

128 FERC ¶ 61,085  
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 No. ER09-748-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued July 24, 2009)

1. On February 24, 2009, Southwest Power Pool, Inc. (SPP) filed proposed revisions to its Open Access Transmission Tariff (Tariff) to modify its real-time energy imbalance services market (EIS Market). Specifically, SPP's proposal includes the incorporation of demand response resources into the EIS Market, the removal of a penalty for not following dispatch instructions for six consecutive intervals, and the use of multiple ramp rates in resource plans. SPP requests an effective date of April 25, 2009 for its proposed changes. In this order, we accept certain proposed revisions without modification, to be effective April 25, 2009. In addition, we accept and suspend other proposed revisions, to be effective April 25, 2009, subject to refund and subject to the outcome of SPP's Order No. 719<sup>1</sup> compliance proceeding.

**I. Background**

2. SPP proposes three changes to Attachment AE (attachment governing the operation of the EIS Market) of its Tariff. First, SPP indicates that it has revised its Market Protocols to provide a mechanism for demand response participation in the EIS market, such that operationally, demand response resources are treated no differently from generation resources. To accommodate this change, SPP revised its Tariff to incorporate a definition for Variable Dispatch Demand Response (VDDR) Resources, which are controllable load dispatchable resources that can respond to interval level dispatch instructions from SPP to reduce the withdrawal of energy when directed. Second, SPP proposes to remove one of the penalties for failing to follow dispatch instructions. Specifically, when a resource fails to follow dispatch instructions for six

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<sup>1</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059 (collectively, Order No. 719).

consecutive intervals, SPP proposes to eliminate the penalty that such a resource will be removed from the EIS Market until such time as the resource demonstrates that it is once again capable of following dispatch instructions. Third, SPP proposes changing the defined terms Economic Maximum/Minimum Limit to Dispatchable Maximum/Minimum Limit to clarify the dispatchable range used in the application of more discrete ramp rates related to both economic and emergency operating limits.

## **II. Notice of Filing and Responsive Pleadings**

3. Notice of SPP's filing was published in the *Federal Register*, 74 Fed. Reg. 9813 (2009), with interventions and protests due on or before March 17, 2009. On March 17, 2009, Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc (collectively, Constellation), Xcel Energy Services, Inc. (Xcel), American Electric Power Service Corporation (AEP), and the East Texas Cooperatives<sup>2</sup> each filed motions to intervene. In addition, Southwest Industrial Customer Coalition (SWICC) filed a motion to intervene and limited protest. Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, Westar) filed a motion to intervene, comments and protest. On April 1, 2009, SWICC filed a motion for leave to answer and answer. SPP also filed an answer to comments and protests. On April 14, 2009, Westar filed a motion for leave to answer and answer.

4. On April 24, 2009, the Director, Division of Tariffs and Market Development—Central issued a deficiency letter to SPP seeking additional support for SPP's proposed Tariff revisions. On May 26, 2009, SPP responded to the Commission's information requests. Notice of SPP's filing was published in the *Federal Register*, 74 Fed. Reg. 27,308 (2009), with interventions and protests due on or before June 16, 2009. On June 17, 2009, Westar filed comments in response to SPP's responses to the Commission's deficiency letter. On July 1, 2009, SPP filed an answer to Westar's comments.

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<sup>2</sup> The East Texas Cooperatives are East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

### **III. Discussion**

#### **A. Procedural Matters**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the April 1, 2009 answers from SPP and SWICC or the April 14, 2009 answer from Westar, and will, therefore, reject them. However, we will accept the June 17, 2009 answer from Westar and the July 1, 2009 answer from SPP because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. SPP's Incorporation of Demand Response into the EIS Market**

###### **a. SPP's Proposal**

7. SPP states that in compliance with directives in the *SPP Market Rehearing Order*,<sup>3</sup> SPP has modified its Market Protocols to provide a mechanism for demand response participation in the EIS Market. SPP states that operationally, demand response resources will be treated no differently from other generation resources. Specifically, SPP explains that market participants that register demand response resources will be required to submit individual resource plans, and that the actual production of the demand response resource will be calculated in a manner agreed to by the market participant, the registered owner of the load settlement location in which the load is included, and their respective meter agents. SPP states that the meter agent for any load settlement location within which a demand response resource is located will be required to gross up the meter data submittal of the load settlement location by the hourly integrated actual

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<sup>3</sup> In *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,289, at P 62 (2006) (*SPP Market Rehearing Order*), the Commission required SPP either to incorporate tariff provisions for "the commitment in the day-ahead process and dispatch in the imbalance market of interruptible demand, behind the meter generation and other demand resources that are capable of providing imbalance service," or to submit an explanation for not doing so. The Commission directed SPP to coordinate with utilities, state commissioners, and other interested parties in considering provisions allowing for the participation of demand resources in the EIS Market.

production of the demand response resource in order to prevent double payment for the same imbalance service.

8. SPP's proposal incorporates a definition for a VDDR resource, which is defined as a controllable load that is a dispatchable resource that can respond to interval level dispatch instructions issued by SPP to reduce the withdrawal of energy from the transmission grid. SPP further revises Attachment AE to provide that the demand response provided by the VDDR resource will be sent directly to SPP, which will calculate the actual net generation of the VDDR resource. SPP states that its proposed tariff revisions are necessary to comply with the Commission's directives that demand resources be allowed to participate in the EIS Market. Furthermore, SPP states that its proposed revisions are consistent with the requirement established by the Commission in Order No. 719 that RTOs accept bids from demand response resources on a comparable basis to any other resources for ancillary services that are acquired in a competitive bidding process.<sup>4</sup>

**b. Protests and Comments**

9. Westar states that it supports SPP's effort to enable demand response resources to participate in regional energy markets. However, Westar asserts that SPP's efforts to incorporate demand response into the EIS Market are inadequate and should be rejected as written. Westar states that SPP's proposed tariff revisions provide too little information to implement the desired demand response changes. Westar states that the Commission should require SPP to address a number of legal and operational issues, including, but not limited to, the following: the eligibility of a demand response resource to participate in the wholesale EIS Market if the demand response resource is owned and/or operated by a retail customer of a SPP Member and therefore subject to state laws and regulations governing retail end users of electricity in the state; the relationship and coordination of a demand response resource with its host balancing authority and retail electric supplier; and the definition of the "value" that is sent directly to the transmission provider and the party responsible for sending the "value."

10. SWICC generally supports SPP's proposal, but it argues that SPP should move certain provisions concerning the participation of demand response resources in the EIS Market from the Market Protocols to the Tariff. Specifically, SWICC states that the Commission should require SPP to move language from section 3.6.3 of SPP's Market Protocols to its Tariff, as this language specifies that market participants, meter agents, and owners of load settlement locations "will agree" to provide information necessary to properly account for demand response resource participation in the EIS Market. SWICC

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<sup>4</sup> See Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 47-49.

contends that incorporation of this language in the Tariff will eliminate potential barriers to demand response participation in the EIS Market.

**c. SPP's Deficiency Letter Response**

11. On April 24, 2009, Commission Staff issued a deficiency letter to SPP, seeking additional details on SPP's proposal to facilitate demand response resource participation in the EIS Market.<sup>5</sup> In response to the deficiency letter, SPP states that any resource that can respond to a dispatch instruction, including a demand response resource, is permitted to participate in the EIS Market.

12. With regard to Staff's inquiry on impediments to participation by demand resources, SPP states that impediments to participation would arise only if the resource is not capable of providing imbalance service, or if its participation is precluded by the laws or regulations of the relevant electric retail regulatory authority. SPP also states that a lack of coordination between the demand response resource, its meter agent, and the balancing authority could result in an impediment to participation. With respect to Staff's inquiry about the eligibility requirements, SPP asserts that demand response resources must satisfy the same requirements applicable to any other resource, including the establishment of metering and payment arrangements and creditworthiness. SPP maintains that a resource may be disqualified from participation in the EIS Market if it fails to satisfy the registration requirements or if its participation is precluded by the laws and regulations of the relevant electric retail regulatory authority.

13. SPP states that the method to determine whether a resource has complied with a dispatch instruction varies slightly based upon the resource. For example, SPP states that behind the meter generation resources are directly metered and therefore compliance with a dispatch instruction is verified by the meter value provided by the meter in real time. For load reduction, SPP asserts that compliance with dispatch instructions is determined by the metering algorithm agreed upon by the meter agent, balancing authority, and the resource. SPP explains that the "value" of the demand response will be determined by direct metering for behind the meter generation resources and by the metering algorithm for other forms of load reduction. SPP maintains that this value is comparable to the "actual net generation" of a generator, which represents the generator's output and is compared against the generator's scheduled generation to determine the imbalance energy provided by the generator.

14. In response to the inquiry on how SPP will monitor for consistency in the treatment of demand response resources, SPP states that its proposed tariff language

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<sup>5</sup> *Southwest Power Pool, Inc.*, Docket No. ER09-748-000 (deficiency letter) (Apr. 24, 2009).

provides flexibility for the resource, meter agent, and load settlement location owner to agree on the methodology for calculating actual production of the demand response resources so that the metering algorithm for a resource can be designed to comply with any applicable retail laws, regulations, and tariffs. In response to Staff's inquiry about third-party aggregators, SPP states that it does permit aggregation by third-party aggregators of retail customers (ARC). SPP also states that it proposed a new section 1.2.10 to Attachment AE in its Order No. 719 compliance filing, indicating that ARCs may aggregate demand response by multiple end-use retail customers provided that the ARC follows all requirements applicable to other EIS Market resources.

15. To address Staff's inquiry about emergency-only offer conditions, SPP states that it has not considered implementing an emergency-only offer condition for demand response participation. SPP maintains that emergency curtailment is a retail issue, subject to the laws, regulations, and approved retail tariffs of the relevant electric retail regulatory authority and is coordinated by state regulators and the balancing authorities.

16. In response to Staff's inquiry regarding the inclusion of certain provisions in the Market Protocols rather than the Tariff, SPP maintains that the provisions that significantly affect the rates and terms of service for all resources participating in the EIS Market are contained in the Tariff. SPP states that it has included in its Tariff a definition of a VDDR resource and a provision addressing how its response is calculated and communicated to clarify that demand response resources are eligible to participate in the EIS Market like other resources. SPP maintains that the practices and procedures outlined in the Market Protocols expand upon and explain the tariff rates and terms of service. SPP contends that this is consistent with the Commission's "rule of reason" that operational instructions and guidelines may be contained in the business practices of a transmission provider rather than in its tariff.<sup>6</sup>

**d. Westar's Comments on SPP's Deficiency Letter Responses**

17. Westar maintains that SPP has yet to provide a default standard for determining a demand response resource's baseline, actual net generation, and compliance with dispatch instructions. Westar states that it remains concerned that the ambiguity of the proposed flexibility may be an impediment to demand response participation in the EIS Market. Westar states that SPP's proposed tariff revisions and the deficiency letter responses fail to consider the possibility that the demand response resource and the registered owner of the load settlement location would be unable to reach an agreement

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<sup>6</sup> SPP, May 26, 2009 Response to Deficiency Letter, at 8 (citing *California Independent System Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008) and other Commission orders).

on the methodology to be used to determine the value of the demand response resource. Westar states that the Commission should require SPP to define the technical requirements for participation by a demand response resource in the market in a transparent and understandable manner. Westar also argues that SPP's proposal lacks clarity with respect to the ability of parties to dispute the amount of net generation reported to SPP for a demand response resource.

18. Westar acknowledges that the relevant retail regulatory authority will determine whether a retail customer can participate in a wholesale energy market; however, Westar states that the Tariff should provide a back-up methodology that will apply unless specifically prohibited by state laws or regulations.

**e. SPP's Answer**

19. In response to Westar's objections, SPP states that its proposed methodology for calculating net generation provides flexibility and is consistent with stakeholder preferences. By adopting a process whereby the demand response resource, the load settlement location owner, and the meter agent reach an agreement on a methodology to calculate a resource baseline load and actual net generation, SPP states that it has established a flexible process that takes into consideration both the unique circumstances of different types of demand response resources and the individual state retail laws and regulations that could affect such resources' participation in the EIS Market. SPP maintains that a uniform calculation methodology could thwart, rather than encourage, participation in the EIS Market because it would not account for different operating characteristics and regulatory requirements of different types of demand response resource. Furthermore, SPP argues that a back-up methodology would erect barriers, would preclude a resource's ability to perform the calculations as required and could provide a disincentive to reach an agreement if a party prefers the back-up methodology over the approach proposed by the other parties.

**f. Commission Determination**

20. We accept and suspend SPP's demand response proposal, to be effective April 25, 2009, subject to refund and subject to further order and the outcome of SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000. Among other things, SPP contends that its proposed revisions are consistent with the requirements of Order No. 719. In addition, in its Order No. 719 compliance filing, SPP cites to the changes proposed in the instant proceeding to show compliance, in part, with Order No. 719.<sup>7</sup>

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<sup>7</sup> See SPP, April 28, 2009, Order No. 719 Compliance Filing, Docket No. ER09-1050-000, at 6 ("The changes proposed in the February 24 Filing, coupled with existing EIS Market features and the revisions proposed in this filing, satisfy the Commission's

(continued...)

The concerns raised by SWICC and Westar regarding SPP's demand response proposal pertain to issues that arise both in this proceeding and in SPP's Order No. 719 compliance proceeding. We find that it is more appropriate to review SPP's entire demand response program (including the provisions proposed in this proceeding) at one time in the Order No. 719 compliance proceeding, rather than addressing SPP's demand response program on a piecemeal basis. Reviewing the proposals made by SPP at that time will avoid duplicative proceedings and provide greater administrative efficiency, while at the same time allowing SPP's proposals to go into effect. Our conditional acceptance of SPP's demand response proposal in this docket is subject to, and without prejudice to, the outcome of the Order No. 719 compliance proceedings.

## **2. Removal of the Penalty for Not Following Dispatch Instructions**

### **a. SPP's Proposal**

21. Currently, the failure of a resource to follow EIS Market dispatch instructions may result in a penalty charge (Uninstructed Deviation Charge (UDC)). Additionally, when a resource fails to follow dispatch instructions for six consecutive, five-minute intervals, SPP removes the resource from the EIS Market until the resource's owner demonstrates to SPP that the resource is once again capable of following SPP's dispatch instructions (lock-out provision). SPP states that the implementation of this provision has resulted in a reduction in resource ramp capability and available capacity. Therefore, SPP proposes to eliminate the lock-out provision. SPP states that its proposed tariff revision is just and reasonable because it will allow for the most efficient use of the resources that could alleviate operational loading of flowgates, thereby improving SPP's operation of the EIS Market.

### **b. Protests and Comments**

22. Westar states that currently two incentives exist in SPP's Tariff to encourage resources to follow SPP's dispatch instructions: the UDC and the lock-out provision. Westar asserts that SPP's proposal to remove the penalty for not following dispatch instructions is inconsistent with efficient market design and should be rejected. Westar avers that a problem exists with the structure of the UDC in that it has the potential to reduce available ramping capability for the EIS Market. Westar contends that unless the problem with the UDC is addressed, it is irresponsible to remove the only other penalty in the Tariff for non-compliance with dispatch instructions. Westar asserts that removal of this penalty has the potential to cause reliability problems and reduce EIS Market efficiency.

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requirements for demand response participation in RTO ancillary services markets articulated in Order No. 719.”).

**c. SPP's Deficiency Letter Response**

23. In response to the Commission's April 24, 2009 deficiency letter, SPP states that in 2008, there were 7,462 lock-out events in which resources were locked out of the EIS Market. SPP states that the market operating system automatically locks resources out after the resource fails to follow dispatch instructions for six consecutive intervals. SPP states that in order for SPP to restore a resource to be eligible for dispatch, the resource operator must call the SPP market operations desk and request for the lock-out to be removed. Once this occurs, SPP states that the resource is once again available for dispatch instructions from SPP.

24. SPP states that the data included in its answer to the deficiency letter reveal that there were 111 lock-out events in 2008 that removed up-ramp potential of 10 percent or more and an additional 633 lock-out events that removed at least 5 percent of the up-ramp potential for the EIS Market. SPP states that the data also reveal that there were 54 lock-out events that removed at least 10 percent of the down-ramp potential and an additional 345 lock-out events that removed at least 5 percent of the down-ramp potential. In one extreme case, SPP states that a lock-out occurred, without which SPP would have had 85 percent more up-ramp capability than was ultimately available due to the lock-out.

**d. Westar's Comments on SPP's Deficiency Letter Responses**

25. Westar states that SPP still fails to support its proposal to eliminate the lock-out provision. Westar maintains that SPP does not provide any understandable or useful information that would support SPP's contention that elimination of this provision would benefit the market. Westar asserts that the Commission should require SPP to make a separate filing to demonstrate the benefits that would result from the proposed tariff change and address the impacts the change will have on all parties, including the host balancing authority. If the Commission decides to approve the proposed tariff revision, Westar states that the Commission should establish an initial interim period during which the proposed tariff revisions will be effective. Westar asserts that the Commission should also require SPP to report to the Commission and the parties regarding whether the tariff revisions result in transparent improvement in EIS Market operations. Lastly, Westar states that the Commission should consider asking the SPP Market Monitor to make suggestions for improving market participants' compliance with dispatch instructions and for providing incentives for resources to follow dispatch instructions

**e. SPP's Answer**

26. SPP contends that Westar's characterization of the data provided by SPP as not "understandable" or "useful" is untenable. SPP states that it responded appropriately to questions posed by Commission's staff, and should not have to anticipate and divulge

whatever information Westar may find “useful” in its analysis of SPP’s EIS Market proposal. In response to Westar’s request to ask SPP’s Market Monitor to make suggestions for improving market participants’ compliance with dispatch instructions, SPP states that the removal of this penalty is the direct result of the Market Monitor’s recommendation to improve efficiency and market operations.

**f. Commission Determination**

27. We accept SPP’s proposal to eliminate the lock-out provision. SPP has shown that this automatic lock-out provision has resulted in numerous instances where both up-ramp and down-ramp capability have been reduced. Not only do these lock-out events affect system reliability, they also impede the most efficient use of resources in the operational loading of flowgates. Moreover, in light of the ease by which locked-out resources can re-enter the EIS Market, we agree with SPP that the efficacy of this penalty is questionable.<sup>8</sup>

28. In its protest, Westar argues that the other penalty for not following dispatch instructions, the UDC, is ineffective and can reduce available ramp capability and cause reliability problems and reduced market efficiency. Notwithstanding Westar’s objections to the UDC, we find that this proceeding is not the appropriate forum to address such issues.<sup>9</sup> SPP has shown that its limited proposal to remove the ineffective lock-out provision is a reasonable means to increase ramp capability. We therefore find it to be just and reasonable, and we accept it here. Accordingly, we deny Westar’s request to make our acceptance applicable only to an interim period and to establish reporting requirements.

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<sup>8</sup> For example, once a resource is locked-out of the market, its operator needs only to call the SPP market operations desk to request that the lock-out be removed, and again participate in the EIS Market.

<sup>9</sup> We note that the SPP Market Monitor worked closely with the SPP stakeholders and the SPP Market Working Group in developing the instant proposal. According to SPP, the SPP Market Monitor will continue to monitor market activity and make recommendations to encourage compliance with dispatch instructions, including proposing new penalties to induce compliance and eliminating existing penalties if they are not effective. SPP July 1, 2009 Answer, Docket No. ER09-748-000, at 12. We encourage SPP, the SPP Market Monitor, and market participants to continue to work together to develop more effective monetary penalties.

### 3. Dispatchable Maximum/Minimum Limit

29. Finally, SPP proposes changing the defined terms Economic Maximum/Minimum Limit to Dispatchable Maximum/Minimum Limit to clarify the dispatchable range used in the application of more discrete ramp rates related to both economic and emergency operating limits. SPP states that it has revised Attachment AE to provide that the dispatchable maximum/minimum limits to be identified by market participants in their resource plans should be the economic, rather than the physical, maximum/minimum output for each operating hour. No entities filed protests to this proposal, and we accept it here without modification.

#### The Commission orders:

(A) SPP's proposed tariff sheets related to the demand response proposal are conditionally accepted and suspended, to be effective April 25, 2009, subject to further order and to the outcome of the demand response provisions of SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000, as discussed above.

(B) SPP's proposed tariff sheets related to the other Tariff revisions made herein are accepted, to be effective April 25, 2009.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.