

127 FERC ¶ 61,216  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Southwest Power Pool, Inc.

Docket Nos. EL07-73-000  
EL07-73-001  
ER07-319-003  
ER07-319-004

ORDER APPROVING UNCONTESTED SETTLEMENT  
AND ACCEPTING COMPLIANCE FILING

(Issued June 3, 2009)

1. On February 24, 2009, Southwest Power Pool, Inc. (SPP) submitted an Offer of Settlement and Stipulation (Settlement) in accordance with Rule 602<sup>1</sup> that resolves all outstanding issues with Xcel Energy Services, Inc. (Xcel), participating on behalf of Southwestern Public Service Company (SPS) and Golden Spread Electric Cooperative, Inc. (Golden Spread) (collectively, parties). We find the Settlement to be fair, reasonable, and in the public interest as it provides a complete resolution of all the issues among the parties. Therefore, we approve the uncontested Settlement. We also accept SPP's July 30, 2007 compliance filing.

**I. Background**

2. Prior to the implementation of the SPP's energy imbalance service market (energy imbalance market), the Commission directed SPP to file, on an informational basis, independently evaluated metrics related to commercial operations readiness and its testing plan.<sup>2</sup> SPP submitted a compliance filing that included market readiness metrics. The Commission found that SPP had complied with its directive, but the Commission also expressed concern that introducing the application of Violation Relaxation Limits

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<sup>1</sup> 18 C.F.R. § 385.602 (2008) (Rule 602).

<sup>2</sup> *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 23 (2006), *order on reh'g*, 116 FERC ¶ 61,289 (2006).

(VRLs)<sup>3</sup> could potentially allow SPP to manage the energy imbalance market outside the provisions of SPP's Open Access Transmission Tariff (OATT).<sup>4</sup> Therefore, the Commission directed SPP to submit a filing detailing the role of VRLs in SPP's dispatch process and explaining whether and how VRLs are used to set market prices.

3. In response, SPP submitted proposed OATT revisions detailing SPP's VRL mechanism. The Commission determined that the OATT revisions complied with the requirements of the October 31 Order and, therefore accepted, as modified, SPP's proposed tariff revisions.<sup>5</sup> The Commission found the VRL mechanism to be just and reasonable because it acts to mitigate prices and ensures a least-cost security constrained dispatch solution. Nevertheless, the Commission required SPP to provide additional detail on the operation of VRLs in SPP's energy imbalance market dispatch and to incorporate various VRL Market Protocol provisions into SPP's OATT.

4. On March 2, 2007, Golden Spread filed a request for rehearing of the VRL Order. It argued that the use of VRLs had not been shown to be just and reasonable, and that the Commission's failure to require SPP to file VRL values was inconsistent with the requirements of section 205 of the Federal Power Act (FPA). On the same date, SPP submitted a compliance filing that incorporated the specific VRL-related provisions of SPP's Market Protocols into its OATT, as required by the VRL Order.

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<sup>3</sup> VRLs are a means by which SPP's least-cost, security-constrained economic dispatch program can choose to exceed an operating limit on a temporary basis in the dispatch solution rather than dispatching generation resources at costs above a certain set point. For example, SPP describes the following:

[u]se of VRLs allows the model to reach a dispatch solution when conditions are such that a solution might not otherwise be achievable within the various limits on the calculation or at a cost that members consider acceptable. Specific values (or set points) are assigned to VRLs depending on the constraint. These values serve to determine the point at which the deployment considers operating options to balance system injection and withdrawals that involve violation of limiting factors.

SPP Settlement at 2-3.

<sup>4</sup> *Southwest Power Pool, Inc.*, 117 FERC ¶ 61,139 (2006) (October 31 Order).

<sup>5</sup> *Southwest Power Pool, Inc.*, 118 FERC ¶ 61,065 (2007) (VRL Order).

5. On June 29, 2007, in the VRL Hearing Order,<sup>6</sup> the Commission accepted, subject to certain modifications, SPP's March 2, 2007 compliance filing and granted in part and denied in part Golden Spread's request for rehearing. The VRL Hearing Order required SPP to file revised tariff sheets to support the VRL values pursuant to section 205 of the FPA and to incorporate such values as part of SPP's OATT. The Commission also required SPP to revise Attachment AE, section 4.6 to clarify that, consistent with the Commission's directions in Order No. 693,<sup>7</sup> the system shall be restored to comply with proven reliability limits as soon as possible, but in no case longer than 30 minutes through market flow relief or emergency actions.<sup>8</sup> In addition, the Commission instituted a section 206 proceeding concerning the justness and reasonableness of the VRL process, established a refund effective date, and ordered paper hearing procedures to address a series of questions regarding the operation of VRLs and the impact of VRL values on market prices.

6. On July 30, 2007, SPP submitted responses that addressed the Commission's questions in the VRL Hearing Order. In addition, SPP submitted revised tariff sheets to comply with the VRL Hearing Order. On August 2, 2007, SPP filed a brief on VRL issues as part of the paper hearing process. In response, Xcel and Golden Spread filed comments and protests. Subsequently, SPP submitted reply comments.

7. In January 2008, the parties agreed to explore a resolution of the VRL issues through the Commission's Alternative Dispute Resolution (ADR) process. Following extensive discussions and negotiations, SPP states that the parties were able to reach an agreement resolving the issues set for hearing by the Commission.<sup>9</sup>

## **II. Notice and Responsive Filings**

8. Notice of SPP's July 30, 2007 compliance filing was published in *Federal Register*, 72 Fed. Reg. 45,033 (2007), with interventions and protests due on or before August 29, 2007. No comments or protests were received on the revised tariff sheets in the compliance filing.

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<sup>6</sup> *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,342 (2007) (VRL Hearing Order).

<sup>7</sup> *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1636, 1640, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

<sup>8</sup> VRL Hearing Order, 119 FERC ¶ 61,342 at P 25.

<sup>9</sup> SPP Settlement Transmittal at 2.

9. Notice of SPP's Settlement filing was published in the *Federal Register*, 74 Fed. Reg. 9,814 (2009), with interventions and protests due on or before March 17, 2009. Westar Energy, Inc. and Kansas Gas and Electric Company (together, Westar) filed timely comments. SPP filed reply comments. In response, Westar submitted reply comments.

**A. Westar Comments**

10. In its initial comments, Westar raises several issues with the Settlement and requests that the Commission reject it. Westar claims that the Settlement lacks detail because it does not explain how the Settlement would benefit all market participants in the SPP energy imbalance market. It also states that the Settlement has not been vetted properly through the SPP stakeholder process. Therefore, Westar requests that the Commission direct SPP to develop a more detailed description of VRL initiatives, to develop protocols that would be necessary to implement these potential initiatives, and to vet these descriptions and protocols through the SPP stakeholder process.<sup>10</sup>

11. Additionally, Westar argues that SPP only commits to work cooperatively with Xcel, SPS, and Golden Spread to investigate generation and dispatch options within the SPS Balancing Authority Area that could mitigate VRL impacts during the ramping out of a reserve sharing event. Westar notes that, as a member of the SPP Reserve Sharing Group, it is also affected by any VRL impacts resulting from a reserve sharing event. It is concerned that SPP would only work with Xcel, SPS, and Golden Spread on these issues. Westar argues that it was not invited to participate in the paper hearing or given the opportunity to engage in the ADR negotiations. Westar contends that the Commission should require SPP to work with all SPP balancing authorities to achieve the same outcome as stated in the Settlement.<sup>11</sup>

12. Finally, Westar notes that, according to the Settlement, SPS will consider a Protocol Revision Request, which would allow Locational Imbalance Prices (LIP) to be re-priced whenever a reserve sharing event triggers VRL-level pricing without an actual flowgate limit breach.<sup>12</sup> Westar states that re-pricing of LIPs is a complicated matter that is likely to affect other market participants, not just the parties to the Settlement. Westar further emphasizes that as of the date that SPP filed its Settlement with the Commission, SPP had not posted any such Protocol Revision Request. Therefore, Westar requests that the Commission defer action on this docket and the Settlement until SPP files with the

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<sup>10</sup> Westar Comments at 3.

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* at 4, citing SPP Settlement, Article 2, Section B.3.b.

Commission the stakeholder-approved Protocol Revision Request and accompanying tariff language or makes a filing addressing the outcome of the SPP stakeholder process. Westar argues that neither the Commission nor SPP market participants can judge the merits of this Settlement until these filings are made.

**B. SPP Answer**

13. SPP states that, based on its discussions with Westar, SPP has agreed to make some clarifications to the Settlement. First, SPP states that the language in Article 2, “. . . following approval by the [Market Working Group],”<sup>13</sup> is not intended to and does not prejudice or presuppose automatic approval by SPP’s Market Working Group. SPP states that this language is properly understood to mean “if approved by [Market Working Group].”

14. In addition, SPP clarifies that with respect to Article 2, section B.3.d of the Settlement,<sup>14</sup> SPP stakeholders will be invited to participate in an open process to develop and discuss the cooperative efforts and the lessons learned from the initiatives described in the section. SPP notes that to the extent these open discussions result in VRL mitigation solutions, the solutions will be shared with all SPP stakeholders. SPP states that any VRL mitigation solutions that require protocol revisions or tariff changes shall commence if so approved by SPP stakeholders and accepted by the Commission.

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<sup>13</sup> SPP Settlement, Article 2, section B.3.b states:

SPS shall consider a Protocol Revision Request (“PRR”) which would allow for the re-pricing of LIPs whenever a Reserve Sharing event triggers VRL-level pricing without an actual flowgate limit breach. SPP shall provide an impact analysis report on the viability of such re-pricing alternative in the month following approval by the MWG.

<sup>14</sup> *Id.*, Article 2, section B.3.d states:

SPP commits to work cooperatively with [Xcel], SPS, and Golden Spread to investigate generation and dispatch options, including increasing or holding generation and/or supplementing dispatch, potentially available within the Balancing Authority that could mitigate VRL impacts during the ramping out of a reserve sharing event.

### C. Westar Reply

15. In response, Westar states that the clarifications that SPP proposes in its answer address Westar's concerns regarding the Settlement. Therefore, Westar states that it does not oppose Commission approval of the Settlement, provided that such approval incorporates the clarifications set forth in SPP's reply comments.

### III. Discussion

16. SPP submitted a negotiated Settlement among the parties that resolves issues that have been pending for over two years. The Settlement puts in place procedures to monitor and reevaluate the operation of VRLs in SPP's energy imbalance market. Having addressed Westar's concerns and based on Westar's reply comments stating that it does not oppose Commission approval of the Settlement with the clarifications provided by SPP, the Settlement is uncontested. We find that the uncontested Settlement, as clarified, is fair, reasonable, and in the public interest. Therefore, the Settlement, as clarified, is hereby approved.

17. The Commission's approval of the Settlement does not constitute approval, or precedent regarding, any principle or issue in this proceeding. The Settlement provides that "[a]fter this [Settlement] becomes effective, in considering any proposed change to any then-effective provision of this [Settlement], the Commission shall apply, to the fullest extent allowed by law, the 'public interest' standard . . . ." <sup>15</sup>

18. We also accept SPP's revised tariff sheets submitted on July 30, 2007. We find that, consistent with the Commission's requirement in the VRL Hearing Order, SPP has revised its OATT to incorporate specific VRL values and to clarify that SPP will restore the system to comply with proven reliability limits as soon as possible, but in no case longer than 30 minutes, through market relief or emergency actions and/or issuing manual instructions. <sup>16</sup>

19. This order terminates Docket Nos. EL07-73-000, ER07-319-001, and ER07-319-002. The paper hearing procedures established by the VRL Hearing Order are hereby terminated and the evidentiary record is closed.

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<sup>15</sup> *Id.*, Article 10.

<sup>16</sup> SPP OATT, Attachment AE, section 4.6 and Addendum 1 to Attachment AE.

The Commission orders:

(A) SPP's Settlement, as clarified, is hereby approved, as discussed in the body of this order.

(B) SPP's revised tariff sheets are hereby accepted, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff and Commissioner Kelly concurring in part with a separate joint statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket Nos. EL07-73-000  
EL07-73-001  
ER07-319-003  
ER07-319-004

(Issued June 3, 2009)

WELLINGHOFF, Chairman, and KELLY, Commissioner, *concurring in part*:

The proposed standard of review in the settlement would have the Commission “apply, to the fullest extent allowed by law, the ‘public interest’ standard” to any proposed changes, including those proposed by non-parties or the Commission acting *sua sponte*.

The U.S. Supreme Court has held that whenever the Commission reviews certain types of contracts, the Federal Power Act (FPA) requires it to apply the presumption that the contract meets the “just and reasonable” requirement imposed by the FPA.<sup>1</sup> The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contract[s]” that were given a unique role in the FPA.<sup>2</sup> In contrast, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that the proper standard of review for a different type of agreement, with regard to changes proposed by non-contracting third parties, was the “‘just and reasonable’ standard in section 206 of the Federal Power Act.”<sup>3</sup> The agreement at issue in *Maine PUC* was a multilateral settlement negotiated in a Commission adjudication of a utility’s proposal to revise its tariff substantially to enable it to establish and operate a locational installed electricity capacity market. The D.C. Circuit’s holding in *Maine PUC* applies with at least equal force to changes to an agreement sought by the Commission acting *sua sponte*.<sup>4</sup>

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<sup>1</sup> *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2737 (2008) (*Morgan Stanley*).

<sup>2</sup> *Id.*

<sup>3</sup> *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, 478, *petition for reh’g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*).

<sup>4</sup> *See Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (Comm’rs Wellinghoff and Kelly dissenting in part).

Our review of the agreement in question here indicates that it more closely resembles the *Maine PUC* adjudicatory settlement than the *Morgan Stanley* wholesale-energy sales contracts, which, for example, were freely negotiated outside the regulatory process. Therefore, applying the “public interest standard” here “to the fullest extent allowed by law” will not result in its application to changes proposed by either non-parties or the Commission acting *sua sponte*. In those instances, the Commission retains the right to investigate the rates, terms, and conditions of the settlement under the “just and reasonable” standard of review set forth under FPA section 206.<sup>5</sup>

For these reasons, we concur in part.

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Jon Wellinghoff

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Suedeem G. Kelly

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<sup>5</sup> 16 U.S.C. § 824e (2006).