade is intended to provide.

26. ITC is also concerned that an affiliate assignee is not evaluated by the Industry Expert Panel that recommends the Designated Transmission Owner for a Competitive Upgrade. ITC notes that the Industry Expert Panel's evaluation of a bid is more extensive than the qualified bidder application process because the panel provides an independent, unbiased method for SPP to identify the best potential Designated

⁶³ ITC Protest at 5.

Transmission Owner, but also because the report of the Industry Expert Panel recommending the Designated Transmission Owner provides the customers who will pay for the Competitive Upgrade with the ability to independently confirm the ability of the Designated Transmission Owner to deliver the benefits which the Competitive Upgrade is intended to provide. ITC asserts that by absolving an affiliate assignee of the obligation of submitting a bid, customers and state commissions are left with tremendous uncertainty as to whether a particular entity is actually best suited to construct a project.

27. ITC asserts that the safeguards which SPP has placed on the assignment process are wholly insufficient to protect transmission customers. First, regarding SPP's proposal that an affiliate assignee abide by all conditions in the original bid, including the total transmission revenue requirement, ITC contends that even if an affiliate assignee has committed to impose the same costs on customers as the Designated Transmission Owner, those customers have no way to be sure that the assignee has the same competence to deliver the benefits which the Competitive Upgrade is intended to provide. Second, ITC argues that there are flaws with SPP's other safeguard for the assignment process, that the Designated Transmission Owner assigning the Notification to Construct to an affiliate is not relieved of its obligations under the Notification to Construct if the assignee fails to perform. According to ITC, although the assignor must still backstop the assignee's obligations under the Notification to Construct, the assignee is the entity that will ultimately operate and maintain the Competitive Upgrade once the Competitive Upgrade is placed into service and the Notification to Construct is closed out, without any guarantee of operational performance from the assignor during the subsequent life of the Competitive Upgrade. ITC contends that the ability of the Designated Transmission Owner to reliably operate and maintain the Competitive Upgrade is largely what the qualified bidder and Industry Expert Panel evaluation is based upon, and thus an assignment of a Competitive Upgrade to a non-qualified bidder affiliate will still leave customers with no information and guarantee regarding operations and maintenance.⁶⁴

28. In addition, ITC asserts that the larger flaw in this proposal is that there is nothing preventing the Designated Transmission Owner from novation of its obligations under the Notification to Construct once the Competitive Upgrade has been assigned to its affiliate. ITC states that novation is governed by SPP Business Practice 7070, providing that SPP shall approve a novation where: (1) the assignee has obtained all state regulatory authority necessary to construct, own and operate transmission facilities within the state(s) where the project is located; (2) the assignee meets SPP creditworthiness requirements; (3) the assignee has signed, or is capable and willing to sign, the SPP Membership Agreement as a Transmission Owner; (4) the assignee meets "such other technical, financial and managerial qualifications as are specified in the Transmission

⁶⁴ *Id.* at 6-9.

Provider's business practices;" and (5) the assignee or assignor provides certain basic information about the Upgrade to SPP.⁶⁵

29. ITC contends that criterion 4 requiring the assignee to meet "such other technical, financial and managerial qualifications" is vague, and SPP's reasoning in evaluating this criterion is not made publicly available to transmission customers and stakeholders. ITC further contends that the use of "shall" implies that SPP may not refuse to permit the novation of a Notification to Construct provided such minimum criteria are met, even if the project is a Competitive Upgrade. Thus, ITC argues that a Designated Transmission Owner may assign a Competitive Upgrade to an affiliate, obtain a novation of its own obligations under the Notification to Construct, and leave customers to blindly trust that the affiliate is similarly the best qualified entity to deliver the benefits of a Competitive Upgrade. ITC asserts that if the Commission approves this proposal, then it is inevitable that a Competitive Upgrade Notification to Construct will eventually be assigned to an affiliate that is less competent in project engineering and construction, less reliable in operation, and that could not have been selected as Designated Transmission Owner had the affiliate had to become a qualified bidder and submit a full bid.

30. ITC argues that it is unclear that permitting assignments of Competitive Upgrades will provide any type of benefit to transmission customers. ITC notes that SPP cites no benefits for customers. ITC asserts that the lack of information derived from a thorough evaluation of an assignee will render *any* assigned Competitive Upgrade suspicious in the eyes of the customers who must pay the costs. ITC avers that if an SPP member desires to have a particular affiliate become a Designated Transmission Owner for a Competitive Upgrade, that member should comply with the Transmission Owner Selection Process and qualify its affiliate as a qualified bidder as other SPP members have already done. ITC argues that the Commission should reject this portion of SPP's filing as unjust and unreasonable, and direct SPP to submit a compliance filing deleting the proposed provisions, and re-inserting the original prohibition against the assignment of Competitive Upgrade Notifications to Construct.

31. ITC also asserts that SPP's proposed assignment provision is, by virtue of its timing in the middle of the current transmission planning cycle, unduly discriminatory against those SPP member affiliates who have already obtained qualified bidder status. ITC argues that the SPP Tariff specified in unequivocal terms that qualified bidder status was an absolute prerequisite to becoming the Designated Transmission Owner for a Competitive Upgrade, and so SPP members applied to become qualified bidders during the 2014 application window. This application required the payment of the SPP annual

⁶⁵ *Id.* at 9-10 (citing SPP Business Practice 7070, available at <http://www.spp.org/publications/SPP%20OATT%20Business%20Practices%2010-2014.pdf>).

membership fee, and involved additional time, effort, and labor cost on the part of ITC employees to complete, some or all which are likely to be non-recoverable development costs, and ITC may incur additional expenses to submit bids in the future.⁶⁶

32. ITC asserts that if the Commission permits the assignment provision of SPP's filing to become effective January 26, 2015, as requested by SPP, SPP member affiliates who did not comply with the SPP Tariff to obtain qualified bidder status will nonetheless be allowed to become Designated Transmission Owners for Competitive Upgrades despite not having to expend resources to become a qualified bidder or submit a bid. ITC argues that this will place qualified bidder affiliates, including its own affiliate, at an unjust disadvantage financially, and is fundamentally unfair. ITC requests that if the Commission accepts SPP's proposal that it should suspend the effective date of the assignment provisions of SPP's filing to June 1, 2015. ITC asserts that suspending the assignment provision would allow all SPP members to proceed into the next planning cycle on equal footing. ITC contends that this would also allow SPP to finalize the currently-unfinished Business Practices which will govern how the Industry Expert Panel will evaluate bids, including how statements of intent to assign a Competitive Upgrade will be evaluated.⁶⁷

C. Answer

33. SPP argues that ITC's contention that SPP's affiliate assignment proposal is contrary to Order No. 1000's core tenets lacks merit. SPP notes that ITC identifies no provision of Order No. 1000 that precludes a transmission planning region from allowing assignments, and that the Commission has accepted proposals in other Order No. 1000 transmission planning regions to allow "selected" or "designated" transmission developers to assign their rights and obligations to other entities, subject to certain limitations or qualifications.⁶⁸ SPP contends that its proposal is consistent with such precedent because its proposed Tariff language conditions any assignment on, among other things, the requirements that: (1) the affiliate has provided express written agreement that it will be bound by all aspects of the RFP Proposal and the Notification to

⁶⁶ *Id.* at 12.

⁶⁷ *Id.* at 12-13.

⁶⁸ SPP Answer at 3 (citing, e.g., *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at P 45 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at P 387 (2013), *order on reh'g & clarification*, 147 FERC ¶ 61,127, at P 357 (2014); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126, at PP 216, 221-23 (2014)).

Construct in the original proposal; and (2) that the affiliate satisfies all of the qualification criteria to be a qualified bidder.⁶⁹

34. SPP refutes ITC's assertion that the affiliate assignment proposal is inconsistent with Order No. 1000's openness and transparency principles, and argues that its proposed revisions enhance transparency and openness by allowing stakeholders two opportunities to review and comment on an affiliate assignment (at the time that the SPP Board considers bids for selection and subsequently when the SPP Board considers a Designated Transmission Owner's request to assign the project).⁷⁰

35. Further, SPP contends that ITC is incorrect when it asserts that the affiliate assignment proposal absolves assignees from having to obtain qualified bidder status. SPP reiterates that prior to receiving approval for an assignment, an assignee is required to demonstrate that it satisfies all of the same qualification criteria that apply during the qualification process, thereby assuring SPP and its stakeholders that any presumptive assignee will possess the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities, consistent with Order No. 1000.⁷¹

36. SPP argues that ITC's comments regarding novation are unfounded because nothing in the SPP Tariff requires SPP to grant a novation for any project.⁷² Further, SPP contends that SPP is bound by the Tariff, and any conflicts with a Business Practice must be resolved in favor of the Tariff. Also, SPP clarifies that SPP Business Practice 7070 does not require that the SPP Board grant all qualifying requests for a novation, but rather merely requires that any approval of the SPP Board of a novation must be conditioned upon the requirements set forth in the Business Practice.⁷³ Further, SPP argues that SPP, through the SPP Board, retains the discretion to decide whether to relieve a party of its contractual obligations. According to SPP, even if it were to entertain a request for novation regarding a Competitive Upgrade, nothing in Order No. 1000 or the Commission's precedent on assignments prohibits releasing the original Designated

⁶⁹ *Id.* at 4 (citing SPP Tariff, Attachment Y, § VII.2.c-f).

⁷⁰ *Id.* at 5-6.

⁷¹ *Id.* at 7 (quoting Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 323).

⁷² *Id.* at 9.

⁷³ *Id.* (citing SPP Business Practice 7070 § 3.2, available at <http://www.spp.org/publications/SPP%20ATT%20Business%20Practices%2010-2014.pdf>).

Transmission Owner from its obligations, provided that the assignee satisfies all qualification criteria and complies with the requirements imposed on the original Designated Transmission Owner.

37. Regarding ITC's request to suspend the effective date, SPP argues that there is no basis for doing so because SPP's affiliate assignment proposal is just and reasonable and granting the requested extension would not achieve the relief ITC demands since the assignment provisions apply to the process that occurs after an RFP proposal has been selected and a Designated Transmission Owner has been named. SPP states that the affiliate assignment provisions have no relation to the June 30 annual deadline for qualified bidder applications and the earliest date that a Designated Transmission Owner would be selected and the assignment provisions could be exercised would be after the SPP Board's July 28, 2015 meeting.⁷⁴

D. Determination

38. As explained in further detail below, we accept SPP's proposed Tariff revisions to section I of Attachment Y, to be effective January 1, 2015 as requested. Further, we conditionally accept SPP's proposed Tariff revisions to sections II, III, IV, and VII of Attachment Y, to be effective January 26, 2015, as requested, subject to certain compliance requirements.

39. Regarding SPP's proposed revisions correcting certain errors from prior filings and providing clarity to section I of Attachment Y in the Tariff, we agree with SPP that its proposed revisions harmonize the inconsistent portions of Attachment Y resulting from the date on which a regional transmission project is approved for construction⁷⁵ and from the different definitions of Byway facilities. We find that the proposed revisions to section I of Attachment Y, which more accurately reflect the Commission's findings in the First Compliance Order without material changes to the competitive bidding process or its applicability, are just and reasonable and not unduly discriminatory or preferential. We grant waiver of the 60-day prior notice requirement for good cause shown,⁷⁶ and

⁷⁴ *Id.* at 12-13.

⁷⁵ We understand the date that a transmission project is "approved for construction" is the same date that a transmission project is selected in the regional transmission plan for purposes of cost allocation, consistent with the Tariff. SPP Tariff, Attachment Y, § III.2.d.vii. (stating that the SPP Board of Directors shall select a bid for each Competitive Upgrade and then notify the RFP respondent that submitted the bid).

⁷⁶ *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339 (1992) (finding that the Commission will grant waiver of the 60-day prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service).

establish an effective date of January 1, 2015 for the revisions to section I of Attachment Y, as requested.

40. Regarding SPP's proposal to change its Tariff to provide explicitly that entities can join together to submit bids for Competitive Upgrades, and to ensure that SPP receives the information it needs to evaluate such joint proposals, we agree with SPP that the proposed revisions provide greater flexibility to participants to structure their proposals and facilitate participation by smaller entities that may lack the resources or capability to develop bids on their own. Also, we agree with SPP that lengthening from 90 days to 180 days the amount of time after the date SPP issues a request for proposals that bids are due, while retaining the discretion to shorten the due date for bids to no less than 90 days based on, but not limited to, the Competitive Upgrade's need date or scope, provides additional flexibility to entities wishing to submit bids, while ensuring that approved Competitive Upgrades are completed in a timely manner to maintain reliable system operations. Further, we find that SPP's proposal to revise its existing alternative financial strength requirements to accept "conclusive evidence" of the respondent's ability to obtain financing in the form of a letter of credit or performance bond at the proposal stage to be just and reasonable. This revision will enable SPP to assess whether a respondent has the financial strength to finance the project if selected and allow the respondent to bid on a transmission project without first obtaining financing for an entire transmission project.

41. We find SPP's proposal to refund 90 percent of the deposit to an RFP Respondent that fails to submit a complete bid by the due date to be reasonable given that SPP will not need to perform most of the analysis the deposit was meant to cover. We find that the proposed Tariff revisions allowing SPP to reevaluate a Competitive Upgrade if all of the bids for the Competitive Upgrade include a cost estimate that exceeds SPP's cost estimate by 30 percent or more will help avoid an inefficient use of time and resources involved in conducting an evaluation process for a Competitive Upgrade where all submitted cost estimates significantly exceed the cost estimate SPP used to determine whether the transmission project should be selected in its transmission plan.

42. Accordingly, we accept SPP's proposed revisions to Attachment Y of the SPP Tariff creating and implementing Joint RFP Proposals and Multi-Owner Proposals, modifying the length of the RFP response window, revising SPP's alternative requirements to demonstrate financial strength, partially refunding deposits for bids that are disqualified as incomplete, and allowing the SPP Board to withdraw and reevaluate an RFP if the cost estimates exceed a certain threshold, and find that they are just and reasonable and not unduly discriminatory or preferential.

43. We also agree with SPP that the proposal to allow a Designated Transmission Owner to assign an affiliate a Notification to Construct for a Competitive Upgrade is appropriate because it provides Designated Transmission Owners flexibility to structure their business arrangements in a manner to comply with regulatory, tax, financial, or

other requirements that may arise, without compromising SPP's ability to ensure that an affiliate assignee is qualified and capable of completing the Competitive Upgrade. SPP proposes a new provision that would require that any assignment of a Notification to Construct shall be subject to the approval of the SPP Board. We find that requiring the SPP Board's consent for assignments of Competitive Upgrades and assignments of other transmission projects constructed by incumbent transmission owners under the SPP Tariff is appropriate, but the SPP Board's consent to assignment should not be unreasonably withheld, conditioned, or delayed.⁷⁷ Accordingly, we conditionally accept SPP's proposal to permit the Designated Transmission Owner for a Competitive Upgrade to assign its rights and obligations to build the Competitive Upgrade to an affiliate, subject to SPP making a further compliance filing within 30 days of the date of issuance of this order to revise its Tariff to state that the SPP Board's consent to assignments of Competitive Upgrades and assignments of other transmission projects constructed by incumbent transmission owners shall not be unreasonably withheld, conditioned, or delayed.

44. We disagree with ITC's concern that SPP's proposed assignment provision does not provide sufficient safeguards to ensure that an affiliate assignee is qualified to develop a transmission project and to protect transmission customers. ITC's concern is based on the incorrect belief that SPP's proposal does not require an affiliate that is assigned a Notification to Construct to become a qualified transmission developer by fulfilling all the qualification criteria in the Tariff. In fact, SPP's proposal requires an affiliate to meet all of the qualification requirements in the Tariff in order to be assigned a Notification to Construct.⁷⁸ Further, SPP must evaluate the proposed assignment, which is also subject to approval by SPP's Board.⁷⁹ However, the Tariff does not make clear that the affiliate must follow the same process to qualify as any other potential transmission developer that wishes to submit a bid. SPP states in its transmittal that a

⁷⁷ See, e.g., *PJM Interconnection, L.L.C.*, 148 FERC ¶ 61,187, at PP 29, 30, 45 (2014) (accepting PJM's consent to assignment provisions as a reasonable mechanism to ensure system reliability, subject to PJM clarifying its provisions to include protestors' reasonable requests that consent to assignment not be "unreasonably withheld, conditioned, or delayed"); *S.C. Elec. & Gas Co.*, 147 FERC ¶ 61,126, at P 221 (2014) (finding that, consistent with the Commission's approach with respect to the *pro forma* Large Generator Interconnection Agreement in Order No. 2003, South Carolina Electric & Gas Company must clarify that consent to an assignment shall not be unreasonably withheld, conditioned, or delayed).

⁷⁸ See SPP Tariff, Attachment Y, § VII.2.d-f.

⁷⁹ *Id.* § VII.2-3.

Designated Transmission Owner for a Competitive Upgrade may assign a Notification To Construct to an affiliate “*provided that the affiliate is adjudged by SPP to satisfy SPP’s qualification criteria and provided that other conditions are met*”⁸⁰ and states in its answer that “SPP’s proposal adopts the same rigor for assignments by requiring that any affiliate assignee demonstrate that it satisfies the very same qualification criteria that apply during the [qualification] process.”⁸¹ We understand these statements to mean that an affiliate assignee would qualify through the established qualification process as part of SPP’s Transmission Owner Selection Process in the same manner as any other bidder, but this is not explicit in the Tariff. We find that, although an affiliate of a qualified transmission developer would not need to be qualified at the time the developer submits a bid, it would be unduly discriminatory to allow an affiliate to be assigned a Notification to Construct for a Competitive Upgrade without having been qualified using the same developer qualification process and criteria as any other bidder. Therefore, we direct SPP to make a compliance filing within 30 days of the date of issuance of this order to revise its Tariff to make clear that, before it can be assigned a Notification to Construct, an affiliate of a Designated Transmission Owner must become qualified using the same qualification process that any other potential bidder must follow to become qualified.

45. Regarding ITC’s argument that SPP’s assignment provisions allow an affiliate assignee to ultimately operate and maintain the Competitive Upgrade once the Upgrade is placed into service, without any guarantee of operational performance from the Designated Transmission Owner during the subsequent life of the Upgrade, we find that ITC’s concern is mitigated by the fact that an affiliate must indeed meet the qualification criteria. Affiliate assignees will qualify through SPP’s Transmission Owner Selection Process in the same manner as any other bidder and must demonstrate their ability to operate and maintain the Competitive Upgrade, just as any Designated Transmission Owner must do.

46. Further, because we require SPP to clarify that an affiliate assignee would have to qualify just as any other bidder would, we deny ITC’s request to suspend the effective date of SPP’s proposed assignment provision. The clarification that an affiliate assignee would qualify through the established qualification process under the Transmission Owner Selection Process addresses ITC’s concern about the timing of the reforms to ensure that all SPP members, regardless of whether they have already applied to become a qualified bidder, would be treated equally.

⁸⁰ SPP Transmittal at 13 (emphasis added).

⁸¹ SPP Answer at 7.

47. As to ITC's concern that SPP's assignment provision is flawed because it does not prevent a Designated Transmission Owner from novating its obligations under the Notification to Construct once the Competitive Upgrade has been assigned to its affiliate, we disagree. While SPP's proposal does not address novation, SPP's proposed revisions to its Tariff make clear that "[n]othing in this Section VII shall relieve a Transmission Owner of its obligations specified in Section VI.3 of Attachment O . . . Section V.4 of Attachment Y . . . and Section 3.3(a) of the SPP Membership Agreement" and that SPP's approval of an assignment does not relieve the original Designated Transmission Owner from its obligations if the assignee fails to perform.⁸² While ITC contends that it appears that a Designated Transmission Owner may seek, and be granted, novation of its obligations under SPP's Business Practices,⁸³ we find that ITC's concerns are mitigated by the fact that SPP is bound by its Tariff, and that any conflict with a Business Practice must be resolved in favor of the Tariff.⁸⁴ Thus, a provision in the Business Practices that provides a Designated Transmission Owner the ability to novate would not apply to the assignment of a Notification to Construct to an affiliate, which is bound by the Tariff provisions governing such assignment that SPP proposes and that we accept here.

The Commission orders:

(A) The proposed Tariff revisions to section I of Attachment Y are hereby accepted, effective January 1, 2015, as requested, as discussed in the body of this order.

(B) The proposed Tariff revisions to sections II, III, IV, and VII of Attachment Y are hereby conditionally accepted, effective January 26, 2015, as requested, as discussed in the body of this order.

⁸² *Id.* at 9; SPP Tariff, Attachment Y, § VII.4.

⁸³ ITC Protest at 9-10 (citing SPP Business Practice 7070, *available at* <http://www.spp.org/publications/SPP%20OATT%20Business%20Practices%2010-2014.pdf>).

⁸⁴ SPP Answer at 9.

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

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.