

128 FERC ¶ 61,245
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER09-1192-000

ORDER ACCEPTING BYLAW REVISIONS, SUBJECT TO CONDITIONS

(Issued September 17, 2009)

1. On May 22, 2009, Southwest Power Pool, Inc. (SPP) filed revisions to its bylaws and requested an effective date of July 22, 2009. SPP subsequently requested a deferral of that effective date to September 30, 2009. In this order, we accept SPP's bylaw revisions, subject to the conditions discussed herein, to be effective September 30, 2009.¹

I. Background

2. SPP is a Commission-approved Regional Transmission Organization (RTO) that provides transmission service, pursuant to an Open Access Transmission Tariff (OATT) over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, and Texas. Additionally, SPP serves as a Regional Entity for the North American Electric Reliability Corporation (NERC). As a Regional Entity, SPP investigates and enforces NERC-approved reliability standards, in addition to proposing new reliability standards.

3. In this filing, SPP proposes several revisions to its bylaws related to both its RTO and Regional Entity functions, all of which SPP states have gone through its stakeholder process. SPP states that the bylaw revisions related to its Regional Entity function are also considered Regional Entity Rules under the Commission's regulations and therefore must be approved by NERC and filed with the Commission.² SPP asserts that these

¹ In a separate filing, in Docket No. RR09-4-000, the North American Electric Reliability Corporation (NERC) filed a petition requesting approval of proposed amendments to the bylaws related to SPP's Regional Entity function pursuant to section 215(f) of the Federal Power Act, 16 U.S.C. § 824o(f) (2006), and section 39.10(a) of the Commission's regulations, 18 C.F.R. § 39.10(a) (2009). NERC's filing is addressed in a separate order issued concurrently with the immediate order, *North American Electric Reliability Corp.*, 128 FERC ¶ 61,244 (2009).

² SPP, May 22, 2009 Filing at 2 (citing 18 C.F.R. §§ 39.1 & 39.10).

revisions were approved by NERC on May 12, 2009, and filed with the Commission on May 21, 2009.³ Additionally, SPP proposes several revisions to its bylaws that do not relate to its Regional Entity function including revisions adopting provisions requested by SPP stakeholders governing meeting attendance and quorum requirements; revisions to incorporate changes necessitated by Order No. 719;⁴ and administrative and ministerial changes to clarify the bylaws, reflect current practices, and make other technical corrections.⁵ SPP states that NERC has reviewed these bylaw revisions and determined that they do not affect the SPP Regional Entity function, consistent with the terms of a Regional Entity Delegation Agreement between SPP and NERC.⁶

II. Notice and Responsive Pleadings

4. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 26391 (2009), with interventions and protests due on or before June 12, 2009. Motions to intervene were filed by East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Cooperative of Texas, Inc. (collectively, East Texas Cooperatives), and Xcel Energy Services, Inc.

5. On July 8, 2009, SPP filed a request for deferral of the effective date of the revisions filed herein to September 30, 2009. By notice issued July 16, 2009, the Commission granted SPP's request.

³ *Id.* (citing NERC, May 21, 2009 Petition for Approval of Proposed Revisions to Bylaws, Docket No. RR09-4-000 (NERC Filing)).

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281(2008), *order on reh'g*, Order No. 719-A, 74 Fed. Reg. 37,776 (July 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009) (Order No. 719).

⁵ These groupings are not necessarily exclusive. For instance, some of SPP's proposed bylaws affect SPP's Regional Entity function but are more applicable, and are therefore addressed, in other sections of SPP's filing.

⁶ *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,060 (Delegation Agreement Order), *order on reh'g*, 120 FERC ¶ 61,260 (2007) (Delegation Agreement Rehearing Order) (accepting the Delegation Agreement).

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. Bylaw Revisions Pertaining to the SPP's Regional Entity Function

a. Description of Filing

7. SPP states that many of its proposed revisions to section 9 of the bylaws are included to reflect the current SPP Regional Entity structure and the appointment of a Regional Entity (RE) General Manager. SPP's proposed section 9.2 reflects the appointment of a new RE General Manager position. Under SPP's proposal, the RE General Manager will be selected by, and will report to, the Regional Entity trustees, and Regional Entity staff will report to the Regional Entity trustees through the RE General Manager. SPP's proposed revisions to section 9.3 require the SPP president to ensure that the RE General Manager has adequate resources, access to information, and full cooperation of SPP staff to fulfill its duties. SPP states that the Commission endorsed the creation of an RE General Manager position in the course of its recent audit of SPP's Regional Entity function.⁷

8. Additionally, SPP proposes revisions to section 9.7, governing the investments of Regional Entity trustees, which SPP explains will require all the Regional Entity trustees' investments to be made in accordance with the same standards that apply to SPP's board of directors. SPP also proposes numerous revisions to section 9.7.3 of the bylaws, which governs the terms and elections for the Regional Entity trustees. Such revisions include, among other things, incorporation of stakeholder requests regarding the vetting and nomination of candidates, the ability to vote against a candidate, and the requirement of a super-majority vote when only one candidate is nominated for a position. Additional proposed revisions regarding Regional Entity trustees involve their resignation and removal, the filling of vacancies, and procedures for adjusting Regional Entity trustee meetings.

⁷ SPP, May 22, 2009 Filing at 5 (citing *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,045, at P 21-22 (2009) (Audit Order)).

9. SPP also proposes a revision to section 3.9.2 to indicate that when an Organizational Group⁸ is acting as an Regional Entity Standards Development Team, voting will be conducted in accordance with the SPP Standards Development Process in order to comply with procedures for developing Regional Entity reliability standards.⁹ Additionally, SPP proposes clean-up revisions to other reliability provisions to adopt consistent terminology and remove references to the SPP compliance staff.

b. Commission Determination

10. We accept SPP's proposed reliability-related bylaw revisions, subject to the same conditions discussed in the concurrently issued order addressing NERC's petition for approval of the same proposed revisions.¹⁰ Accordingly, we direct SPP to submit a compliance filing in this docket that addresses the concerns raised in that order.

2. Bylaw Revisions Governing Meeting Attendance and Quorum Requirements

a. Description of Filing

11. SPP states that a number of its proposed bylaw revisions result from a review of the bylaws by the Corporate Governance Committee, at the request of Organizational Group chairs and secretaries. SPP states that the purpose of these proposed revisions is to encourage attendance at meetings on a consistent basis.

12. SPP proposes to revise section 3.2 of the bylaws to indicate that a member of an Organizational Group other than the Markets and Operations Policy Committee who misses three consecutive meetings will be deemed to have resigned from the Organizational Group, absent express waiver by the chair of the Organizational Group. SPP's proposal allows any individual removed from an Organizational Group to appeal to the SPP Corporate Secretary. The proposed revisions also modify Organizational Group proxy rules to permit Organization Group members to appoint a substitute representative for no more than three consecutive meetings and to clarify that a proxy granted to another

⁸ Section 1.12 of SPP's bylaws defines an Organizational Group as "[a] group, other than the Board of Directors, comprising a committee or working group that is charged with specific responsibilities toward accomplishing SPP's mission."

⁹ Section 9.5 of SPP's bylaws state that "[f]or purposes of a Standards Development Team, participation and voting will be open to any interested party...without regard to membership status in SPP."

¹⁰ See *N. Am. Elec. Reliability Corp.*, 128 FERC ¶ 61,244 at P 7-11.

member of the Organizational Group will not be recorded as attendance at the meeting and will not serve to meet or maintain the quorum requirements.

13. SPP also proposes to revise section 3.8 to indicate that a quorum must be established and maintained throughout the meeting in order for an Organizational Group to take any binding action. Proposed revisions to this section would also clarify that proxies will be counted for quorum purposes in accordance with Section 3.2 of the bylaws. Additionally, SPP proposes to revise Section 3.9 of the bylaws to clarify the voting procedures for the Markets and Operations Policy Committee and for other Organizational Groups.

b. Commission Determination

14. Although no protests or comments were filed with respect to this provision in the instant proceeding, we note that in SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000, the Electric Power Supply Association (EPSA) filed comments that speak to the merits of this proposal.¹¹ SPP subsequently filed an answer in that proceeding, which responded to EPSA's comments.¹² The proposed revisions discussed in this section were vetted and approved by SPP's stakeholders, none of which raise objections to them here. Nor do we have any objections with respect to these provisions outside the context of the Order No. 719 compliance proceedings. Accordingly, we accept and nominally suspend these proposed bylaw revisions, subject to refund and subject to the outcome of SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000. Reviewing the proposals made by SPP at that time will avoid duplicative proceedings and provide greater administrative efficiency, while at the same time allowing SPP's proposals to go into effect. Our conditional acceptance of the above-described bylaw revisions is subject to, and without prejudice to, the outcome of the Order No. 719 compliance proceedings.

3. Bylaw Revisions to Comply with Order No. 719

a. Description of Filing

15. SPP proposes several revisions to section 3.17 of the bylaws governing Market Monitoring, including: (1) revising the section to reflect SPP's current internal Market Monitor structure and its supervision by the SPP Board of Directors; (2) clarifying that market monitoring applies to all Market Participants rather than just SPP Members; (3) reflecting the requirement in Order No. 719 that market mitigation be conducted by

¹¹ EPSA, May 26, 2009 Comments, Docket No. ER09-1050-000, at 3-6.

¹² SPP, June 10, 2009 Answer, Docket No. ER09-1050-000, at 11-15.

the RTO rather than by the Market Monitor, with the SPP Market Monitor recommending mitigation plans; and (4) correcting typographical and other ministerial errors. SPP asserts that such revisions comply with Order No. 719 and are consistent with other tariff revisions filed in SPP's Order No. 719 compliance filing.¹³

b. Commission Determination

16. Similar to our determination with respect to the bylaw revisions discussed in the previous section, we accept and nominally suspend SPP's bylaw revisions, subject to refund and subject to the outcome of SPP's Order No. 719 compliance proceeding in Docket No. ER09-1050-000. SPP states that revisions proposed in this filing related to SPP's Market Monitoring and Mitigation comply with Order No. 719 and are consistent with tariff revisions submitted as part of SPP's Order No. 719 compliance filing.¹⁴ Rather than address SPP's Market Monitoring and Mitigation provisions on a piecemeal basis, we find that it is more appropriate to review all of SPP's Market Monitoring and Mitigation provisions (including the provisions accepted herein) at one time in the Order No. 719 compliance proceeding. Reviewing the proposals made by SPP at that time will avoid duplicative proceedings and provide greater administrative efficiency, while at the same time allowing SPP's proposals to go into effect. Our conditional acceptance of SPP's Market Monitoring and Mitigation provisions in this docket is subject to, and without prejudice to, the outcome of the Order No. 719 compliance proceedings.

4. Miscellaneous Bylaw Revisions

a. Description of Filing

17. SPP proposes additional revisions to its bylaws, which SPP states adopt current practices, make administrative and ministerial revisions, correct terminology and administrative errors, and provide greater clarity and flexibility to the bylaws.¹⁵ These revised bylaw provisions address, among other things, the release and publication of information, SPP's dispute resolution process, the composition and duties of SPP's Organizational Groups, the Corporate Governance Committee's structure and practice, and SPP's fiscal administration.

¹³ On April 28, 2009, SPP filed its Order No. 719 compliance filing in Docket No. ER09-1050-000.

¹⁴ SPP, May 22, 2009 Filing at 8.

¹⁵ *Id.* at 8-11 (providing a general description of these proposed revisions).

b. Commission Determination

18. The Commission finds the proposed miscellaneous bylaw revisions to be just and reasonable and therefore accepts them.

The Commission orders:

(A) SPP's proposed bylaw revisions are hereby accepted, to be effective September 30, 2009, subject to conditions, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelly is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.