

127 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-149-002

ORDER ON COMPLIANCE FILING

(Issued April 16, 2009)

1. On January 21, 2009, Southwest Power Pool, Inc. (SPP) submitted revised tariff sheets to comply with an order¹ issued on December 18, 2008, in which the Commission conditionally accepted SPP's October 28, 2008 filing to allow SPP to unilaterally register all loads and resources in its Energy Imbalance Service Market (Energy Imbalance Market) footprint (October 28, 2008 Filing). SPP requests that its tariff sheets become effective December 27, 2008. As discussed below, the Commission accepts SPP's revised tariff sheets, to be effective December 27, 2008 as requested.

I. Background and Details of Filing

2. SPP's filings in Docket No. ER09-149, *et al.*, relate to a long-running dispute among SPP, John Deere Renewables, LLC (John Deere), and Xcel Energy Services, Inc. (Xcel) over the proper treatment of John Deere's wind generation facilities in SPP's Energy Imbalance Market. The John Deere wind facilities at issue are classified as Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).² As such, they are entitled to sell 100 percent of their output to the purchasing utility (in this case Xcel) at an avoided cost rate.

3. In an order issued on March 22, 2007, the Commission found that SPP did not have the authority under its Open Access Transmission Tariff (Tariff) to unilaterally register an entity with a resource as a Market Participant in the Energy Imbalance

¹ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314 (2008) (December 18, 2008 Order).

² 16 U.S.C. § 824a-3 (2006).

Market, and that such authority would have to be granted before SPP could do so.³ SPP sought to give itself this right by proposed new section 1.2.2(g) of Attachment AE in its October 28, 2008 Filing in this proceeding. Specifically, SPP's proposal would have allowed SPP to unilaterally register all loads or resources (including Behind-the-Meter Generation⁴ of 10 MW or greater) to its Energy Imbalance Market, so that the refusal or failure to voluntarily register as a Market Participant would not exempt a unit from registration and operational obligations. SPP's proposal also would have allowed it to file an unexecuted Market Participant agreement with the Commission if a resource was not registered by the resource-owning entity or another Market Participant.⁵ SPP justified its proposal by explaining its need to have specific scheduling and supply information for each resource in its footprint in order to reliably operate the Energy Imbalance Market and properly account for all energy flows into and out of the transmission grid.

4. In the December 18, 2008 Order, the Commission generally agreed with the information-gathering aspect of SPP's proposed registration requirement.⁶ However, the Commission stated that to the extent that SPP's proposed registration requirement triggers any charges that change what a QF recovers under PURPA's purchase obligation, as implemented by the state regulatory authority, that requirement is unjust and unreasonable.⁷ Accordingly, the Commission concluded that SPP may not compel participation in the Energy Imbalance Market by, or otherwise trigger deviation charges for, QFs exercising their PURPA rights to deliver all of their power to their host utilities.⁸

³ See *Xcel Energy Services, Inc. v. Southwest Power Pool, Inc.*, 118 FERC ¶ 61,232, at P 19-31 (2007) (March 22, 2007 Order).

⁴ SPP defines Behind-the-Meter Generation as: “[A] generation unit that is connected on the load side of a load Meter Settlement Location and is agreed to by the load Market Participant that is the registered owner of the Meter Settlement Location to serve all or part of its capacity, energy or Ancillary Service needs.” See SPP Tariff at Attachment AE, section 1.1.2(a).

⁵ See October 28 Filing at 7.

⁶ See December 18, 2008 Order at P 36, 40.

⁷ *Id.* P 38.

⁸ *Id.*

Therefore, the Commission conditioned its acceptance of SPP's proposed registration requirement on SPP submitting revised tariff sheets that remove any obligation for QFs to participate in the Energy Imbalance Market or to pay Energy Imbalance Market charges that stem from the registration.⁹

5. In its compliance filing, SPP states that it has added language to section 1.2.2(g) of Attachment AE of its Tariff, providing that a QF unilaterally registered by SPP that is exercising its right to deliver all of its net output to its host utility will not be required to participate in the Energy Imbalance Market or be subjected to any charges or payments related to the Energy Imbalance Market. SPP notes that in order to accommodate the revision to section 1.2.2(g), it has incorporated a definition for QFs in revised section 1.1.27 of Attachment AE. SPP states that the effect of these revisions will be to require unilaterally registered QFs exercising their PURPA rights to deliver power to their host utilities only to furnish the relevant operational information necessary for SPP's administration of the Energy Imbalance Market.

II. Notice of Filing and Responsive Pleadings

6. Notice of SPP's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 6146 (2009), with comments, protests, and interventions due on or before February 11, 2009. Xcel, on behalf of Southwestern Public Service Company, filed a timely protest. American Electric Power Service Corporation, on behalf of Southwest Electric Power Company and Public Service Company of Oklahoma (collectively, AEP) filed a motion to intervene out-of-time and protest of the compliance filing and a motion to deny SPP's request for clarification.¹⁰ On February 26, 2009, John Deere submitted an answer to Xcel's protest. On February 27, 2009, SPP submitted an answer to AEP's protest.

7. In its protest, Xcel contends that the language proposed by SPP is unduly broad and may be interpreted by some parties as limiting a state commission's ability to set rates for energy put to host utilities by QFs. Specifically, Xcel takes issue with part of

⁹ *Id.* P 40.

¹⁰ On January 21, 2009, SPP filed a request for clarification of the December 18, 2008 Order in which SPP requested the Commission to clarify that the December 18, 2008 Order would permit SPP to modify its Tariff to allocate imbalance charges associated with QF generation to the utility purchasing the QF generation. On February 19, 2009, the Commission rejected SPP's request for clarification as beyond the scope of the proceeding. *See Southwest Power Pool, Inc.*, 126 FERC ¶ 61,135, at P10 (2009) (February 19 Order).

SPP's proposed language in section 1.2.2(g), which provides that "such registration will not require the Qualifying Facility to participate in the EIS Market *or subject the Qualifying Facility to any charges or payments related to the EIS Market.*"¹¹ Xcel argues that the wording of this sentence may suggest that a QF could not be assessed *any* costs related to the Energy Imbalance Market, even if these costs are assessed or considered as part of an avoided cost analysis by a state commission. In contrast, Xcel argues that the December 18, 2008 Order recognized that a state commission is empowered to determine whether registration in an energy imbalance market should be factored into a QF's avoided cost analysis.¹² Xcel asserts that a state commission's determination of what constitutes "avoided costs" should not be informed or limited by language in the SPP Tariff. Accordingly, Xcel proposes modified language for section 1.2.2(g) of Attachment AE.

8. Xcel also argues that SPP's filing fails to address the need for a QF to supply ongoing operating information to the host utility. Xcel states that in order to manage the risk of Energy Imbalance Market charges imposed on a host utility, QFs that wish to sell their full output to a host utility and are not responsible to SPP for Energy Imbalance Market charges under proposed section 1.2.2(g), should be obligated to provide ongoing operating information to the purchasing host utility to enable the host utility to plan its generation dispatch in a manner that minimizes Energy Imbalance Market charges.

9. Xcel also states that the Commission recognized the importance of the need for accurate information in the December 18, 2008 Order when it found that SPP's proposed registration requirement was acceptable for the purpose of collecting "operational information relevant to SPP's administration of the [Energy Imbalance] Market from QFs entitled to enforce the PURPA purchase obligation."¹³ Xcel is concerned that without a clear requirement in the SPP Tariff obligating QFs to provide ongoing accurate operating data, QFs will be reluctant to enter into appropriate registration arrangements with their host utilities. Thus, Xcel states, host utilities may be put in a position where they are subject to Energy Imbalance Market charges due to a mandatory QF purchase, but where the QFs have no corresponding obligation to help manage that exposure. Xcel therefore

¹¹ See Xcel Protest at 5, citing SPP Tariff, Attachment AE, proposed section 1.2.2(g) (emphasis added).

¹² Citing December 18, 2008 Order at P 38 n.31.

¹³ Citing December 18, 2008 Order at P 36, 40.

argues that the Commission should direct SPP to include additional language in section 1.2.2(g) of Attachment AE specifying that QFs shall also provide operational information to the host utility in order to coordinate operations.

10. John Deere, in its answer to Xcel's protest, generally states that Xcel's suggested revisions to section 1.2.2(g) of Attachment AE of SPP's Tariff should be rejected because they are unnecessary, confusing, and beyond the scope of the December 18, 2008 Order. John Deere notes that Xcel and John Deere are engaged in a proceeding before the Public Utility Commission of Texas (PUCT),¹⁴ and argues that Xcel's proposals would inappropriately raise issues in this proceeding that are currently under consideration by the PUCT.

11. John Deere contends that Xcel's proposed revision to SPP's filing, which refers to how Energy Imbalance Market charges may be treated in a state commission's avoided cost analysis, should be rejected. John Deere argues that it is unnecessary and inappropriate to use the SPP Tariff as a vehicle to determine state jurisdiction under PURPA. John Deere also argues that other proposed revisions by Xcel to the language filed by SPP would have the effect of overriding the intent of Commission by creating an exception to the Commission's finding that *no* participation in the Energy Imbalance Market may be compelled.

12. John Deere next states that the Commission should reject Xcel's request to include language in the SPP Tariff that requires QFs to provide operational information to the host facility. John Deere argues that the request has nothing to do with SPP and is beyond the scope of SPP's compliance filing. John Deere further states that SPP does not have the responsibility to facilitate the exchange of information under PURPA, nor is there a nexus between SPP, the host utility, and the QF to oversee or enforce any exchange of operational information. John Deere also contends that allowing Xcel to include this issue in SPP's Tariff would open the door for other parties to propose to include their contractual or business requirements in the SPP Tariff. In addition, John Deere states that the language proposed by Xcel is vague, and it is therefore not clear how SPP would interpret such language or ensure compliance with a bilateral contract between buyers and sellers of power.¹⁵

¹⁴ Public Utility Commission of Texas, PUCT Docket No. 34442.

¹⁵ John Deere states that if Xcel seeks only the same operating information that John Deere already provides to SPP, John Deere does not necessarily object. John Deere states that such information could be provided to the host utility at the same time it is provided to SPP. John Deere states, however, that SPP and not the host utility must

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13. Finally, John Deere notes that while the Commission encourages QFs and their host utilities to enter into agreements to foster an exchange of information, the Commission does not mandate such agreements.¹⁶ John Deere states that it already provides operating information to Xcel under the Operating Coordinating Guide between the two parties, and John Deere has repeatedly stated its willingness to share information with Xcel on the operation of its wind generating facilities.¹⁷ Therefore, John Deere states that it is unnecessary and beyond the scope of the December 18, 2008 Order to create a new requirement in the SPP Tariff establishing information-sharing requirements between host utilities and QFs under PURPA.

14. In AEP's protest, AEP expresses concern that SPP's compliance filing coupled with SPP's request for clarification could be construed as allowing SPP to implement a market design and Tariff change that has not been vetted through the SPP stakeholder process. However, AEP states, proposing such changes in a request for clarification does not provide the utilities that would bear such costs the opportunity to address the proposal, and it should not be permitted. AEP alleges that SPP's compliance filing and request for clarification are inconsistent with the December 18 Order, circumvent the SPP stakeholder process, and deprive SPP members of their rights under sections 205 and 206 of the Federal Power Act.

15. In its answer, SPP states that AEP misinterprets SPP's request for clarification. SPP states that the purpose of its clarification request was to ensure that the December 18, 2008 Order did not prohibit SPP from developing Tariff provisions through its stakeholder process that would allocate any imbalance charges associated with QF generation to the utility purchasing the QF generation under PURPA. SPP notes that the

determine the scope of information needed by SPP to reliably operate its system.

¹⁶ See December 18, 2008 Order at P 34.

¹⁷ John Deere Answer at 10, citing *Answer of JD Wind to Answer of Xcel Energy Services, Inc.*, Docket No. EL07-28 at 1-2 ("To the contrary, [John Deere] has committed, under the legally enforceable obligation notices, all of the output from the [John Deere] facilities to SPS for 20 years. As a result, SPS *does* have a right to this operational information. Furthermore, regardless of any "right" or "entitlement" to the information, [John Deere] has stated that it is willing to and *will provide* essential information regarding the operation and status of the [John Deere] facilities to SPS. [John Deere] makes this commitment to provide such operational information to SPS regardless of any "right" or "entitlement" to the information.") (emphasis in original) (Jan. 30, 2007).

Commission refused to opine on any potential Tariff revisions and stated that any Tariff language should be filed in a separate proceeding.¹⁸ SPP states that it intends to develop Tariff modifications addressing this issue through its stakeholder process. Therefore, SPP states, AEP's protest should be dismissed by the Commission.

III. Discussion

A. Procedural Matters

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

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2008), the Commission will grant AEP's late-filed motion to intervene in Docket No. ER09-149-002 given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPP's and John Deere's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

19. We find that the revised tariff sheets filed by SPP on January 21, 2009, comply with our December 18, 2008 Order. We, therefore, accept the tariff sheets, to be effective December 27, 2008, as requested.¹⁹

¹⁸ See *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,135, at P 12 (2009).

¹⁹ The substance of AEP's protest—regarding the proper allocation of imbalance charges associated with the operation of a QF and the vetting of related proposals through the SPP stakeholder process—pertains to issues raised in SPP's request for clarification in Docket No. ER09-149-001. The Commission has since denied this clarification request as beyond the scope of these proceedings. *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,135, at P 12 (2009). We, therefore, find the issues raised by AEP regarding the vetting of proposals to allocate to imbalance charges associated with the operation of QFs to be moot.

20. In the December 18, 2008 Order, the Commission conditionally accepted SPP's proposed registration requirement "only to the extent that it provides for the collection of operational information relevant to SPP's administration of the Energy Imbalance Market from QFs entitled to enforce the PURPA purchase obligation."²⁰ Accordingly, the Commission directed SPP to make a filing "that removes any obligation for such QF resources to actively participate in the Energy Imbalance Market or to pay charges that stem from the registration."²¹ In compliance with this directive, SPP's January 21, 2009 Filing limits SPP's Energy Imbalance Market registration requirement with the following: "In the case of a Qualifying Facility exercising its rights under PURPA to deliver all of its net output to its host utility, such registration will not require the Qualifying Facility to participate in the [Energy Imbalance] Market or subject the Qualifying Facility to any charges or payments related to the [Energy Imbalance] Market."²²

21. The issue on compliance is whether SPP's filing complies with what it was ordered to do in the December 18 Order. It has not been shown that SPP's proposal fails to comply with the December 18, 2008 Order. Because SPP's proposed tariff language complies with the change we ordered to SPP's initial proposal—the removal of the obligation of a QF to involuntary participate in the Energy Imbalance Market as a result of a unilateral registration by SPP—we find SPP's proposed language to be in compliance with our December 18, 2008 Order. Accordingly, we decline Xcel's request that, in our review of the compliance filing, we require SPP to make further revisions to its proposed tariff language. Xcel argues that SPP's proposed language is too broad and could be read to circumscribe a state commission's authority to perform an avoided cost analysis. We disagree. The added language in SPP's revised section 1.2.2(g)—which exempts QFs exercising their PURPA rights from participating in the Energy Imbalance Market—applies only to instances where a load or resource is unilaterally registered by the transmission provider due to failing or refusing to voluntarily register as a Market Participant, and addresses only the charges that SPP may assess the Market Participant under the Tariff.²³ It in no way limits what may be considered in an avoided cost analysis

²⁰ December 18, 2008 Order at P 40.

²¹ *Id.*

²² SPP, January 21, 2009 Filing, Proposed section 1.2.2(g) of Attachment AE of SPP's Tariff.

²³ *See* SPP, January 21, 2009 Filing, Proposed section 1.2.2(g) of Attachment AE of SPP's Tariff (emphasis added) ("...*such registration* will not require the Qualifying Facility to participate in the [Energy Imbalance] Market or subject the Qualifying Facility

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performed by a state commission. We therefore reject Xcel's proposed modification of SPP's compliance filing.

22. We also decline to expand the scope of this proceeding to require QFs to provide additional information to their host utilities, as requested by Xcel. SPP proposed its unilateral registration requirement in order to gather scheduling and supply information needed to operate its Energy Imbalance Market. Our December 18, 2008 Order accepted that proposal, subject to SPP making the compliance filing accepted herein. Nowhere in SPP's original filing or the December 18, 2008 Order did SPP or the Commission entertain the possibility of an additional information-sharing requirement between a QF and the host utility. Therefore, we find Xcel's request to require SPP to modify its tariff to require QFs to share information with their host utilities to be beyond the scope of the compliance filing order in the December 18, 2008 Order.

The Commission orders:

SPP's filing is hereby accepted as in compliance with the December 18, 2008 Order, to be effective December 27, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

to any charges or payments related to the [Energy Imbalance] Market.”).