

137 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket Nos. ER09-1050-001
ER09-1050-002
ER09-1050-004
ER09-748-001
ER09-748-002
ER09-1192-002
(Not
consolidated)

ORDER ON COMPLIANCE FILINGS AND REHEARING

(Issued October 4, 2011)

1. In this order, we conditionally accept two filings made by Southwest Power Pool, Inc. (SPP) in compliance with: (1) the requirements established in Order No. 719-A¹ regarding demand response; and (2) the Commission's November 2009 Order.² The November 2009 Order addressed SPP's compliance with Order No. 719,³

¹ *Wholesale Competition in Regions with Organized Electric Markets, order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719-A).

² *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,163 (2009) (November 2009 Order). The November 2009 Order addressed SPP's compliance with Order No. 719 requirements regarding demand response and pricing during periods of operating reserve shortages, long-term power contracting, and market monitoring.

³ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719-A), *order denying reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (Order No. 719-B).

with the exception of SPP's responsiveness to customers and other stakeholders, which the Commission addressed in a separate order.⁴ This order addresses SPP's compliance with the November 2009 Order only with respect to demand response issues. In addition, in this order, we grant clarification of the November 2009 Order as requested by the TDU Intervenors⁵ with regard to the participation of retail customers in aggregated demand response programs. We also accept reports submitted by SPP and the SPP Market Monitor regarding barriers to demand response in the SPP market.

I. Background

A. Order No. 719-A

2. On July 16, 2009, the Commission issued Order No. 719-A, which, in response to requests for rehearing, revised and clarified certain of the findings in Order No. 719 and, as relevant here, directed compliance relating to two aspects of demand response. First, Order No. 719-A established that Regional Transmission Organizations (RTO) and Independent System Operators (ISO) may not accept demand response bids from an Aggregator of Retail Customers (ARC) that aggregates demand response of the customers of utilities that distributed: (1) more than 4 million megawatt hours (MWh) in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customer's demand response to be bid into organized markets by an ARC; or (2) 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an ARC.⁶ The Commission directed each RTO and ISO to submit a compliance filing within 90 days after the issuance of Order No. 719-A.

3. Second, the Commission required RTOs and ISOs to develop mechanisms for sharing information about demand response resources with affected load-serving entities and to develop and implement mechanisms allowing ARCs to operate in organized markets, addressing concerns such as double-counting, deviations, underscheduling in the day-ahead market, metering, billing, settlement, information sharing, and verification

⁴ See *Southwest Power Pool, Inc.*, 133 FERC ¶ 61,069 (2010).

⁵ In their pleading, Lincoln Electric System, Missouri Joint Municipal Electric Utility Commission and West Texas Municipal Power Agency collectively identify themselves as "TDU Intervenors."

⁶ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51.

measures.⁷ The Commission required RTOs and ISOs to submit a filing to comply with these requirements within 180 days of the issuance of Order No. 719-A.

B. July 2009 Order

4. On February 24, 2009, in Docket No. ER09-748-000 (February 2009 Filing), SPP filed under section 205 of the Federal Power Act (FPA)⁸ proposed revisions to its Open Access Transmission Tariff (Tariff) to allow demand response resource participation in SPP's Energy Imbalance Service Market.⁹ In an order issued on July 24, 2009, the Commission accepted and suspended SPP's demand response proposal in its February 2009 Filing, 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.¹⁰

C. November 2009 Order

5. On April 28, 2009, SPP submitted its Order No. 719 compliance filing. The Commission accepted in part, and rejected in part, various portions of this filing in the November 2009 Order.¹¹

6. The November 2009 Order required further action by SPP on a number of demand response issues, including revisions to the Tariff incorporating SPP's bidding parameters for demand response resources; a substantive discussion of the technical requirements, policies, and procedures needed for demand response resource participation in SPP's Energy Imbalance Service Market;¹² explanation of requirements for aggregation of customers into a single resource; and submission of baseline, measurement, and

⁷ *Id.* P 67, 69-70.

⁸ 16 U.S.C. § 824, *et seq.* (2006).

⁹ SPP made this filing to comply with the Commission's directives in the SPP Market Rehearing Order (*Southwest Power Pool, Inc.*, 116 FERC ¶ 61,289 (2006)).

¹⁰ *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,085 (2009).

¹¹ November 2009 Order, 129 FERC ¶ 61,163 (2009).

¹² SPP's Energy Imbalance Service Market is a real-time market. Tariff provisions establishing the rules and operations of the Energy Imbalance Service Market are included in Attachment AE of SPP's Tariff.

verification methodologies for demand response resources, as well as a timeline for their implementation.¹³

7. In addition, the Commission found that SPP's proposed certification requirements for retail participation in ARCs based on the size of the retail utility did not comply with the requirements in Order Nos. 719 and 719-A and directed SPP to modify its proposal. The order rejected SPP's proposal that the ARC must provide a certification from the relevant electric retail regulatory authority that the demand response the ARC is aggregating is not precluded from participating. The order stated that SPP could require the ARC to self-certify that the demand response it aggregates is not precluded from participating in the market.¹⁴

8. The November 2009 Order also addressed remaining criteria with respect to price formation during periods of operating reserve shortage¹⁵ and the filing of reports by both SPP and its Market Monitor on barriers to entry of demand response resources within the SPP market.¹⁶ The Commission required SPP and its Market Monitor to file their reports within six months and required all other demand response issues to be addressed in a compliance filing within 90 days of issuance of the November 2009 Order.¹⁷

D. Extensions of Time

9. On December 15, 2009, SPP requested an extension of time, until May 19, 2010, to comply with the second group of requirements in Order No. 719-A. SPP also requested an extension of time, from May 20, 2010 to August 18, 2010, for SPP and the SPP Market Monitor to submit the reports on barriers to entry of demand response required by the November 2009 Order. By notice dated December 23, 2009, the Commission granted an extension of time up to and including May 19, 2010 to comply with the second group of Order No. 719-A requirements. However, because SPP had not sufficiently supported

¹³ November 2009 Order, 129 FERC ¶ 61,163 at P 46-48, 51, 70, 74.

¹⁴ *Id.* P 71-72.

¹⁵ The Commission required changes with respect to price formation during periods of operating reserve shortage, including an explicit requirement to monitor for physical withholding and unavailability of facilities. *Id.* P 131.

¹⁶ November 2009 Order, 129 FERC ¶ 61,163 at P 86, 89, 96.

¹⁷ SPP proposed such a requirement in its February 18, 2010 market monitoring compliance filing, which the Commission accepted in an order issued on September 16, 2010. *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,240, at P 30 (2010).

its request for additional time to submit the barriers to entry of demand response reports, the Commission denied that request.

II. Filings Addressed

A. Demand Response Compliance Filings

10. On October 27, 2009, in Docket No. ER09-1050-001, SPP submitted a filing to comply with Order No. 719-A (October 2009 Filing), addressing the first Order No. 719-A requirement (relating to the requirements for participation of ARCs based on the size of the retail utility). SPP states that the filing had been developed through SPP's stakeholder process.¹⁸

11. On May 19, 2010, in Docket Nos. ER09-1050-004 and ER09-748-002, SPP submitted a filing (May 2010 Filing) proposing additional revisions to its Tariff, in compliance with the November 2009 Order and to the second group of requirements of Order No. 719-A relating to information sharing and development of protocols. SPP states that the Tariff revisions and market modifications proposed in the May 2010 Filing have been vetted and approved through its stakeholder process.¹⁹ SPP requests that some of its proposed Tariff revisions be made effective on May 19, 2010, with the remaining proposed Tariff revisions to be made effective on a future date following Commission action on the filing.

¹⁸ In particular, the SPP Market Working Group discussed the proposed Tariff revisions and market modifications during its August 17, 2009 meeting, and the Regional Tariff Working Group unanimously accepted the revisions during its August 27, 2009 meeting. The SPP Markets and Operations Policy Committee reviewed the proposed Tariff revisions on October 13, 2009. The Market and Operations Policy Committee consists of one representative officer or employee from each SPP Member and reports to the SPP Board of Directors.

¹⁹ The SPP Market Working Group discussed the proposal during several meetings beginning on January 18, 2010, and the Market Working Group approved the proposal on March 10, 2010. The SPP Regional Tariff Working Group reviewed and approved the revisions on March 24, 2010, and the SPP Markets and Operations Policy Committee discussed and approved the proposed Tariff revisions on April 13, 2010. The SPP Board of Directors approved the Tariff revisions on April 27, 2010.

12. On May 20, 2010, SPP and its Market Monitor each filed a report on barriers to entry associated with demand response resources (SPP Barriers Report²⁰ and Market Monitor Barriers Report²¹), in compliance with Order No. 719 and the November 2009 Order.

B. Rehearing Request

13. On December 18, 2009, TDU Intervenors filed a request for clarification, or in the alternative, rehearing of the November 2009 Order.

III. Notice of Filing and Responsive Pleadings

14. Notice of SPP's October 2009 Filing was published in the *Federal Register*, 74 Fed. Reg. 58,270 (2009), with interventions and protests due on or before November 10, 2009. TDU Intervenors filed comments and Occidental Permian Ltd., Occidental Power Marketing, L.P. and Occidental Chemical Corporation (collectively Occidental) filed a protest. Subsequently, SPP filed an answer to Occidental's protest and Occidental filed an answer to SPP's answer.

15. Notice of SPP's May 2010 Filing was published in the *Federal Register*, 75 Fed. Reg. 30,391 (2010), with interventions and protests due on or before June 9, 2010. Occidental timely filed a request for clarification or, in the alternative, protest.

IV. Discussion

A. Procedural Matters

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by SPP and Occidental and will, therefore, reject them.

²⁰ Southwest Power Pool, Inc., *Report on Remaining Barriers to Demand Response* (May 20, 2010). The SPP Barriers Report is located at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12350332>.

²¹ Southwest Power Pool, Inc. Market Monitoring Unit, *Barriers to Entry of Demand Response Resources in SPP* (May 20, 2010). The Market Monitor Barriers Report is located at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12350330>.

B. Substantive Matters

17. As discussed further below, in this order we clarify certain of the findings the Commission made in the November 2009 Order as requested by the TDU Intervenors, and conditionally accept SPP's October 2009 Filing and its May 2010 Filing. The Commission also accepts the reports submitted by SPP and the SPP Market Monitor regarding remaining barriers to demand response.

1. Request for Clarification or, in the Alternative, Rehearing**a. TDU Intervenors' Request for Clarification or, in the Alternative Request for Rehearing**

18. TDU Intervenors request clarification or, in the alternative, rehearing, of two aspects of the Commission's November 2009 Order. TDU Intervenors take issue with the Commission's statement permitting SPP to require an ARC to include in its registration application certification by the ARC that its participation is not precluded by the relevant electric retail regulatory authority.²² TDU Intervenors seek clarification that this statement was not intended to override Order No. 719-A's directive, affirmed in Order No. 719-B, that RTOs not accept ARC bids aggregating small utility customers (i.e., from utilities distributing 4 million MWh or less in the previous fiscal year) unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by the ARC. TDU Intervenors state that the Commission should clarify or modify this directive to be consistent with Order Nos. 719-A and 719-B.²³

19. TDU Intervenors also take issue with the Commission's statement that "the Commission disagrees with the idea that SPP should not extend Market Participant status to retail customers that are allowed to participate in the demand response programs undertaken by wholesale Market Participant load-serving entities. Order No. 719 does not limit the types of retail customers that are allowed to become Market Participants, except for those that may be prohibited by the laws or regulations of the relevant electric retail regulatory authority."²⁴ TDU Intervenors are concerned that this statement, like that cited in the previous paragraph, fails to acknowledge Order No. 719-A's additional

²² See November 2009 Order, 129 FERC ¶ 61,163 at P 71-72.

²³ TDU Intervenors December 18, 2009 Rehearing Request at 1-2, *citing* Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51; Order No. 719-B, 129 FERC ¶ 61,252 at P 1, 6.

²⁴ November 2009 Order, 129 FERC ¶ 61,163 at P 73.

restriction that, with regard to utilities with annual sales of 4 million MWh or less, a retail customer may become a Market Participant eligible to be aggregated by ARCs only if the relevant electric retail regulatory authority permits the retail customer to participate.²⁵ Accordingly, TDU Intervenors request that the Commission clarify that its statement should be interpreted and applied consistent with Order No. 719-A's requirements respecting the ability of the relevant electric retail regulatory authority to condition a retail customer's eligibility to participate in an ARC, particularly for small utility customers.²⁶ TDU Intervenors maintain that Order No. 719-A does not entitle these small utility customers to be Market Participants and instead only allows their participation if the relevant electric retail regulatory authority permits their participation.²⁷

20. TDU Intervenors also question whether this statement is consistent with statements in Order Nos. 719-A and 719-B, as well as *PJM*, expressing the Commission's intent to preserve existing load serving entity (LSE) demand response programs and to respect a relevant retail electric regulatory authority's ability to condition the participation of a retail customer in ARC demand response programs. TDU Intervenors argue that the Commission expressly left it to the relevant electric retail regulatory authority to determine whether a retail customer in its jurisdiction is eligible to have its demand response aggregated by one or more ARCs, and the requirements and qualifications for an ARC to aggregate the demand response of such retail customers.

b. Commission Determination

21. In their request for clarification or, in the alternative, rehearing of the November 2009 Order, TDU Intervenors point to statements made by the Commission that, in their view, conflict with the directives in Order No. 719-A. The November 2009 Order addressed SPP's compliance with Order No. 719 in SPP's April 2009 Filing. It did not address that filing's compliance with Order No. 719-A. We address issues pertaining to SPP's compliance with Order No. 719-A below. Accordingly, we grant the request for

²⁵ TDU Intervenors December 18, 2009 Rehearing Request at 10.

²⁶ TDU Intervenors December 18, 2009 Rehearing Request at 2, *citing* Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51, 67-68; Order No. 719-B, 129 FERC ¶ 61,252 at P 16-17; and *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,238, at P 22 (2009) (*PJM*) (In which the Commission accounted for the requirements in Order No. 719-A when addressing PJM Interconnection, L.L.C.'s (*PJM*) compliance with Order No. 719).

²⁷ *Id.* at 10, *citing* Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51.

clarification and find that the Commission did not intend for its determinations in the November 2009 Order to conflict with the directives in Order No. 719-A.

2. October 2009 Filing

a. SPP's Filing

22. In its October 2009 Filing SPP addresses the first component of Order No. 719-A which established conditions under which RTOs and ISOs can accept demand response bids. SPP proposes to modify language in section 1.2.10 of Attachment AE, so that ARCs may aggregate demand response of:

1. end-use retail customers of utilities that distributed more than 4 million MWh in the previous fiscal year, unless precluded by the laws or regulations of the relevant electric retail regulatory authority including state-approved retail tariff(s); and
2. end-use customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority, including any state-approved retail tariff(s), affirmatively permits such customer's demand response to be bid into the SPP Energy Imbalance Service Market by an ARC.

23. SPP proposes to add section 1.2.2(j) to Attachment AE which specifies that an ARC must be a Market Participant and satisfy all registration and certification requirements applicable to Market Participants (found in § 1.2.2 of Attachment AE) and obtain certification relating to the ability of the relevant end-use customers to be aggregated by the ARC consistent with section 1.2.10 of Attachment AE.

24. In this filing, SPP does not propose to modify the registration requirement in Section 1.2.2(i) of Attachment AE, which provides that a Market Participant wishing to offer controllable load in the Energy Imbalance Service Market must include in its application a certification by means of a declaration by the relevant electric retail regulatory authority, as applicable, that participation by its demand response resource in that market is not precluded under the laws or regulations of the relevant electric retail regulatory authority.

25. SPP states that its proposed revisions codify the Order No. 719-A distinction between large and small distribution utilities for the purposes of accepting bids from ARCs while providing SPP with the information necessary to determine an ARC

resource's eligibility without it having to interpret retail laws and regulations. Accordingly, SPP argues that these revisions are just and reasonable.²⁸

b. Protests and Comments

26. TDU Intervenors assert that SPP complied with the new directives of Order No. 719-A by including Tariff language that distinguishes between small and large utilities. However, TDU Intervenors maintain that SPP's proposed Tariff language does not resolve an ambiguity identified by TDU Intervenors in its May 26, 2009 comments in SPP's Order No. 719 compliance proceeding. In their pleading, TDU Intervenors took issue with the proposed definition of the term "Market Participant," which would include "any retail customer or eligible person that is not precluded under the laws or regulations of the relevant electric retail regulatory authority including state-approved retail tariff(s) from participating in demand response programs and that is technically qualified to offer controllable load into the Energy Imbalance Service Market or an aggregator of such retail customers that offers controllable load into the Energy Imbalance Service Market under Section 1.2.10 of Attachment AE."²⁹ TDU Intervenors explain that they understand this language to include only those retail customers not precluded by law or regulation from participating directly (i.e., as Market Participants in their own right) in SPP market demand response programs. TDU Intervenors seek clarification that SPP's proposed definition does not extend Market Participant status to retail customers that are permitted to participate in demand response programs undertaken by wholesale Market Participant load-serving entities or by their member cities. Instead, TDU Intervenors contend SPP should honor existing and future load-serving entity-administered demand response programs that are used to maintain reliability, reduce planning reserve requirements, avoid or defer generation investment, or otherwise secure market savings.³⁰

27. TDU Intervenors also ask for clarification that SPP must respect the relevant electric retail regulatory authority's laws and regulations, including those that choose to bar retail customers from participating in SPP market demand programs through third party aggregators, while permitting load serving entities to manage the demand response of their retail customers, including the aggregation of the demand response of one or more of those customers.³¹ TDU Intervenors state that Order No. 719-A made express that relevant electric retail regulatory authorities retain authority to place limits on which

²⁸ SPP October 2009 Filing at 8.

²⁹ SPP Tariff § 1.18c.

³⁰ TDU Intervenors November 10, 2009 Comments at 1-2.

³¹ *Id.* at 2.

ARCs may aggregate retail customers' demand response and under what terms, when it stated "[it] is up to the relevant electric retail regulatory authorities, if they choose, to decide whether existing retail aggregation programs provide benefits and whether retail customer participation in wholesale demand response programs, individually or through an ARC, would adversely affect those programs and, if so, *whether and how to permit such participation* (emphasis added by TDU Intervenors)."

28. Occidental protests SPP's proposal in section 1.2.2(j) of Attachment AE to require an ARC to satisfy the previously proposed registration and certification requirements applicable to other participants in the Energy Imbalance Service Market (section 1.2.2), including the requirement in section 1.2.2(i) that Market Participants include in their application a declaration from the relevant electric retail regulatory authority that participation in the Energy Imbalance Service Market by the Market Participant's demand response resource is not precluded by that regulatory authority's laws or regulations. Occidental argues that requiring such a declaration is contrary to Order No. 719 and would erect a substantial barrier to demand response resource participation in SPP's Energy Imbalance Service Market.³²

c. Commission Determination

29. With regard to TDU Intervenors' concerns regarding eligibility of a retail customer to participate in the market, we will require SPP to modify the definition of Market Participant so that it includes only those retail customers not precluded by law or regulation from participating directly in SPP's Energy Imbalance Service Market. With this modification, this definition will be explicit in not extending Market Participant status to retail customers that are allowed by the relevant electric retail regulatory authority only to participate in demand response aggregation programs undertaken by wholesale Market Participant load-serving entities.³³ We will require SPP to file revisions to its Tariff in compliance with this requirement within 60 days after the issuance of this order.

30. In its original Order No. 719 compliance filing submitted in April 2009, SPP proposed modifications to section 1.2.2(i) of Attachment AE's asset application and registration requirements. SPP proposed to require Market Participants (including ARCs) wishing to offer Controllable Load as a resource in the Energy Imbalance Service Market

³² Occidental November 10, 2009 Protest at 1-4.

³³We note that load-serving entities, or their designated third-party aggregators, may not circumvent the relevant electric retail regulatory authority's policies regarding ARC qualifications and requirements, including those pertaining to small utility systems. See Order No. 719-B, 129 FERC ¶ 61,252 at P 22-24.

to include in their application and registration a certification, by means of a declaration by the relevant electric retail regulatory authority, that the Controllable Load's participation was not precluded by the regulatory authority's laws or regulations.³⁴ Occidental is correct that this requirement is inconsistent with Order No. 719. The Commission made this determination in the November 2009 Order, finding that this requirement imposed an unnecessary burden on retail regulatory authorities. The Commission rejected the proposal to the extent the certification included a declaration from the relevant electric retail regulatory authority. However, the Commission also stated that SPP may require Market Participants to self-certify that their participation is not precluded by the laws and regulations of the relevant electric retail regulatory authority.³⁵ The Commission required SPP to make appropriate changes within Attachment AE as part of its compliance filing to the November 2009 Order, which SPP submitted in May 2010.

31. We note that SPP submitted its filing regarding the first Order No. 719-A compliance requirement in October 2009, before the Commission issued its order on SPP's Order No. 719 compliance filing in November 2009. Accordingly, we will limit our assessment here of SPP's October 2009 Filing to the first compliance requirement in Order No. 719-A that addressed a relevant electric retail regulatory authority "not precluding" versus "permitting" retail customer participation in an ARC, depending on the size of the utility.

32. Given this limited scope, we conditionally accept the addition of section 1.2.2(j) and the changes to section 1.2.10 in Attachment AE in the October 2009 Filing as fulfilling SPP's compliance with the first Order No. 719-A compliance requirement, conditioned upon SPP making the changes needed in section 1.2.2(i) of Attachment AE, discussed below in section IV.3.a.iv, as a part of the discussion of SPP's May 2010 filing. Likewise, this order will address separately Occidental's concern with respect to SPP's compliance with the directive in the November 2009 Order prohibiting a declaration by the relevant electric retail regulatory authority (but permitting certification by Market Participants of the ability of their resources to participate via an ARC).

3. May 2010 Filing

33. In its May 2010 Filing, SPP responded to the demand response requirements in the November 2009 Order and addressed the second group of Order No. 719-A requirements.

³⁴ Occidental also protested this certification requirement in the April 2009 proceeding. *See* Occidental May 26, 2009 Protest in Docket No. ER09-1050-000, *et al.*

³⁵ November 2009 Order, 129 FERC ¶ 61,163 at P 71.

a. **Compliance to November 2009 Order**

i. **Bidding Parameters**

34. In the November 2009 Order, the Commission found SPP's bidding parameters for demand response resources that specify the limits of duration, frequency, and amount of service in demand response resource bids, to be consistent with Order No. 719. However, the Commission directed SPP to include those bidding parameters in its Tariff.³⁶

(a) **SPP's Filing**

35. In its May 2010 Filing, SPP proposes several revisions to Attachment AE of the SPP Tariff. SPP added the bidding parameters in its Market Protocols to Attachment AE of its Tariff. Specifically, SPP adopted language from section 5 of its Market Protocols (governing Offer Curves) within section 2.5 of Attachment AE, providing that a Market Participant's Offer Curve be submitted with up to ten monotonically increasing³⁷ pairs of megawatt hours (MWh) and price. The proposed language specifies that the Offer Curve will include the following: date, hour ending, resource, megawatts, and price/MWh. SPP also revised section 2.5 of Attachment AE to indicate that Offer Curves may be submitted as early as seven days prior to the Operating Day and may be submitted or modified up to 45 minutes prior to the Operating Hour. SPP requests that these changes be made effective May 19, 2010, the date of its filing.

(b) **Commission Determination**

36. As we found in the November 2009 Order, SPP's bidding parameters are sufficient to meet Order No. 719's requirements with respect to specification of the limits of duration, frequency, and amount of service in bids by demand response resources. The Commission directed SPP to include those bidding parameters in its Tariff. SPP has done so in its May 2010 Filing, and we find SPP to be in compliance with respect to including the current bidding requirements in its Tariff.

ii. **Technical Requirements**

37. The Commission found that SPP's filing was deficient with respect to SPP's acceptance of bids for ancillary services from demand response resources on a basis

³⁶ *Id.* P 46.

³⁷ With a monotonically increasing function, the price of the offer increases with the number of MWh offered throughout the supply curve.

comparable to any other resource. The Commission found that the filing lacked substantive detail of the technical requirements, policies, and procedures needed for demand response resource participation in the Energy Imbalance Service Market. The Commission found that SPP did not explain what the technical requirements were for demand response resources, including, but not limited to, the technical requirements for size, telemetry, and metering. The Commission also found that SPP's filing did not justify why technical requirements, policies, and procedures tailored for generation resources were reasonable and appropriate for accommodating the characteristics of technically capable demand response resources.³⁸

38. The Commission also ordered SPP to explain why it had proposed that end-use customers that are aggregated into a single resource must be located at the same physical and electrically equivalent withdrawal point and must be served by the same retail provider. The Commission directed SPP to submit a compliance filing revising its Tariff such that bids from ARCs would be accepted on a basis comparable to those from supply side resources. The Commission stated that the compliance filing must contain sufficient detail to demonstrate that SPP's Tariff revisions would accomplish this requirement.³⁹

(a) **SPP's Filing**

39. SPP incorporated language from its Market Protocols that govern Resource Plans⁴⁰ into section 2.2.1 of Attachment AE of its Tariff. This language requires a Market Participant's Resource Plan to cover a rolling seven-day horizon and to specify, among other things, the minimum and maximum operating limits (operating, capacity, and emergency), ramp rate, and resource status. SPP states it has added language indicating that for minimum operating limits, demand response resources will submit a value of

³⁸ *Id.* at 47.

³⁹ November 2009 Order, 129 FERC ¶ 61,163 at P 48.

⁴⁰ The SPP Tariff, Attachment AE, § 1.1.30 defines a Resource Plan as "A Market Participant's plan to meet its energy obligations including specification of Resource operating characteristics." A Resource Plan is submitted by Market Participants with registered resources to enable SPP to assess resource and ancillary service adequacy for the SPP region, each SPP control area, and each Market Participant. SPP uses the data in Resource Plans for both market and reliability purposes. A Resource Plan covers a period of seven days (with hourly detail), with the first being the operating day. Market Participants with registered resources are required to keep the plan up to date throughout the operating day, and Market Participants may update data for individual hours until 45 minutes prior to the operating hour. SPP Energy Imbalance Service Market Protocols, Revision 27.0, §§ 3.2-3.4.

zero. SPP explains that, because these provisions do not require significant system changes but instead adopt Market Protocols language that is already in effect, it proposes to make these Tariff changes effective May 19, 2010.⁴¹ SPP asserts that these revisions are just and reasonable as they adopt into the SPP Tariff the provisions from the SPP Market Protocols that it said the Commission determined, in the November 2009 Order, were consistent with Order No. 719.⁴²

40. In addressing the Commission's ruling that it address the technical requirements for demand response resources, SPP states that demand response resources or aggregations of such resources must be a minimum of 1 MW,⁴³ must use a real-time meter, and must be able to submit real-time response data and respond to dispatch instructions during each dispatch interval, similar to generation resources. In addition, such resources must submit availability data for dispatch and nodal location because the Energy Imbalance Service Market is solely a real-time market. SPP states that demand response is dispatched comparably to, and in competition with, large generation resources when economically appropriate in this real-time market, with dispatch including consideration for congestion in the selection and dispatch. SPP asserts that in order to use dispatchable demand response resources, it must be able to determine the responsiveness of the resource on a comparable basis with generation resources, which requires real-time response and communication of data in real-time.⁴⁴

41. SPP proposes removing the requirement in section 1.2.10(a) of Attachment AE originally proposed in its April 2009 Filing, which specified that all end-use customers aggregated into a single resource be located at the same physical withdrawal point. SPP states it is removing this requirement because it is not necessary for the administration

⁴¹ SPP May 2010 Filing at 18.

⁴² *Id.*, citing November 2009 Order, 129 FERC ¶ 61,163 at P 46.

⁴³ The requirement for the 1 MW minimum is included in section 2.5 of Attachment AE. With respect to this minimum, in the SPP Barriers Report, SPP states that the market system for its Energy Imbalance Service Market currently limits requests and offers for capacity or demand in increments of whole megawatts, meaning that the granularity of offers into the Energy Imbalance Service Market cannot be smaller than 1 MW. SPP notes that this limitation was not designed to erect a barrier to any kind of Market Participant and is consistent with industry standards for dispatch and scheduling. However, SPP acknowledges this may potentially limit the ability of smaller entities to offer demand response into the Energy Imbalance Service Market. SPP Barriers Report at 3.

⁴⁴ SPP May 2010 Filing at 16.

and settlement of the Energy Imbalance Service Market. SPP asserts that removing this requirement will facilitate aggregation of multiple retail customers that may be located at different physical locations but within the same electrically equivalent withdrawal point, without affecting SPP's ability to dispatch, administer, and settle the Energy Imbalance Service Market. SPP proposes to make this revision effective May 19, 2010.⁴⁵

42. SPP continues to require ARC customers aggregated into a single resource to be at the same electrically equivalent withdrawal point. SPP states that end-use customers grouped within a single resource of an ARC must be located at a single electrically equivalent withdrawal point on the SPP Transmission System and served by the same retail provider. SPP asserts this is necessary because it deploys resources in the Energy Imbalance Service Market—including demand response resources—based in part on each resource's location on the electric grid and as a substitute for generation resources. SPP asserts that these requirements allow it to know the impact of resource deployment on each part of the grid and to manage congestion appropriately. Further, SPP states that it settles its Energy Imbalance Service Market locationally, with payments made based on the specific locational imbalance price (LIP) at which the demand response occurs. SPP maintains that LIP settlement would not be possible if retail customers within a single aggregation (i.e., within a single resource in an ARC) were scattered across various locations (and thus subject to various LIPs).⁴⁶

43. SPP states it must also coordinate with retail providers for retail load and settlement purposes, and aggregation across retail providers does not allow for the demand response to be isolated and identified to a specific provider for retail load purposes. SPP contends that it is also necessary to require all customers in an aggregation to be served by the same retail provider.⁴⁷ SPP also asserts that these requirements do not prevent an ARC from representing customers of different retail providers at different places on the grid. SPP explains that “[a]n ARC can register and bid demand response on behalf of multiple groups of retail customers located throughout the grid, provided that the ARC registers groups of customers at different locations and served by different retail providers as different [Energy Imbalance Service] Market demand response resources.”⁴⁸ SPP maintains that these requirements do not erect a barrier to participation, are necessary to administer the Energy Imbalance Service

⁴⁵ *Id.* at 20.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

Market, are necessary to manage dispatch of Energy Imbalance Service Market resources and are thus just and reasonable.⁴⁹

(b) **Commission Determination**

44. The November 2009 Order found that the bidding parameters were consistent with Order No. 719, but did not speak to the technical requirements included in the Market Protocols. Instead, it found that SPP had not provided substantive discussion of the technical requirements, policies and procedures needed for demand response.⁵⁰ While SPP has provided detail on the technical requirements, policies, and procedures needed for demand response resource participation in the Energy Imbalance Service Market in the current filing, we find that it has not fully demonstrated that those technical requirements, policies, and procedures are reasonable and appropriate as required by the November 2009 Order. We will require further explanation, as noted below.

45. We will require SPP to explain why it is necessary for a demand response resource to file a Resource Plan, when that resource is not available to provide demand response during the subsequent seven day period. We note that some demand response resources may choose to participate in SPP's Energy Imbalance Service Market during limited days or portions of the year. It appears that SPP is requiring these resources, as Market Participants, to maintain a Resource Plan for extended periods of time when they are not available. While we agree that demand response resources should be required to submit a Resource Plan during periods when they are available, we question the necessity of requiring a Resource Plan when the demand response resource is not available for significant periods of time. Indeed, requiring these Market Participants to continuously provide and update Resource Plans during long stretches of inactivity could erect an unnecessary barrier to demand response resource participation in the SPP market. We will require SPP to address the need for such submissions under these circumstances and to discuss whether this practice could become a barrier to demand response resource participation in the SPP market in a compliance filing due within 60 days of issuance of this order

46. SPP states demand response resources or aggregations of such resources must submit availability data for dispatch. We will require SPP to clarify how it collects availability data for dispatch. In addition, it is unclear what SPP means by the phrase "must be able to submit real-time response data." Specifically, SPP does not specify what demand response resources must provide in terms of metering or procedural requirements in order to submit real-time response data and whether this is reflected in

⁴⁹ *Id.*

⁵⁰ November 2009 Order, 129 FERC ¶ 61,168 at P 46-48.

the SPP Market Protocols, merely stating that the process for demand response is “similar” to that for generation resources. We will require SPP to provide this information in a compliance filing within 60 days after the issuance of this order.

47. With respect to ARCs, we will accept SPP’s proposal to remove the requirement from section 1.2.10(a) of Attachment AE that end users must be aggregated into the same physical withdrawal point. However, SPP has not sufficiently explained the remaining requirements for aggregation into a single resource, as required by the Commission’s November 2009 Order. Specifically, SPP has not explained clearly what it means by “electrically equivalent” withdrawal points. Nor has SPP clearly established why each specific location for which an imbalance price is developed must be a separate resource. Further, the following SPP statement is unclear: “An ARC can register and bid demand response on behalf of multiple groups of retail customers located throughout the grid, provided that the ARC registers groups of customers at different locations and served by different retail providers as different [Energy Imbalance Service] Market demand response resources.”⁵¹ The statement is unclear with respect to whether a “location” can have demand response from more than one retail provider.⁵² Accordingly, we will require SPP to explain the meaning of “electrically equivalent point,” and to clarify if multiple resources can be associated with a particular electrically equivalent point.

48. SPP’s Tariff currently limits bids and offers to increments of whole MWs. This means that there is a 1 MW minimum for bids and offers in the Energy Imbalance Service Market.⁵³ SPP states in its Barriers Report that it believes the 1 MW minimum may be a barrier and that it potentially could limit the ability of smaller entities to offer demand response into its Energy Imbalance Service Market. SPP also states that it does not envision modifying this requirement prior to the implementation of its future markets (i.e., day-ahead and ancillary service markets).⁵⁴ SPP states in its transmittal letter that demand response resources “must be a minimum of 1 MW (or aggregated with other end use customers into an aggregation of at least 1 MW).”⁵⁵ However, it is not clear if SPP would apply the 1 MW minimum to individual resources of a demand response provider (such as those of an ARC) or to the combined resources provided by that market

⁵¹ SPP May 2010 Filing at 20.

⁵² It would appear from the discussion that SPP means that such a “location” implies an “electrically equivalent point;” however, this is not clear.

⁵³ SPP Tariff, Attachment AE § 2.5(a).

⁵⁴ SPP Barriers Report at 3.

⁵⁵ SPP May 2010 Filing at 16.

participant. We believe that a 1 MW minimum for individual resources to be aggregated could be unnecessarily limiting of demand response. We will require SPP to explain to what portion of an ARC's aggregated resource(s) the 1 MW limitation would apply and why.

49. We believe that SPP's requirements that an ARC resource have a single retail provider and be at a single electrically equivalent point (depending on the definition thereof), could result in ARCs being treated in a non-comparable manner by unnecessarily restricting the ability of aggregators to participate in the market and to effectively and efficiently aggregate demand response. In particular, if each resource aggregation as proposed, is to be at a single electrically equivalent point and from a single retail provider, these restrictions could limit the participation of demand response in an aggregation, even though such aggregations may be beneficial for smaller entities that wish to provide demand response and find it is easiest to do so through an ARC. Allowing aggregation of such demand response was the Commission's focus in establishing ARCs in Order No. 719.⁵⁶ Accordingly, we will require SPP to either remove these requirements or to justify the need for them in its compliance filing due 60 days after the issuance of this order.

iii. Baselines, Measurement, and Verification

50. The Commission rejected SPP's proposed methodology for determining a customer's baseline in the November 2009 Order. SPP had proposed that the demand response resource, load settlement location owner, balancing authority, and meter agent would agree on a method for determining the baseline. The Commission found that SPP did not provide any additional information on how the parties would reach the agreement, and that it did not demonstrate that the resulting method for baseline calculations would be just and reasonable and not unduly discriminatory.⁵⁷

51. The Commission found that SPP did not propose a measurement and verification standard for demand response resources (including for ARCs) as required by Order No. 719, noting that case-by-case development of measurement and verification processes by separate entities—as proposed by SPP—could create the potential for unduly discriminatory behavior. The Commission directed SPP to provide baseline, measurement, and verification methodologies for demand response resources and a timeline for implementation of these methodologies. The Commission stated that these overlapping methodologies should be uniform, depict as accurately as possible a demand response resource's normal load on a given day, reliably measure the "Actual Resource

⁵⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 154.

⁵⁷ November 2009 Order, 129 FERC ¶ 61,163 at P 49.

Production,” and verify performance and compliance with dispatch instructions. The Commission also stressed that the roles, responsibilities, and associated payments of all parties must be clearly defined in the methodologies.⁵⁸

52. The Commission also found that SPP did not provide sufficient explanation for how bids from demand response resources would be accepted in its Energy Imbalance Service Market on a basis comparable to any other resource, nor did it explain the roles and relationships of all parties needed for demand response resource market transactions. In particular, the Commission found that SPP did not explain the roles of the demand response resource, the load settlement location owner, and the meter agent and how each would contribute to reaching an agreement on determining the actual production of the resource. The Commission stated that SPP must make clear what each entity will do and what their relationship is to one another with respect to providing demand response.⁵⁹

(a) **SPP’s Filing**

53. SPP proposes several revisions to Attachment AE in order to implement measurement, verification, and baseline calculation methodologies. SPP proposes to remove the definition of “Variable Dispatch Demand Resource” in section 1.1.45 of the Tariff⁶⁰ and to replace it with a newly defined term “Controllable Load.”⁶¹ The proposed Tariff language in section 1.1.3a defines “Controllable Load” as:

A registered, measurable load that is capable of being reduced at the instruction of the SPP operator and subsequently increased at the instruction of an SPP operator in order to provide a dispatchable quantity in the form of a demand response Resource. A Controllable Load must be associated with a demand response Resource.⁶²

⁵⁸ *Id.* P 50-51.

⁵⁹ *Id.* P 47.

⁶⁰ SPP had defined “Variable Dispatch Demand Response Resource” as “A controllable load that is a Dispatchable Resource and can reduce the withdrawal of energy from the transmission grid when directed by the Transmission Provider.”

⁶¹ SPP May 2010 Filing at 10. SPP also proposes revisions to its Table of Contents and several sections of Attachment AE of its Tariff to conform to these definitional changes.

⁶² SPP Tariff, Attachment AE, § 1.1.3a.

54. SPP proposes to make these Tariff changes effective May 19, 2010, the date of its filing, because they do not require significant changes to SPP's systems. SPP also proposes a May 19, 2010 effective date for changes to section 1.2.9 of Attachment AE, in which the measurement of real-time demand response would remain initially unchanged, except for a revision to its title.⁶³

55. SPP also proposes a number of revisions to add measurement, verification, and baseline calculation standards in sections 1.2.9 ("Calculation of Real-Time Controllable Load from Demand Response Resources") and 5.1 ("Calculation of [Energy Imbalance Service] Market Settlement Quantities") of Attachment AE that would take effect at a later date, specifically 60 days after SPP notifies the Commission that it has completed prerequisite system changes. SPP anticipates being able to complete the underlying system changes within 18 months of final Commission action on this proposal. SPP maintains that this delay is due to other pressing demands on its information technology resources and vendors related to system changes necessary to implement SPP's future market systems and support needed to comply with regulatory requirements such as Order No. 729.⁶⁴

56. Section 1.2.9 of Attachment AE, as currently written, provides that "Variable Demand Response Resource is sent directly to the transmission provider. This value will represent the actual net generation." SPP proposes to remove this provision entirely in the further revised sheets to become effective after the Commission is informed that the prerequisite system changes have been implemented. At that time, SPP proposes to replace this current version of section 1.2.9 with two methodologies for calculating and measuring demand response quantities: (1) the Calculated Real-Time Response Methodology (Calculated Methodology) and (2) the Submitted Real-Time Response Methodology (Submitted Methodology). SPP further proposes a new Attachment AE section 1.2.2(k), which provides that the Market Participant registering a demand response resource must notify the Transmission Provider which of these methodologies it intends to use.⁶⁵

57. The Calculated Methodology, outlined in new section 1.2.9.1(a) of Attachment AE, provides that the response provided by a demand response resource will be calculated as

⁶³ SPP proposes to change the labeling of this section from "Calculation of Real-Time Demand Response from Variable Demand Response Resources" to "Calculation of Real-Time Controllable Load from Demand Response Resources."

⁶⁴ SPP May 2010 Filing at 15.

⁶⁵ Section 1.2.2(k) would also become effective 60 days following notification to the Commission that system changes are complete.

the difference between: (1) the lesser of (a) the real-time consumption of the Controllable Load associated with the demand response resource in the Dispatch Interval immediately preceding the initial deployment of the demand response resource, or (b) the hourly baseline for the hour; and (2) the real-time value of the associated Controllable Load received via the Inter-Control Center Communications Protocol (ICCP), whenever the demand response resource's dispatch is greater than zero.⁶⁶

58. Under the proposed Calculated Methodology, the Market Participant must submit an hourly baseline for its Controllable Load indicating the MWh of energy consumption expected at that location if the demand response resource is not dispatched. The baseline provided must cover, at a minimum, all hours the resource is submitted as available in the Resource Plan, plus one hour before and one hour after the specified hours of availability. The baseline must be submitted by 11 a.m. Central Standard Time on the day prior to the operating day, and the baseline may be updated by the Market Participant up to 45 minutes before the operating hour. The proposed Tariff language establishes that, if there have been deviations in hourly integrated metered load from the hourly baseline during periods when the resource was not dispatched, the hourly baseline will be adjusted by SPP prior to the calculation of the Controllable Load dispatch.⁶⁷ SPP will perform this assessment each day and notify the Market Participant of any adjustment SPP makes.

59. SPP has also proposed a new section 1.2.2(l) of Attachment AE that requires a demand response resource that has elected to use the Calculated Methodology to certify that the methodology is consistent with its retail tariff or agreement, in accordance with the certification allowed under Order No. 719.⁶⁸

60. Under the Submitted Methodology for calculating and measuring demand response, detailed in section 1.2.9.2 of Attachment AE, Controllable Load response provided by the demand response resource is sent directly to SPP via ICCP. The Submitted Methodology may be used only by demand response resources: (1) that are using strictly Behind the Meter Generation to provide their response; or (2) where the

⁶⁶ We note that SPP uses, but has not defined, the term "ICCP" in its Tariff.

⁶⁷ In particular, proposed section 1.2.9.1(c) in Attachment AE establishes that if the average of the hourly integrated Controllable Load for the hours in the last 30 calendar days when the resource was not dispatched is less than the average hourly baseline during those hours by more than 5 percent, the hourly baseline will be reduced by the average difference between the actual and the baseline during those same hours.

⁶⁸ Section 1.2.2(l) would become effective 60 days following notification to the Commission that system changes are complete.

Market Participant is offering the demand response resource under a retail tariff provision that includes near real-time measurement and verification terms.

61. Proposed section 1.2.9.3 of Attachment AE establishes that settlements will be limited to demand reductions executed in response to dispatch instructions in the Energy Imbalance Service Market. Demand reductions where the timing of the demand reduction does not change in direct response to a dispatch instruction for the Energy Imbalance Service Market will not be eligible for settlement. Where the Controllable Load's demand reduction is not due to a dispatch instruction, section 1.2.9.3 provides that the Controllable Load resource will indicate its production as zero MWh.

62. SPP proposes to add section 1.2.10(c) to Attachment AE which establishes that for demand response of an ARC that chooses to measure demand reductions using the Calculated Methodology, a single hourly baseline for each registered resource will be used to determine settlements. This section is to become effective 60 days following notification to the Commission that necessary system changes are complete. SPP asserts that this requirement promotes administrative efficiency and comparable treatment by permitting the calculation of an ARC's demand response on a resource-by-resource basis like any other demand response or generation resource, rather than either: (1) requiring the customer to submit separate baselines for each end-use customer that is aggregated as a single resource; or (2) requiring SPP to calculate the demand response provided by an ARC resource on the basis of a single, aggregated baseline submitted by the ARC for all of its resources across the entire Energy Imbalance Service Market.⁶⁹ Along with this change, SPP has updated its settlement procedures in section 5.1 of its Tariff to provide that adjustment of the reported load of a settlement location with Controllable Load (to reflect the amount of the demand response production quantity) will be performed by SPP under the calculated real-time methodology, and by the meter agent with the Submitted Methodology. SPP requests that these changes be made effective 60 days following notification to the Commission that system changes are complete.

(b) Protests and Comments

63. Occidental expresses concern over the proposed requirement in section 1.2.2(l) of Attachment AE requiring a Market Participant to certify the consistency of SPP's proposed Calculated Methodology with the calculation or measurement of demand response in the retail provider's tariff or agreement under which the Market Participant is purchasing energy. Occidental requests clarification that, where retail provider tariffs or agreements are silent on the calculation or measurement of demand response, the Calculated Methodology may be certified as consistent with those tariffs or agreements.

⁶⁹ SPP May 2010 Filing at 23.

Absent such clarification, Occidental protests the calculation certification requirement, alleging that it erects a new barrier to participation of demand response resources and could force a Market Participant into a costly and time-consuming process of obtaining tariff or agreement revisions to support the required certification. Accordingly, Occidental requests clarification from the Commission that the calculation certification requirement cannot preclude a calculation self-certification by the Market Participant where the relevant tariff or agreement is silent as to the measurement and calculation of demand response.⁷⁰ Absent such clarification, Occidental urges the Commission to reject the proposed calculation certification requirement.

(c) **Commission Determination**

64. We find that SPP, in its May 2010 Filing, has eliminated substantial uncertainty regarding how parties will reach an agreement on the method for calculating the baseline by providing explicit methods for its calculation. Accordingly, we find that SPP has met the compliance requirement to propose a measurement and verification methodology. While SPP's proposed changes relating to measurement and verification have not been implemented and will not be implemented for approximately 18 months after the Commission approves the proposal, we note that SPP has developed a plan for implementation as required by Order No. 719. We find SPP to be in compliance with respect to these requirements, with the exceptions noted herein. We expect SPP to submit its notification that it has made underlying system changes in a timely fashion. However, we find there are terms that remain undefined and factors that remain unexplained that SPP must address, as explained below. We expect that SPP will address the necessary system changes to implement these new methodologies as it develops the methodology and software for its new markets.

65. SPP refers to an undefined term "Variable Demand Response Resource" in proposed section 1.2.9 of Attachment AE (Calculation of Real-Time Controllable Load from Demand Response Resources) that is proposed to be effective May 19, 2010.⁷¹ We will require SPP to either define this term or to replace it in section 1.2.9 with an appropriate term that is defined in its Tariff in a compliance filing due within 60 days after the issuance of this order.

66. SPP defines the term "Controllable Load," noting that it was previously undefined. The proposed definition of Controllable Load provides that it "must be associated with a demand response [r]esource," yet SPP does not explain what it means by this phrase.

⁷⁰ Occidental June 9, 2010 Protest at 3-5.

⁷¹ Also in this Filing, SPP proposes removing the definition of a similar term "Variable Dispatch Demand Response Resource" to be effective May 19, 2010.

SPP substitutes the term “Controllable Load” for the term “demand response” in sections 1.2.9 (Calculation of Controllable Load from Demand Response Resources) and 1.2.10 (Aggregation of Controllable Load as a Resource) of Attachment AE; however, SPP has not explained why it is replacing the term “demand response” with “Controllable Load” or what the distinction is between these terms. SPP also does not explain why Controllable Load must be able to be “subsequently increased at the instruction of an SPP operator in order to provide a dispatchable quantity in the form of a demand response Resource”. Further, SPP does not explain how Controllable Load would get the instructions from SPP to increase or decrease. We will require SPP to provide these explanations in its compliance filing due 60 days after the issuance of this order.

67. SPP also has not explained the basis for the hourly baselines submitted by Market Participants in proposed section 1.2.9 of Attachment AE of its Tariff. This section states that baselines must be submitted by Market Participants, but does not specify nor define how the baseline should be developed or calculated. It is unclear whether the 30-day average hourly integrated metered load is the basis for the hourly baselines to be submitted by Market Participants (as proposed, section 1.2.9.1(c) could be interpreted to define the hourly baseline as an average of hourly integrated metered load in the previous 30 calendar days), or whether SPP intends or has specified an alternative hourly baseline definition. Accordingly, we will require SPP to specify in its Tariff how the baseline is developed. In particular, this definition is due in a compliance filing due within 60 days after the issuance of this order.

68. Similarly, SPP has not explained how the Controllable Load response under the Submitted Methodology is to be determined, only how that information is to be delivered. We will require SPP to explain the determination of the Controllable Load response under this method, in a compliance filing due 60 days after the issuance of this order. SPP also proposes to restrict the Submitted Methodology to demand response resources that use strictly Behind the Meter Generation or for Market Participants with real-time measurement and verification capabilities under retail demand response programs. We also will require SPP to explain why it is excluding ARCs or individual demand response resources with real-time capability not associated with retail demand response programs from utilizing the Submitted Methodology, in a compliance filing due 60 days after the issuance of this order.

69. With respect to Occidental’s concerns, we agree that SPP’s proposed calculation certification requirement for the Calculated Methodology could become a barrier to entry if the demand response resource were required to obtain retail tariff or agreement revisions to support such certification. Order No. 719 does not require such a certification requirement for the method to be used for calculation of the demand response. Accordingly, we will require SPP to modify proposed section 1.2.2(l) of Attachment AE to remove that requirement, in a compliance filing due within 60 days after the issuance of this order.

70. We also find that SPP must clarify the size of the demand reduction that is eligible for settlement, as provided in section 1.2.9.3 of Attachment AE (proposed to be effective 60 days following notification to the Commission that system changes are complete). This section provides that settlements will be limited to demand reductions executed in response to dispatch instructions in the Energy Imbalance Service Market and that demand reductions where the reduction did not change in direct response to a dispatch instruction will not be eligible for settlement. It provides that, in the case where the Controllable Load's demand reduction is not due to a dispatch instruction, the resource will indicate its production as zero MWhs. However, this section does not address a potential circumstance wherein SPP asks for a level of demand reduction and the Controllable Load provides demand response in excess of the requested level. In this circumstance, the Tariff could be construed to mean that the party generating the demand response would have a quantity of zero assigned to it, rather than being assigned the requested amount of demand response as its settlement quantity for demand response. Accordingly, we find that SPP must clarify its Tariff to address this circumstance so that the demand response resource is appropriately paid for any requested⁷² demand reduction, in a compliance filing due within 60 days after the issuance of this order.

71. We generally find that the interrelationships, roles, and responsibilities of the Controllable Load, demand response resource, and the ARC are not clearly defined in the proposed Tariff sheets. For example, section 1.2.9.3 of Attachment AE provides that, for settlement purposes, the resource must indicate its production as zero MW when the Controllable Load's demand reduction is not due to a dispatch instruction.⁷³ To the extent that a reduction in quantity is appropriate per the discussion above, it is not clear whether this means that the ARC or the Controllable Load (as a demand response resource) is to submit the (new lower) quantity. When an ARC provides the demand response, it also is not clear how settlement would occur or how ARC-related payments would occur. Accordingly, we will require SPP to explain how settlement occurs, as well

⁷² SPP would not need to address payments for demand reductions in excess of the levels in dispatch instructions.

⁷³ The proposed Tariff revisions also provide for a Market Participant offering Controllable Load in the form of a resource (Attachment AE, section 1.2.2) or in the form of a demand response resource, while the definition of "Resources" in section 1.1.29(a) of Attachment AE states that "Resources may include generation or Controllable Load."

as the associated relationships between Controllable Load, the demand response resource, and the ARC, in a compliance filing due within 60 days after the issuance of this order.⁷⁴

72. We will also require SPP to define the term “ICCP,” which it uses in the description of the Calculated and Submitted Methodologies, and to explain why the use of ICCP therein is appropriate for measurement and verification. We will require SPP to make these changes in its Tariff, in its compliance filing due within 60 days after the issuance of this order.

iv. ARC Authorization of Resource Ability to Participate in Market

73. In the November 2009 Order, the Commission directed SPP to modify the language with respect to declarations of authorization of ability to offer controllable load into the Energy Imbalance Service Market to comply with the criteria outlined in Order Nos. 719 and 719-A.⁷⁵ The Commission noted that SPP’s proposal to require an ARC to submit a declaration of authorization by the relevant electric retail regulatory authority appeared to impose an unnecessary burden on retail regulatory authorities. The Commission stated that SPP may require an ARC to include in its registration application a certification by the ARC itself that the ARC’s participation is not precluded by the relevant electric retail regulatory authority.⁷⁶

(a) SPP’s Filing

74. SPP proposes Tariff language (to be effective May 19, 2010) that uses the term “Controllable Load” in the place of “demand response” and incorporates language proposed in the October 2009 Filing for section 1.2.10 of Attachment AE and detailed in

⁷⁴ We note that, in accepting SPP’s proposal in Docket No. ER09-748-000 subject to the outcome of SPP’s Order No. 719 compliance proceeding, the Commission accepted SPP’s proposal that the meter agent for any load settlement location will be required to gross up the meter data submittal of the load settlement location by the hourly integrated actual production of the demand response resource in order to prevent double payment for the same imbalance service. We note, however, that this issue will be re-examined in SPP’s compliance filing to be filed with respect to Order No. 745. See *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,085 (2009), *Demand Response Compensation in Organized Wholesale Energy Markets*, and Order No. 745, 76 FR 16658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322 (2011).

⁷⁵ November 2009 Order, 129 FERC ¶ 61,163 at P 72.

⁷⁶ *Id.* P 71.

section IV. B.2.a., above. In particular, section 1.2.10, as proposed, in relevant part, provides that for purposes of participation in the SPP Energy Imbalance Service Market, an ARC may aggregate Controllable Load of:

1. end-use retail customers of utilities that distributed more than 4 million MWh in the previous fiscal year, unless precluded by the laws or regulations of the relevant electric retail regulatory authority including state-approved retail tariff(s); and
2. end-use retail customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority, including any state approved retail tariff(s), affirmatively permits such customer's demand response to be bid into the SPP [Energy Imbalance Service] Market by an ARC.

75. In addition, in section 1.2.2(i) of Attachment AE, SPP removes the phrase "by means of a declaration by the relevant electric retail regulatory authority" in relation to the required certification for demand response resources, such that it reads:

A Market Participant wishing to offer Controllable Load in the form of a demand response Resource in the [Energy Imbalance Service] market must include in its application and registration a certification that participation in the [Energy Imbalance Service] market by its demand response Resource is not precluded under the laws or regulations of the relevant electric retail regulatory authority

76. SPP states that its proposed certification requirement in section 1.2.2(i) also complies with Order No. 719-A's requirements governing ARC participation in ancillary services markets based upon the size of the retail utility serving the ARC's customers.

(b) Commission Determination

77. In its May 2010 Filing, SPP proposes to remove from section 1.2.2 of Attachment AE the requirement (previously in section 1.2.2(i)) for a declaration from the relevant electric retail regulatory authority related to participation in the Energy Imbalance Service Market of demand response resources.⁷⁷ Instead, SPP proposes to include in section 1.2.2(i) a requirement that Market Participants (including ARCs)

⁷⁷ We find that the removal of this requirement from section 1.2.2 of Attachment AE alleviates concerns raised by Occidental in its November 10, 2009 Protest in Docket No. ER09-1050-001 (i.e., SPP's October 2009 Filing proceeding).

wishing to offer Controllable Load in the form of a demand response resource provide certification that its resource is not precluded by the laws or regulations of the relevant electric retail regulatory authority. We find that removal of the obligation for the relevant electric retail regulatory to provide such notification or certification is consistent with the Commission's directive in the November 2009 Order.

78. However, the language proposed in section 1.2.2(i) provides for a certification that the Controllable Load offered by the Market Participant (which could apply to an ARC) in the form of a demand response resource is not precluded under the laws or regulations of the relevant electric retail regulatory authority. As specified in section 1.2.10 (and accepted earlier in this order), there are further limitations pertaining to ARCs and the aggregation of small utility customers such that the ARC can aggregate, when not precluded by the laws or regulations of the relevant electric retail regulatory authority, controllable load of end-use customers of utilities that distributed more than 4 million MWh in the previous fiscal year. In the case of utilities with distribution totals under this level, section 1.2.10 provides, and the Commission accepted, that the relevant electric retail regulatory authority must affirmatively permit such demand response to be bid in to the Energy Imbalance Service Market. In order to eliminate any ambiguity and build internal consistency within Attachment AE of SPP's Tariff, we will require SPP to clarify within section 1.2.2(i) of Attachment AE that certification for ARCs requires meeting the requirements in section 1.2.10 of Attachment AE. This clarification is due in a compliance filing due within 60 days after the issuance of this order. Once SPP provides this clarification, it will be fully compliant with Order No. 719-A's directive related to certification of ability to participate in an ARC.

v. **Market Rules Governing Price Formation during Periods of Operating Reserve Shortage**

79. In the November 2009 Order, the Commission found that SPP had failed to meet the second and fifth criteria laid out in Order No. 719 with respect to price formation:⁷⁸

⁷⁸ November 2009 Order, 129 FERC ¶ 61,163 at P 194. The six criteria are: (1) improve reliability by reducing demand and increasing supply during periods of operating reserve shortages; (2) make it more worthwhile for customers to invest in demand response technologies; (3) encourage existing generation and demand resources to continue to be relied upon during an operating reserve shortage; (4) encourage entry of new generation and demand resources; (5) ensure that the principle of comparability in treatment of and compensation to all resources is not discarded during periods of operating reserve shortage; and (6) ensure market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages including, but not limited to, showing how demand resources discipline bidding behavior to competitive levels. Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 246-247.

making it more worthwhile for customers to invest in demand response technologies and ensuring that the principle of comparability in treatment of and compensation to all resources is not discarded during periods of operating reserve shortage.⁷⁹ The Commission stated that these criteria depend on the ability of demand response resources to participate in the market, and they rely on SPP's compliance with the other provisions of Order No. 719, which SPP had not met. Accordingly, once SPP has met the other provisions of Order No. 719, it will be in compliance with respect to the second and fifth criteria.

80. The Commission also found SPP noncompliant with the sixth criterion ensuring that market power is mitigated and gaming behavior is deterred during periods of operating reserve shortages including, but not limited to, showing how demand resources discipline bidding behavior to competitive levels, because its Tariff lacked an explicit requirement to monitor for physical withholding and unavailability of facilities.⁸⁰

(a) SPP Filing

81. SPP states that the revisions proposed in its May 2010 Filing meet the demand response requirements of Order No. 719 and the November 2009 Order, and thus, once SPP implements these demand response reforms, SPP will fully comply with the criteria.⁸¹

(b) Commission Determination

82. With respect to the second criterion that customers find it more worthwhile to invest in demand response technologies, as discussed above, we find that SPP has not fully explained the limitations on demand response resources (i.e., associated with a single retail provider, and electrically equivalent point), which may affect customers' decisions to invest in demand response technologies. Therefore, we cannot yet address compliance with this criterion but will do so in addressing SPP's subsequent compliance filing, in which we have required SPP to address these limitations.

83. With respect to the fifth criterion of ensuring that the principle of comparability in treatment and compensation of all resources is not being discarded during periods of operating reserve shortages, we find that SPP has not yet ensured that there is comparable treatment of demand response resources and ARCs during these periods. Therefore, we

⁷⁹ November 2009 Order, 129 FERC ¶ 61,163 at P 88.

⁸⁰ *Id.* P 86.

⁸¹ SPP May 2010 Filing at 24.

will require SPP to address this criterion in its compliance filing due within 60 days after the issuance of this order.

84. With respect to the sixth criterion, SPP included an explicit requirement to monitor for physical withholding and unavailability of facilities in its February 18, 2010 market monitoring compliance filing, which the Commission accepted in an order issued on September 16, 2010.⁸² However, we find that SPP has not shown how demand resources discipline bidding behavior to competitive levels, as required in part by the sixth criterion. Accordingly, we will require SPP to address this aspect of the sixth criterion in a compliance filing due within 60 days after issuance of this order.

b. Compliance to Order No. 719-A⁸³

85. In Order No. 719-A, the Commission required RTOs to develop appropriate coordination mechanisms for sharing information about demand response resources to develop and implement protocols to address double counting, concerns regarding deviations, underscheduling, and uplift of other charges that may be incurred if real-time load is below that scheduled in the day-ahead market, as well as metering, billing, settlement, information sharing and verification measures.

i. SPP's Filing

86. In its filing, as discussed above, SPP states that it has modified its registration requirements to provide more detail in demand response resource registrations. It states that these revisions also require SPP to notify the applicable retail service provider and the relevant electric retail regulatory authority of a demand response resource's registration and expected level of participation.⁸⁴

87. SPP further states that it has modified its Energy Imbalance Service Market settlement provisions, as discussed above, to require that the reported load of a settlement location that includes controllable load be adjusted up by the amount of the demand response resource production quantity. SPP asserts that because reported load for settlement purposes will be adjusted up to the level that would have occurred if demand response had not been adjusted, this provision also addresses these concerns to the extent that they may exist in SPP's real-time Energy Imbalance Service Market. SPP states that

⁸² *Southwest Power Pool, Inc.*, 132 FERC ¶ 61,240, at P 30 (2010).

⁸³ This section deals with Order No. 719-A compliance issues other than the issue of certification of eligibility of resources to participate, which is discussed above.

⁸⁴ SPP May 2010 Filing at 26.

it has adopted other measures required by Order No. 719-A to address metering, billing, settlement, information sharing, and verification procedures, as discussed in the previous sections. SPP notes that it does not administer a day-ahead market at this time, and asserts that therefore, concerns regarding discrepancies between day-ahead and real-time demand response are inapplicable.⁸⁵

ii. Commission Determination

88. With respect to the requirements of Order No. 719-A related to coordination mechanisms associated with sharing information, avoidance of double-counting, uplift and metering, billing, information sharing and verification, we find that SPP has not sufficiently addressed these concerns, because it has not provided sufficient detail on roles and responsibilities and settlement. We will require SPP to explain the mechanisms it is developing for necessary sharing of information about demand response resources to address double counting, verification procedures, and deviation charges, as required by Order No. 719-A. In addition, we will require SPP to detail the mechanisms it is developing for notification to (and the party to provide that notification) an affected load-serving entity: (1) when load served by that entity is enrolled to participate, either individually or through an ARC, as a demand response resource; and (2) the expected level of that participation for each enrolled demand response resource. Further, SPP must explain how settlement occurs, as well as the associated relationships between Controllable Load, the demand response resource, and the ARC. SPP must address these issues in a compliance filing due within 60 days after the issuance of this order.

89. We also find that issues related to the day-ahead market, such as deviations between day-ahead schedules and real-time quantities are not applicable until such time as SPP may institute its day-ahead market.

4. May 20 Filings on Remaining Barriers to Comparable Treatment of Demand Response Resources

90. In the November 2009 Order, the Commission found SPP to be in partial compliance with respect to the reporting requirement on existing barriers to comparable treatment. The Commission stated that SPP's demand response program was in its nascent stages, and SPP may not have had sufficient information to assess potential barriers. However, the Commission required both SPP and its Market Monitor to file their reports within six months of the date of that order.⁸⁶

⁸⁵ *Id.* at 26-27.

⁸⁶ November 2009 Order, 129 FERC ¶ 61,163 at P 96.

a. SPP and Market Monitor Reports

91. On May 20, 2010, SPP and its Market Monitor filed their reports on remaining barriers to demand response in the SPP Energy Imbalance Service Market.

b. Commission Determination

92. The Commission finds that SPP has complied with the directive of Order No. 719 to provide a listing of and full assessment of remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction. We also find that the SPP Market Monitor has appropriately filed its views on barriers to comparable treatment of demand response resources.⁸⁷

The Commission orders:

(A) SPP's compliance filing in Docket No. ER09-1050-001 submitted on October 27, 2009 is hereby conditionally accepted for filing, effective December 27, 2009, as discussed in the body of this order.

(B) SPP's compliance filing in Docket Nos. ER09-1050-004 and ER09-748-002 submitted on May 19, 2010 is hereby conditionally accepted for filing, effective May 19, 2010 or 60 days after SPP notification to the Commission that it has completed prerequisite system changes, as applicable, as discussed in the body of this order.

(C) SPP is hereby directed to submit a compliance filing, within 60 days of the date of this order, as discussed in the body of this order.

(D) The Commission hereby denies the request for rehearing filed in Docket Nos. ER09-1050-002, ER09-748-001, and ER09-1192-002, but clarifies the order in these dockets issued on November 20, 2009, as discussed in the body of this order.

⁸⁷ The Barriers Reports will provide information that will be considered by Commission staff in its evaluation of remaining barriers to demand response participating in SPP's wholesale markets.

(E) The Commission accepts the reports submitted on May 20, 2010 by SPP and the SPP Market Monitor regarding remaining barriers to demand response, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.