

152 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER15-2268-000

ORDER REJECTING TARIFF REVISIONS

(Issued September 22, 2015)

1. On July 24, 2015, Southwest Power Pool, Inc. (SPP) submitted, pursuant to section 205 of the Federal Power Act,¹ and Part 35 of the Commission's regulations,² revisions to its Open Access Transmission Tariff (Tariff) that propose to revise the costs to be included in mitigated energy offer curves, start-up offers, and no-load offers submitted by market participants under the SPP Market Power Mitigation Plan. In this order we reject SPP's proposed Tariff revisions, as discussed below.

I. Background

2. In the SPP Integrated Marketplace, market participants are required to submit energy offer curves, start-up offers, no-load offers, and operating reserves offers each day. Pursuant to Attachment AF (Market Power Mitigation Plan), market participants must also submit mitigated offers for each energy product. Under the Market Power Mitigation Plan, SPP applies mitigation by replacing submitted energy offer curves, start-up offers, no-load offers, or operating reserves offers with mitigated offers if a resource: submits an offer in excess of Tariff-defined conduct thresholds; has local market power; and fails a market impact test, or is manually committed by SPP or a local transmission owner.³

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ See Tariff at Attachment AF §§ 3.2, 3.3, 3.4.

3. In October 2012, as a part of the approval of SPP's Integrated Marketplace, the Commission directed SPP to base mitigated offers on short-run marginal costs.⁴ In February 2013, SPP submitted a filing in compliance with the Commission's directives that specified that short-run marginal cost would form the basis for mitigated offers.⁵ In March 2013, on rehearing of the October 2012 Order, the Commission reiterated the appropriateness of mitigation based on short-run marginal cost.⁶ In January 2014, in an order conditionally accepting a further compliance filing by SPP on the Integrated Marketplace, the Commission accepted several Tariff revisions that provide for the use of short-run marginal cost as the basis for mitigated energy, start-up, and no-load offers.⁷

4. SPP's currently effective Tariff describes mitigated energy offers as the "short-run marginal cost of producing energy as determined by the unit's heat rate; fuel costs and the costs related to fuel usage, such as transportation and emissions costs (total fuel related costs); and Energy Offer Curve (EOC) variable operations and maintenance (VOM) costs."⁸ For mitigated start-up and no-load offers, the Tariff similarly describes mitigation measures for fuel transportation and handling and VOM cost components in terms of short-run marginal cost.⁹

II. SPP Filing

5. SPP explains that its proposed Tariff revisions address stakeholder concerns over the scope of VOM costs that market participants may include in mitigated offers under the Market Power Mitigation Plan. SPP states that market participants raised concerns over the SPP Market Monitoring Unit's (SPP Market Monitor) interpretation of the

⁴ *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 420 (2012) (October 2012 Order), *order on reh'g*, 142 FERC ¶ 61,205 (2013).

⁵ SPP Compliance Filing, Docket No. ER12-1179-003 (filed Feb. 15, 2013); *see also Sw. Power Pool, Inc.*, 144 FERC ¶ 61,224 (2013) (addressing February 2013 compliance filing).

⁶ *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,205 at P 98.

⁷ *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,050, at P 187 (2014).

⁸ Tariff at Attachment AF § 3.2C.

⁹ *Id.* §§ 3.3E(1), 3.3E(3).

undefined Tariff phrase “short-run marginal cost.”¹⁰ SPP further explains that market participants believe that the SPP Market Monitor considered only a subset of the actual VOM costs incurred by their resources for purposes of calculating mitigated offers.¹¹ According to SPP, market participants expressed the concern that SPP’s current mitigated offer design results in the submission of bids at or near their mitigated offer. SPP states that this potentially compromises the continued financial viability of the affected resources, because they are not recovering their actual costs due to the SPP Market Monitor’s interpretation of the Tariff and its references to short-run marginal cost.¹²

6. As part of its proposed Tariff revisions, SPP proposes to remove from the Market Power Mitigation Plan references to short-run marginal cost as the basis for mitigated offers, and to replace those references with language that describes the components of mitigated offers in terms of variable cost.¹³ SPP also proposes Tariff revisions that: (1) establish default VOM costs that market participants may use to calculate their mitigated offers; (2) detail the types of costs eligible for resource-specific mitigated offers; (3) allow a market participant to request a Frequently Mitigated Resource Adder¹⁴ to increase the mitigated offers for its resources that are frequently mitigated; and (4) allow a market participant to request objective information from the SPP Market

¹⁰ Transmittal at 5. Pursuant to section 3 of Attachment AF, market participants submit mitigated offers, and the SPP Market Monitor verifies that the submitted mitigated offers are acceptable.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ SPP’s proposed Tariff revisions define a Frequently Mitigated Resource as a resource that has local market power more than 60 percent of its annual operating hours, yet fails to recover its avoidable costs on an annual basis. The proposed Tariff revisions apply Frequently Mitigated Resource Adders to mitigated energy offer curves based on the percentage of operating hours that Frequently Mitigated Resources have local market power. *See* Proposed Tariff at Attachment AF §§ 2.10, 3.2E, 3.2F (proposed effective date December 31, 9998). SPP explains that Annual Avoidable Cost is a new term defined in the proposed Tariff revisions and is the sum of the following specific categorical costs: avoidable operations and maintenance labor expenses; avoidable administrative expenses; avoidable taxes, fees, and insurance; avoidable carrying charges; and avoidable corporate level expenses. *See id.* at 12-13.

Monitor related to why a particular resource may not be recovering its avoidable costs under the revised mitigated offer construct.¹⁵

7. SPP requests that the Commission allow an effective date of September 22, 2015 for the revisions establishing default VOM cost levels and adding greater detail regarding the types of costs that may be included in resource-specific VOM costs. SPP requests that the Commission allow the Tariff revisions that establish the Frequently Mitigated Resource Adder that permit market participants to request analysis of the potential causes for a resource's cost under-recovery to become effective on a date approximately five months after the Commission's approval of the VOM cost-related provisions. Because the requested effective dates for some of the proposed Tariff revisions are more than 120 days after the submission of its filing, SPP requests waiver of the Commission's prior notice requirement, arguing that good cause exists to allow the proposed revisions to become effective on the date requested.¹⁶ SPP also requests that the Commission approve all of its proposed Tariff changes as an inter-related package of reforms.¹⁷

III. Notice of Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*, 80 Fed. Reg. 45,651 (2015), with interventions and protests due on or before August 14, 2015. Timely motions to intervene were filed by: American Electric Power Service Corp.; Dogwood Energy, LLC; Dogwood Power Management, LLC; Empire Electric District Company; Exelon Corporation; Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company; Midwest Energy, Inc.; Nebraska Public Power District; Omaha Public Power District; Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; TDU Intervenors;¹⁸ Westar Energy, Inc.; and Xcel Energy Services, Inc. The SPP Market Monitor and Golden Spread Electric Cooperative, Inc. (Golden Spread) each filed timely motions to intervene and comments. Joint Filing

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 15 (citing 18 C.F.R. § 35.3(a)(1) (2015)).

¹⁷ *Id.* at 7.

¹⁸ TDU Intervenors include The City of Independence, Missouri, Kansas Power Pool, Municipal Energy Agency of Nebraska, and Missouri Joint Municipal Electric Utility Commission.

Group¹⁹ filed a timely motion to intervene, comments, and a limited protest. The Independent Market Monitor of PJM (PJM Market Monitor) filed a timely motion to intervene and protest. The New Jersey Board of Public Utilities (New Jersey Board) filed a motion to intervene out of time and comments.

9. On August 31, 2015, the SPP Market Monitor and Joint Filing Group filed answers. On September 4, 2015, SPP filed an answer. On September 4, 2015, Joint Filing Group filed an answer in opposition to the out of time motion to intervene filed by the New Jersey Board. Joint Filing Group argues that the New Jersey Board does not provide good cause for waiving the time limitation for intervention, does not have an interest that is directly affected by the outcome of this proceeding, and that the New Jersey Board's concerns are speculative and unfounded. On September 15, 2015, the SPP Market Monitor filed an answer. On September 18, 2015, the PJM Market Monitor filed an answer.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Notwithstanding Joint Filing Group's opposition to the out of time motion to intervene filed by the New Jersey Board, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), the Commission will grant the New Jersey Board'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.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

¹⁹ Joint Filing Group includes American Electric Power Company, Inc., Golden Spread Electric Cooperative, Inc., Midwest Energy Inc., Nebraska Public Power District, Omaha Public Power District, Southwestern Public Service Company, Sunflower Electric Power Corporation, The Empire District Electric Company, and Westar Energy, Inc.

B. Substantive Matters**1. Replacing Short-Run Marginal Cost with Variable Cost****a. SPP Proposal**

12. SPP proposes to change the description of the costs that may be included in mitigated offers under Attachment AF from short-run marginal cost to variable cost. SPP's replacement of references to short-run marginal cost with references to variable cost affects Tariff provisions related to mitigated energy offers (specifically, fuel-cost and VOM-cost components), as well as start-up and no-load offers.²⁰ "Short-run marginal cost" is not a defined term under SPP's Tariff.²¹ SPP states that the concept of short-run marginal cost played a significant role in the discussions during the stakeholder process leading to the proposed Tariff revisions, and it notes that stakeholders could not reach consensus on the scope of short-run marginal costs. Further, SPP asserts that a Commission staff report stated that measuring marginal cost can be a "complicated endeavor" and that panelists at an October 2014 Commission technical conference debated the types of costs that can be classified as short-run marginal costs. According to SPP, in order to achieve consensus, it replaced references to short-run marginal cost in its Market Power Mitigation Plan with language that describes VOM costs in terms of variable costs versus fixed costs.²² SPP states that in addition to the terminology change, it developed more detailed cost identification and calculation language in the Tariff that addresses concepts of fixed and variable costs.²³

13. For fuel costs, SPP's proposed revisions to section 3.2 of Attachment AF would define fuel transportation and handling costs allowable in mitigated offers in terms of variable cost instead of short-run marginal cost. The revisions include examples of variable handling costs, such as those related to coal combustible residuals, demoinsturization of oil, antifreeze for coal, maintenance of mills and conveyors, and consumables related directly to the use of incremental fuel.

²⁰ Transmittal at 8; *see* Proposed Tariff at Attachment AF §§ 3.2; 3.3 (proposed effective date September 22, 2015).

²¹ Transmittal at 5.

²² *Id.* at 7.

²³ *Id.*

14. For VOM cost components of mitigated energy offer curves, SPP proposes revisions to section 3.2 of Attachment AF to remove a reference to short-run marginal cost. The revisions state that, for purposes of including VOM costs in mitigated offers, market participants may use either default VOM costs specified in the proposed Addendum 2 of Attachment AF, or market participants may use SPP Market Monitor-approved resource specific VOM costs.

15. Under SPP's proposed revisions to section 3.2 of Attachment AF, VOM cost components that market participants submit to the SPP Market Monitor cannot include fixed costs but can include “expenses attributed to starts-based or hours-based inspection and maintenance activities associated with [original equipment manufacturer] recommendations or similar programs to maintain equipment . . . whether such expense is through contract labor or market participant labor associated with these activities that would not otherwise be incurred.”²⁴

b. Comments and Protests

i. Replacing “Short-Run Marginal Cost” with “Variable Cost” in Mitigated Offer Calculations

16. Joint Filing Group contends that SPP's filing provides needed clarity regarding VOM costs and the calculations used for mitigated offers in the market. Joint Filing Group avers that SPP's proposal strikes a fair balance between seller and buyer interests and supports Commission acceptance.²⁵ However, Joint Filing Group also requests that the Commission direct further clarifications to the SPP Tariff, arguing that reasonable mitigated offers would include major maintenance costs as a component of VOM cost, and that the inclusion of such costs would help support full variable cost recovery while excluding fixed costs.²⁶

²⁴ *Id.* at 10 (quoting Proposed Tariff at Attachment AF § 3.2E(3)(a) (proposed effective date September 22, 2015)).

²⁵ Joint Filing Group Comments at 11-12.

²⁶ *Id.* at 10. Joint Filing Group states that major maintenance costs are the cost of maintenance that a generation owner periodically performs to maintain the operating condition of its generating units as required by the recommendations of original equipment manufacturer specifications or similar programs, exclusive of fixed costs, and that the timing of major maintenance activities is based on the frequency and conditions for starting and operating the generating unit. *See id.* n.4.

17. Joint Filing Group argues that average variable cost is used as a surrogate for short-run marginal cost and that major maintenance expenses are part of a unit's average variable costs.²⁷ Joint Filing Group states that, since the launch of the Integrated Marketplace, generation owners have been under-compensated for mitigated offers and have been unable to recover their full VOM costs, including major maintenance components of those costs, through mitigated offers due to the SPP Market Monitor's interpretation of the phrase "short-run marginal cost" in the Tariff. Joint Filing Group argues that the SPP Market Monitor explicitly excludes major maintenance costs from its definition of short-run marginal costs for purposes of calculating mitigated offers.²⁸

18. Joint Filing Group further asserts that major maintenance costs are driven by a unit's operation, including kilowatt-hours of energy produced, number of starts, or number of run hours, are short-run marginal costs in the true economic sense. According to Joint Filing Group, these costs represent a component of "the increment to total cost that results from producing an additional unit of output, where some inputs of production are variable and others are fixed."²⁹

19. According to Joint Filing Group, in SPP's Integrated Marketplace, a market participant with a long term service agreement³⁰ that defines costs in terms of resource starts or hours of run time is not permitted to include all such costs in its mitigated offer. Joint Filing Group contends that the long term service agreement costs are short-run marginal costs to the market participant that should be eligible to be included in mitigated

²⁷ *Id.* at 8-9 (citing *MCI Communications Corp. v. American Tel. and Tel Co.*, 708 F.2d 1081, at 1114-15 (7th Cir. 1983) (*MCI Communications*); *William Inglis & Sons Baking Co. v. ITT Continental Baking Co. Inc.*, 668 F.2d 1014, 1032 (9th Cir. 1981) (*William Inglis*)).

²⁸ *Id.* (citing Catherine Tyler Mooney, SPP Market Monitoring Unit, Mitigated Offer Task Force, Short Run Marginal Costs and Long Run Cost Recovery at 21 (June 16, 2014), available at <http://www.spp.org/section.asp?group=3154&pageID=27> (MOTF-2014 6/16/14 Agenda & Background Materials)).

²⁹ *Id.* at 9 (citing *MCI Communications*, 708 F.2d at 1114 (citing 3 P. Areeda & D. Turner, *Antitrust Law*, ¶ 712 (1978))).

³⁰ Joint Filing Group states that a long term service agreement is an agreement regarding Original Equipment Manufacturer recommended service and maintenance of a generation unit, and notes that long term service agreements are common in the industry. *Id.* n.7.

offers.³¹ According to Joint Filing Group, the exclusion of such long term service agreement short-run marginal costs denies the market participant any recovery of associated costs, and therefore it is unreasonable.³²

20. Joint Filing Group asserts that recovery of major maintenance costs is especially important for generating units committed out of economic order by SPP into the day-ahead and real-time energy markets.³³ According to Joint Filing Group, it is indisputable that the operation of a generating unit causes wear and tear on equipment and parts, requires oil changes and other maintenance, and thus, causes maintenance costs to be incurred that vary with changes in unit operation. Joint Filing Group notes that costs related to major maintenance are not actually paid or booked as an expense to the appropriate account in the FERC Uniform System of Accounts until the time of the major maintenance activity. Joint Filing Group also contends that these major maintenance costs are variable because they are directly caused by the frequency and conditions for starting and operating the units to provide capacity and produce energy.³⁴ Thus, Joint Filing Group asserts that major maintenance costs driven by a unit's operation are short-run marginal costs.³⁵ In addition, Joint Filing Group asserts that mitigation that does not allow full recovery of variable costs essentially requires a market participant, and its captive ratepayers, to cross-subsidize mitigated market sales to market buyers.³⁶

21. Further, Joint Filing Group contends that a cost benefit study commissioned by SPP to inform stakeholders of the benefits of moving to the SPP Integrated Marketplace was based on the assumption that full variable maintenance costs would be recovered as reflected in FERC Form No. 1 Operations and Maintenance data, including overhaul and major maintenance cost recovery.³⁷

³¹ *Id.* at 7.

³² *Id.*

³³ *Id.* at 10.

³⁴ *Id.* at 9-10.

³⁵ *Id.* at 8.

³⁶ *Id.* at 6-7.

³⁷ *Id.* at 6.

22. Golden Spread submitted comments in support of Joint Filing Group's limited protest and asserting that market participants in SPP's Integrated Marketplace are unjustly and unreasonably denied recovery of VOM costs.³⁸ Golden Spread contends that under-recovery of VOM costs in the wholesale market creates a subsidy by improperly forcing its distribution cooperative members and their customers to pay for costs imposed by participation in the SPP markets;³⁹ in particular, by committing its units at the direction of SPP to ensure reliability. According to Golden Spread, this violates cost causation principles and is inconsistent with precedent that states that costs should be paid for in the rates of those who cause the costs.⁴⁰

23. Golden Spread also argues that the SPP Market Monitor narrowly and erroneously interprets the current Tariff to deny recovery of major maintenance components of VOM costs in mitigated offers. In support of this argument, Golden Spread contends that the major maintenance costs that it seeks to recover in its mitigated offers are both short-run marginal costs and variable costs.⁴¹ Golden Spread argues that short-run marginal cost represents an increment to total cost from an incremental unit of output where the production process uses fixed and variable outputs, and that average variable cost is a surrogate for short-run marginal cost because business records do not often reflect marginal costs.⁴²

24. The SPP Market Monitor states that it disagrees with SPP's proposal to permit generation owners to recover, when mitigated, VOM costs that exceed short-run marginal costs.⁴³ It argues that SPP's proposal is inconsistent with the economic theory underlying competitive markets, and that market participants' concerns are based on traditional cost-of-service ratemaking accounting practices.⁴⁴ According to the SPP Market

³⁸ Golden Spread Comments at 2.

³⁹ *Id.*

⁴⁰ *Id.* at 2 (citing *K N Energy v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Alcoa Inc. v. FERC*, 564 F.3d 1342, 1346-47 (D.C. Cir. 2009); *Sithe/Independence Power Partners v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002)).

⁴¹ *Id.* at 3 (citing *MCI Communications*, 708 F.2d at 1114-15; *William Inglis*, 668 F.2d at 1032).

⁴² *Id.* at 3.

⁴³ SPP Market Monitor Comments at 1.

⁴⁴ *Id.* at 16-17.

Monitor, these traditional accounting practices do not differentiate between short-run marginal cost and other non-capital costs (e.g., labor, inspections, major maintenance), while competitive offers are appropriately based on short-run marginal cost alone. Because SPP's proposal would result in guaranteed cost recovery for market participants, the SPP Market Monitor concludes that it is inconsistent with competitive market structure.⁴⁵ The SPP Market Monitor also asserts that there are other means to permit cost recovery in a competitive market, including capacity payments, revenues from operating reserves markets, and scarcity pricing.⁴⁶ The SPP Market Monitor requests that the Commission reject the proposed Tariff revisions that would include non-short-run marginal costs in mitigated offers.⁴⁷

25. The SPP Market Monitor asserts that short-run marginal cost is not a nebulous term, but it is a common economic phrase that describes the incremental cost of production. The SPP Market Monitor further states that it has advised SPP that the Tariff should describe short-run marginal costs in terms of the costs of consumables, incremental maintenance personnel, and other incremental expenses caused as a direct result of the short-run production of energy.⁴⁸ The SPP Market Monitor argues that, as explained in Dr. Mooney's testimony in support of a 2013 compliance filing by SPP, short-run marginal costs are "costs that vary by MWh output," and that market participants have appropriate flexibility to include documented costs as short-run marginal costs, subject to SPP Market Monitor verification.⁴⁹ The SPP Market Monitor argues that costs such as major overhaul expenses should not be included as short-run marginal costs, and that SPP's proposal, if implemented, would create opportunities for economic withholding.⁵⁰

26. The PJM Market Monitor argues that it would be unjust and unreasonable to permit the replacement of SPP's current use of short-run marginal cost for calculating

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 26.

⁴⁸ *Id.* at 14-15.

⁴⁹ *Id.* at 15 (quoting SPP November 2013 Compliance Filing, Ex No. SPP-13, Testimony of Catherine Mooney at 19-20).

⁵⁰ *Id.* at 16.

mitigated offers.⁵¹ According to the PJM Market Monitor, it would be unjust and unreasonable to define competitive offers and the inputs used for market power mitigation on any basis other than short-run marginal cost.⁵²

27. The PJM Market Monitor asserts that SPP's proposal is inconsistent with the correct economic definition of short-run marginal cost, and that short-run marginal cost does not include long-term maintenance costs, fixed costs, or investment costs.⁵³ The PJM Market Monitor states that SPP's proposal would require the SPP Market Monitor to include all variable costs as short-run marginal costs, even when it is inappropriate to do so. The PJM Market Monitor further asserts that SPP's current approach of developing mitigated offers based on short-run marginal cost is consistent with competition, consistent with economic principles, well defined, and properly implemented. The PJM Market Monitor argues that, to the extent that PJM's rules are not as clear as SPP's rules for defining short-run marginal cost, it is PJM rather than SPP that should modify its rules.⁵⁴

28. Further, the PJM Market Monitor argues that competitive pricing does not guarantee cost recovery and that some suppliers may incur losses in a competitive market.⁵⁵ According to the PJM Market Monitor, in a competitive wholesale market, market participants may have opportunities to recover costs other than short-run marginal costs through other sources. The PJM Market Monitor lists example sources including infra-marginal rents, adders to the mitigated offers of frequently-mitigated units, operating reserve markets, scarcity pricing, capacity markets, and regulated bilateral contracts.⁵⁶ According to the PJM Market Monitor, cost recovery for the generation owners in the SPP market is covered by state cost of service regulation.⁵⁷ The PJM Market Monitor also states that it is inappropriate to permit the exercise of market power

⁵¹ PJM Market Monitor Protest at 2.

⁵² *Id.* at 6.

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 2.

⁵⁵ *Id.* at 4.

⁵⁶ *Id.* at 8.

⁵⁷ *Id.* at 3.

in competitive wholesale electricity markets, and that SPP's proposal would interfere with the SPP Market Monitor's ability to prevent the exercise of market power.⁵⁸

29. The New Jersey Board supports the arguments advanced by the PJM Market Monitor and shares the PJM Market Monitor's objections to SPP's filing. The New Jersey Board agrees with the PJM Market Monitor's assessment that a Commission determination approving SPP's proposed Tariff revisions as filed would be a regression from SPP's current mitigation rules, and it believes it could create an adverse precedent that spills over to other regions. Further, the New Jersey Board agrees that approval of SPP's filing could subject SPP's customers to structural market power and potentially subject PJM customers in the future to the same, thereby nullifying recent progress in PJM.⁵⁹

30. According to the New Jersey Board, SPP's efforts to expand the scope of what constitutes short-run marginal cost beyond the Commission's definition and beyond the widely accepted definition of standard market economics, would skew the efficiency of energy market price outcomes and artificially inflate the price of energy borne by all consumers. The New Jersey Board argues that market participants in SPP, or any regional transmission organization (RTO), should not be permitted to claim energy market recovery of expenses recoverable under cost of service ratemaking. In addition, the New Jersey Board asserts that it is inappropriate for any RTO to advance such a design in the presence of a competitive wholesale market paradigm.⁶⁰

ii. Precedent Regarding Short-Run Marginal Cost

31. Joint Filing Group argues that the SPP Market Monitor's narrow application of short-run marginal cost to preclude recovery of major maintenance costs in mitigated offers is in contrast to Commission-approved market power mitigation plans of other RTOs and ISOs.⁶¹ Joint Filing Group notes that the Commission approved CAISO's

⁵⁸ *Id.* at 2.

⁵⁹ New Jersey Board Comments at 2.

⁶⁰ *Id.* at 3-4.

⁶¹ Joint Filing Group Comments at 11 (citing Midcontinent Independent Transmission System Operator (MISO), FERC Electric Tariff, Module D, Sections 64.1.4 and 65.2.1; New York Independent System Operator, Inc. (NYISO), Market Administration and Control Area Services Tariff, Attachment H, Section 23.3.1.4; ISO New England Inc. (ISO-NE), Transmission, Markets, and Services Tariff, Section III,

request to implement a major maintenance adder, which CAISO explained would be based solely on resource-specific information derived from actual maintenance costs, when available, or estimated maintenance costs provided by the scheduling coordinator or an independent entity chosen by CAISO.⁶² Joint Filing Group therefore asserts that SPP market participants are likely under-compensated as compared to market participants in other RTO/ISO markets providing similar services.

32. Joint Filing Group contends that the courts have recognized that short-run marginal cost is an economic cost standard and not an accounting standard.⁶³ Joint Filing Group asserts that average variable cost has been used as an evidentiary surrogate for short-run marginal cost because business records rarely reflect marginal costs of production.⁶⁴

33. The SPP Market Monitor explains that the Commission required SPP to mitigate on the basis of short-run marginal cost in several orders, including: (1) the October 2012 Order conditionally accepting SPP's Integrated Marketplace;⁶⁵ and (2) the subsequent 2013 order on rehearing.⁶⁶ The SPP Market Monitor argues that SPP's Integrated Marketplace filings and Tariff have, until this point, specified that short-run marginal cost is the basis for mitigated offers, including for energy offer curves, start-up offers, no-load offers, as well as fuel and VOM costs for mitigated operating reserve offers.⁶⁷ The SPP Market Monitor states that the Commission accepted provisions to base the VOM cost components of mitigated offers on short-run marginal cost on January 29, 2014.⁶⁸

Market Rule 1, Appendix A, Section III, A.7.5.1; and California Independent System Operator Corporation (CAISO), Fifth Replacement Electric Tariff, Section 30.4.1.1.4).

⁶² *Id.* (citing *California Indep. Sys. Operator Corp.*, 145 FERC ¶ 61,082, at P 5 (2013)).

⁶³ *Id.* at 8 (citing *MCI*, 708 F.2d at 1114-15 (citations omitted); *William Inglis*, 668 F.2d 1014).

⁶⁴ *Id.* (citing *William Inglis*, 668 F.2d at 1032).

⁶⁵ SPP Market Monitor Comments at 10-11 (citing October 2012 Order, 141 FERC ¶ 61,048 at P 420).

⁶⁶ *Id.* at 11 (citing *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,205 at P 98).

⁶⁷ *Id.* at 11-12.

⁶⁸ *Id.* at 13 (citing *Sw. Power Pool, Inc.* 146 FERC ¶ 61,050 at P 187).

According to the SPP Market Monitor, SPP's proposal is a departure from prior Commission orders that have consistently directed SPP to define short-run marginal cost, rather than to change its Market Power Mitigation Plan to describe costs as variable or fixed.⁶⁹ The SPP Market Monitor also argues that SPP's proposal is inconsistent with competitively-based approaches approved by the Commission for other RTOs/ISOs. The SPP Market Monitor concludes that SPP's proposal is a major departure from SPP's Tariff and the Commission's direction, and it should be rejected.⁷⁰

34. According to the SPP Market Monitor, SPP's proposal is inconsistent with other Commission precedent requiring the use of short-run marginal cost for competitive energy offers and establishing marginal cost as the basis for locational marginal pricing.⁷¹ The SPP Market Monitor argues that competitive locational marginal pricing requires market participants to base energy offers on short-run marginal cost, and that offers based on costs in excess of short-run marginal cost would result in distorted prices and anti-competitive behavior.⁷² The SPP Market Monitor maintains that the mitigation procedures in Commission-jurisdictional RTO/ISO tariffs follow the premise that resource offers will be approximately equal to short-run marginal cost, inclusive of opportunity costs.⁷³ The SPP Market Monitor states that the Commission has held providing generators with guaranteed cost recovery beyond the going-forward or marginal costs of a generating unit would be inappropriate and inconsistent with the establishment of mitigated prices that reflect competitive offers.⁷⁴ The SPP Market Monitor also argues that the Commission has held that competitive conditions require

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 10 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,225, at P 53 (2014); *Atlantic City Elec. Co. v. PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,132, at P 22 (2006)).

⁷² *Id.*

⁷³ *Id.* at 17 (citing Commission Staff Analysis of Energy Offer Mitigation in RTO and ISO Markets, Docket No. AD14-14-000, at 3).

⁷⁴ *Id.* at 17-18 (citing *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,091, at P 36 (2014)).

that generators not be provided with incentives to raise offers significantly above marginal costs.⁷⁵

35. Similarly, the PJM Market Monitor contends that the Commission has made it clear that there is a difference between short-run marginal cost and variable cost⁷⁶ and that SPP's proposal contradicts the Commission's directives to SPP and other precedent.⁷⁷ The PJM Market Monitor states that it supports the definition of short-run marginal cost included in the Commission's orders on this matter in SPP.⁷⁸ The PJM Market Monitor also asserts that SPP's filing is a collateral attack on the Commission's prior orders.⁷⁹

iii. Golden Spread's Individual Resources

36. Golden Spread states that there are two major components of VOM costs: (1) costs associated with annual operations and maintenance expenses for units, such as consumable commodities and station power; and (2) costs associated with major maintenance that occurs in accordance with original equipment manufacturer recommendations.⁸⁰ Golden Spread presents analysis of its VOM costs and asserts that the major maintenance costs identified therein are variable costs. Golden Spread argues that hours of operation or number of starts are the drivers for the major maintenance costs for Golden Spread's simple-cycle combustion turbines at the Mustang Station⁸¹ and

⁷⁵ *Id.* at 18 (citing *ISO New England Inc.*, 111 FERC ¶ 61,184, at P 16 (2005)).

⁷⁶ PJM Market Monitor Protest at 6 (citing *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,205 at P 92 and n.137).

⁷⁷ *Id.* at 2.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Golden Spread Comments at 3-4 (citing Attachment 1 at P 6 (Affidavit of Jeff Pippin) (Pippin Aff.)).

⁸¹ Golden Spread Comments at 5-6 (citing Pippin Aff. at PP 11-13). Golden Spread states that Mustang Station is a 487 MW power plant consisting of a combined cycle facility and three simple cycle combustion turbines. *See* Pippin Aff. at P 3.

gas-fired reciprocating engines at the Antelope Elk Energy Center.⁸² As such, Golden Spread argues that major maintenance costs are variable or short-run marginal costs of production and should be included in mitigated offers when adequately supported.⁸³ Golden Spread also states that it does not include fixed costs in its definition of VOM costs and that it uses the same definition of fixed costs that SPP proposes in its filing. Golden Spread argues that major maintenance costs are clearly part of the average variable cost of production for Golden Spread's generating units.⁸⁴

37. According to Golden Spread, the cost of spare parts is an example of a major maintenance cost that should be considered as a component of VOM costs. Golden Spread states that the costs are not paid or booked as expenses to the appropriate account in the FERC Uniform System of Accounts until the year in which the purchase and installation of the spare parts takes place.⁸⁵ Golden Spread further asserts the operation of a generating unit causes wear and tear on parts and machinery, and eventually causes parts to fail necessitating spare part replacements. Golden Spread contends that conversely, if a generating unit sits idle and never produces any output, the major maintenance cost components of VOM costs would be avoided.⁸⁶

38. Golden Spread argues that its resources are uniquely situated in such a way that they are acutely impacted by the under-recovery of VOM costs.⁸⁷ In particular, Golden Spread asserts that its Antelope Station reciprocating engine units and Mustang Station combustion turbines are often subject to mitigation.⁸⁸ Golden Spread states that SPP often commits the combustion turbines at its Mustang Station, located in a

⁸² Antelope Elk Energy Center includes the Antelope Station and Elk Station. Antelope Station consists of 18 natural gas-fired reciprocating engine generators. Elk Station consists of a natural gas-fired combustion turbine, with two additional natural gas-fired combustion turbines planned for 2016. *See* Pippin Aff. at P 3.

⁸³ Pippin Aff. at P 4.

⁸⁴ Golden Spread Comments at 5.

⁸⁵ Pippin Aff. at P 6.

⁸⁶ *Id.* P 7.

⁸⁷ Golden Spread Comments at 2.

⁸⁸ *Id.* at 7 (citing Attachment 2 at P 11 (Affidavit of Matt Moore) (Moore Aff.)).

Frequently-Constrained Area,⁸⁹ outside of the market clearing process in the reliability unit commitment process.⁹⁰ Golden Spread asserts that, when SPP instructs these units to run through the reliability unit commitment process, the units are likely to receive mitigation due to their location.⁹¹ According to Golden Spread, SPP often instructs these units to operate to address system constraints, voltage issues, or capacity issues. Golden Spread maintains that if not for SPP calling upon these units to relieve market constraints and maintain reliability, Golden Spread would not often run the units to serve its member distribution cooperative loads.⁹² Golden Spread states that the increased frequency with which SPP instructs these units to start and run leads to an increase in major maintenance costs, and that it is not fair or reasonable to force Golden Spread and its distribution cooperative members to absorb these costs.⁹³

39. Golden Spread also states that starts at the Antelope Station have increased by nearly 400 percent since the start of the Integrated Marketplace in March 2014.⁹⁴ According to Golden Spread, a large percentage of the starts have been subject to mitigation. Golden Spread further states that SPP increasingly relies upon the Antelope Station units, along with its new and planned Elk Station units, in order to manage renewable resource output. Golden Spread contends that reliance on these units could increase under higher levels of renewable resources likely needed to comply with the Environmental Protection Agency's Clean Power Plan.⁹⁵ Golden Spread states that, although the Antelope and Elk Stations are not located in a Frequently Constrained Area, they are still subject to and receive mitigation.⁹⁶ Golden Spread asserts that it will be

⁸⁹ SPP's Tariff defines a Frequently Constrained Area as "an electrical area identified by the [SPP] 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." Tariff at Attachment AF § 3.1.1.

⁹⁰ Golden Spread Comments at 7.

⁹¹ *Id.*; Moore Aff. at P 11.

⁹² Moore Aff. at P 11, P 13.

⁹³ *Id.* P 13.

⁹⁴ Golden Spread Comments at 7.

⁹⁵ *Id.* at 8; Moore Aff. at P 10.

⁹⁶ Moore Aff. at P 12.

unable to recover in mitigated offers all of the legitimate VOM costs associated with these units if SPP continues to commit the units as it does currently.⁹⁷

iv. Miscellaneous Items

40. The SPP Market Monitor asserts that SPP's proposal attempts to fix a problem that may not exist, and points out that offer mitigation is infrequent in the Integrated Marketplace. Relying on analysis from the 2014 State of the Market Report, the SPP Market Monitor contends that mitigation for all categories of offers has decreased significantly since the launch of the Integrated Marketplace in March 2014. The SPP Market Monitor states that mitigation applied to a very low percentage of offers in SPP's energy markets. The Market Monitor asserts that the application of mitigation in the real-time balancing market was less than 0.03 percent on average in the first 12 months of the Integrated Marketplace, and that the application of mitigation in the day-ahead market was under 0.2 percent in July 2015.⁹⁸

41. The SPP Market Monitor also contends that the mitigation that has occurred in the Integrated Marketplace is not a significant source of cost under-recovery. Based on analysis conducted for the 2014 State of the Market Report, the SPP Market Monitor asserts that market prices in SPP are high enough to support recovery of annual ongoing operations and maintenance costs for scrubbed coal, combined cycle, and combustion turbine technologies. The SPP Market Monitor also asserts that if mitigation were causing a cost under-recovery problem, the number of resource offers at or near the threshold for mitigation would be higher. The SPP Market Monitor argues that resources may fail to recover their costs because of reasons unrelated to mitigation, such as inefficient market dispatch of the resource.

c. Answers

42. In its answer, Joint Filing Group contends that it is not arguing against short-run marginal costs; rather, it is challenging the SPP Market Monitor's unsupported assumption that major maintenance costs are not variable costs. In the affidavit submitted with its answer, Joint Filing Group asserts that the SPP Market Monitor inappropriately defines short-run marginal costs as incurred concurrently with

⁹⁷ *Id.* P 9.

⁹⁸ SPP Market Monitor Comments at 20.

incremental production.⁹⁹ Joint Filing Group states that the timing of the incurrence of costs is immaterial;¹⁰⁰ i.e., payment before or after the incremental operation of a generating unit does not convert a variable cost into a fixed cost,¹⁰¹ and that allowing recovery based on when financial expenditures occur could lead to economic inefficiencies including shifting the timing of otherwise efficient maintenance schedules.¹⁰² Joint Filing Group contends that the SPP Market Monitor is incorrect in its claims that SPP's proposal would adversely alter the focus of mitigation and distort locational marginal prices.¹⁰³ According to Joint Filing Group, mitigated offers that do not permit resources to recover their variable costs deny fair cost recovery to generators and suppress locational marginal prices, leading to inefficient operational and investment decisions.¹⁰⁴

43. Joint Filing Group argues that the SPP Market Monitor's assertion that non-short-run marginal costs can be recovered through scarcity pricing is unrealistic because scarcity pricing is infrequent, unpredictable, and only benefits resources that clear the market.¹⁰⁵ Joint Filing Group also argues that revenues from operating reserves often reduce make-whole payments for out-of-merit generators and do not result in cost recovery, and that this is not an acceptable substitute for setting mitigated energy offers that provide for recovery of variable costs. Joint Filing Group asserts that market participants should not have to rely on "unpredictable and undependable revenue streams," such as scarcity pricing and ancillary services revenue, to recover the VOM costs associated with operating in the Integrated Marketplace.¹⁰⁶

⁹⁹ Joint Filing Group August 31 Answer at 10 (citing Appendix A at P 17 (Affidavit of Todd Schatzki (Schatzki Aff.) (citing SPP Market Monitor Comments at 5 (emphasis in the original))).

¹⁰⁰ Joint Filing Group August 31 Answer at 10-11 (citing Schatzki Aff. at PP 9, 17).

¹⁰¹ *Id.* at 11-12.

¹⁰² Schatzki Aff. at PP 8-9.

¹⁰³ Joint Filing Group August 31 Answer at 13.

¹⁰⁴ *Id.* at 13-14.

¹⁰⁵ *Id.* at 13.

¹⁰⁶ *Id.*

44. According to Joint Filing Group, SPP's proposal is not a "major departure"¹⁰⁷ from the Commission's direction in the Integrated Marketplace orders, which it argues did not suggest that variable cost and short-run marginal cost are different. Joint Filing Group further argues that SPP's proposal is not a collateral attack on those orders.¹⁰⁸ In this regard, Joint Filing Group contends that in the October 2012 Order, the Commission explained that with the adoption of a "short-run marginal cost" approach, "in the SPP market, the offer . . . will be mitigated to its variable costs,"¹⁰⁹ and that on rehearing the Commission determined that mitigated offers should not guarantee recovery of *fixed* costs.¹¹⁰ Joint Filing Group argues that the Integrated Marketplace orders did not address the question of whether major maintenance costs should be excluded from mitigated offers, and that SPP's Filing proposes to clarify the Tariff on this question.

45. Joint Filing Group contends that neither the SPP Market Monitor nor the PJM Market Monitor cited any Commission precedent indicating that the VOM costs in SPP's proposal are not variable or short-run marginal costs.¹¹¹ Moreover, Joint Filing Group contends that both market monitors ignore that other RTOs and ISOs have tariff provisions that allow the inclusion of VOM costs in mitigated offers, and that SPP's proposal to include major maintenance components of such costs is not novel.¹¹² Joint Filing Group emphasizes that in CAISO the Commission has approved the inclusion of major maintenance costs in mitigated offers.¹¹³ Joint Filing Group also asserts that the Electric Reliability Council of Texas' (ERCOT) energy market allows for the recovery of overhaul and major maintenance costs in energy prices, and that rejection of SPP's

¹⁰⁷ *Id.* at 7 (citing SPP Market Monitor Comments at 13).

¹⁰⁸ *Id.* (citing PJM Market Monitor Protest at 2, 6).

¹⁰⁹ *Id.* at 8 (citing October 2012 Order, 141 FERC ¶ 61,048 at P 442).

¹¹⁰ *Id.* (citing *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,205 at P 98).

¹¹¹ *Id.* at 10.

¹¹² Joint Filing Group August 31 Answer at 3 (citing MISO, FERC Electric Tariff, Module D, Sections 64.1.4 and 65.2.1; NYISO, Market Administration and Control Area Services Tariff, Attachment H, Section 23.3.1.4; ISO-NE, Transmission, Markets, and Services Tariff, Section III, Market Rule 1, Appendix A, Section III, A.7.5.1; and CAISO, Fifth Replacement Electric Tariff, Section 30.4.1.1.4).

¹¹³ *Id.* at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 145 FERC ¶ 61,082, at P 5 (2013) (approving CAISO's request to implement a major maintenance adder)).

proposal may lead to inefficient decisions between deploying resources in SPP or ERCOT.¹¹⁴

46. Joint Filing Group argues that the SPP Market Monitor's discussion of the recent infrequency of mitigation in SPP is not relevant to the Commission's analysis of whether SPP's proposed Tariff revisions are just and reasonable. In this regard, Joint Filing Group argues that frequency of mitigation does not reflect compensation adequacy or obviate the need to include VOM costs in mitigated offers.¹¹⁵

47. In its answer, the SPP Market Monitor states that the comments of Joint Filing Group and Golden Spread amplify its concern that SPP's proposed tariff revisions would change the focus of market mitigation from ensuring competitive market outcomes to ensuring cost recovery at the expense of market efficiency.¹¹⁶ The SPP Market Monitor argues that Joint Filing Group is incorrect that major maintenance costs are "short-run marginal costs in the true economic sense."¹¹⁷ Rather, according to the SPP Market Monitor, major maintenance costs are valid long-run variable costs that occur infrequently during planned outages, but they are not short-run marginal costs. The SPP Market Monitor states that major maintenance is a known long-run expense and an anticipated avoidable cost associated with maintaining capacity for regular operation.¹¹⁸ The SPP Market Monitor reiterates that in a competitive market, prices equal the short-run marginal cost of production, and the point of market power mitigation is to bring prices to competitive levels in the presence of market power, not to guarantee recovery of variable costs.

48. In addition, the SPP Market Monitor argues that Joint Filing Group's reference to CAISO's practice of allowing inclusion of costs that are not short-run marginal costs in the major maintenance adder is inapposite. The SPP Market Monitor contends that while CAISO does include long-run costs in its major maintenance adder, unlike SPP's proposal, CAISO does not allow the inclusion of costs based solely on long-term service agreements. According to the SPP Market Monitor, this is a significant distinction between CAISO's practice and SPP proposal, because SPP's proposal would obligate the

¹¹⁴ *Id.* at 4.

¹¹⁵ *Id.* at 15.

¹¹⁶ SPP Market Monitor Answer at 1.

¹¹⁷ *Id.* at 3 (quoting Joint Filing Group Comments at 8).

¹¹⁸ *Id.* at 3-4.

SPP Market Monitor to accept any cost denominated in starts, hours, or MWhs in a long-term service agreement as includable in mitigated offers regardless of whether the expenses represent fixed or variable, short-run or long-run costs.¹¹⁹

49. In response to Golden Spread's comments regarding its Antelope Station, the SPP Market Monitor argues it has advocated, along with Golden Spread, for SPP to make changes to the manner in which it commits and dispatches quick-start resources. The SPP Market Monitor states that addressing quick-start issues may also address Golden Spread's concerns. In this regard, the SPP Market Monitor argues that the commitment and dispatch patterns of Golden Spread's Antelope Station are not material to SPP's filing, and Golden Spread's comments do not indicate that market power mitigation has affected the Antelope Station in a significant way. The SPP Market Monitor also states in response to concerns Golden Spread raised about its Mustang Station that if SPP has few substitutes for a given resource, that resource may frequently be brought online during the reliability unit commitment process through a mitigated offer. The SPP Market Monitor states that, in this scenario, locational marginal prices may not support long-run cost recovery because real-time locational marginal prices often do not support reliability unit commitment decisions for combustion turbines.¹²⁰ In cases where the current market design does not provide recovery of all avoidable costs, including major maintenance costs, the SPP Market Monitor states that it supports the limited use of Frequently Mitigated Resource Adders.¹²¹

50. Finally, the SPP Market Monitor asserts that the Commission has considered and rejected arguments that variable and fixed costs beyond short-run marginal costs should be included in mitigated offers. The SPP Market Monitor reiterates that the Commission has stated already that SPP is to base offer mitigation on short-run marginal costs.¹²² It argues that to the extent Joint Filing Group and Golden Spread wish to challenge the Commission's prior orders, they must do so by filing a complaint under section 206 of the Federal Power Act.¹²³

¹¹⁹ *Id.* at 5.

¹²⁰ *Id.* at 6-7.

¹²¹ *Id.* at 8.

¹²² *Id.* (citing October 2012 Order, 141 FERC ¶ 61,048 at P 420, *order on reh'g*, 142 FERC ¶ 61,205 at P 98).

¹²³ *Id.*

51. In its answer, SPP states that the proposed revisions address the problem of an unclear and publicly-debated cost standard and resulted from SPP's properly functioning Commission-approved stakeholder process.¹²⁴ SPP states that it is not required to demonstrate that its proposal is superior to all other potential methodologies and that the unilateral opinions of the SPP Market Monitor and the PJM Market Monitor are not the standard by which tariff revisions should be reviewed.¹²⁵ According to SPP, its proposal is just and reasonable and clarifies a potential ambiguity regarding mitigated offers in the Tariff. SPP further argues that its proposal is not a collateral attack on a prior Commission order.¹²⁶

52. SPP disputes the assertions of the SPP Market Monitor and the PJM Market Monitor that their respective interpretations of short-run marginal cost are well-settled. It asserts that the comments filed by other parties in this proceeding, approaches to mitigation in other RTOs and ISOs, and statements made by the PJM Market Monitor and the Independent Market Monitor for MISO make it clear that there is no single industry consensus about the methodology to calculate mitigated offers.¹²⁷ SPP states that different markets may have different approaches to mitigation and notes that, unlike PJM, the SPP market design is not built around retail open access and does not have a competitive forward capacity market.¹²⁸ SPP states that the SPP Market Monitor's comments that the frequency of mitigation in SPP has decreased do not address market participants' concerns that the current SPP Tariff is unclear as to the cost components allowed in mitigated offers.¹²⁹ SPP agrees with Joint Filing Group that there is no accounting method to identify the economic concept of short-run marginal cost in the Tariff, and as such, categorizing costs as fixed and variable is appropriate.

53. In its answer responding to the comments of the New Jersey Board, Joint Filing Group asserts that mitigated offer prices based on variable costs, not fixed costs, are consistent with competitive market prices, and do not reflect any exercise of market power. With regard to the comments of the New Jersey Board that SPP's proposal could

¹²⁴ SPP Answer at 2.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 3.

¹²⁸ *Id.* at 4.

¹²⁹ *Id.* at 5.

nullify recent progress in PJM, Joint Filing Group argues that Commission acceptance of SPP's filing would not change, or require any change to, the rules in PJM.¹³⁰

54. Joint Filing Group also asserts that the SPP Market Monitor has been misapplying the short-run marginal cost standard in the SPP Tariff to exclude certain variable maintenance costs from mitigated offers. According to Joint Filing Group, SPP's filing is consistent with the Commission's directive that mitigated offers based on short-run marginal cost should cover variable costs, but not fixed costs.¹³¹ Further, Joint Filing Group argues that any suggestion that the Commission should require cost shifting from Integrated Marketplace buyers to the captive retail or wholesale customers of the market participant utilities by requiring captive customers to cover variable operation and maintenance costs instead of reflecting them in mitigated energy market offers is inappropriate.¹³²

55. In an answer to Joint Filing Group and SPP, the SPP Market Monitor reiterates its requests for the Commission to direct SPP to eliminate from its proposed Tariff revisions all VOM costs that are not short-run marginal costs and to require that the SPP Market Monitor annually review and recommend updates to default VOM costs based on competitive offers.¹³³

56. The SPP Market Monitor states that SPP and Joint Filing Group misrepresent the SPP Market Monitor's position. The SPP Market Monitor argues that SPP's proposal is unjust and unreasonable, rather than a less reasonable alternative to the currently effective Tariff.¹³⁴ The SPP Market Monitor contends that SPP's proposal would not ensure efficient market rates in SPP; rather, the SPP Market Monitor argues that the proposal would create opportunities for economic withholding and would lead to inadequate consumer protections against market power, contrary to the purpose of a market power mitigation plan.¹³⁵

¹³⁰ Joint Filing Group September 4 Answer at 3.

¹³¹ *Id.* (citing Joint Filing Group August 31 Answer at 7-9).

¹³² *Id.* at 4.

¹³³ SPP Market Monitor September 15 Answer at 2.

¹³⁴ *Id.*

¹³⁵ *Id.* at 2-3.

57. The SPP Market Monitor asserts that Joint Filing Group fails to recognize a fundamental economic concept regarding the distinction between short-run and long-run time frames in determining the appropriate costs to include in competitive offers.¹³⁶ In this regard, the SPP Market Monitor states that a basic tenet of microeconomic theory holds that all costs are variable in the long-run, but in the short-run, some costs are fixed and some costs are variable.¹³⁷ The SPP Market Monitor further states that a necessary condition for market efficiency in the short-run is that prices equal the short-run marginal cost of production, and that suppliers have strong incentives to offer at their short-run marginal cost in competitive electricity markets.¹³⁸

58. The SPP Market Monitor states that the relevant timing of decisions in SPP markets is quite short, and that the costs associated with the decision to produce a marginal unit of energy include fuel usage costs, emissions costs, opportunity costs, and only a small amount of maintenance and labor costs.¹³⁹ Additionally, the SPP Market Monitor asserts that neither the timing of an expenditure nor the accounting of a cost is relevant to whether a cost is included in a competitive offer; rather, the SPP Market Monitor argues that the relevant question is whether the decision to consume a resource occurs in the short-run time frame of the market.¹⁴⁰

59. The SPP Market Monitor disagrees with SPP and Joint Filing Group that variable costs and short-run marginal costs are synonymous terms, and states that decisions to incur many major maintenance costs and other costs associated with the FERC Uniform System of Accounts account numbers listed in SPP's proposal are long-run decisions.¹⁴¹

60. The SPP Market Monitor argues that the standard for efficient prices in competitive electricity markets does not vary based on the underlying regulatory structure.¹⁴² The SPP Market Monitor further argues that Joint Filing Group's citations to

¹³⁶ *Id.* at 3-4.

¹³⁷ *Id.* at 4.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.*

¹⁴² *Id.* at 5-6.

other RTO and ISO markets incorrectly suggest that those markets allow the inclusion of all operating and maintenance costs in mitigated offers yet none of the markets in question guarantee the inclusion in mitigated offers of all VOM costs claimed by a market participant.¹⁴³ The SPP Market Monitor contends that each of the other markets cited by Joint Filing Group provides for a review by the relevant market monitor to ensure the reasonableness of the costs submitted by market participants for inclusion in mitigated offers.¹⁴⁴

61. In an answer to Joint Filing Group and SPP, the PJM Market Monitor argues that SPP's proposal should be rejected as a matter of law, and if not rejected, should be found not just and reasonable.¹⁴⁵ The PJM Market Monitor states that Joint Filing Group fails to provide support for defining cost-based offers at levels greater than short-run marginal cost. The PJM Market Monitor further asserts that Joint Filing Group is attempting to redefine competitive offers to achieve a regulatory cost allocation objective and that competitive markets do not guarantee that market participants will recover all of their costs.¹⁴⁶

62. According to the PJM Market Monitor, a good market design provides the opportunity to recover all costs through competitive offers, but does not guarantee that all costs will be recovered for each generating unit.¹⁴⁷ The PJM Market Monitor also argues that the SPP market operates in an environment that includes cost-of-service regulation for most generating resources. The PJM Market Monitor asserts that Joint Filing Group prefers the regulatory solution of cost-of-service regulation, but is unwilling to accept its consequences, and asserts that a capacity market would provide a market-based resolution to Joint Filing Group's issues.¹⁴⁸

63. In response to Joint Filing Group's arguments regarding inappropriate cost shifting to captive customers, the PJM Market Monitor states that, under cost-of-service regulation, captive customers pay all of the fixed costs that are not covered by revenues

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 6-7.

¹⁴⁵ PJM Market Monitor September 18 Answer at 2-3.

¹⁴⁶ *Id.* at 3.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 3-4.

from energy and ancillary service markets, and further states that taking Joint Filing Group's position to its logical conclusion would lead to the inclusion of fixed costs in energy offers.¹⁴⁹ The PJM Market Monitor further asserts that Joint Filing Group has not supported its claims of inadequate net revenue with any data, and that even if there were any such evidence, the appropriate solution would be to improve SPP's market design rather than to create distortions in mitigated offers.¹⁵⁰ The PJM Market Monitor contends that there is no debate among economists that competitive markets produce efficient and socially optimal prices when market participants offer at their short-run marginal cost.¹⁵¹

64. The PJM Market Monitor states that the evidence in PJM's markets shows that sellers offer at their actual short-run marginal cost, defined in the same way as the SPP Market Monitor defines short-run marginal cost.¹⁵² Additionally, the PJM Market Monitor argues that an affidavit filed in support of Joint Filing Group's arguments ignores the fact that SPP relies on a competitive market and ignores theory regarding the relevant time period associated with the definition of short-run marginal cost.¹⁵³ In this regard, the PJM Market Monitor asserts that fuel costs are short run marginal costs while repair and major maintenance costs such as turbine overhauls are not short run marginal costs. Further, the PJM Market Monitor asserts that bilateral contracts, including long-term service agreements, do not define short-run marginal costs.¹⁵⁴

65. The PJM Market Monitor reiterates that SPP's proposal should be rejected as a collateral attack on the October 2012 Order, and argues that even if the proposal is not a collateral attack on prior Commission orders, it should be rejected on its merits. The PJM Market Monitor argues that the issue of what constitutes a competitive offer is not susceptible to multiple answers as may be the case when the "zone of reasonableness" concept is applied in cost allocation or cost-of-service ratemaking. The PJM Market

¹⁴⁹ *Id.* at 4-5.

¹⁵⁰ *Id.* at 5.

¹⁵¹ *Id.* at 6.

¹⁵² *Id.*

¹⁵³ *Id.* at 6-7.

¹⁵⁴ *Id.* at 7.

Monitor also states that prices resulting from offers at short-run marginal cost are the only metrics for determining whether a market is competitive.¹⁵⁵

66. The PJM Market Monitor further contends that, while SPP is the party that filed the proposal under section 205 of the Federal Power Act, it is generation owners that are attempting to argue the merits of the proposal. The PJM Market Monitor asserts that SPP's generation owners do not have section 205 filing rights concerning the Tariff and that SPP does not show that it made any independent evaluation of the proposed Tariff revisions.¹⁵⁶

d. Commission Determination

67. As discussed below, SPP has not shown that its proposal to describe mitigated offers in terms of variable cost rather than short-run marginal cost would lead to mitigated offers that reasonably reflect offers in a competitive market. SPP also has not adequately supported its proposal, and further, the proposal is inconsistent with the Commission's directive in the October 2012 Order conditionally accepting the Integrated Marketplace.¹⁵⁷ Thus, SPP has not shown its proposal will result in just and reasonable rates.

68. The Commission has stated previously that in a competitive electricity market, suppliers are "expected to produce at the point where prices exceed their short-run marginal costs,"¹⁵⁸ and it found that mitigation based on marginal cost is reasonable for generators that are usually dispatched in-merit to provide energy.¹⁵⁹ The Commission also stated that defining the appropriate cost basis for mitigated offers is not an "exact science," but nonetheless the Commission stated that mitigated offers should "reasonably reflect offers in a competitive market."¹⁶⁰ Here, SPP has not shown that its proposal to describe mitigated offers in terms of variable cost rather than short-run marginal cost will result in mitigated offers that reasonably reflect offers in a competitive market. Based on

¹⁵⁵ *Id.* at 10-11.

¹⁵⁶ *Id.* at 12-13.

¹⁵⁷ October 2012 Order, 141 FERC ¶ 61,048 at P 420.

¹⁵⁸ *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 25 (2005).

¹⁵⁹ *Id.* P 27.

¹⁶⁰ *Id.* P 114.

the record in this proceeding, we find that SPP's proposal to base mitigated offers on variable costs may lead both to inefficient dispatch outcomes, characterized by higher production cost, and to distorted locational marginal prices that do not reflect competitive conditions. In response to SPP's argument that it is not required to demonstrate that its proposal is superior to all other potential methodologies, we note that the Commission's standard of review under section 205 of the Federal Power Act is to determine whether a proposal is just and reasonable and not unduly discriminatory. Based on the record in this proceeding, SPP's proposal is not adequately supported and SPP has not met this standard.

69. SPP has not adequately supported its proposal because it has not defined the term "variable cost." Rather than providing a defined term for "variable cost" in the Tariff, SPP includes in its proposed revisions to Attachment AF examples of certain fuel-related activities that SPP associates with variable cost and states that VOM cost components of energy offer curves cannot include fixed costs but can include expenses attributed to starts-based or hours-based inspection and maintenance. SPP's Tariff revisions also list accounts from the Uniform System of Accounts that could include variable costs. However, SPP states that the list of accounts is "not exhaustive," and SPP's proposed Tariff revisions describe the accounts as "examples of accounts that contain VOM cost components" that may be included in mitigated offers.¹⁶¹ SPP also does not describe with specificity what costs may be included in mitigated offers as variable costs that were not previously regarded as short-run marginal costs. As such, SPP proposes to replace one phrase that SPP contends is undefined (short-run marginal cost) with another phrase that is not well defined (variable cost).

70. In addition, in the October 2012 Order, the Commission found that a proposal to mitigate offers to "incremental cost" did not provide enough specificity. Therefore, the Commission directed SPP to establish that mitigated offers would be based on the short-run marginal cost of the applicable generating unit.¹⁶² On rehearing, the Commission reiterated the appropriateness of mitigation based on "short-run marginal costs."¹⁶³ In both the October 2012 Order and the subsequent rehearing, the Commission determined that SPP's mitigation should be based on short-run marginal cost; accordingly we disagree with the contention of Joint Filing Group that SPP's proposal is consistent with the Commission's Integrated Marketplace orders.

¹⁶¹ Transmittal at 11; Proposed Tariff at Attachment AF § 3.2.E(3)(a).

¹⁶² October 2012 Order, 141 FERC ¶ 61,048 at P 420.

¹⁶³ *Sw. Power Pool, Inc.*, 142 FERC ¶ 61,205 at P 98.

71. Because we have found SPP's proposal to be unsupported, we find it unnecessary to address SPP's arguments that there is no single industry consensus about the methodology to calculate mitigated offers and that there is no accounting method to identify the economic concept of short-run marginal cost.

72. With respect to Joint Filing Group's assertion that the SPP Market Monitor's application of short-run marginal cost differs from Commission-approved market power mitigation plans of other RTOs and ISOs, and with respect to their arguments regarding CAISO's use of a major maintenance adder, we note that here, we have rejected SPP's proposal because it is unsupported. Therefore, we need not address these issues.¹⁶⁴

73. We also note that both Joint Filing Group and Golden Spread assert that the major maintenance costs that they seek to include as components of mitigated offers are short-run marginal costs,¹⁶⁵ and that Joint Filing Group asserts that long-term service agreement costs are short-run marginal costs.¹⁶⁶ SPP's currently effective Tariff already allows for the inclusion of short-run marginal costs, exclusive of fixed costs, in the VOM cost component of mitigated offers.¹⁶⁷ To the extent that Joint Filing Group and Golden Spread are alleging that the SPP Market Monitor is incorrectly interpreting and applying the currently effective Tariff, these allegations do not warrant approval of SPP's proposal. Further, with respect to the arguments of Joint Filing Group and Golden Spread that the SPP Market Monitor's interpretation of short-run marginal cost is resulting in an inappropriate under-recovery of costs, and with respect to Joint Filing Group's arguments regarding cost shifting from Integrated Marketplace buyers to captive wholesale and retail customers, we note that adequately reflecting short-run marginal cost, exclusive of fixed costs, in mitigated offers should address concerns about under-recovery of cost and any potential for inappropriate cost shifting. We encourage Joint Filing Group and Golden Spread to work with the SPP Market Monitor to appropriately categorize the VOM costs that reflect short-run marginal costs, particularly for the units at Golden Spread's Mustang, Antelope, and Elk Stations, with consideration to the characteristics of those units as described in the affidavits submitted by Golden Spread to support its comments.

¹⁶⁴ See *supra* P 69.

¹⁶⁵ Joint Filing Group Comments at 7-8; Golden Spread Comments at 3.

¹⁶⁶ Joint Filing Group Comments at 7.

¹⁶⁷ See Tariff at Attachment AF, §§ 3.2D, 3.2E.

74. We acknowledge the information provided by the SPP Market Monitor regarding mitigation frequency, revenue adequacy, and bidding behavior. This information provides helpful context on the performance of the Integrated Marketplace during its first 15 months of operation; however, we note that this information does not represent a projection of future market outcomes. We find that the information further highlights the importance of ensuring that mitigated offers reasonably reflect offers that would be made under competitive conditions, as such an approach to mitigation helps to ensure efficient market outcomes.

2. Default VOM Cost Methodology

a. Filing

75. SPP proposes to establish default VOM costs for energy, start-up, and no load mitigated offers based on fuel type and resource type. SPP contends that the intention of its proposal is to alleviate potential under-recovery of costs to market participants and uncertainty surrounding the calculation of mitigated offers. SPP states that as part of its stakeholder efforts to reform its mitigated offer process, the SPP Market Monitor designed the calculations and established the proposed default VOM costs, which are set forth in Addendum 2 to Attachment AF of SPP's Tariff. SPP states that the methodology for calculating the proposed default VOM costs followed guidelines in the SPP Integrated Marketplace Protocols.¹⁶⁸

76. SPP states that its proposed default VOM costs would be calculated only for resource types that have more than one unit within the SPP market, in order to protect the confidentiality of cost data and to make the default value an objective standard. SPP explains that its proposed default energy offer curve VOM costs were calculated using data from market participants. According to SPP, it used the 80th percentile of the submitted VOM costs for each resource type to determine the proposed default values. SPP further states that in cases where there was a high concentration of VOM costs above the 80th percentile, the SPP Market Monitor increased the default VOM costs consistent with the costs in the higher percentile. SPP asserts that its default VOM cost proposal is similar to the default cost calculation components in CAISO's market power mitigation measures.¹⁶⁹

77. SPP also proposes Tariff revisions to require the SPP Market Monitor to review the default VOM costs annually to determine whether the values fairly represent actual

¹⁶⁸ Transmittal at 8-9.

¹⁶⁹ *Id.* at 9 (citing CAISO FERC Electric Tariff § 39.7).

costs and “whether these levels appropriately support cost recovery.”¹⁷⁰ The revisions would require the SPP Market Monitor’s review to include updated VOM costs submitted by market participants, adjustments to market participant cost data by the SPP Market Monitor, adjustments for inflation, analysis of the effectiveness of the default values for the majority of resources, and other relevant changes that may impact VOM costs in SPP.¹⁷¹

b. Comments and Protests

78. Joint Filing Group asserts that SPP’s proposed default VOM costs do not adequately reflect full VOM cost recovery. Joint Filing Group contends that a major flaw in the SPP Market Monitor’s approach to creating the default VOM costs is that the values were created from offer data that reflected the SPP Market Monitor’s position that major maintenance costs are not recoverable in mitigated offers. Joint Filing Group avers that market participants have not included all major maintenance costs in the VOM cost components of their mitigated offers, as the inclusion of such costs would cause their offers to exceed the mitigation thresholds allowed by the SPP Tariff. Joint Filing Group contends that the default VOM costs will not allow the Joint Filing Group market participants to recover major maintenance costs in mitigated offers.¹⁷²

79. According to Golden Spread, the proposed default VOM costs do not accurately reflect major maintenance costs. Golden Spread argues that SPP’s proposed default VOM costs do not allow full recovery of such costs for the Mustang Station units, and also do not resolve cost recovery issues for the Antelope Station natural gas-fired reciprocating engine units because SPP did not propose a default VOM costs for reciprocating engines.¹⁷³ Golden Spread argues that the use of the 80th percentile of market participant data to develop default VOM costs is flawed because market participants’ resource offers did not include all major maintenance costs, as the SPP Market Monitor excluded these costs from the definition of short-run marginal costs. Golden Spread also asserts that SPP’s proposed process for updating default VOM costs

¹⁷⁰ See Proposed Tariff at Attachment AF, §§ 3.2.H(3)(b), 3.3.E(4).

¹⁷¹ See *id.*

¹⁷² Joint Filing Group Comments at 16-17.

¹⁷³ Golden Spread Comments at 9; Moore Affidavit at P 9.

would not alleviate Golden Spread's issues if the SPP Market Monitor continues to have discretion to not allow the recovery of major maintenance costs.¹⁷⁴

80. The SPP Market Monitor argues that SPP's proposed default VOM costs improperly include costs other than short-run marginal costs. The SPP Market Monitor maintains that SPP's proposed default VOM costs include fixed costs such as maintenance overhauls, insurance, long-term service agreements, and inspection services.¹⁷⁵ The SPP Market Monitor asserts that it was the entity responsible for calculating SPP's proposed default VOM costs, but that the values were only calculated as part of a negotiation that included other concessions to offset market power, none of which received stakeholder approval, and that the use of SPP's proposed default VOM costs without the other offsetting compromise provisions would lead to economic withholding.¹⁷⁶

81. The SPP Market Monitor disagrees with SPP's proposal to require that default VOM costs be updated using data submitted by market participants that are not relevant to competitive offers,¹⁷⁷ and it asks the Commission to require that the SPP Market Monitor annually review and recommend updates to default VOM costs based on competitive offers.¹⁷⁸ The SPP Market Monitor also argues that SPP's proposal would permit market participants to unilaterally update default VOM costs and would result in anti-competitive mitigation. According to the SPP Market Monitor, SPP's proposed process for updating the proposed default VOM costs is flawed because it does not require updates to those values if the SPP Market Monitor determines that the values exceed the VOM costs typically included in competitive offers. The SPP Market Monitor contends that the proposal would instead require the SPP Market Monitor to evaluate default VOM costs based on their effectiveness in supporting cost recovery, using market participant-submitted VOM costs calculated using the Uniform System of Accounts. The SPP Market Monitor argues that an appropriate update methodology would use a proven

¹⁷⁴ *Id.* P 15.

¹⁷⁵ SPP Market Monitor Comments at 14.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 1.

¹⁷⁸ *Id.* at 26.

method for determining short-run marginal cost based on generator costs or competitively cleared market offers.¹⁷⁹

c. Answer

82. In its answer, Joint Filing Group states that it strongly opposes the SPP Market Monitor's preferred approach to updating default VOM costs based on competitive reference levels. According to Joint Filing Group, such an approach would not take into account the unique characteristics of each resource, would undermine the principle that mitigated offer development is cost based, and would lead to further confusion for market participants.¹⁸⁰

d. Commission Determination

83. We find that SPP's proposed default VOM costs are not adequately supported. SPP has not shown that its proposed default VOM costs reasonably reflect the costs of a typical unit in each resource-type category. Rather, SPP's proposal to use the 80th percentile value of VOM cost data submitted by market participants would likely lead to default values that are representative of units with relatively high VOM costs. SPP also has not sufficiently demonstrated that it attempted to verify the reasonableness of its proposed default VOM costs.

84. Because we are rejecting SPP's proposal, we find it unnecessary to address the SPP Market Monitor's specific suggested revisions to the proposed methodology to update default VOM costs, or Joint Filing Group's objections to the SPP Market Monitor's suggested revisions.

85. In response to Joint Filing Group's and Golden Spread's comments that SPP's proposed default VOM costs are inadequate because they do not cover major maintenance costs, as discussed above, we find that SPP has not shown its proposal to be just and reasonable, as the use of the 80th percentile of submitted VOM costs to calculate default VOM costs will likely lead to default costs above the costs of a typical unit of each resource type. Commenters have failed to demonstrate that creating even higher default VOM costs would lead to just and reasonable rates.

¹⁷⁹ *Id.* at 18-19.

¹⁸⁰ Joint Filing Group August 31 Answer at 18-19.

3. Resource-Specific VOM Costs

a. Filing

86. Under SPP's proposal, if a resource type has no default VOM cost defined, or if a resource's actual VOM costs exceed the default VOM costs, SPP would allow a market participant to request a resource-specific VOM cost from the Market Monitor for the market participant's mitigated offer calculation. SPP states that market participants must submit the relevant cost components to the SPP Market Monitor for review pursuant to the Mitigated Offer Guidelines in SPP's Market Protocols.¹⁸¹ As discussed above, under SPP's proposed revisions to section 3.2 of Attachment AF, resource-specific VOM cost components cannot include fixed costs but can include expenses attributed to starts-based or hours-based inspection and maintenance activities associated with original equipment manufacturer recommendations or similar programs for maintenance of equipment.¹⁸² SPP states that the use of resource-specific cost calculations is similar to procedures in CAISO's tariff, and in PJM's mitigation design.¹⁸³

87. SPP's Tariff revisions include a list of 14 account numbers from the FERC Uniform System of Accounts that SPP would qualify as VOM cost components in mitigated offers. The account numbers included in the Tariff include: (1) four account numbers related to steam generation (502, 505, 512, and 513); (2) five account numbers related to nuclear power generation (519, 520, 523, 530, and 531); (3) one account number related to hydraulic power generation (545); and (4) three account numbers related to other power generation (548, 553, and 554). SPP states that there is precedent for the use of the Uniform System of Accounts for market power mitigation purposes, as PJM uses such accounts pursuant to PJM Manual 15 (Cost Development Guidelines).¹⁸⁴ SPP also states that its list of accounts is not exhaustive, and that each resource-specific VOM cost calculation must be reviewed and approved by the SPP Market Monitor.

¹⁸¹ Transmittal at 10.

¹⁸² *See supra* P 15.

¹⁸³ *Id.* (citing CAISO Tariff § 39.7.1.3 and PJM Manual 15, Cost Development Guidelines at section 1.7).

¹⁸⁴ *Id.* at 11 (citing PJM Manual 15, Cost Development Guidelines at Attachment A (Applicable FERC System of Accounts)).

b. Comments and Protests

88. Joint Filing Group argues that SPP's proposal to clarify that VOM cost components that can be included in mitigated offers addresses the problem of under-recovery of major maintenance costs by market participants.¹⁸⁵ According to Joint Filing Group, SPP's proposed Tariff provisions specifying that "starts based or hours-based inspection and maintenance activities associated with [original equipment manufacturer] recommendations or similar programs to maintain equipment are appropriate [VOM] costs" provide necessary clarity and transparency to SPP's market participants.¹⁸⁶

89. However, Joint Filing Group also states that SPP's proposed revisions could give the SPP Market Monitor the discretion to disallow inclusion of a maintenance component of VOM costs in a resource-specific mitigated price for reasons other than those specified in the Tariff. Therefore, Joint Filing Group contends that the Tariff should be further revised to clarify that a major maintenance cost component of VOM costs reviewed by the SPP Market Monitor is "properly included" in a market participant's resource-specific mitigated offer. Joint Filing Group also requests that a sentence be added to the proposed Tariff provisions to make clear that the cost projections over the relevant maintenance period, rather than historical costs, may form the basis for a major maintenance component of VOM costs in mitigated offers. Joint Filing Group contends that relying solely on historical expenses confuses accounting with economic cost causation. According to Joint Filing Group, the intent of the SPP's proposed tariff revisions is to "levelize" recovery of major maintenance costs over the relevant maintenance cycle period, and to reflect the way the operations and maintenance cost requirements are accrued, i.e., on a per kWh basis, run time basis or on a per start basis, depending on which factors are driving the costs in accordance with the maintenance specifications.¹⁸⁷ Joint Filing Group asserts that if these costs can be recovered only after the expenses have been paid, rather than when they are incurred in the economic sense, extreme mitigated cost variations would occur when periodic maintenance occurs, and that this could result in market distortions. Joint Filing Group contends that without its additional proposed revisions, the mitigated cost-based offer will not reflect the true costs

¹⁸⁵ Joint Filing Group Comments at 11.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 14.

of starting or running a unit, and the unit will be dispatched more frequently than it otherwise would have been.¹⁸⁸

90. Golden Spread argues that the proposed resource-specific VOM costs would not allow major maintenance costs to be included in mitigated offers, and that as a result, Golden Spread's distribution cooperative members and their member customers would absorb market-imposed costs.¹⁸⁹ Golden Spread further asserts that the resource-specific VOM cost provisions should allow for a major maintenance costs to be included.¹⁹⁰

91. Golden Spread also argues that, as proposed, the Tariff would give the SPP Market Monitor "unfettered" discretion to exclude major maintenance costs from mitigated offers even when such costs are adequately supported.¹⁹¹ Golden Spread argues that the additional Tariff revisions it recommends are necessary to clarify that major maintenance costs are "properly included" in mitigated offers, subject to the SPP Market Monitor's review.¹⁹² Golden Spread asserts that additional Tariff language proposed by Joint Filing Group would also provide that cost projections, rather than historical costs, could form the basis for major maintenance cost components of resource-specific VOM costs. According to Golden Spread, historical expenses booked in the Uniform System of Accounts are limiting, accounting should not dictate ratemaking, and if cost recovery occurs only after payment for expenses, mitigated offers would cycle through extreme variations as periodic maintenance occurs and market participants record the associated expenses in the Uniform System of Accounts, leading to an inefficient dispatch of resources.¹⁹³

92. Golden Spread contends that the affidavits submitted with its comments provides the type of documented analysis that should be acceptable to SPP and the SPP Market Monitor to allow the inclusion of major maintenance costs in resource-specific VOM cost calculations.¹⁹⁴ In particular, Golden Spread argues that major maintenance is

¹⁸⁸ *Id.* at 13-15.

¹⁸⁹ Moore Aff. at P 17.

¹⁹⁰ *Id.* P 19.

¹⁹¹ Golden Spread Comments at 3.

¹⁹² *Id.*

¹⁹³ *Id.* at 3-4.

¹⁹⁴ *Id.* at 6.

maintenance Golden Spread must perform regularly to maintain its generating units in good operating condition as required by the recommendations of the generating unit's original equipment manufacturer specifications.¹⁹⁵ Golden Spread argues that it does not make sense to wait for major maintenance costs to occur to begin recovery of these costs, and that its quick start combustion turbines and reciprocating engines are called upon with a frequency such that major maintenance will not be required every year. According to Golden Spread, if there is no allowance for a major maintenance component of VOM costs in mitigated offers, a unit could be dispatched more frequently than would otherwise be the case, thereby accelerating future major maintenance activity that would need to be recovered disproportionately in later years. In addition, Golden Spread argues that under its proposed additional Tariff language, VOM costs would be subject to annual review and updates, and that adjustments could occur over time to ensure that total costs recovered are not excessive.¹⁹⁶

93. The PJM Market Monitor also argues that SPP's reliance on PJM rules to justify the proposed Tariff revisions is misplaced, and that references to PJM rules in SPP's filing are out of date and inaccurate.¹⁹⁷ According to the PJM Market Monitor, PJM recently revised its mitigated offer rules to exclude long-term maintenance expenses, and PJM's current rules are consistent with SPP's current rules.¹⁹⁸

94. The New Jersey Board argues that SPP should not base its proposed tariff changes on rules that are no longer in effect, arguing that PJM's Cost Development Guidelines have recently removed long-term maintenance expenses from inclusion in the calculation of short-run marginal costs.¹⁹⁹

c. Answer

95. Joint Filing Group states that, even with recent changes to PJM's manuals to exclude certain overhaul costs from the calculation of cost-based offers, certain generation owners in PJM can still include long-term service agreement costs in cost-based offers, and major maintenance costs may still be recovered under such offers

¹⁹⁵ Pippin Aff. at P 6.

¹⁹⁶ Moore Aff. at P 20.

¹⁹⁷ PJM Market Monitor Protest at 2.

¹⁹⁸ *Id.* at 10.

¹⁹⁹ New Jersey Board Comments at 3-4.

for many resource types. Joint Filing Group also notes that PJM previously allowed major maintenance costs to be included in all resource types' cost-based offers for more than ten years.²⁰⁰ In addition, Joint Filing Group contends that analogies to PJM are inapt because PJM has a forward capacity market while SPP does not, resulting in a different availability of revenue streams between the two markets.²⁰¹

96. In response to the comments of the New Jersey Board, Joint Filing Group asserts that the fact that PJM made changes to exclude major maintenance costs from mitigated offers for two resource types, but not for other resource types, provides no evidence that SPP's proposal to include variable major maintenance costs is unjust or unreasonable. In this regard, Joint Filing Group argues that PJM allowed inclusion of such costs in mitigated offers for a number of years with no finding that this approach is unjust or unreasonable. Joint Filing Group also contends that PJM continues to allow for recovery of major maintenance costs for resource types other than combined cycle and combustion turbine units. It also argues that unlike PJM, SPP does not have a capacity market as an alternative mechanism for recovery of major maintenance costs, making PJM a poor analog. According to Joint Filing Group, other RTOs include variable operation and maintenance costs, including major maintenance costs, in mitigated offers, and the Commission has accepted this approach.²⁰²

d. Commission Determination

97. We find that SPP has not provided sufficient support to show that its proposed methodology for calculating resource-specific VOM costs is just and reasonable. As with its proposed default VOM costs, SPP proposes to base resource-specific VOM costs on variable cost, rather than short-run marginal cost. Further, SPP's proposed use of the Uniform System of Accounts does not identify the specific expense items recorded in each account number that SPP considers to be fixed costs (and therefore excluded from VOM costs in mitigated offers under SPP's proposal). SPP also does not propose to limit the accounts used in developing VOM costs for mitigated offers, or to limit the specific items in each account considered to be VOM costs.²⁰³ With respect to Joint Filing Group's argument that SPP's proposed resource-specific VOM cost provisions provide

²⁰⁰ Joint Filing Group August 31 Answer at 5.

²⁰¹ *Id.* at 6.

²⁰² Joint Filing Group September 4 Answer at 5.

²⁰³ SPP states that “[i]mportantly, the list of accounts is not exhaustive.” Transmittal at 11.

an appropriate level of clarity and transparency to market participants, we find that added transparency alone does not make SPP's proposal just and reasonable. Rather, a resource-specific VOM cost proposal must be supported through a demonstration by SPP that the methodology for developing such costs is appropriately based on the short-run marginal costs of the generator, thereby reflecting offers under competitive conditions.

98. We also reject the arguments of Joint Filing Group and Golden Spread asserting that the Commission should require further Tariff revisions to provide that major maintenance costs are "properly included" in mitigated offers, and that these costs should be based on projections rather than historical data. We find that it is outside the scope of this proceeding to determine whether the additional tariff revisions proposed by Joint Filing Group and Golden Spread would be just and reasonable. Finally, we disagree with Joint Filing Group and Golden Spread's argument that SPP's current tariff gives the SPP Market Monitor undue discretion in determining whether certain VOM costs are included in mitigated offers because the SPP Market Monitor has an obligation to review the mitigated offers submitted by resources and to ensure that they are consistent with Tariff. This review may involve the exercise of some discretion by the SPP Market Monitor which is appropriate given the roles and responsibilities of the independent market monitor.

99. With respect to assertions of the PJM Market Monitor and the New Jersey Board that PJM removed sections of its manuals related to the inclusion of long-term maintenance expenses in mitigated offers, we note that we do not rely upon arguments regarding PJM's manuals in finding that SPP's proposal is unsupported. As such, we find that it is not necessary to address arguments from Joint Filing Group regarding comparisons between PJM's manuals and SPP's proposal.

4. Frequently Mitigated Resource Provisions and Right to Request Evaluation

a. Filing

100. SPP proposes mechanisms to address Frequently Mitigated Resources that can show they are not recovering particular cost categories over time. SPP explains that a market participant with a Frequently Mitigated Resource can seek a Frequently Mitigated Resource Adder as set forth in proposed sections 3.2F and 3.2H of Attachment AF. SPP states that under its proposal, a resource requesting a Frequently Mitigated Resource Adder must submit sufficient data to support a determination of its Annual Avoidable Cost.²⁰⁴ SPP argues that this adder is similar to mitigation measures previously approved

²⁰⁴ *Id.* at 12; Proposed Tariff at Attachment AF § 3.2F (proposed effective date 12/31/9998).

by the Commission in CAISO and PJM.²⁰⁵ SPP also proposes to add new definitions to section 2 of Attachment AF, defining terms associated with Frequently Mitigated Resource Adders, including the components of Annual Avoidable Cost.²⁰⁶

101. SPP also proposes to allow a resource to request analysis by the SPP Market Monitor regarding why it may not be recovering its Annual Avoidable Cost under the mitigated-offer construct proposed in this proceeding.²⁰⁷

b. Comments and Protests

102. Golden Spread argues that the proposed Frequently Mitigated Resource Adder does not adequately address the recovery of a major maintenance component of VOM costs.²⁰⁸ Golden Spread asserts that the units at its Mustang Station are in a Frequently Constrained Area, but are unlikely to always meet the 60 percent minimum threshold for local market power to be considered a Frequently Mitigated Resource. Therefore, Golden Spread argues that these units are unlikely to be eligible for a Frequently Mitigated Resource Adder. Similarly, Golden Spread asserts that its Antelope Station and Elk Station units are not in a Frequently Constrained Area, are not likely to have market power 60 percent of the time, and therefore would not likely be eligible for a Frequently Mitigated Resource Adder. According to Golden Spread, the cost data that a resource must submit to show it is not recovering its Annual Avoidable Cost are defined in terms of expenses preceding the month in which the data submittal occurs.²⁰⁹ Golden Spread contends that costs based on historical expenses do not reflect major maintenance costs as they are incurred in starting and operating units. Golden Spread is concerned that the Market Monitor could disallow these costs from qualifying as avoidable costs.²¹⁰

²⁰⁵ Transmittal at 12 (citing CAISO Tariff §§ 39.8.1; 39.8.3; PJM OATT, Attachment K, Appendix 6.4.2(a)(iii)).

²⁰⁶ *Id.* at 12-13; Proposed Tariff at Attachment AF § 2 (proposed effective date 12/31/9998).

²⁰⁷ Transmittal at 15.

²⁰⁸ Golden Spread Comments at 8.

²⁰⁹ *Id.* at 9-10.

²¹⁰ *Id.* at 10.

103. Joint Filing Group notes that the Frequently Mitigated Resource Adder proposed by SPP does not adequately address and resolve the issues discussed in its comments. According to Joint Filing Group, because of the high minimum threshold proposed and the required cost data based on historical expenses (which do not reflect major maintenance VOM costs) that a resource must provide to qualify as a Frequently Mitigated Resource, any resource that is not covered by default VOM costs will most likely find that the Frequently Mitigated Resource Adder is of no benefit.²¹¹

104. The SPP Market Monitor generally supports the Frequently Mitigated Resource Adder as a means to permit cost recovery for resources that do not recover operations and maintenance costs in the short run,²¹² and as an appropriate way to protect against cost under-recovery in cases where a resource can provide sufficient evidence to show it is not recovering its Annual Avoidable Costs.²¹³

c. Answers

105. Joint Filing Group asserts that the SPP Market Monitor's support of the SPP's proposed Frequently Mitigated Resource Adder is misguided.²¹⁴ Joint Filing Group argues that the application of the proposed Frequently Mitigated Resource Adder provisions could result in artificially increasing locational marginal prices higher than necessary for cost recovery by the resource receiving the adder because market participants will be required to use the full adder amount instead of only the components needed for cost recovery.²¹⁵

106. In its answer, the SPP Market Monitor states that the situation that Golden Spread describes for the Mustang Station turbines "provides a fine example of potential Frequently Mitigated Resources."²¹⁶

²¹¹ Joint Filing Group Comments at n.27.

²¹² SPP Market Monitor Comments at 2.

²¹³ *Id.* at 24.

²¹⁴ Joint Filing Group August 31 Answer at 17 (quoting SPP Market Monitor Comments at 24).

²¹⁵ *Id.*

²¹⁶ SPP Market Monitor Answer at 6.

d. Commission Determination

107. We reject as unsupported SPP's proposed Frequently Mitigated Resource Adder provisions, and the associated Tariff definitions. We also reject SPP's proposal to allow market participants to request analysis of the reasons they may not be recovering their Annual Avoidable Costs.

108. While SPP's proposed Tariff provisions for Frequently Mitigated Resource Adders are generally supported by the SPP Market Monitor, SPP provides no support or justification for the dollar-per-MWh levels of the adders in proposed section 3.2F of Attachment AF to the Tariff. Without any support for these values, it is not possible to evaluate fully SPP's proposal to determine whether it is just and reasonable. Because we reject SPP's proposed Frequently Mitigated Resource Adder provisions, we find that it is unnecessary to address Golden Spread's comments, the SPP Market Monitor's answer, or Joint Filing Group's answer on this issue.

5. Stakeholder Deference

a. Filing

109. According to SPP, its Tariff revisions were the subject of intensive stakeholder discussion for over a year prior to the filing.²¹⁷ SPP further states that its proposed Tariff revisions are a result of the efforts of a stakeholder group composed of representatives from SPP, the SPP Market Monitor, and stakeholders who were involved in prior proposals that failed to receive approval from SPP's Board of Directors.²¹⁸ SPP states that, while it recognizes that stakeholder approval does not by itself cause a filing to be just and reasonable, it requests that the Commission extend appropriate deference to the wishes of SPP's stakeholders, consistent with Commission precedent.²¹⁹

b. Comments

110. The SPP Market Monitor argues that the Commission should not defer to stakeholder recommendations where such recommendations are inconsistent with an efficiently functioning market. According to the SPP Market Monitor, stakeholder support alone cannot prove a rate design is just and reasonable, and stakeholder

²¹⁷ *Id.* at 3.

²¹⁸ *Id.* at 5-6.

²¹⁹ Transmittal at 4.

consensus does not override the Commission's obligations under section 205 of the Federal Power Act. The SPP Market Monitor further asserts that deferring to stakeholder recommendations in this case would undermine competitive markets.²²⁰

111. The PJM Market Monitor argues that no deference to SPP stakeholders is appropriate in this case.²²¹ It maintains that according deference to SPP stakeholders on the regulation of electric market pricing would be contrary to the Federal Power Act because the determination of what is just and reasonable cannot be properly delegated to the electric utilities regulated under that Act.²²²

112. The PJM Market Monitor also asserts the Commission has recognized that the independence of the SPP Market Monitor is essential to the market monitoring function, and to detect and deter the exercise of market power.²²³ The PJM Market Monitor argues that SPP's proposal raises questions about whether SPP should do more to protect and promote the independence of the SPP Market Monitor. In particular, the PJM Market Monitor is concerned that when the SPP Market Monitor made interpretations with respect to mitigated offers that SPP market participants did not like, the response was that market participants initiated a stakeholder process to apply pressure on the SPP Market Monitor to compromise or change those interpretations.²²⁴ Thus, the PJM Market Monitor recommends that the Commission examine whether SPP could do more to protect and promote the independence of its SPP Market Monitor, and consider adopting structural safeguards.²²⁵

113. The New Jersey Board argues that the determinative role of market participants in the development of the proposed expansion of the short-run marginal cost definition is unacceptable. The New Jersey Board asserts that the Commission should scrutinize the

²²⁰ SPP Market Monitor Comments at 24-25.

²²¹ PJM Market Monitor Protest at 12.

²²² *Id.* at 11.

²²³ *Id.* at 9.

²²⁴ *Id.*

²²⁵ *Id.*

process leading up to the proposed rule changes, and that such a process should not be condoned in SPP or any other RTO.²²⁶

c. Answer

114. With regard to the assertions of the New Jersey Board that the Commission should scrutinize the role of market participants in the development of the proposed expansion of the definition of short-run marginal cost, Joint Filing Group contends that SPP's filing did not result from a generator controlled process. In this regard, Joint Filing Group asserts that SPP's filing and the SPP Market Monitor's comments chronicle the extensive stakeholder process, and that SPP's filing was the result of compromises by all involved. Further, Joint Filing Group argues that the independent SPP Board has ultimate control over decisions to amend the SPP Tariff. In addition, Joint Filing Group argues that the New Jersey Board was not a participant in the extended process that led up to SPP's filing, and that the SPP Market Monitor's comments did not raise concerns regarding the SPP stakeholder process.²²⁷

115. SPP asserts that the PJM Market Monitor has no role or standing in the SPP stakeholder process and that the PJM Market Monitor's comments about the SPP stakeholder process are inaccurate and inappropriate.²²⁸ SPP states that the independent SPP Board of Directors devoted a significant amount of time and attention to SPP's proposal, which included a special task force and a strike team.²²⁹ SPP requests that the Commission reject the PJM Market Monitor's suggestion that the stakeholder process associated with SPP's proposal is tainted. SPP argues that the Board of Directors heard arguments from all parties and directed them to develop a proposal that reflected a greater degree of agreement among the SPP Market Monitor, SPP staff, and stakeholders. SPP states that all of these parties participated in the process leading to the instant proposal.²³⁰

²²⁶ New Jersey Board Comments at 3.

²²⁷ Joint Filing Group September 4 Answer at 4-5.

²²⁸ SPP Answer at 6.

²²⁹ *Id.* at 7.

²³⁰ *Id.*

d. Commission Determination

116. While we accord an appropriate degree of deference to RTO stakeholder processes,²³¹ our decisions are based on our review of the record to determine whether a proposal is just and reasonable. For the reasons explained above, we find that SPP has not adequately supported its proposal, nor has it shown that its proposal is just and reasonable.

117. We disagree with Joint Filing Group's assertion that the SPP Market Monitor did not raise concerns regarding the SPP stakeholder process. To the contrary, although the SPP Market Monitor did not argue that the stakeholder process itself was flawed, the SPP Market Monitor did point out that SPP's proposal "is contrary to the [SPP Market Monitor]'s recommendations throughout the stakeholder process."²³² We also note that in its comments, the SPP Market Monitor explained that it developed the default VOM cost calculations included in SPP's proposal as an integrated part of a negotiated compromise package that did not receive stakeholder consensus, and that without the other compromise provisions, use of the default variable operation and maintenance values will result in economic withholding.²³³

118. Finally, we decline to direct a specific examination of whether SPP could do more to protect and promote the independence of its Market Monitor, because we find that issue to be outside the scope of SPP's proposal.²³⁴ We note, however, that the SPP Market Monitor's participation in this case demonstrates the importance of having an independent market monitor that assists SPP, market participants, and the Commission in evaluating market rule proposals. This role is crucial to ensure that markets are competitive.

²³¹ See, e.g., *New England Power Pool*, 105 FERC ¶ 61,300, at P 34 (2003); *Policy Statement Regarding Regional Transmission Groups*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,976, at 30,872 (1993); *Pub. Serv. Comm'n of Wisconsin v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008).

²³² SPP Market Monitor Comments at 13.

²³³ *Id.* at 18.

²³⁴ We note that an audit of SPP is being conducted under section 301 of the Federal Power Act. If there are any specific findings or recommendations in this regard, we may act at that time. See *Sw. Power Pool, Inc.*, Docket No. PA15-6-000 (Feb. 27, 2015) (letter informing SPP of commencement of an audit).

The Commission orders:

SPP's proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.