

126 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket Nos. OA08-5-001
OA08-5-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued March 19, 2009)

1. On June 16, 2008 in Docket No. OA08-5-001, Southwest Power Pool, Inc. (SPP) and American Wind Energy Association (AWEA) filed requests for rehearing of the Commission's May 16, 2008 Order in this docket.¹ Also on June 16, 2008, in Docket No. OA08-5-002, SPP submitted a filing to comply with the May 16, 2008 Order. In this order, the Commission grants in part and denies in part the requests for rehearing and accepts SPP's June 16, 2008 filing, effective October 11, 2007, as in compliance with the May 16, 2008 Order.

I. Background

A. Order No. 890

2. In Order No. 890,² the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

¹ *Southwest Power Pool, Inc.* 123 FERC ¶ 61,176 (2008) (May 16, 2008 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members and required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).³

B. SPP's Order No. 890 Compliance Filing

4. On October 11, 2007, SPP submitted a compliance filing stating that it incorporated the majority of the revisions adopted in Order No. 890 into its OATT. SPP also noted that several of the SPP tariff provisions include previously accepted variations that either required slight modification in order to incorporate Order No. 890 changes, or were not substantively affected by the incorporation of the revisions. SPP also stated that there are several provisions of the Order No. 890 *pro forma* OATT that SPP did not propose to implement because the applicable provisions in SPP's OATT were consistent with or superior to the Order No. 890 *pro forma* OATT revisions.⁴ In its October 11, 2007, filing SPP also submitted a revised Attachment C (Methodology to Assess Available Transfer Capability).

5. In the May 16, 2008 Order, the Commission accepted SPP's October 11, 2007 compliance filing and directed SPP to make a further compliance filing. Specifically, the Commission directed SPP to (1) update its unreserved use penalties provisions consistent with the requirement that a transmission provider's unreserved use penalty rate may not be greater than twice the firm point-to-point rate for the period of unreserved use; (2) revise its penalty provisions so that penalty revenues will be distributed to non-offending transmission customers, not retained by SPP to reduce its administrative charge; (3) submit a one-time compliance filing proposing a methodology for distributing revenues from unreserved use penalties and late study penalties, consistent with the

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157, 161.

⁴ Specifically, SPP did not revise its OATT to adopt the Order No. 890 *pro forma* OATT revisions for conditional firm point-to-point service (hereinafter conditional firm service), planning redispatch point-to-point service, energy and generator imbalance services, and unreserved use penalties.

requirements of Order No. 890, prior to the first distribution of those operational penalties; (4) revise the SPP Attachment R⁵ to incorporate language from the Order No. 890 *pro forma* OATT regarding procedures to address parallel flows; and (5) file revised tariff sheets under section 2.2 of its OATT to reflect the rollover rights language effective prior to SPP's October 11, 2007 filing and re-file the rollover reform language within 30 days after the Commission's acceptance of SPP's transmission planning process.⁶ Additionally, as more fully discussed below, the Commission rejected protesters' arguments that SPP should be required to offer conditional firm service.⁷

6. The Commission directed SPP to revise its Attachment C to provide a link to SPP's web site with the mathematical algorithms it uses to calculate firm and non-firm Available Transfer Capability (and Available Flowgate Capacity, if applicable) for its scheduling, operating and planning horizons and to provide an explanation regarding modeling of contingency outages with regard to its use of an Available Flowgate Capacity methodology to calculate Available Transfer Capability. The Commission also directed SPP to revise its Attachment C to provide clear definitions of Existing Transmission Commitments and Total Transfer Capability, a detailed explanation of its Total Transmission Capability calculation methodology, a list of databases used to calculate Total Transmission Capability and Transmission Reliability Margin, and a list of conditions under which Transmission Reliability Margin is used.

II. Requests for Rehearing – Docket No. OA08-5-001

A. Conditional Firm Service

1. AWEA's Request for Rehearing

7. AWEA requests rehearing of the Commission's determination that SPP is not required to offer conditional firm transmission service. AWEA argues that the Commission erred by (1) accepting SPP's answer to the protests without substantial evidence that SPP's Energy Imbalance Service market provides the kind of energy market required by Order No. 890 to support new market entrants, or details on how this market can allow customers to buy through congestion; (2) disregarding the barriers to new resources to entering the market; and (3) stating that part of this exemption is based

⁵ SPP's procedures addressing parallel flows (Attachment J of the Order No. 890 *pro forma* OATT) are provided under SPP's Attachment R.

⁶ SPP's transmission planning process is labeled as Attachment O.

⁷ AWEA and Redbud Energy LP filed protests regarding conditional firm service.

on the possibility that conditional firm service may “disrupt the distribution” of financial transmission rights.⁸

8. With regard to its first argument, AWEA contends that SPP has not adequately demonstrated that it meets the requirements of Order No. 890 under which ISOs and RTOs may be exempt from offering conditional firm service. Specifically, AWEA argues that SPP must demonstrate that it offers a real-time energy market and a way for transmission customers to buy through congestion. AWEA states that in SPP’s answer to the protests filed against its October 11, 2007 filing, SPP did not elaborate on how its Energy Imbalance Service Market addresses the goals underlying the Commission’s requirement for conditional firm service—i.e., helps to avoid discrimination in the granting of transmission service, avoids barriers to new market entrants, or helps to make the most efficient use of the transmission grid.⁹ AWEA contends that SPP does not offer any evidence that its Energy Imbalance Service Market allows parties with long-term contracts to buy through congestion, nor does SPP offer any additional options beyond the Energy Imbalance Service Market. AWEA also argues that another goal underlying the adoption of the conditional firm service was to “increase the efficient utilization of transmission by eliminating artificial barriers to use the grid.”¹⁰ AWEA argues that SPP has not shown that its Energy Imbalance Service Market alone is sufficient to encourage the most efficient use of the transmission system by encouraging the development of new resources in remote areas of the grid that may be constrained a few hours of the year.¹¹

9. Next, AWEA argues that the May 16, 2008 Order fails to recognize the importance of transmission rights. AWEA states that SPP’s Energy Imbalance Service Market comprises only eight percent of SPP’s total load and SPP primarily operates under a bilateral market where energy sales rely on prior reservation for firm network service or point-to-point transmission rights.¹² AWEA contends that if more developers were able to finance their projects based on the Energy Imbalance Service Market, there would be more market entrants and fewer parties with long-term transmission requests in the SPP’s aggregate study process. However, AWEA argues that the opposite is the case and there is a backlog of transmission service requests causing SPP to delay the SPP

⁸ AWEA Request for Rehearing at 3.

⁹ *See id.* at 5.

¹⁰ *Id.* (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 4).

¹¹ *Id.*

¹² *Id.* at 5-6.

study process.¹³ AWEA argues that financial transmission rights in other RTO and ISO markets allow new generators to gain access to long-term transmission on par with incumbent suppliers; however, these opportunities do not exist for new generators located in SPP's congested areas.

10. AWEA alleges that discrimination between network customers and point-to-point customers seeking long-term transmission capacity is still a reality in SPP. For example, AWEA states that new resources can receive network service if such resource is an addition to a utility's fleet and if the utility agrees to redispatch generation when transmission is constrained. According to AWEA, independent/merchant generation cannot receive network service unless nominated by a load nor can they receive point-to-point transmission without costly upgrades or generation redispatch. AWEA argues that SPP will not offer an independent generator redispatch service, but requires parties to negotiate with incumbent utilities or other generators for redispatch service, who may not offer that service or make it prohibitively expensive. AWEA adds that new market entrants such as wind resources require a level of certainty of transmission rights and prices for their power, which cannot be developed within an imbalance market alone.

11. Lastly, AWEA takes issue with the Commission's statement that "in RTOs and ISOs with [financial transmission rights], conditional firm service may disrupt the distribution of these rights."¹⁴ AWEA asserts that there is no substantial evidence in the record that conditional firm service may disrupt the distribution of financial transmission rights in RTOs and ISOs. AWEA also asserts that "such speculation is not a reasonable basis to allow a transmission provider to refuse to offer conditional firm service," that the Commission made no such exception in Order No. 890, and that the Commission cannot find SPP to be in compliance with Order No. 890 on this basis.¹⁵

2. Commission Determination

12. The Commission finds AWEA's arguments constitute a collateral attack on Order No. 890 and denies AWEA's request for rehearing. In the May 16, 2008 Order, the Commission considered the arguments raised by protesters, including AWEA, in support of their position that SPP should be required to offer conditional firm service, and SPP's answer to those protests. Specifically, we stated that in Order No. 890 the Commission found that customers transacting within RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior

¹³ *Id.* at 6.

¹⁴ *Id.* at 7 (*citing* May 16, 2008 Order at P 14).

¹⁵ *Id.*

reservation to access transmission.¹⁶ The Commission found that SPP's Energy Imbalance Service Market allows customers to buy their way through transmission congestion through the use of locational imbalance services and that such services do not require prior reservation of transmission service.¹⁷

13. Moreover, AWEA misapprehends the Order No. 890 compliance obligations of ISOs and RTOs such as SPP with regard to conditional firm service. In its request for rehearing, AWEA makes the same arguments that it made in protesting SPP's October 11, 2007 compliance filing—i.e., that SPP must demonstrate that it offers a real-time energy market and a way for transmission customers to buy through congestion in order for SPP to be exempt from providing conditional firm service.¹⁸ However, in Order No. 890, the Commission found that it would be inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm service.¹⁹ Contrary to AWEA's assertions, the Commission did not require RTOs and ISOs to demonstrate why they should not be required to offer conditional firm service – i.e., there is no RTO/ISO exemption. Rather, the Commission found that voluntary curtailment in order to access transmission is not an attractive option given the range of options available for customers transacting in RTOs and ISOs.²⁰ Accordingly, the Commission found no need to reform existing RTO and ISO procedures to satisfy concerns underlying the adoption of the conditional firm service option.²¹

¹⁶ May 16, 2008 Order at P 14.

¹⁷ *Id.* (Stating “Here, SPP explains that in its EIS Market, customers may buy their way through transmission congestion through the use of locational imbalance services, which do not require prior reservation of transmission service. Further, both AWEA and Redbud acknowledge that sales in SPP's EIS Market do not require prior reservation of transmission service and congestion in that market is managed through use of locational imbalance prices.”).

¹⁸ *See id.* P 10-12.

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 992. We note that in the Order No. 890 proceeding, AWEA argued that ISOs and RTOs should be required to demonstrate that their services are consistent with or superior to conditional firm service and that RTOs that do not provide financial rights should be required to provide conditional firm service. *See id.* P 989. The Commission did not adopt AWEA's requested requirements. *See id.* P 992-93.

²⁰ *See id.* P 992.

²¹ *Id.*

14. Additionally, AWEA takes issue with the Commission's statement in the May 16, 2008 Order with regard to financial transmission rights in RTOs and ISOs. This was a restatement of the Commission's determination in Order No. 890,²² and AWEA's objection amounts to a collateral attack on the Commission's findings in Order No. 890. If AWEA had concerns with this finding, it could have raised this issue in a request for rehearing of the Final Rule. Indeed, as AWEA states, SPP does not offer financial transmission rights. Thus this statement is not directly relevant to SPP's compliance on this issue.²³ Accordingly, the Commission denies rehearing.

B. Attachment C (Methodology to Assess Available Transfer Capability)

1. SPP Request for Rehearing

15. On rehearing, SPP states the Commission erred by requiring SPP to revise its Attachment C to provide a clear definition for Total Transfer Capability, a detailed explanation of its Total Transfer Capability calculation methodology, and a list of databases used to calculate Total Transfer Capability. SPP asserts that the Commission failed to provide a reasoned explanation why it treated SPP differently from a similarly-situated RTO upon which the Commission did not impose such a requirement.²⁴ SPP states that, like other RTOs, it uses a flowgate network response methodology for calculating Available Transfer Capability and it has revised its Attachment C to provide a detailed description of the specific mathematical algorithm used to calculate Available Transfer Capability and Available Flowgate Capacity for the operating, planning and study horizons. SPP also states that its Attachment C includes a process flow diagram illustrating the various steps through which it calculates Available Flowgate Capacity, as well as a detailed explanation of how it calculates each of the Available Flowgate Capacity components for the operating, planning and study horizons.

16. In addition, SPP states that in its Order No. 890 compliance filing the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) revised its Attachment C to include, among other things, detailed explanations of how each of the Available Flowgate Capacity components is calculated for the operating, planning and study horizons, but the Midwest ISO did not incorporate detailed information on Total Transfer

²² *See id.*

²³ As noted above, in Order No. 890 the Commission considered but did not adopt AWEA's suggestion that RTOs that do not provide financial transmission rights should be required to provide conditional firm service.

²⁴ SPP Request for Rehearing at 3 (*citing Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 22-24 (2008)).

Capability.²⁵ SPP states that the Midwest ISO noted that for those entities that use a flow-based approach to derive Available Transfer Capability, Total Transfer Capability is not part of the calculation.²⁶ SPP also states that the North American Electric Reliability Corporation's (NERC) Draft Standard MOD-030-1 provides that transmission providers shall use a specific algorithm that does not include Total Transfer Capability when calculating firm and non-firm Available Flowgate Capacity, respectively for a flowgate for a specified period.²⁷ SPP states that in a May 15, 2008 Order the Commission accepted without comment the Midwest ISO's proposal not to incorporate detailed Total Transfer Capability information into its Attachment C²⁸ and accepted a similar proposal filed by PJM Interconnection, L.L.C. (PJM).²⁹

17. SPP argues that like the Midwest ISO and other RTOs that rely on flowgate network response methodologies for the determination of Available Transfer Capability, SPP neither determines Total Transfer Capability nor is Total Transfer Capability used or useful in determining Available Flowgate Capacity. SPP contends that in the May 16, 2008 Order, the Commission does not explain why SPP is subject to the requirement to incorporate detailed Total Transfer Capability information into Attachment C of its OATT while the Midwest ISO, a similarly-situated RTO that uses a flow-based approach, is not required to incorporate such information into its OATT.

2. Commission Determination

18. Upon review of the May 16, 2008 Order and the information SPP provided in its rehearing request, we will grant SPP's request for rehearing.

19. In Order No. 890, the Commission amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability. The Commission required a transmission provider to clearly identify which methodology it uses (e.g., contract path, network Available Transfer Capability, or network Available

²⁵ *Id.* at 4 (*citing* Midwest ISO Order No. 890 Compliance Filing, Docket No. OA08-14-000, at 4-6 (Oct. 11, 2007)).

²⁶ *Id.* at 4-5.

²⁷ *Id.* at 5 (*citing* NERC Draft Standards MOD-030-1 at sections R.8 and R.9).

²⁸ *Id.* at 5-6 (*citing* *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154 at P 22-24).

²⁹ *See id.* n.25 (*citing* *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,145, at P 24-36 (2008)).

Flowgate Capacity).³⁰ The transmission provider was also required to describe in detail the specific mathematical algorithms used to calculate firm and non-firm Available Transfer Capability (and Available Flowgate Capacity, if applicable) for its scheduling, operating, and planning horizons.³¹

20. Upon further consideration, we conclude that SPP has satisfied this obligation by providing in its Attachment C detailed explanations of how each of the Available Flowgate Capacity components is calculated for the operating, planning and study horizons. SPP states that it uses a flowgate network response methodology for calculating Available Flowgate Capability and that, as with other entities that use a flow-based approach to derive Available Flowgate Capability, Total Transfer Capability is not part of the calculation. Because SPP does not determine nor use Total Transfer Capability in determining Available Flowgate Capacity, or the conversion of Available Flowgate Capacity to Available Transfer Capability for posting purposes, we conclude that it is unnecessary for SPP to revise its Attachment C to provide a clear definition for Total Transfer Capability, a detailed explanation of its Total Transfer Capability calculation methodology, as well as a list of databases used to calculate Total Transfer Capability. SPP's request for rehearing is granted.

III. SPP's Compliance Filing (Docket No. OA08-5-002)

A. SPP's Filing

21. In its compliance filing, SPP states that has revised its OATT to satisfy each of the Commission's directives in the May 16, 2008 Order. Referencing its subsequently filed request for rehearing, SPP states that to extent that the Commission determines that it is not necessary for SPP to specify Total Transfer Capability in its OATT, SPP will submit a further compliance filing removing section 2.4, the provision it submitted in the instant filing to meet the Total Transfer Capability directive. SPP requests an October 11, 2007 effective date in accordance with the May 16, 2008 Order.

B. Notice of Filing

22. Notice of SPP's filing was published in the *Federal Register*, 73 Fed. Reg. 35,681 (2008), with interventions and protests due on or before July 7, 2008. None was filed.

³⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 208.

³¹ *Id.* at *pro forma* OATT, Att. C; *see also id.* P 323.

C. Commission Determination

23. We find that SPP has complied with the Commission's directives outlined in the May 16, 2008 Order. Specifically, SPP has (1) revised its unreserved use penalty provisions in sections 13.7 and 14.5 of its OATT to comply with the Order No. 890 requirement that a transmission provider's unreserved use penalty rate may not be greater than twice the firm point-to-point rate for the period of unreserved use; (2) removed language from its OATT providing that penalty revenues will be used to reduce SPP's administrative costs; (3) incorporated language from the Order No. 890 *pro forma* OATT regarding procedures addressing parallel flows into its Attachment R; and (4) and re-incorporated the Commission's previous roll-over policy into section 2.2 of its OATT.

24. In addition, SPP has revised its Attachment C to conform with each of the Commission's directives in the May 16, 2008 Order including (1) incorporating language into section 3.2 of its Attachment C to provide a link to the actual mathematical algorithms for calculating Available Flowgate Capacity and Available Transfer Capability on SPP's website; (2) modifying sections 4, 4.1.1, 4.2.1, and 4.3.1 to provide an explanation of the assumptions used in its Available Flowgate Capacity assessments regarding the load levels, generation dispatch, and modeling of both planned and contingency outages and adding language to sections 4.1.1, 4.2.1 and 4.3.1 to indicate when planned and contingency generation and transmission outages are included in the modeling assumptions for calculations of Available Flowgate Capacity; (3) adding a new section 4.6 to describe SPP's present method of implementing modifications in Total Flowgate Capability in the event of contingency outages or changes in planned outages that impact Total Flowgate Capability; (4) adding a new section 2.4 providing a clear definition for Total Transfer Capability, a detailed explanation of its Total Transfer Capability calculation methodology, a list of the databases used to calculate Total Transfer Capability, and the formula used to calculate Total Transfer Capability; (5) adding a new section 1.2.6 providing for a clear definition for Existing Transmission Commitments; and (6) revising section 5 of its Attachment C to provide a list of the databases used in the calculations of Transmission Reliability Margin and adding language detailing when Transmission Reliability Margin is used.

25. As discussed above we find it unnecessary for SPP to revise its Attachment C to provide a clear definition for Total Transfer Capability, a detailed explanation of its Total Transfer Capability calculation methodology, as well as a list of databases used to calculate Total Transfer Capability. Accordingly, we will accept SPP's tariff revisions, as modified to remove section 2.4 regarding Total Transfer Capability, as in compliance with Order No. 890 and the May 16, 2008 Order to be effective October 11, 2007. The Commission directs SPP to file, within 30 days of the date of this order, a filing removing section 2.4 from Attachment C of its OATT.

The Commission orders:

(A) AWEA's request for rehearing is hereby denied, as discussed in the body of this order.

(B) SPP's request for rehearing is hereby granted, as discussed in the body of this order.

(C) SPP's compliance filing is hereby accepted, as modified, effective October 11, 2007, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.