

138 FERC ¶ 61,150
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. ER09-659-002
EL12-2-000

ORDER ON COMPLIANCE FILING, INSTITUTING SECTION 206 PROCEEDING,
ESTABLISHING REFUND EFFECTIVE DATE, AND DIRECTING FURTHER
COMPLIANCE FILING

(Issued February 29, 2012)

1. On August 17, 2009, Southwest Power Pool, Inc. (SPP) filed a revised executed letter agreement (Revised SPP-Entergy Agreement) between SPP and Entergy Services, Inc. (Entergy) to comply with the Commission's April 10, 2009 order in this proceeding¹ and a June 18, 2009 order² that addressed Entergy's compliance with the transmission planning principles of Order No. 890.³ The Commission accepts the Revised SPP-Entergy Agreement for filing effective April 8, 2009, subject to SPP submitting an additional filing, within 30 days, modifying the Revised SPP-Entergy Agreement, as discussed below. Additionally, as discussed below, the Commission institutes a proceeding pursuant to section 206 of the Federal Power Act (FPA)⁴ to determine the justness and reasonableness of certain language in section VII.8(b) of Attachment O of

¹ *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,032 (2009) (April 2009 SPP Order).

² *Entergy Services, Inc.*, 127 FERC ¶ 61,272 (2009) (June 2009 Entergy Order).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ 16 U.S.C. § 824e (2006).

SPP's existing open access transmission tariff (OATT),⁵ and establishes a refund effective date.

I. Background

2. On December 14, 2007, in Docket No. OA08-61-000, SPP filed its transmission planning process as a proposed attachment to its OATT to comply with Order No. 890.⁶ On July 11, 2008, the Commission conditionally accepted SPP's Filing, directing SPP to submit a compliance filing that would, among other things, describe how the agreements it has with its neighboring regions meet the inter-regional coordination requirements of Order No. 890 and, if necessary, propose revised Attachment O language.⁷ Additionally, on December 7, 2007, in Docket No. OA08-59-000, Entergy filed its Attachment K transmission planning process, which the Commission conditionally accepted in an order issued on September 18, 2008.⁸ As was the case with SPP, the Commission required Entergy to submit a compliance filing that would, among other things, describe in detail its process for coordinating with interconnected systems to meet the inter-regional coordination requirements of Order No. 890.⁹

3. On February 6, 2009, as amended on February 9, 2009,¹⁰ SPP submitted two compliance filings to address the Commission's directives in the July 2008 SPP Order. First, SPP submitted a filing in Docket No. OA08-61-001 to address the Commission's directives in the July 2008 SPP Order except inter-regional planning with Entergy. Second, in the instant proceeding, SPP submitted an executed letter agreement,¹¹ which

⁵ At the time SPP submitted its compliance filing, the Information Exchange section of Attachment O to the SPP OATT was labeled "section IX." Subsequently, SPP relabeled that section to "section VII" in another proceeding. We will refer to the Information Exchange provision of Attachment O to SPP's OATT as "section VII."

⁶ SPP incorporated its transmission planning process in Attachment O of its OATT.

⁷ *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028, at P 49 (2008) (July 2008 SPP Order).

⁸ *Entergy Services, Inc.*, 124 FERC ¶ 61,268 (2008) (September 2008 Entergy Order).

⁹ *Id.* P 102.

¹⁰ SPP revised its February 6, 2009 Filing to correct a designation error.

¹¹ This agreement is entitled "Agreement between Southwest Power Pool, Inc. and

(continued...)

SPP stated obligates SPP and Entergy to engage in coordinated transmission system planning in accordance with the Principles Governing Regional Planning (Principles) that are part of the SPP-Entergy Agreement. In addition, Entergy submitted a filing on February 6, 2009 in Docket No. OA08-59-004 incorporating the Principles into section 13 of its Attachment K transmission planning process.

4. In response to SPP's Filing in the instant proceeding, protesters and commenters argued that the SPP-Entergy Agreement was inadequate to meet Order No. 890's requirements for inter-regional planning between SPP and Entergy. Instead, they argued, a comprehensive seams agreement was needed.¹² In addition, Union Power Partners, L.P. (Union Power) argued that the SPP-Entergy Agreement lacked the specificity contained in Entergy's proposed Attachment K. Union Power asserted that Entergy's Attachment K's internal references refer to section numbers while the SPP-Entergy Agreement internal references refer to "this Article" regardless of whether the reference is limited to the specific section in which it appears.¹³

5. In the April 2009 SPP Order, the Commission found that while SPP chose to make two separate filings to address its compliance with the July 11, 2008 Order, the SPP-Entergy Agreement should be reviewed in context with SPP's response in Docket No. OA08-61-001.¹⁴ The Commission also found the language of the Principles to be so similar in substance to the language Entergy proposed in section 13 of its Attachment K to warrant simultaneous consideration of issues raised by the SPP and Entergy proposals. Accordingly, the Commission accepted and nominally suspended the SPP-Entergy Agreement to be effective April 8, 2009, subject to refund and subject to the outcome of both SPP's and Entergy's transmission planning proceedings in Docket Nos. OA08-61-001 and Docket No. OA08-59-004, respectively.¹⁵

6. Subsequently, in addressing SPP's compliance filing in Docket No. OA08-61-001, the Commission found it appropriate to address whether the coordination between SPP

Entergy Services, Inc. to Implement Principles Governing Regional Planning in Accordance with the Regional Planning Requirements of the Federal Energy Regulatory Commission" (SPP-Entergy Agreement).

¹² April 2009 SPP Order, 127 FERC ¶ 61,032 at P 9, 11-14.

¹³ *Id.* P 10.

¹⁴ *Id.* P 18.

¹⁵ *Id.* P 19.

and Entergy met the inter-regional coordination requirements of Order No. 890 when the Commission addressed Entergy's transmission planning process.¹⁶

7. With regard to Entergy's compliance with the inter-regional planning requirements of Order No. 890, as noted above on February 6, 2009, in Docket No. OA08-59-004 Entergy submitted a filing to incorporate the Principles into section 13 of the Entergy Attachment K. In the June 2009 Entergy Order, the Commission accepted Entergy's Filing, subject to an additional compliance filing. The Commission stated that because the Commission's acceptance of the SPP-Entergy Agreement in Docket No. ER09-659-000 was made subject to the outcome of the Commission's findings in Docket No. OA08-59, SPP must revise the SPP-Entergy Agreement to comply with directives of the June 2009 Entergy Order.¹⁷ Subsequently, Entergy submitted additional compliance filings on August 17, 2009 and on June 1, 2010, which the Commission addressed in orders issued on March 31, 2010¹⁸ and November 10, 2010,¹⁹ respectively.²⁰ SPP submitted its August 17, 2009 Filing prior to the issuance of the latter two Entergy Compliance Orders. The modifications the Commission directed in the Entergy Compliance Orders, as applicable to the SPP-Entergy Agreement, are discussed below.

II. SPP Compliance Filing

8. On August 17, 2009, SPP filed the Revised SPP-Entergy Agreement to comply with the April 2009 SPP Order and the June 2009 Entergy Order. SPP requests waiver of the Commission's 60-day notice requirement, 18 C.F.R. § 35.3 (2011), in order to maintain the current April 8, 2009 effective date for the SPP-Entergy Agreement. SPP states that its filing merely incorporates the modifications made to Entergy's Attachment K. Accordingly, SPP contends that waiver is appropriate.

¹⁶ *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,171, at P 65 (May 2009 SPP Order).

¹⁷ June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 64.

¹⁸ *Entergy Services, Inc.*, 130 FERC ¶ 61,264 (2010) (March 2010 Entergy Order).

¹⁹ *Entergy Services, Inc.*, 133 FERC ¶ 61,130 (2010) (November 2010 Entergy Order).

²⁰ We will refer to the June 2009, March 2010, and November 2010 Entergy Orders as "Entergy Compliance Orders," collectively.

III. Notice and Responsive Pleadings

9. Notice of SPP's Filing was published in the *Federal Register*, 74 Fed. Reg. 42,887 (2009), with interventions and protests due on or before September 8, 2009. Union Power filed a protest,²¹ and SPP filed an answer.

IV. Discussion

A. Procedural Matters

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

B. Substantive Matters

1. Compliance Requirements

11. Because the SPP-Entergy Agreement and the Principles reflect the inter-regional coordination between SPP and Entergy addressed in the Entergy Compliance Orders, the Revised SPP-Entergy Agreement must comply with all of the Entergy Compliance Orders.

12. In the June 2009 Entergy Order, the Commission directed that the following revisions be made to Entergy's Attachment K and the SPP-Entergy Agreement: (1) explicitly include reliability studies in the definition of Regional Study;²² (2) specify that any interested party may request a Regional Study;²³ (3) clarify language regarding sharing system plans and associated data and assumptions to ensure that no relevant data are inadvertently omitted;²⁴ (4) provide that information regarding "N-2" contingencies²⁵

²¹ Union Power filed a timely motion to intervene in this proceeding on February 27, 2009.

²² June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 76.

²³ *Id.* P 89.

²⁴ *Id.* P 96.

²⁵ N-2 and N-1 contingencies are types of events analyzed in load flow and stability analyses. An N-2 contingency is a double event contingency; an N-1 contingency is a single event contingency.

will be shared in the same way as information regarding “N-1” contingencies;²⁶ (5) add language to the Entergy Attachment K to state that Entergy will work with its stakeholder working group to revise the local plan if that plan is not found to be simultaneously feasible with the Approved Expansion Plan of the other Regional Planning Parties²⁷ and define the term “approved;”²⁸ and (6) provide definitions for and clarify certain terms, including “Approved Expansion Plan,” “Regional Stakeholder Meeting,” and “Regional Planning Party.”²⁹

13. In addition, the Commission directed Entergy to add facilities studies to the list of studies contained in section 13.1.3.1.4 of its Attachment K, specify that any files Entergy posts for its local planning will be posted for its regional planning, and clarify what “relevant interfaces” means in section 13.1.3.1.8 of Entergy’s Attachment K.³⁰

14. Additionally, in the September 2008 Entergy Order, the Commission directed Entergy to remove from its Attachment K a requirement that stakeholders seeking confidential information that was not Critical Energy Infrastructure Information (CEII) from Southeast Inter-Regional Participation Process participants (SIRPP)³¹ first obtain from the Commission the Form No. 715, including CEII (Form No. 715 Requirement). In the June 2009 Entergy Order, the Commission found that Entergy had appropriately revised its Attachment K for stakeholders seeking non-CEII confidential information from SIRPP participants. However, the Commission found that the tariff language related to the process that the SIRPP stakeholder group members must use to obtain CEII still included the Form No. 715 Requirement, so the Commission directed Entergy to revise that tariff language to remove the Form No. 715 Requirement.³²

15. The Commission also found that a newly-added provision that forbids Participating Transmission Owners from disclosing certain resource-specific data

²⁶ June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 99.

²⁷ *Id.* P 104.

²⁸ *Id.* P 105.

²⁹ *Id.* P 119.

³⁰ *Id.* P 120.

³¹ SIRPP is an inter-regional process in which Entergy participates.

³² June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 149.

unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. The Commission stated that:

As written, the provision requires Participating Transmission Owners to exempt from disclosure any resource-specific data that can be used to determine security constrained unit commitment and economic dispatch or to perform an economic evaluation of costs and benefits, even if that data would not otherwise be considered confidential. In addition, even if the resource-specific data is confidential, it is not clear why all such data must be exempt from disclosure, even under appropriate confidentiality protections that are already in the tariff. Moreover, this provision conflicts with the requirement that stakeholders have sufficient information to replicate all transmission planning studies, and is unduly discriminatory.³³

16. Accordingly, the Commission directed Entergy to revise the provision to require Participating Transmission Owners to disclose resource-specific data in the planning process, under applicable confidentiality provisions, if the information is needed for participation in the transmission planning process and/or to replicate transmission planning studies.

17. In the March 2010 Entergy Order, the Commission accepted Entergy's revised definitions of "Approved Expansion Plan" and "Regional Stakeholder Meeting."³⁴ The Commission also accepted Entergy's replacement of the Form No. 715 Requirement with language providing that stakeholders may be certified to obtain CEII by following procedures on Entergy's and SIRPP's websites.³⁵ Subsequently, in the November 2010

³³ *Id.* P 147 (internal citations omitted).

³⁴ The accepted definitions are as follows:

"Approved Expansion Plan" means "in the case of another Regional Planning Party, the plan that includes the transmission projects that party has committed either to construct or to cause to be constructed."

"Regional Stakeholder Meeting" means "a joint meeting between or among any two or more of the following: the [Long Term Transmission Issues Working Group], the [Transmission Working Group], and the stakeholder committee having responsibility for transmission expansion issues of any other entity that becomes a Regional Planning Party."

³⁵ March 2010 Entergy Order, 127 FERC ¶ 61,272 at P 57.

Entergy Order, the Commission accepted Entergy's proposal to delete the confidentiality agreement for CEII related to planning models and data developed in accordance with the Regional Planning Process, which had been proposed Appendix 8 of its Attachment K, because it would conflict with the March 2010 Entergy Order's acceptance of language in the Entergy OATT stating that the confidentiality procedures would be posted on Entergy's website.³⁶ In the March 2010 Entergy Order, the Commission also accepted Entergy's proposal to replace the prohibition on disclosing certain resource-specific data with language providing that stakeholders will have access to resource-specific information if it is provided in the SIRPP and is needed to participate in the SIRPP or to replicate inter-regional studies.³⁷

2. SPP's August 17 Compliance Filing

18. SPP states that, in response to the requirements of the June 2009 Entergy Order, SPP and Entergy have agreed to specific revisions to the regional planning portions of Entergy's Attachment K that correspond to provisions contained in the SPP-Entergy Agreement.³⁸ SPP highlights that SPP and Entergy have also agreed to delete the confidentiality agreement previously included in the SPP-Entergy Agreement due to modifications to section 1.5.9.6 of the Principles to comply with the June 2009 Entergy Order. SPP concludes that its proposed revisions to the SPP-Entergy Agreement are consistent with the revisions to Entergy's Attachment K that Entergy filed to comply with the June 2009 Entergy Order.

3. Union Power's Protest

19. Union Power protests two aspects of SPP's compliance filing. First, Union Power reiterates arguments it made in its previous protest that the SPP-Entergy Agreement should contain internal references to specific section numbers, as are contained in section 13 of Entergy's Attachment K.

20. Second, Union Power states that SPP proposes to modify section 1.5.9.6.1 of the Revised SPP-Entergy Agreement to provide that CEII used in the SPP-Entergy regional planning process be made available from each party in accordance with each party's tariff.³⁹ Union Power argues that, although not stated, the proposed provision may be

³⁶ November 2010 Entergy Order, 133 FERC ¶ 61,130 at P 18.

³⁷ March 2010 Entergy Order, 127 FERC ¶ 61,272 at P 56.

³⁸ SPP August 17, 2009 Filing at 2.

³⁹ Union Power September 8, 2009 Protest at 3-4.

intended to refer to section VII.8 of Attachment O of SPP's OATT, which provides as follows: (b) The Transmission Provider shall screen Members and Market Participants prior to providing access to CEII information. Individuals that do not belong to a confirmed pre-screened Member or Market Participant shall be directed to the Commission's website for instructions for access to CEII.⁴⁰

21. Union Power argues that requiring prior Commission authorization for access to CEII is contrary to the June 2009 Entergy Order, which Union Power states directed Entergy to establish procedures for allowing access to CEII without requiring stakeholders to obtain Commission authorization.⁴¹ Union Power also argues that in the June 2009 Entergy Order, the Commission "emphasized that it had not required stakeholders to receive Commission authorization to access such information, as would be the case under the Form 715 Requirement, either in Order No. 890 or elsewhere."⁴² Union Power adds that SPP's Attachment O does not set forth the process for pre-screening SPP Members or for obtaining pre-screening status, and SPP does not indicate where these procedures may be posted.

4. SPP Answer

22. Regarding Union Power's request that the internal references in the Revised SPP-Entergy Agreement be revised to be more specific, SPP argues that the Commission did not require that the SPP-Entergy Agreement contain the specific internal references used in Entergy's Attachment K, notwithstanding Union Power's prior protest on this issue.⁴³ SPP also argues that while Entergy's Attachment K and the Revised SPP-Entergy Agreement do not contain identical language, no substantive differences exist between the two documents.

23. Regarding Union Power's concerns with the CEII provisions, SPP argues that the Commission did not require SPP to modify its process for providing CEII under Attachment O to the SPP OATT but instead required SPP to make changes needed to satisfy the regional coordination principle of Order No. 890 with respect to Entergy,

⁴⁰ Union Power September 8, 2009 Protest at 4 (citing SPP OATT, Attachment O section VII.8(b)).

⁴¹ *See id.* at 2-3 (citing June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 149-154).

⁴² *Id.* at 3 (citing June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 150-152).

⁴³ SPP September 23, 2009 Answer at 6-7.

which SPP argues it did. In addition, SPP asserts that the Principles have been modified to refer to each regional planning party's tariff provisions addressing data access, rather than attempting to modify both Entergy's and SPP's internal tariff processes to make them identical.⁴⁴ SPP argues that this change was necessary and appropriate because the Commission directed Entergy to modify its Attachment K process in a manner that conforms with Entergy's general processes for accessing other data, but that is different from the SPP process for accessing CEII, which was approved as part of SPP's Attachment O.⁴⁵ SPP avers that the Commission's directives regarding CEII related directly to Entergy's proposed Attachment K and that SPP's Attachment O process was not at issue in this proceeding.

24. SPP also argues that it does not require SPP Members and SPP Market Participants to obtain Commission approval prior to accessing transmission-related CEII. According to SPP, section VII.7(f) of Attachment O⁴⁶ requires SPP Members and Market Participants to execute confidentiality agreements with SPP prior to receiving CEII.⁴⁷

25. In addition, SPP contends that, contrary to Union Power's arguments, sections VII.6(d) and (e) of Attachment O to SPP's OATT provide that instructions for obtaining access to SPP power flow models, and SPP transmission planning maps are posted on the SPP website.

5. Commission Determination

26. We find that the Revised SPP-Entergy Agreement partially complies with the April 2009 SPP Order, the Entergy Compliance Orders, and the regional planning principle of Order No. 890. The Commission will accept the Revised SPP-Entergy Agreement, subject to SPP submitting revised tariff sheets within thirty days of issuance of this order, as discussed below.

27. As an initial matter, we find it unnecessary for internal references in the Revised SPP-Entergy Agreement to be revised as Union Power requests. While the internal

⁴⁴ See SPP September 23, 2009 Answer at 3.

⁴⁵ *Id.* at 4 (citing SPP OATT, Attachment O section VII.8(b)).

⁴⁶ Section VII.7(f) provides as follows: "Confidentiality agreements shall be required for Members and Market Participants to receive data where the owner of the data has given permission to the Transmission Provider to release the data."

⁴⁷ *Id.* at 4-5.

references are not identical in form to those in the Attachment K of Entergy's OATT, they are, as SPP notes, sufficiently specific.

28. With regard to the proposed revisions, we find that SPP has made most of the revisions required in the April 2009 SPP Order and the June 2009 Entergy Order. However, as noted above, since the time SPP submitted its filing, the Commission issued two additional orders addressing the Principles. In the March 2010 Entergy Order, the Commission accepted Entergy's proposed revisions to the definitions of "Approved Expansion Plan" and "Regional Stakeholder Meeting." Accordingly, we will require SPP to submit conforming revisions to these definitions in the Revised SPP-Entergy Agreement in a filing to be submitted within thirty days of the date of issuance of this order.

29. In addition, we note that the Revised SPP-Entergy Agreement does not contain new language providing that resource-specific data in the planning process will be disclosed by SPP, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies. In the June 2009 Entergy Order, the Commission found that a SIRPP provision forbidding participating transmission owners from disclosing certain resource-specific data would unreasonably restrict access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. Accordingly, the Commission found that the provision conflicted with the requirement that stakeholders have sufficient information to replicate all transmission planning studies and was unduly discriminatory.⁴⁸ Furthermore, in a separate proceeding in Docket No. ER08-1419-000, the Commission found a similarly-worded provision in SPP's Attachment O transmission planning process to be inconsistent with the transparency requirements of Order No. 890 and directed SPP to revise its tariff to remove the provision.⁴⁹ As the language in the SPP-Entergy Agreement is essentially the same as that in Attachment K of Entergy's

⁴⁸ June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 147. The SIRPP provision proposed in section 13.2.8.3.2.2 of Entergy's Attachment K provided as follows:

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.

⁴⁹ See *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,271, at P 15 (2009); *order on reh'g and compliance*, 137 FERC ¶ 61,227 (2011).

OATT and Attachment O of SPP's OATT,⁵⁰ we will require SPP to submit revisions to the SPP-Entergy Agreement to conform with section VII.7(d), as modified in the ER08-1419-000 proceeding.

30. Concerning access to CEII, in the Revised SPP-Entergy Agreement SPP replaced the FERC Form No. 715 Requirement with a statement that CEII data "shall be made available from each Regional Planning Party in accordance with provisions established by that party's tariff,"⁵¹ without specifying any particular section of the SPP OATT to which that statement refers. In response to Union Power's arguments that SPP Members and Market Participants that have not been prescreened and other stakeholders that are not SPP Members or Market Participants are required to obtain Commission authorization to access CEII, SPP points to sections VII.6(d) and (e) and VII.7(f) of the Information Exchange provision of Attachment O to its OATT. We interpret "in accordance with provisions established by that party's tariff" to refer to the Information Exchange provisions of Attachment O. Based on our reading of section VII as a whole, we find section VII may be unclear as to how all interested stakeholders may obtain access to CEII data needed in the transmission planning process contrary to the June 2009 Entergy Order and Order No. 890.

31. In Order No. 890, the Commission acknowledged its responsibility to protect CEII and recognized that those with a legitimate need for CEII information must be able to obtain it on a timely basis.⁵² The Commission specified the measures transmission providers can use to protect CEII⁵³ but did not require stakeholders to receive

⁵⁰ Section 1.5.9.7.2 of the SPP-Entergy Agreement provides as follows:

Resource-specific data shall not be made available by a Regional Planning Party if the data has been designated confidential by the data provider or if the data can be used to (a) determine security constrained unit commitment or economic dispatch of resources or (b) perform an economic evaluation of costs and benefits.

Section VII.7(d) of Attachment O to SPP's OATT as originally proposed is identical except that it referred to "Transmission Provider" rather than "Regional Planning Party."

⁵¹ The Revised SPP-Entergy Agreement has also deleted Appendix 1, which was the confidentiality agreement.

⁵² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 403.

⁵³ For examples such measures include, standard disclosure procedures, digital

(continued...)

authorization from the Commission to access CEII data.⁵⁴ Furthermore, as the Commission stated in the June 2009 Entergy Order, there is nothing in the Commission's regulations or precedent that would require the imposition of a requirement like the Form 715 Requirement. To the contrary, "in Order No. 643[], the Commission amended its CEII regulations and noted that nothing in the revisions it was making nor in the regulations outlined in Order No. 630 is intended to require companies to withhold CEII or to prohibit voluntary arrangements for sharing information."⁵⁵

32. Here, section VII.6 of Attachment O provides, in relevant part:

b) The Transmission Provider shall provide a secure web-based workspace for hosting and sharing planning information, data, and models. ... c) The secure web-based workspace shall be password protected and require CEII clearance in accordance with Section VII.8 of this Attachment O.

33. Section VII.8 provides, in relevant part:

b) The Transmission Provider shall screen Members and Market Participants prior to providing access to CEII information. Individuals that do not belong to a confirmed pre-screened Member or Market Participant shall be directed to the Commission's website for instructions for access to CEII information.

c) For those entities that have met the CEII requirements in Section VII.8.b of this Attachment O, the Transmission Provider shall provide password protected access to CEII information related to the SPP Transmission Expansion Plan and the underlying studies and models via the SPP website.

34. Accordingly, we interpret section VII as allowing Members and Market Participants that have been pre-screened by SPP, under procedures found on SPP's website, to have access to password-protected access to planning-related CEII. In addition, section VII directs interested stakeholders to SPP's website for "instructions to

certificates or passwords, additional login requirements, acknowledgements by users that they will be viewing CEII information, and nondisclosure agreements. *Id.* P 404.

⁵⁴ See June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 152; See also *KCP&L Greater Missouri Operations Co.*, 132 FERC ¶ 61,162 (2010).

⁵⁵ June 2009 Entergy Order, 127 FERC ¶ 61,272 at P 152 (citing *Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)*, Order No. 643, FERC Stats. & Regs. ¶ 31,149, at P 16 (2003)).

obtain access to the Transmission Provider's power flow models"⁵⁶ and "instructions to obtain copies of the Transmission Provider's transmission planning maps."⁵⁷ Regarding Union Power's argument that Attachment O does not contain the process by which Members can obtain pre-screened status and SPP does not indicate where the procedures may be posted, we disagree. Sections VII.6(d) and (e) of Attachment O state that instructions for stakeholders to obtain access to power flow models and transmission planning maps are posted on the SPP website.⁵⁸ We find these provisions are adequate for SPP Members. However, the language of section VII.8(b), which directs certain entities to the Commission's website for instructions for access to CEII, appears to contradict the Commission's directive that stakeholders are not required to receive authorization from the Commission to access CEII data. For these reasons, in light of the language of section VII.8(b), we find section VII to be unjust and unreasonable, and inconsistent with Order No. 890's requirement that transmission providers establish procedures for allowing access to CEII, rather than referring those seeking such information to the Commission. Therefore, we establish an investigation under FPA section 206 to evaluate the justness and reasonableness of section VII.8(b) of Attachment O to SPP's OATT. We direct SPP to submit a filing, within thirty days of issuance of this order, revising section VII.8(b) of Attachment O to its OATT to remove the language directing individuals that do not belong to a confirmed pre-screened Member or Market Participant to the Commission's website for instructions to access CEII information and to add procedures for how non-Members may gain access to CEII.

35. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date. We establish a refund date to be the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL12-2-000 is published in the Federal Register.

36. Finally, waiver of the 60-day prior notice requirement is unnecessary as SPP is proposing revisions to the SPP-Entergy Agreement to comply with prior Commission orders. Accordingly, we accept the Revised SPP-Entergy Agreement, as modified in a

⁵⁶ SPP OATT, Attachment O section VII.6(d).

⁵⁷ *Id.* at section VII.6(e).

⁵⁸ The instructions are posted on SPP's website at <http://www.spp.org/section.asp?pageID=108>.

filing to be submitted within thirty days of issuance of this order to be effective April 8, 2009, as requested.

The Commission orders:

(A) The Revised SPP-Entergy Agreement is hereby accepted, as modified, effective April 8, 2009, subject to a further compliance filing, as discussed in the body of this order.

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

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL12-2-000 concerning the justness and reasonableness of section VII.8(b) of Attachment O of SPP's OATT, as discussed in the body of this order.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (C) above, under section 206 of the FPA.

(E) The refund effective date in Docket No. EL12-2-000, established pursuant to section 206(b) of the Federal Power Act, shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (D) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.