

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. ER06-451-005
ER06-1047-001

ER06-451-006
ER06-1047-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 26, 2006)

1. In this order, the Commission addresses requests for clarification and/or rehearing of the *SPP Compliance Order*¹ related to Southwest Power Pool, Inc.'s (SPP) energy imbalance service market (imbalance market) filings. In the *SPP Compliance Order*, the Commission accepted in part, as modified, and rejected in part SPP's filing on (1) proposed open access transmission tariff (OATT or tariff) revisions pursuant to the *SPP Market Order*² and (2) proposed market participant agreement and reserve cost allocation. In this order, we also address SPP's proposed revisions to its OATT submitted in compliance to the *SPP Compliance Order*. As discussed below, we deny in part and accept in part the requests for rehearing and accept SPP's compliance filing, as modified, to become effective on December 1, 2006 or such later date as SPP's imbalance market becomes effective and direct a compliance filing as discussed below.

¹ *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,053, at P 93 (2006) (*SPP Compliance Order*).

² *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 (*SPP Market Order*), order on reh'g, 116 FERC ¶ 61,289 (2006).

I. Background

2. SPP has been authorized as a regional transmission organization (RTO) since October 1, 2004.³ The Commission accepted SPP's commitment to develop an imbalance market, including implementation of a real-time, offer-based energy market that will be used to calculate the price of imbalance energy.⁴ The Commission also required SPP to provide market monitoring and market power mitigation plans.⁵

3. On June 15, 2005, SPP submitted proposed tariff revisions intended to implement an imbalance market and establish a market monitoring and market power mitigation plan (June 15 Filing). The Commission rejected the June 15 Filing as inadequate and provided guidance concerning: (1) reliable and stable market operations; (2) market-based rates in the new market; and (3) mitigation and monitoring issues.⁶

4. On January 4, 2006, SPP again submitted proposed revisions to its OATT to implement SPP's imbalance market and establish market monitoring and market power mitigation plans (January 4 Filing). With these revisions, SPP intended to implement a real-time energy imbalance market, based on the least cost bid-based security constrained economic dispatch and locational marginal pricing (LMP). In the *SPP Market Order*, the Commission found that the January 4 Filing was missing important elements and assurances regarding reliable and stable operation and therefore directed submission of the missing elements and additional readiness and market startup safeguards.⁷ The Commission accepted parts of SPP's market operations and monitoring proposal, rejected

³ See *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004) (*RTO Order*), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

⁴ *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 134, *order on reh'g*, 109 FERC ¶ 61,010 (2004).

⁵ *Id.* P 173.

⁶ *Southwest Power Pool, Inc.*, 112 FERC ¶ 61,303 (*September 19 Order*), *reh'g denied*, 113 FERC ¶ 61,115 (2005).

⁷ *SPP Market Order*, 114 FERC ¶ 61,289 at P 1-3.

parts, and directed SPP to submit a compliance filing. The Commission suspended SPP's filing and permitted it to become effective October 1, 2006, subject to further orders.⁸

5. Subsequently on May 19, 2006, SPP submitted a compliance filing to incorporate Commission's directives from the *SPP Market Order* into the SPP tariff. SPP also submitted newly proposed market provisions, under section 205 of the FPA,⁹ a standard market participant agreement and a proposal for allocating the costs of energy from operating reserves (May 19 Filing). In the *SPP Compliance Order*, the Commission accepted SPP's newly proposed market provisions and compliance filing in part, as modified, and rejected in part, to become effective on October 1, 2006. The Commission also directed further compliance filing as discussed in the order.

6. SPP, Golden Spread Electric Cooperative, Inc. (Golden Spread), Xcel Energy Services, Inc. on behalf of Southwestern Public Service Company (Xcel) requested rehearing of the *SPP Compliance Order*. Missouri Joint Municipal Electric Utility Commission, Oklahoma Municipal Power Authority and West Texas Municipal Power Agency (collectively, TDU Intervenors) and Redbud Energy LP (Redbud) submitted answers.

7. Also, on August 21, 2006, SPP submitted a compliance filing to incorporate the Commission's revisions to its OATT. SPP requests that the proposed tariff sheets become effective on November 1, 2006.

II. Notice of Filing and Responsive Pleading

8. Notice of the compliance filing was published in the *Federal Register*, 71 Fed. Reg. 57,940 (2006), with comments, protests, and interventions due on or before September 11, 2006. Timely comments were filed by Westar Energy, Inc. (Westar). Timely protests were filed by Xcel; TDU Intervenors; and Southwest Industrial Customer Coalition (Southwest Industrials). On September 26, 2006, SPP filed an answer to comments and protests of Westar and Xcel.

⁸ On August 2, 2006, SPP submitted a letter indicating that the Board of Directors adopted a motion to delay the start of its imbalance market until November 1, 2006. On September 29, 2006, SPP submitted a letter notifying the Commission that the scheduled implementation of SPP's energy imbalance market has been extended to December 1, 2006.

⁹ 16 U.S.C. § 824d (2000).

III. Requests for Rehearing

A. Procedural Matter

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept answers filed by TDU Intervenors and Redbud and will, therefore, reject them.

B. Market Mitigation

10. In the *SPP Market Order*, the Commission accepted SPP's mitigation proposal in Attachment AF, subject to certain modifications.¹⁰ Specifically, SPP proposed to apply an offer cap during transmission constraints to generators that have a generator-to-load distribution factor of five percent or greater.¹¹ The Commission concluded that the offer-cap provision required clarification, and stated that it interpreted sections 3.2.2 and 3.2.3 of Attachment AF to provide that the offer cap applies to all resources owned or controlled by a particular supplier that impacts a particular constraint, if any of the supplier's resources impacting that constraint have a generator-to-load distribution factor of five percent or greater.¹² Accordingly, the Commission required SPP to clarify the

¹⁰ *SPP Market Order*, 114 FERC ¶ 61,289 at P 170.

¹¹ January 4 Filing, Attachment AF, section 3.2.2 provided that:

All resources that are located on the importing side of a constrained flowgate that have Generator-to-Load Distribution Factors greater than or equal to 5% (i.e. for each 100 MW increase in Resource output, the flowgate imports are reduced by 5 MWs or greater) shall be subject to an Offer Cap.

January 4 Filing, Attachment AF, section 3.2.3 provided that:

The Market Monitor will reassess the status of Resources subject to Offer Caps when transmission and generation facility additions, outages, changes, or changes in ownership occur that may reasonably cause the Resources' Offer Capped status to change.

¹² *SPP Market Order*, 114 FERC ¶ 61,289 at P 170.

role that ownership of or control over offer-capped resources plays in imposing offer caps regardless of whether an individual resource has a generation-to-load distribution of less than five percent.

11. Additionally, the Commission directed SPP to modify the language in Attachment AF to provide for any exceptions to the generator-to-load factor analysis.¹³ The Commission found that SPP did not adequately address the calculation of generator-to-load distribution factors for generators impacting the two flowgates that bound the Southwestern Public Service Company (SPS) control area.¹⁴

12. Subsequently, in the *SPP Compliance Order*, the Commission found that SPP had not complied with the Commission's directive to clarify the role of ownership as provided in the *SPP Market Order*.¹⁵ Contrary to the Commission's directive, SPP simply revised its tariff to state that ownership will not affect day-to-day designation of offer-capped resources, and that the Market Monitor will "periodically assess the potential for market power abuse due to common ownership or control of [r]esources that are not [o]ffer [c]apped."¹⁶ Therefore, the Commission rejected SPP's proposed modifications and directed SPP to submit a revised tariff to provide for "offer-capping of resources owned by the same supplier and impacting the same constraint when the supplier has one or more offer-capped resources impacting the particular constraint."¹⁷

13. Additionally, in the *SPP Compliance Order*, the Commission accepted SPP's revisions in section 3.2.2 to require that all resources are subject to the same threshold for offer-capping. The Commission found that SPP had complied with the directive to modify Attachment AF to list exceptions, if any, to the generator-to-load distribution

¹³ *Id.*

¹⁴ SPP's external market monitor noted that, for the two flowgates "it may be more appropriate to apply the [generator-to-load distribution factor] method to each monitored element in the flowgate separately, instead of simultaneously." See June 15 Filing, Exhibit VI, Testimony of Dr. Craig Roach Testimony at 54.

¹⁵ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 93.

¹⁶ January 4 Filing, Attachment AF, section 3.2.3. In its answer, SPP stated that by specifying that ownership plays no role in which resources are offer capped, it has clarified its tariff consistent with the Commission's directive. *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 90.

¹⁷ *Id.* P 93.

factor analysis by providing that there are no exceptions in the tariff to the generator-to-load distribution analysis that would allow for lesser or greater cost-capping of resources.¹⁸ Moreover, the Commission stated that, based on the *SPP Market Order* language, it was within SPP's discretion to decide on exceptions, if any, to the analysis.¹⁹

1. Rehearing Request

14. SPP requests the Commission to clarify its statement in the *SPP Compliance Order* that offer caps apply to certain resources that impact a particular constraint. SPP states that the language in the *SPP Compliance Order* does not provide specificity as to which resources are affected by the Commission's directives. It requests the Commission to clarify how a resource is deemed to "impact a particular constraint" and thus subject to offer capping.²⁰

15. In the alternative, SPP seeks rehearing if the Commission intended that offer caps will apply to all generation owned by a particular supplier even if only one generator fails the five-percent threshold. SPP argues that contrary to the Commission's finding in the *SPP Compliance Order*, it had complied with the *SPP Market Order* by submitting a revised section 3.2.3 of Attachment AF. SPP claims that the language in the *SPP Market Order* simply directed SPP to clarify the role of ownership in offer capping; while the Commission provided its interpretation, it did not require SPP to propose clarifying language consistent with the Commission's interpretation.²¹ SPP asserts that, consistent with that directive, it revised the language in section 3.2.3 to state that ". . . the Market Monitor will periodically assess potential for market power abuse due to common ownership or control of [r]esources that are not [o]ffered [c]apped."²² Further, SPP contends that the May 19 Filing does not constitute an improper request for rehearing because the *SPP Market Order* did not direct SPP to revise section 3.2.3 consistent with the Commission's interpretation.

¹⁸ *Id.* P 85, 92.

¹⁹ *Id.* P 92.

²⁰ SPP Rehearing Request at 8-9.

²¹ *Id.* at 11.

²² *Id.* and n.19.

16. SPP also argues that the Commission did not provide a reasoned basis for its interpretation of the offer cap application and arrived at an unsupported conclusion based on its misinterpretation of SPP's tariff. Specifically, it contends that the Commission misinterpreted section 3.2.3 by not considering section 3.2.3 in relation to Attachment AF in its entirety. It states that the Commission misinterpreted the reference to ownership out of context by ignoring SPP's intention in Attachment AF.²³ SPP states that it never intended to apply offer caps to all resources owned by a particular entity without regard to whether the individual resources meet the generator-to-load distribution factor threshold. Rather, its intent was that only generating units that have generator-to-load distribution factors of five percent or greater would be subject to the offer caps. According to SPP, its only reference to "ownership" was to a "change in ownership" as a factor that the Market Monitor may consider in assessing the status of resources subject to offer caps.²⁴ Therefore, SPP asserts that the Commission misinterpreted SPP's initial proposal and inappropriately directed SPP to institute requirements far beyond what SPP proposed.

17. Finally, SPP asserts that requiring SPP to apply an offer cap based on the Commission's interpretation will have detrimental effects on the SPP imbalance market. SPP states that the Commission previously recognized the importance of finding the appropriate balance between under-mitigation and over-mitigation.²⁵ SPP states that applying an offer cap to all or most of a company's resources even if only one unit fails the shift factor test creates a disincentive for owners of resources to bid into the market (particularly given the market-based authority that most owners of generation possess for bilateral sales outside of the market). This, in turn, would jeopardize the well being of the market as a whole by decreasing the amount of generation in the market.²⁶ SPP states that this is over-mitigation for which there is no justification.

²³ SPP asserts that Attachment AF as a whole proposed by SPP in its January 4 Filing reveals that resource affiliation was not intended to be a factor in applying offer caps. *Id.* at 14.

²⁴ *Id.* at 15.

²⁵ SPP Rehearing Request at 20, citing *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,158, at P 12 (2006).

²⁶ Based on SPP's analysis, it estimates that approximately 25,000 MW of generating capacity would be subject to offer capping 600 hours or more per year if the affiliated resources are considered together for offer-capping (approximately 40 percent
(continued)

18. Additionally, Golden Spread asserts that the Commission erred in finding SPP's proposal as just and reasonable that there will not be any exceptions to the generator-to-load distribution factor analysis. Golden Spread states that the Commission directed SPP to clarify any exceptions based on the external market monitor's conclusion that the generator-to-load distribution factor method does not work for two flowgates that bound the SPS control area.²⁷ Golden Spread argues that SPP ignored the testimony by its external market monitor and did not provide for any exceptions to the SPS flowgates. SPP's failure to address the issue constitutes non-compliance with the Commission's directive in the *SPP Market Order*. Therefore, Golden Spread requests that the Commission direct SPP either to set forth an exception to the generation-to-load distribution factor analysis in the tariff for the two flowgates or to provide an analysis justifying the failure to create such an exception.²⁸

2. Commission Determination

19. The Commission finds that SPP's rehearing request is untimely and inappropriate for this proceeding. The Commission clearly directed SPP in the *SPP Market Order* to "clarify the role that ownership of or control over offer-capped resources plays in the assessment and reassessment of offer-capped resources" and provided the clarification necessary through the Commission's interpretation.²⁹ SPP did not request a rehearing or a clarification of the Commission's interpretation within 30 days of the *SPP Market Order*. Instead, SPP submitted a compliance filing with a new interpretation of the application of offer caps. Accordingly, in the *SPP Compliance Filing*, the Commission concluded that SPP had not complied with the Commission's directive and further that, it was inappropriate to offer a new interpretation³⁰ because the compliance filing was not

of the generating capacity in the SPP footprint); while applying offer capping as SPP intended would result in approximately 4,000 MW of capacity being subject to offer capping in 600 hours or more per year (approximately 7 percent of the generating capacity in the SPP footprint). SPP Rehearing Request at 20-21.

²⁷ Golden Spread Rehearing Request at 2-3.

²⁸ *Id.* at 4.

²⁹ *SPP Market Order*, 114 FERC ¶ 61,289 at 170.

³⁰ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 93.

the correct proceeding to raise a rehearing request.³¹ SPP's failure to seek timely rehearing of the Commission's directive in the *SPP Market Order* precludes it from later seeking rehearing through its compliance filing.

20. While we deny SPP's request for rehearing, we clarify one aspect of the Commission's directive. SPP states that the Commission's directive is not clear as to whether a resource "impacting" a constraint would need to be on the importing and/or exporting side of the constraint. We clarify, consistent with the accepted tariff text, that "impacting" means that the offer cap applies to resources on the importing side of a constraint.³²

21. Further, we do not agree with SPP's conclusion that approximately 25,000 MWs would be subject to offer capping. SPP's calculation is based on offer capping resources on both the importing and exporting sides of the constraint.³³ As discussed above, the tariff language would apply only to resources on the importing side of the constraint. Similarly, we do not agree with SPP's claims that this action will discourage participation in the imbalance market. We do not find that this will result in over-mitigation because SPP's proposed offer cap is designed to produce revenues sufficient to permit generators to be adequately compensated and not withhold offers from the market even when they may be offer capped. Likewise, we find that this mitigation is necessary to ensure just and reasonable prices and to limit the potential for exercise of market power. If only those generators that exceed the generator-to-load threshold were offer capped, affiliated generators below the threshold would be free to bid in excess of the offer caps while the generators that are offer capped have no obligation to bid. This scenario could result in utilities receiving excessive payment for energy imbalance service. We find that the Commission's interpretation as set forth in the *SPP Market Order* strikes the appropriate balance between over-mitigation (mitigation of competitive market results) and under-mitigation (some exercise of market power that is not mitigated). Finally, we note that

³¹ The Commission has previously held that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether or not they comply with the Commission's previously-stated directives. *See NorthWestern Corp.*, 113 FERC ¶ 61,215, at 9 (2005); *Tampa Elec. Co.*, 113 FERC ¶ 61,159, at P 37 (2005); *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, P 60 (2005).

³² January 4 Filing, Attachment AF, section 3.2.2.

³³ SPP's August 21, 2006 Compliance Filing, Exhibit VII, Affidavit of Dr. Craig R. Roach at 2.

SPP may propose an alternative to the application of the prescribed offer-cap once market operations begins if any over-mitigation results.

22. Finally, we deny Golden Spread's request that the Commission direct (1) SPP to set forth the SPS flowgates as exceptions to the generator-to-load factor method or (2) SPP to provide an analysis justifying why it should not. We affirm our finding in the *SPP Compliance Order* that our directive did not require SPP to amend its tariff to except the SPS flowgates since the *SPP Market Order* allowed SPP to decide whether there should be exceptions.³⁴ Because SPP complied with the Commission's directive by stating that there were no exceptions, Golden Spread's request is denied.

C. Reserving Sharing Cost Allocation

23. In the *SPP Compliance Order*, the Commission accepted as just and reasonable SPP's proposal to allocate the costs associated with energy assistance from reserves, as opposed to reserve capacity,³⁵ directly to the market participant responsible for the resource that caused the need for reserve activation.³⁶ Specifically, SPP proposed a new section 4.2(a) to Attachment AE to provide for the activation of reserve sharing and a new Attachment AK to provide for the allocation and recovery of the costs of emergency energy that is activated by SPP in response to an operating reserve contingency. While the Commission recognized that SPP's proposal is different from the way that the costs of reserves have historically been allocated, it found that it is not unjust and unreasonable to require resources that provide imbalance energy to remain responsible for their own reliable operation, especially when buyers in the market cannot choose their imbalance energy provider. The Commission noted that SPP's proposal does not change the allocation of the capacity costs of maintaining reserves. Rather, SPP's proposal merely changes the entity responsible for the cost of the energy provided from reserves so that these provisions mesh with the imbalance market proposal.³⁷ Further, the Commission noted that such an allocation will increase the incentives in the imbalance market for reliable operation with a minimal expected impact on prices in the imbalance market.

³⁴ *Id.* P 92.

³⁵ Reserve capacity is provided pursuant to Schedule 5 (Operating Reserve – Spinning) and 6 (Operating Reserve - Supplemental) of SPP's OATT.

³⁶ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 32.

³⁷ *Id.* P 33.

24. Additionally, the Commission accepted SPP's proposal to act as a conduit for assessing and collecting emergency charges, but rejected SPP's proposal to use existing contracts between balancing authorities to establish applicable emergency energy rates. Noting many concerns with the use of emergency energy rates from these contracts,³⁸ the Commission stated that tariff rates must be on file with the Commission to provide identifiable costs and rate formulas.³⁹ The Commission also stated that such rates could result in the over-recovery of capacity costs given that balancing authorities have the opportunity to recover capacity costs through OATT Schedules 5 and 6. Accordingly, while allowing SPP to modify its OATT to provide that rates for emergency service are to be a pass-through of costs charged by balancing authorities, the Commission required the balancing authorities to modify their OATTs to add a new emergency ancillary service schedule. Further, the Commission noted that the just and reasonable rate for emergency energy should reflect the actual costs of emergency energy and should not include capacity costs.⁴⁰

1. Rehearing Request

25. Golden Spread argues that the Commission accepted SPP's reserve cost allocation as just and reasonable without justification.⁴¹ It states that the Commission ignored the arguments raised by commenters that SPP's proposal would require generators to add a premium to the price at which energy was offered into the imbalance market, thus raising the price to consumers, and would provide an advantage to market participants with large and diverse generation portfolios.⁴² Golden Spread argues that the Commission's finding that SPP's proposed cost allocation is just and reasonable on grounds that any increase will be *de minimus* is unjustified because FPA's requirement does not allow even a little unlawfulness.⁴³ Golden Spread also asserts that the Commission ignored commenters' arguments that entities without large and diverse generation portfolios would be disadvantaged.

³⁸ *Id.* P 36-40.

³⁹ *Id.* P 36 and n.52.

⁴⁰ *Id.* P 40.

⁴¹ Golden Spread Rehearing Request at 4-5.

⁴² *Id.*

⁴³ *Id.* at 5.

26. Additionally, Xcel seeks rehearing of the Commission's determination that utilities providing emergency energy may not recover capacity costs through their individual emergency energy charges to be included in their OATTs.⁴⁴ It asserts that such a conclusion is inconsistent with Commission's precedent of allowing emergency energy service to be priced as a premium service. It states that the Commission has historically allowed utilities to recover \$100 per MWh for emergency service,⁴⁵ and more recently, the higher of \$100 per MWh or 110 percent of incremental cost.⁴⁶ Xcel notes that the Commission adopted such a pricing standard not only to provide appropriate compensation to a supplying utility, but also to serve as a disincentive to entities from relying on emergency energy. Moreover, Xcel argues that the Commission ignored that the entities obtaining emergency energy may not necessarily be obtaining, and paying for, other ancillary services from the supplying balancing authority and therefore may not be paying capacity costs under OATT Schedules 5 and 6.⁴⁷ Xcel also asserts that if the Commission were to limit the emergency rate to incremental cost, the emergency rate could be lower than the market clearing price in the energy imbalance market. Xcel explains that if emergency energy provided during a reserving sharing event is priced at cost but the Location Imbalance Pricing (LIP) at the unit that caused the event to occur is higher, the entity that triggered the deployment of reserve energy may profit from the differential between the price of reserve sharing energy and the LIP at its affected unit.⁴⁸ Xcel also argues that any entity that responds to a reserve sharing event may lose an opportunity cost if the LIP at its unit is higher than its cost.⁴⁹ Xcel states that a better approach would be to establish a higher standard rate or to allow a utility to charge an individual rate, consistent with Commission precedent that allows recovery of hard to quantify costs and provides some capacity contribution.⁵⁰

⁴⁴ Xcel Rehearing Request at 4.

⁴⁵ *Id.*, citing *Indiana Michigan Power Co., et al.*, 44 FERC ¶ 61,313 (1988).

⁴⁶ *Id.* at 5, citing *Consumers Energy Co.*, 80 FERC ¶ 61,247 (1997).

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* at 7-8.

⁴⁹ *Id.* at 8.

⁵⁰ *Id.* at 7.

2. Commission Determination

27. We deny Golden Spread's rehearing request. We disagree with its contention that adding a *de minimus* amount of cost to its offers through a risk premium renders a rate unjust or unreasonable or permits "a little unlawfulness" since a risk premium is just one of many factors/costs an entity considers when determining its charges for a product or service, and including an appropriate risk premium, such as in this situation, may be part of the just and reasonable rate. We also reject Golden Spread's contention that its reserve options must be equivalent to the options available to entities with large and diverse generation portfolios. As we stated in the *SPP Compliance Order*, entities that are not members of a reserve sharing group (RSG) have options available to them. They may contract for reserve service and avoid charges from balancing authorities by operating pursuant to SPP's section 4.2(c) of Attachment AE.⁵¹ This would allow those without large and diverse portfolios to gather their resources together to self-provide operating reserves and emergency energy. They may also add a risk premium to their bid to spread the costs of emergency energy among all of their imbalance energy customers.⁵² Accordingly, we do not find that SPP's proposal for reserve cost allocation constitutes undue discrimination.

28. We also deny in part and grant in part Xcel's rehearing request. We note that SPP's proposal changes the entity typically responsible for the cost of the energy provided from reserves. While we agree that it is appropriate to provide an incentive for generators providing imbalance energy to operate reliably, we disagree with Xcel that such generators should have to pay a rate significantly higher than the costs of correcting the reserve sharing event. Xcel's argument that the market participant taking emergency energy may not have paid Schedule 5 and 6 charges for recovery of the capacity cost associated with the reserves is inapposite. In order to include capacity costs in its formula for emergency energy, Xcel must demonstrate that it would not double recover the cost of capacity. It would be unjust and unreasonable for Xcel to recover under ancillary service schedules a contribution towards its overall capacity costs from customers who take service under those schedules and also recover those costs from customers who obtain emergency service. Therefore, as we stated in the *SPP Compliance Order*, the just and reasonable rate emergency energy should reflect the actual costs of emergency energy and should not include capacity costs.⁵³ However, we

⁵¹ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 35.

⁵² *Id.*

⁵³ *Id.* P 40.

agree with Xcel that if the emergency rate were limited to incremental cost, the emergency rate could be lower than the market clearing price and that denying an entity the ability to recover its opportunity costs would be inappropriate. As such, the Commission will allow reserve sharing charges to be based on the higher of the incremental costs plus an adder consistent with Commission precedent or the LIP for the unit responding to the reserve sharing event.⁵⁴

IV. Compliance Filing

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed interventions and motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to protests unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's answer and will, therefore, reject it.

B. Offer Cap—Attachment AF

31. As discussed above, in the *SPP Compliance Order*,⁵⁵ the Commission found that SPP had not complied with the Commission's directive in the *SPP Market Order* to clarify the role of ownership in determining offer caps consistent with the Commission's interpretation of sections 3.2.2 and 3.2.3 of Attachment AF.⁵⁶ The Commission rejected SPP's proposed modifications and directed SPP to submit a compliance filing that modified section 3.2.2 of Attachment AF to provide for offer-capping of resources owned by the same supplier and impacting the same constraint when the supplier has one or more offer-capped resources impacting the particular constraint.⁵⁷

⁵⁴ See *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,172, at P 22 (2005).

⁵⁵ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 93.

⁵⁶ *SPP Market Order*, 114 FERC ¶ 61,289 at P 170.

⁵⁷ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 93.

1. SPP's Proposal

32. SPP submitted two versions of the offer capping proposal for Commission review: (1) version 1 that provides that all generating units on the importing side of a constraint with generation-to-load distribution factors of five percent or greater shall be subject to offer caps without consideration of ownership; and (2) version 2 that provides that if an entity has one generating unit subject to offer caps, then all of its generating units are subject to offer caps, even if the units do not satisfy the five-percent or greater shift factor requirement.

2. Compliance Filing Protests

33. TDU Intervenors and Southwest Industrials argue that version 1 of section 3.2.2 does not comply with the Commission's directive because it applies only to resources on the importing side of the constraint that have a generation-to-load distribution factor of greater than five percent without consideration of ownership.⁵⁸ Southwest Industrials also state that SPP's proposed version 1 has not been demonstrated to be just and reasonable.⁵⁹

34. Additionally, TDU Intervenors argue that version 2 is also flawed because the Commission's directive in *SPP Compliance Order* did not require SPP to eliminate the requirement in section 3.2.2 of Attachment AF providing for offer capping of resources "on the *importing* side of a constrained flowgate that have generation-to-load distribution factors greater than or equal to 5 [percent]"(emphasis added).⁶⁰

35. Therefore, TDU Intervenors suggest that the following language be added to section 3.2.2 to comply with the Commission's directive on offer caps (underlined language indicates proposed additions):

If any of a Market Participant's Resources are subject to the Offer Cap based on the Generator-to-Load Distribution Factors, all Resources owned by that Market Participant that are located on the importing side of the same constrained flowgate shall also be subject to an Offer Cap.

⁵⁸TDU Intervenors at 2; Southwest Industrials at 5.

⁵⁹ Southwest Industrials at 6.

⁶⁰ TDU Intervenors at 2.

3. Commission Determination

36. As discussed above, we find that SPP's offer cap proposal in version 1 does not comply with the *SPP Compliance Order* and therefore reject it.⁶¹ We accept, subject to modification, SPP's proposed revisions in version 2 because they are in compliance with the Commission's directive in the *SPP Compliance Order*. Additionally, we agree that TDU Intervenor's proposed language clarifies application of the offer caps and therefore direct SPP to incorporate TDU Intervenor's proposed language into SPP's OATT in a compliance filing within 30 days of the date of this order.

C. Reserve Sharing – Attachment AK

37. In the *SPP Compliance Order*, the Commission directed SPP to modify its OATT to provide that rates for emergency energy will reflect a pass-through of costs charged to SPP pursuant to a new emergency energy ancillary service schedule in the affected public utilities' OATTs or utilities' reciprocal tariffs.⁶²

1. SPP Proposal

38. SPP revised Attachment AK to reference the individual transmission owners' schedules that will govern the collection of emergency energy costs in the event of a reserve sharing activation.⁶³ Specifically, SPP proposed language in section II of Attachment AK, Charges for Reserve Sharing Services, that states, that "charges to the market participant are to reflect only a pass-through of the costs pursuant to schedules of the affected Balancing Authority." SPP also proposes to add language in section III, Revenues for Reserve Sharing Services, that states that revenues collected under this attachment "shall be passed-through" to the affected Balancing Authority "by the Transmission Provider."

2. Compliance Filing Protests

39. Xcel and Westar argue that SPP's proposed changes to Attachment AK fail to comply with the Commission's directives in the *SPP Compliance Order*. Specifically,

⁶¹ See *supra* discussion in section III.B.

⁶² *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 40.

⁶³ SPP Transmittal letter at 3.

Xcel contends that SPP's proposed tariff language: (1) is inconsistent with the directives of the Commission; (2) continues the current practice whereby individual members of the RSG providing reserves in response to an event, charge the Balancing Authority that requested activation of the Reserve Sharing System (RSS); (3) raises the prospect of deviations between charges assessed to the Balancing Authority and charges assessed by the Balancing Authority; and (4) provides that SPP will remit to the Balancing Authority only the amount of revenues it receives from the invoiced market participant without addressing the consequences to a Balancing Authority of non-payment in whole or in part of the bill submitted by SPP. In addition, Westar argues that Attachment AK: (1) does not explain how it will bring the non-market participant members of the RSG into compliance with the *SPP Compliance Order*; and (2) inadequately addresses the Commission's directive to modify the rates for reserve sharing energy to reflect a pass-through of costs charged pursuant to an identifiable rate on file with the Commission. Xcel and Westar proposed revisions to Attachment AK for Commission's consideration and claim that the revisions achieve compliance with the Commission's directives.

3. Commission Determination

40. In the *SPP Compliance Order*, the Commission accepted SPP's proposal to act as a conduit for assessing and collecting emergency energy charges, but rejected SPP's proposal to rely on bilateral contracts between balancing authorities as the filed rate for emergency energy.⁶⁴ While the Commission noted that the use of emergency energy rates from contracts raises many concerns,⁶⁵ the Commission did not intend to change the RSG member contracts or the way they are administered. The Commission's directive was intended to ensure that the non-RSG market participants are charged rates on file with the Commission. Accordingly, the Commission rejected SPP's proposal to have balancing authorities invoice market participants, through SPP, using contracts that are not applicable to the market participants.⁶⁶

41. We disagree with Xcel and Westar that SPP's proposed Attachment AK is not in compliance with the Commission's directive in the *SPP Compliance Order*. SPP revised Attachment AK to state that rates will only reflect a pass through of charges and we accept SPP's changes with some modifications. Consistent with the Commission's intentions noted above, we direct SPP to further clarify Attachment AK regarding market

⁶⁴ *SPP Compliance Order*, 116 FERC ¶ 61,053 at P 36.

⁶⁵ *Id.* P 36-40.

⁶⁶ *Id.* P 40.

participants that are not part of existing reserve sharing agreements. Section II of Attachment AK states that “[c]harges for energy assistance supplied during a reserve sharing activation will be calculated in accordance with the applicable contracts between members of the Reserve Sharing Group (RSG).” We find this could be read to apply to market participants who are not part of the existing reserve sharing agreements. This was the concern the Commission addressed in the *SPP Compliance Order* directing SPP to modify its OATT and noted that prior to passing through the costs of this service, any public utility must have on file a Commission-approved rate schedule for emergency energy.⁶⁷ Accordingly, SPP is directed to add the phrase “to Reserve Sharing Group members” before the word “will” in the sentence above. In addition, SPP is directed to delete the second sentence since RSG members who are invoiced in accordance with the applicable contracts need not submit the invoices to SPP; the applicable contracts can be administered between the RSG members without SPP involvement. Further, SPP is directed to add the word “non-RSG” before the word “Market Participant” in the third sentence. Finally, for clarity, we direct SPP to replace the last sentence as follows: “Such an invoice shall reflect the charges for energy assistance supplied to the non-RSG Market Participant as calculated by the supplying Balancing Authority in accordance with the Commission-approved tariff of such Balancing Authority.” With these modifications,⁶⁸ we accept SPP’s proposed changes and direct SPP to make a further

⁶⁷ *Id.* P 40.

⁶⁸ The revised Attachment AK, section II should read as follows:

Charges for energy assistance supplied during a reserve sharing activation to Reserve Sharing Group (RSG) members will be calculated in accordance with the applicable contracts between members of the RSG.

The Transmission Provider shall invoice the non-RSG Market Participant registered for the Resource causing the need to activate the Reserve Sharing System for the total of the charges provided to the Transmission Provider by the affected Balancing Authority. Such an invoice shall reflect the charges for energy assistance supplied to the non-RSG Market Participant as calculated by the Balancing Authority in accordance with the Commission-approved tariff of such Balancing Authority.

compliance filing within 30 days of the date of this order incorporating the changes noted above in Attachment AK.

42. Xcel also protests aspects of the filing not at issue, e.g., non-payment or partial payment. Since this is a tariff service for non-members or service under existing contracts, the non-payment or partial payment of invoices would be subject to the non-payment provisions of the tariff or RSG member contracts as applicable. Accordingly, Xcel's protest in this regard is moot.

D. Strategic Withholding

43. In the *SPP Compliance Order*, the Commission directed SPP to submit a compliance filing that specifies strategic withholding monitoring steps.⁶⁹

1. SPP Proposal

44. SPP proposal revises section 4.6 of Attachment AG by adding new subsection 4.6.2, Strategic Withholding. In that section, SPP provides that the Market Monitor will look for cases where commonly owned or controlled resources on the importing side of a transmission constraint that are required to serve the load and that are not subject to the offer cap, are causing the LIP on the importing side of such transmission constraint to be set at levels above the offer cap. SPP's proposal provides specific steps to monitor this activity, but limits documenting the LIP for pivotal resources to six months after the start of the imbalance market.

2. Compliance Filing Protests

45. TDU Intervenors protest SPP's proposal regarding strategic withholding. Specifically it argues that the six-month time requirement to document the LIP associated with all pivotal Resources identified under section 4.6.2(b) is not necessary and should be removed. TDU Intervenors note that the testimony provided by Dr. Roach regarding this matter did not limit such portfolio bidding monitoring to only a six-month period following imbalance market start-up, and concludes that such risks will grow as market participants become more adept at bidding into the imbalance market and gain a better understanding of how their bids can affect transmission constraints and LIPs. As such, TDU Intervenors requests the Commission to direct SPP to remove the proposed six-month time limit.

⁶⁹ *Id.* P 94.

3. Commission Determination

46. We agree with TDU Intervenors and reject the proposed six-month time limit following imbalance market start-up to document LIPs associated with pivotal resources identified under Section 4.6.2(b). We did not indicate any such time limitation in the *SPP Compliance Order*.⁷⁰ In order to properly execute its oversight role of market behavior and to prevent the possibility of gaming, the Market Monitor will need to continue to track and trend this data. Accordingly, we direct SPP to remove the proposed six-month time limit in the compliance filing ordered below.

E. Transmission Charges for Imbalance Service

47. In the January 4 Filing, SPP proposed that market participants that use energy imbalance service to serve their load but have not paid a transmission service charge (through point-to-point service reservations) would be charged a separate transmission service charge. These participants would be permitted to deviate from their point-to-point service reservation amount by up to four percent without an additional charge. Also, SPP proposed to charge an imbalance transmission service charge to the transmission owners that provide service under grandfathered agreements or to bundled retail load but do not take network integration transmission service on behalf of their load. In the *SPP Market Order*, the Commission explained that it believed the intent of the provision was to allow SPP to charge these transmission owners for transmission service taken in excess of four percent of their scheduled load, as follows:

Under Schedule 4, SPP proposed to charge transmission owners serving grandfathered and/or bundled retail load, and not taking transmission service under SPP's tariff, a non-firm point-to-point transmission service rate "multiplied by the actual amount of Imbalance Energy transmitted in excess of 4% of the sum of such Transmission Owner's bundled retail load and load under Grandfathered Agreements in each hour."⁷¹

48. For clarity, the Commission required SPP to add the word "scheduled" before the word "load" in the above clause. Furthermore, the Commission required SPP to include

⁷⁰ *Id.*

⁷¹ *SPP Market Order*, 114 FERC ¶ 61,289 at 102-03.

the 2 MW minimum so that owners serving grandfathered and/or bundled retail load pay for transmission usage in excess of 4 percent of its scheduled load.⁷²

49. In its compliance filing, instead of adding the word “scheduled” before “load” as directed, SPP deleted the phrase “bundled retail load and load under Grandfathered Agreements” and inserted “Reported Load” claiming that the Commission’s directive was incorrect because transmission owning control area operators do not schedule energy for their native load or grandfathered load in the control areas.⁷³ Because SPP had not complied with the Commission’s directive in the *SPP Market Order*, the Commission required SPP,⁷⁴ to clarify how imbalance energy would be calculated for these transmission owners. The Commission directed SPP to provide specific examples using at least two hypothetical load and generation levels describing how energy imbalances would be calculated for transmission owners that do not submit schedules to SPP and how transmission service charges for energy imbalance service would be calculated for transmission owners serving load under grandfathered agreements or bundled retail load not taking network or point-to-point service.

1. SPP Proposal

50. In its compliance filing, SPP explains that it had erred in stating that transmission-owning control area operators do not schedule energy for their native load or grandfathered load in their own control areas. SPP also states that energy is scheduled by such entities to such loads pursuant to the SPP OATT, and any difference from actual energy is imbalance service.⁷⁵

2. Commission Determination

51. In view of SPP’s acknowledgement that transmission-owning control area operators do in fact schedule energy for their native load or grandfathered load in their control areas, the Commission directs SPP to submit a revised tariff sheet that reinstates the phrase “bundled retail load and load under Grandfathered Agreements.” In addition, SPP must add the word “scheduled” before “load” in the phrase noted above as originally directed in the *SPP Market Order*.

⁷² *Id.* P 103.

⁷³ *SPP Compliance Order*, 114 FERC ¶ 61,289 at P 77.

⁷⁴ *Id.* P 81.

⁷⁵ SPP transmittal letter at 3 and 4.

F. Other Issues

52. In the *SPP Compliance Order*, the Commission required SPP to make certain revisions to its Energy Imbalance Market and Market Monitoring Procedures in the SPP OATT. These include: (1) delete the extraneous word “on” from section 10 of Attachment AH; (2) modify sections 2.4.2(a) and 2.4.2(b) of Attachment AE to provide that revised resource plans should be submitted by the later of 1700 CPT on the day prior to the operating day or two hours after the receipt of notification from SPP; (3) modify section 3.2 of Attachment AE to provide that a supply adequacy analysis will be conducted on a two-hour ahead basis during the intra-day process; (4) include the deleted definition of Reported Load from Attachment AE in the definitions section at the beginning of its tariff; and (5) file a complete and corrected version of its price correction provisions in section 4.5(a) of Attachment AE. In addition, SPP was directed to: (1) update the table of contents for Attachment AE to delete and add references to definitions where appropriate; (2) replace the obsolete reference to section 7.2 of Attachment AF on First Revised Sheet No. 627; (3) define the term “Market System” or replace it with a defined term in the definition of “Resources” on Superseding First Revised Sheet No. 623; (4) renumber the subsections in section 4.2 of Attachment AE; and (5) correct misspellings on Sheet Nos. 616, 644F, and 664E.⁷⁶

1. Commission Determination

53. We find that SPP has addressed each item above in this filing and has generally complied with the Commission requirements of the *SPP Compliance Order*. However, a few discrepancies still exist. SPP states that misspellings have been corrected on Sheet Nos. 616 and 664E; however, the corrected sheets were not included in this filing. Accordingly, SPP is directed to submit these sheets properly designated on compliance to this order. SPP must also correct the following designations pursuant to Order 614⁷⁷ within 30 days of the date of this order: (a) First Revised First Revised Sheet No. 1A should be designated as First Revised Sheet No. 1A Superseding Original Sheet No. 1A;

⁷⁶ *SPP Compliance Order*, 114 FERC ¶ 61,289 at P 104. In the *SPP Compliance Order*, the Commission instructed SPP to correct a misspelling in Sheet No. 644F, however as SPP notes in the August 21 filing, Sheet No. 644F does not exist in the SPP Tariff, accordingly no further action is required by SPP to address this matter.

⁷⁷ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (April 7, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

and (b) Second Sheet No. 667 should be designated as Second Revised Sheet No. 667 Superseding First Revised Sheet No. 667.

The Commission orders:

(A) The requests for rehearing are hereby denied in part and granted in part as discussed in the body of this order.

(B) SPP's revised tariff sheets are accepted, as modified, to be effective December 1, 2006 or such later date as SPP's imbalance market becomes effective.

(C) SPP is hereby directed to make a compliance filing within 30 days of the date of this as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.