

132 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Southwest Power Pool, Inc.

Docket Nos. ER09-1050-003
ER09-1192-000
(not consolidated)

ORDER ON COMPLIANCE FILING

(Issued September 16, 2010)

1. On February 18, 2010, Southwest Power Pool, Inc. (SPP) submitted a filing addressing market monitoring provisions in its Open Access Transmission Tariff (tariff) and Bylaws to comply with the Commission's November 20, 2009 order¹ on SPP's compliance with Order No. 719,² which accepted in part, and rejected in part, SPP's April 28, 2009 Order No. 719 compliance filing (April 28 Filing). In this order, we accept SPP's revisions to Attachment AJ in its tariff effective December 31, 2009, and revisions to the SPP Bylaws effective February 18, 2010, as requested. We accept in part, and reject in part, all other revisions to the SPP tariff, to be effective February 18, 2010, and will require a further compliance filing within 30 days of the date of issuance of this order, as discussed below.

¹ *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,163 (2009) (November 20 Order).

² *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 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

I. Background

A. Order No. 719

2. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets³ and amended its regulations under the Federal Power Act (FPA)⁴ in the areas of: (1) demand response, including pricing during periods of operating reserve shortage; (2) long-term power contracting; (3) market-monitoring policies; and (4) the responsiveness of RTOs and ISOs to their customers and other stakeholders.⁵

3. With regard to market monitoring policies, the Commission in Order No. 719 directed each RTO and ISO to provide its Market Monitoring Unit with access to market data, resources, and personnel sufficient to carry out its duties. The Commission further required the Market Monitoring Unit (or the external Market Monitoring Unit in a hybrid structure and, in some cases, the internal Market Monitoring Unit) to report directly to the RTO or ISO board of directors. In addition, the Commission required that the Market Monitoring Unit's functions include the core functions of: (1) identifying ineffective market rules and recommending proposed rules and tariff changes; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities; and (3) notifying appropriate Commission staff of instances in which a market participant's behavior may require investigation.⁶

4. The Commission also established the following requirements with regard to Market Monitoring Units: (1) expanding the list of recipients of Market Monitoring Unit recommendations regarding rule and tariff changes and broadening the scope of behavior to be reported to the Commission; (2) modifying Market Monitoring Unit participation in tariff administration and market mitigation and requiring each RTO and ISO to include ethics standards for Market Monitoring Unit employees in its tariff and requiring each RTO and ISO to consolidate all its Market Monitoring Unit provisions in one section of its tariff; and (3) expanding the required dissemination of Market Monitoring Unit market information to a broader constituency (with reports to be made on a more frequent basis

³ Organized market regions are areas of the country in which a regional transmission organization (RTO) or independent system operator (ISO) operates day-ahead and/or real-time energy markets.

⁴ 16 U.S.C. § 824, *et seq.* (2006).

⁵ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

⁶ *Id.* P 328, 339, 354.

than in the past) and reducing the time periods before energy market bid and offer data are released to the public.⁷

B. Docket No. ER09-1192-000

5. On May 22, 2009, in Docket No. ER09-1192-000, SPP filed revisions to its Bylaws that included, *inter alia*, changes to reflect Order No. 719 market monitoring requirements. In an order issued on September 17, 2009, the Commission accepted and nominally suspended the revisions to section 3.17 of the SPP Bylaws, subject to refund, and subject to the outcome of SPP's Order No. 719 compliance filing.⁸ The Commission sought to avoid a piecemeal review of Bylaw changes with Order No. 719 implications while at the same time allowing SPP's proposals to go into effect.

II. Notice of Filings and Responsive Pleadings

6. Notice of SPP's February 18 filing was published in the *Federal Register*, 75 Fed. Reg. 9890 (2010), with interventions, comments, and protests due on or before March 11, 2010. Arkansas Public Service Commission submitted a notice of intervention and an amended notice of intervention. Timely motions to intervene were filed by East Texas Cooperatives, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, the East Texas Cooperatives), Golden Spread Electric Cooperative, Inc. (Golden Spread) (with comments), and EPIC Merchant Energy, L.P. (EPIC) (with protest).

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

⁷ *Id.* P 354, 374-375, 377-380, 392, 424.

⁸ *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,245, at P 14, 16 (2009).

B. Substantive Matters**1. Market Monitoring Structure****a. Compliance Requirement**

8. In its April 28 Filing, SPP explained that it had an internal Market Monitoring Unit (internal market monitor) aided by an outside consultant referred to as the “external market advisor” (external advisor).⁹ SPP stated that its contract with the external advisor, Boston Pacific Company, Inc. (Boston Pacific), was included in Attachment AJ (External Advisor Agreement) of its tariff. SPP also stated that its external advisor prepared SPP’s annual State of the Market Report.¹⁰ In the November 20 Order, the Commission found that preparation of this report was part of the core market monitoring functions articulated in Order No. 719. Therefore, the Commission reasoned, it was inappropriate for an external consultant to be responsible for the preparation of the report.¹¹ Accordingly, the Commission gave SPP the choice of adopting one of two market monitoring structures: (1) an internal market monitoring structure, which would require assigning the task of preparing the annual State of the Market Report to SPP’s internal market monitor or (2) a hybrid market monitoring structure, which would require SPP to articulate how its external market monitor satisfied the requirements of Order No. 719.¹²

b. SPP’s Filing

9. SPP confirms that it now uses an internal market monitoring structure, with the internal market monitor performing all core market monitoring functions (including preparation of the annual State of the Market Report). SPP states that Boston Pacific is no longer an external advisor and, accordingly, SPP proposes to remove the External Advisor Agreement from its tariff. SPP states that Boston Pacific will serve as a consultant for both the internal market monitor and the SPP Board of Directors (Board). SPP asserts it is no longer necessary to include the External Advisor Agreement within

⁹ SPP April 28, 2009 Filing at 20 (April 28 Filing).

¹⁰ See, e.g., 2008 SPP State of the Market Report prepared by Boston Pacific available at: (<http://www.spp.org/publications/SPP%202008%20State%20of%20the%20Market%20Report.pdf>).

¹¹ November 20 Order, 129 FERC ¶ 61,163 at P 106.

¹² *Id.* P 107.

the SPP tariff because Boston Pacific is no longer delegated any core market monitoring functions.¹³

10. Accordingly, SPP proposes to remove from Attachment AG (Monitoring Plan) in its tariff all references to Attachment AJ, including the definition of “external market advisor” found in section 2.3 and references to the external advisor in the “Staffing and Resources” provisions in section 3.1. SPP also proposes to revise section 1.3.2 of its Monitoring Plan by adding a new objective stating that the internal market monitor will review the performance of the wholesale market and prepare an annual State of the Market Report. SPP asserts this change is necessary to reflect that added responsibility assumed by the internal market monitor of preparing the State of the Market Report, which the Commission identified as a core market monitoring function in the November 20 Order.¹⁴

c. EPIC’s Protest

11. EPIC objects to SPP’s proposal to adopt an internal market monitoring structure, arguing that a structure that lacks a unit that is independent of, and external from, the RTO or ISO is severely diminished in its ability to perform market monitoring functions. EPIC asserts that it is critical that Market Monitoring Units oversee not just the function of the market, but also the functioning of the RTO or ISO itself, to ensure that the RTO or ISO is performing independently, efficiently, and in compliance with its tariff. Based on its experiences, EPIC finds that having an external Market Monitoring Unit—provided by either an external or hybrid market monitoring structure—is essential to performing these tasks. EPIC argues that an external Market Monitoring Unit can provide true independent analysis that is not influenced by major incumbent utilities or the RTO or ISO’s management, whereas an internal Market Monitoring Unit has the potential to be co-opted by institutional interests. EPIC urges the Commission to direct SPP to adopt a market monitoring structure that includes an external Market Monitoring Unit. Because a Market Monitoring Unit can never truly be independent of the RTO or ISO that funds its activities, EPIC also urges the Commission to ensure that the RTO or ISO cannot dictate, or unduly influence, the funding for the Market Monitoring Unit.¹⁵

¹³ SPP February 18, 2010 Filing at 8-9 (SPP Filing).

¹⁴ *Id.* at 8. *See also* SPP tariff, Attachment AG, proposed §§ 1.3.2, 2.3, 3.1.

¹⁵ EPIC Protest at 1-4.

d. Commission Determination

12. Because Order No. 719 did not dictate whether market monitoring would be conducted by an internal, external, or hybrid structure, we will accept SPP's choice of an internal market monitoring structure. We will also accept the removal of the External Advisor Agreement from Attachment AJ of the SPP tariff. We do not find it necessary to include within SPP's tariff a consulting contract renewed on a regular basis if that consultant does not perform any core market monitoring functions. We will accept SPP's proposed changes to sections 2.3 and 3.1 in the Monitoring Plan that remove references to Attachment AJ. We will also accept revisions to section 1.3.2 in the Monitoring Plan that assign the task of preparing the annual State of the Market Report to the internal market monitor. We note that if, in the future, SPP assigns any core market monitoring functions to Boston Pacific or another consultant, SPP must declare that consultant an external market monitor, assume a hybrid market monitoring structure, and make appropriate revisions to its tariff and Bylaws pursuant to the requirements of Order No. 719.

13. We will deny EPIC's request to direct SPP to adopt a market monitoring structure that includes an external Market Monitoring Unit. We note that in Order No. 719, the Commission respected regional variances and preferences and declined to impose any particular market monitoring structure for RTOs and ISOs.¹⁶ Furthermore, we disagree with EPIC's assertion that a Market Monitoring Unit structure that lacks a unit that is independent of, and external from, the RTO or ISO is severely diminished in its ability to perform market monitoring functions. As we found in Order Nos. 719 and 719-A, the Commission has not observed any deficiencies in performance by internal Market Monitoring Units that can be attributed to their structures.¹⁷ In addition, the proposition that an internal Market Monitoring Unit lacks independence ignores the reforms made in Order No. 719 to address this concern, such as having the internal Market Monitoring Unit report to a board of directors, with management representatives on the board excluded from oversight of the internal Market Monitoring Unit. Moreover, EPIC has provided no specific examples of how SPP's internal market monitor is dysfunctional or how a market monitoring structure that utilizes an external Market Monitoring Unit would necessarily perform better. Inasmuch as SPP's proposed internal market monitoring unit is consistent with Order No. 719, and thus permissible, adopting EPIC's recommendation would essentially change the requirements of Order No. 719 to impose a more restrictive requirement only on SPP. This would be inappropriate and unjustified. Moreover, EPIC had numerous opportunities to voice its concerns in technical

¹⁶ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 326.

¹⁷ *Id.*; Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 141.

conferences and during the entire Order No. 719 rulemaking proceeding, and it did not do so.

14. As the Commission noted in Order No. 719, all Market Monitoring Units, regardless of market monitoring structure, receive their funding from the RTO or ISO.¹⁸ EPIC asserts that this raises concerns about the independence of these units. Absent any additional evidence, we reject EPIC's arguments as a collateral attack on our findings in Order No. 719. In developing the market reforms in Order No. 719, the Commission acted to ensure the independence and accountability of Market Monitoring Units by developing oversight protections, creating tariff safeguards and tools, eliminating conflicts of interest, and articulating core market monitoring functions.¹⁹ We find the reforms provided by Order No. 719 afford sufficient protection against undue influence by the RTO or ISO through its funding of the Market Monitoring Unit. In addition, if a Market Monitoring Unit or other stakeholder believes an RTO or ISO is acting inappropriately or abusing the Market Monitoring Unit's funding mechanism, there are several means by which such grievances can be brought to the Commission's attention, such as by the filing of a complaint, referrals to the Commission's Office of Enforcement, or informal discussions with Commission staff.

2. Oversight

a. Compliance Requirement

15. In the November 20 Order, the Commission found that, while SPP's External Advisor Agreement specified that the external advisor reported directly to the Board, there was no language in the External Advisor Agreement preventing management representatives on SPP's Board from overseeing the external advisor. Thus, if SPP chose to designate the external advisor as an external market monitor, the Commission stated it would require SPP to revise the External Advisor Agreement, its Bylaws, and/or other appropriate documents to state that management representatives on the SPP Board are excluded from participating in oversight of the external market monitor.²⁰

b. SPP's Filing

16. SPP proposes to remove the External Advisor Agreement from its tariff.

¹⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 327.

¹⁹ *Id.* P 317.

²⁰ November 20 Order, 129 FERC ¶ 61,163 at P 112.

c. Commission Determination

17. We find SPP's proposal compliant with Order No. 719's market monitoring oversight provisions, because SPP has chosen an internal market monitoring structure, and because an External Adviser Agreement is not required when an ISO or RTO adopts an internal market monitoring structure.

3. Market Monitoring Functions

a. Compliance Requirement

18. In the November 20 Order, the Commission found that SPP was not compliant with the first core market monitoring function articulated in Order No. 719 (identifying ineffective market rules and recommending proposed rules and tariff changes). The Commission directed SPP to modify its Monitoring Plan to incorporate the language set forth in Order No. 719 regarding the Market Monitoring Unit's responsibility to evaluate rules, tariff provisions, and market design elements and to recommend proposed changes to the Commission's Office of Energy Market Regulation staff and to other interested entities.²¹

19. The Commission also found SPP noncompliant with Order No. 719's second core market monitoring function (reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities). The Commission determined that preparation of the annual State of the Market Report was a part of the second core market monitoring function, and it was inappropriate for Boston Pacific, as an external advisor, to be responsible for its preparation. The Commission found that if SPP chose to keep its internal market monitoring structure, the responsibility for the preparation of the annual State of the Market Report should be given to SPP's internal market monitor. However, if SPP chose a hybrid market monitoring structure, the Commission found that an external market monitor could assume this task.²² In addition, the Commission directed SPP to modify its Monitoring Plan to include a specific requirement to review and report on the performance of the wholesale market, as well as a requirement that this reporting function be directed to the RTO, the Commission, and other interested entities.²³

²¹ *Id.* P 119.

²² *Id.* P 120.

²³ *Id.* P 121.

20. The Commission also found SPP noncompliant with the third core market monitoring function articulated in Order No. 719 (notifying appropriate Commission staff of instances in which a market participant's behavior may require investigation). The Commission found that section 3.2 of the Monitoring Plan did not satisfy the Order No. 719 requirement that the Market Monitoring Unit must notify the Commission's Office of Enforcement staff of instances when certain market behavior may require investigation. In addition, the Commission found that the Monitoring Plan did not include a broader requirement set forth in Order No. 719 that the Market Monitoring Unit should report "suspected" violations of any Commission-approved rule or regulation. The Commission also found that SPP's Monitoring Plan did not comply with the Order No. 719 requirement that the Market Monitoring Unit must identify and notify the Commission's Office of Enforcement staff of instances where inappropriate dispatch may require investigation. The Commission directed SPP to modify its Monitoring Plan to address these findings.²⁴

b. SPP's Filing

21. In regard to the first core market monitoring function (identifying ineffective market rules), SPP proposes to modify the "Objectives" in section 1.3.2 of its Monitoring Plan to include specific language from Order No. 719 that states the internal market monitor will evaluate existing and proposed rules, tariff provisions, and market designs and will recommend proposed rule and tariff changes to SPP, the Commission's Office of Energy Market Regulation, and other interested parties, with the caveat that dissemination may be limited in the event that broader dissemination could lead to exploitation.²⁵

22. In regard to the second core market monitoring function (reporting on wholesale market performance), SPP proposes to modify section 7.2 of its Monitoring Plan to specify that the annual State of the Market Report prepared by the internal market monitor will be provided to the Commission, SPP, its Board, state commissions, market participants, and other interested entities.²⁶

²⁴ *Id.* P 122.

²⁵ SPP tariff, Attachment AG, proposed § 1.3.2.

²⁶ SPP tariff, Attachment AG, proposed § 7.2. As mentioned previously, SPP also proposes to revise section 1.3.2 of Attachment AG by adding a new objective that states the internal market monitor will review the performance of the wholesale market and prepare an annual State of the Market Report.

23. In regard to the third core market monitoring function (notifying Commission staff of items to be investigated), SPP proposes to modify section 3.2 (“Relationships and Notifications”) of its Monitoring Plan to specify that the internal market monitor shall bring to the attention of the SPP Board and officers, the Commission’s Office of Enforcement (or its successor organization) staff, and affected state regulatory authorities (at the internal market monitor’s discretion) any instances of market behavior that may require investigation, including suspected tariff violations, suspected violations of Commission-approved rules and regulations, suspected market manipulation, and inappropriate dispatch.

24. Another SPP proposal involving the third core monitoring function is SPP’s proposal to modify section 4.3 of its Monitoring Plan to state that the internal market monitor will monitor for violations of any Commission-approved rules and regulations and will report any suspected violations to the Office of Enforcement staff.²⁷

c. Golden Spread’s Comments

25. Golden Spread seeks clarification of language that SPP proposes to include in section 4.3(b) of its Monitoring Plan that authorizes the internal market monitor to monitor for violations of “any Commission-approved rules and regulations.” Golden Spread asserts that market monitors do not monitor for violations of all Commission-approved rules and regulations, and the SPP tariff should not authorize the internal market monitor to perform functions unrelated to those prescribed by the Commission.²⁸ Golden Spread argues that, if taken literally, this language could authorize the internal market monitor to investigate, for example, potential violations of Commission-approved reliability standards. Golden Spread urges the Commission to clarify that the internal market monitor’s authority extends only to Commission-approved rules and regulations that relate to the functioning of markets for the sale of wholesale power and the provision of transmission service in the SPP footprint.²⁹

²⁷ SPP tariff, Attachment AG, proposed §§ 3.2, 4.3(b).

²⁸ Golden Spread Comments at 3-4, (citing *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267, at P 1 (2005) (where the Commission states that the purpose of market monitors is to “monitor organized wholesale markets to identify ineffective market rules and tariff provisions, identify potential anticompetitive behavior by market participants, and provide the comprehensive market analysis critical for informed policy decision making.”)).

²⁹ *Id.* at 3.

d. Commission Determination

26. We find SPP's tariff compliant with two of the three core market monitoring functions articulated in Order No. 719. Accordingly, we will accept SPP's revisions to section 1.3.2 in its Monitoring Plan incorporating the language required by the November 20 Order and section 7.2 of the Monitoring Plan that tasks the internal market monitor with preparation of the annual State of the Market Report. However, we find that SPP is only partially compliant with the third core market monitoring function. Section 4.3 of SPP's Monitoring Plan correctly references the Commission's protocols for referral of suspected market violations³⁰ to the Office of Enforcement. But section 3.2 of SPP's Monitoring Plan, in its proposed form, specifies that the internal market monitor will notify SPP's Board of Directors, the officers of SPP, the Commission's Office of Enforcement staff, and other affected state regulatory authorities of instances of market behavior that may require investigation, including suspected tariff violations, violations of Commission-approved rules and regulations, suspected market manipulation, and inappropriate dispatch. However, in Order No. 719, the Commission distinguished between the process for referrals of market design flaws and referrals of market violations. For referrals of market design flaws, notifications should be made to interested entities as well as to Commission staff. But referrals of market violations should be made solely to Commission staff, and there is no provision for notifications to persons or entities outside of the Commission.³¹ In that same order, the Commission discussed the importance of the confidentiality of Office of Enforcement investigations,³² and promulgated a rule providing that referrals of market violations to the Office of Enforcement are to be non-public.³³ Therefore, section 3.2 should limit the internal market monitor's referral of suspected market violations, and any notifications pertaining to such referral, only to the Commission's staff. We will require SPP to make appropriate changes to section 3.2 of its Monitoring Plan in a compliance filing within 30 days of the issuance of this order. We will accept SPP's changes to section 4.3(b) of its Monitoring Plan, which is compliant with the referral requirements articulated in the third core market monitoring function.

³⁰ A "market violation" is defined as: "a tariff violation, violation of a Commission-approved order, rule or regulation, market manipulation, or inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies." 18 CFR § 35.28(b)(8).

³¹ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 354.

³² *Id.* P 465-469.

³³ 18 CFR § 35.28(g)(3)(iv)(A).

27. The Commission clarified in Order No. 719 that the Market Monitoring Unit's role is one of monitoring the RTO or ISO, not comprehensively auditing it.³⁴ In response to Golden Spread's comments, we clarify that we expect SPP's internal market monitor to monitor SPP's markets and services. Section 4.3(b) in the monitoring plan states that SPP's internal market monitor will "monitor for violations of these rules or any other Commission-approved rules and regulations or of SPP's tariff." The phrase "these rules" refers to the Market Behavior Rules defined in Order No. 670 and the Conditions for Public Utility Market-Based Rate Authorization Holders defined in Order No. 674, which SPP references in section 4.3(a) of its Monitoring Plan.³⁵ We find that SPP's use of the phrase "or any other" in section 4.3(b) is meant to refer to any other Commission-approved rules and regulations relating to markets and services in addition to Order Nos. 670 and 674.

4. Mitigation

a. Compliance Requirement

28. In the November 20 Order, the Commission found SPP's revised Attachment AF (Mitigation Plan) in the SPP tariff compliant with Order No. 719. However, the Commission directed SPP to modify section 1.2 of its Monitoring Plan to remove a reference to the Mitigation Plan.³⁶ The Commission also directed SPP to modify its Monitoring Plan to clarify that the internal market monitor must monitor for and report suspected instances of physical withholding and unavailability of facilities to the Commission.³⁷

b. SPP's Filing

29. SPP proposes to revise section 1.2 of its Monitoring Plan to remove reference to the Mitigation Plan. SPP also proposes to add two subsections to section 4 of its

³⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 356.

³⁵ See *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202 (2006); *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, FERC Stats. & Regs. ¶ 31,208 (2006).

³⁶ November 20 Order, 129 FERC ¶ 61,163 at P 130.

³⁷ *Id.* P 131. In the November 20 Order, the Commission rejected SPP's claim that physical withholding and unavailability of facilities could not occur in the Energy Imbalance Service Market, as participation in the market is voluntary.

Monitoring Plan to address the monitoring and reporting of physical withholding and unavailability of facilities.³⁸

c. Commission Determination

30. We will accept SPP's revisions to sections 1.2, 4.7, and 4.8 in its Monitoring Plan that remove reference to the Mitigation Plan and task the internal market monitor with monitoring for physical withholding and unavailability of facilities in SPP's Energy Imbalance Service Market. We note that the language SPP proposes in sections 4.7 and 4.8 is similar to language that SPP removed from sections 4 and 5 of the Mitigation Plan in its April 28 Filing, although there are two key differences. First, SPP appropriately did not incorporate language that suggests physical withholding and unavailability of facilities is not possible in the Energy Imbalance Service Market.³⁹ Second, SPP added language stating that, if appropriate, the internal market monitor will make referrals to the Commission's Office of Enforcement (or its successor organization). We find this additional language consistent with Order No. 719's Commission referral requirements.

5. Ethics

a. Compliance Requirement

31. In the November 20 Order, the Commission found that SPP must define what a "material affiliation" is as used in the ethical standard in section 3.3(a) of the Monitoring Plan. The Commission also directed SPP to revise section 3.3 to include a statement that the ethical standards in section 3.3 of the Monitoring Plan apply to the Market Monitoring Unit itself as well as to its employees, as required by Order No. 719.⁴⁰

32. In regard to the External Advisor Agreement, the Commission found that this agreement lacked two Order No. 719 ethics standards.⁴¹ The first was the requirement that the external advisor and its employees may not accept anything of value from a market participant in excess of a *de minimis* amount. The second was the requirement

³⁸ SPP tariff, Attachment AG, proposed §§ 1.2, 4.7, 4.8.

³⁹ November 20 Order, 129 FERC ¶ 61,163 at P 131.

⁴⁰ *Id.* P 135.

⁴¹ Section 3.3 of SPP's Monitoring Plan states the internal market monitor shall require any external consultants or experts to certify compliance with its ethical policies. Thus, the Commission found that the External Advisor Agreement should be Order No. 719 compliant, regardless of the market monitoring structure SPP chose. *Id.* P 136.

that external advisor employees must advise a supervisor in the event they seek employment with a market participant and must disqualify themselves from participating in any matter that would have an effect on the financial interest of the market participant. The Commission found that, at the time that SPP files any subsequent or updated External Advisor Agreement with the Commission, SPP should include these Order No. 719 ethical standards in that agreement.⁴²

b. SPP's Filing

33. In regard to defining the term “material affiliation,” SPP states it does not have a unique definition for this term, apart from what the Commission intended in Order No. 719. However, SPP states it intends to apply this requirement in the same manner as it applies the SPP Standards of Conduct for all SPP employees, which prohibit SPP employees from being employees, directors, consultants, or contractors to any third party and prohibits SPP employees and their immediate family members from having a financial interest in or owning securities issued by a third party.⁴³ SPP proposes to modify section 3.3 of its Monitoring Plan to state that the internal market monitor and its employees will abide by SPP’s Standards of Conduct and the ethical standards listed in section 3.3.⁴⁴ SPP has not proposed changes to the ethics standards in the External Advisor Agreement because it proposes to remove this agreement from Attachment AJ.⁴⁵

c. Commission Determination

34. We will accept SPP’s revisions to section 3.3 in its Monitoring Plan (specifying that the internal market monitor and its employees will abide by SPP’s Standards of Conduct and the ethical standards listed in section 3.3) because we find that these revisions fully comply with the requirements of Order No. 719. We also find that SPP’s

⁴² *Id.*

⁴³ SPP defines the term “third party” as any entity (including representatives, agents, and employees): (1) that is an owner, operator, or user of the bulk power system in the SPP region (as defined in SPP’s “Delegation Agreement” with the North American Electric Reliability Corporation); (2) that is a transmission customer as defined in the SPP tariff or any other tariff that SPP administers; (3) for which SPP provides services under contract, including, but not limited to, tariff administration services; or (4) that engages in purchases or sales of wholesale or retail electric energy in the SPP region. SPP Filing at n.71.

⁴⁴ SPP tariff, Attachment AG, proposed § 3.3.

⁴⁵ SPP Filing at 13.

explanation that it will use the criteria in its Standards of Conduct as its classification of what constitutes a material affiliation satisfies the definitional directive in the November 20 Order. We also find SPP's removal of the External Advisor Agreement from its tariff fully satisfies the directives in the November 20 Order requiring changes to its ethics standards. We caution, however, that SPP must abide by the terms of section 3.3 of its Monitoring Plan, which requires the internal Market Monitoring Unit to monitor any external consultants or experts SPP may hire to certify compliance with its ethical policies.

6. Tariff Provisions

a. Compliance Requirement

35. In the November 20 Order, the Commission found that SPP's choice of market monitoring structure would affect its compliance with the Order No. 719 requirement to centralize all Market Monitoring Unit provisions in one location in its tariff.

b. SPP's Filing

36. SPP asserts its proposal to remove the External Advisor Agreement from Attachment AJ complies with the Order No. 719 requirement to centralize all market monitoring provisions in a single tariff location. SPP states all market monitoring provisions are now centralized in its Monitoring Plan.⁴⁶

c. Commission Determination

37. We find SPP's proposal to centralize all its market monitoring provisions in its Monitoring Plan satisfies the requirement in Order No. 719 to centralize all market monitoring provisions within one location in its tariff. Because SPP has chosen an internal market monitoring structure, it is reasonable that it has placed all of its market monitoring provisions in its Monitoring Plan. We note that if, in the future, SPP chooses a different market monitoring structure, it must notify the Commission and make appropriate revisions within its tariff.⁴⁷

⁴⁶ *Id.* at 14.

⁴⁷ In particular, if at some point SPP switches to a hybrid market monitoring structure, it must also: (1) define clearly in its tariff the relationship between the internal and external market monitors; (2) delineate clearly in its tariff the responsibilities of the external market monitor; and (3) state where the contract between SPP and the external market monitor is located in its tariff.

7. Enhanced Information Dissemination

a. Compliance Requirement

38. In the November 20 Order, the Commission found that SPP's choice of market monitoring structure would affect its compliance with some of the Order No. 719 information sharing requirements. The Commission directed SPP to give the responsibility for preparing and disseminating the annual State of the Market Report to its internal market monitor if it chose to continue with an internal market monitoring structure. However, if SPP chose a hybrid market monitoring structure, Boston Pacific could continue to prepare the annual State of the Market Report on the condition that it become an external market monitor with all its associated requirements, such as reporting directly to the SPP Board.⁴⁸

39. The Commission also directed SPP to modify section 7.2.3 of the Monitoring Plan to state that conference calls with the Market Monitoring Unit relating to the internal market monitor's reports may be attended by the parties currently specified in that section, regardless of which party originates the call. The Commission also directed SPP to modify section 7.2.3 to state that one or more of the internal market monitor's staff members would be available for regular conference calls.⁴⁹

40. In its April 28 Filing, SPP stated that it would release hourly offer curves for dispatchable resources within three months.⁵⁰ In the November 20 Order, the Commission found that the phrase "within three months" appeared to allow for the release of offer curve information prior to the three month milestone prescribed in Order No. 719. The Commission directed SPP either to provide justification for a shorter release period or to modify its proposed section 6 in Attachment AE to state that offer curves for dispatchable resources would be released three months after the day for which the offer was submitted. In addition, SPP provided no justification for its policy regarding the aggregation of offer and cost data (or lack thereof) in its April 28 Filing, explaining that it was still developing a data posting policy. The Commission directed SPP to provide this justification in a compliance filing.⁵¹

⁴⁸ November 20 Order, 129 FERC ¶ 61,163 at P 147.

⁴⁹ *Id.* P 148.

⁵⁰ *See* April 28 Filing, Attachment AE § 6.

⁵¹ November 20 Order, 129 FERC ¶ 61,163 at P 150.

b. SPP's Filing

41. In regard to report preparation, SPP asserts it is in compliance with the requirements of Order No. 719 because it has assigned the responsibility for preparing the annual State of the Market Report to its internal market monitor, as discussed previously.⁵² In regard to conference calls, SPP proposes to revise section 7.2.3 of its Monitoring Plan to remove a reference to conference calls held by the internal market monitor to ensure that any party may initiate a conference call. SPP also proposes to modify this section to state that the internal market monitor shall make one or more of its staff members available for regular conference calls.⁵³ In regard to the release of offer and bid data, SPP proposes to revise section 6 of Attachment AE to state that hourly offer curves for dispatchable resources will be released by SPP “ninety (90) days after the day for which the offer was submitted.”⁵⁴

42. In regard to providing justification for its policy concerning the aggregation of offer and cost data, SPP explains that bids and offers will be posted 90 days after the operating day for which the offer is submitted. SPP states it will not aggregate bid and offer data but will mask the data to protect the identity of the resource for which the bid/offer is submitted. SPP states that resource identifiers will remain constant from month to month but will be changed annually. SPP asserts that this policy fosters market transparency by providing non-aggregated resource bids and offers in a consistent format for one year while protecting market participants from having their resource offers and cost data made identifiable. SPP further affirms that a policy of masking the identity of individual resources protects sensitive market participant data while allowing interested parties to monitor bid and offer activity in the SPP Energy Imbalance Service Market.⁵⁵

c. Commission Determination

43. We will accept SPP's changes to section 7.2 of its Monitoring Plan regarding conference calls and dissemination of the annual State of the Market Report because these changes meet the compliance requirements specified in the November 20 Order. We will also accept SPP's revisions to section 6 of Attachment AE because this revision removes ambiguity and meets the compliance requirement in the November 20 Order.

⁵² SPP Filing at 15. *See also* SPP tariff, Attachment AG, proposed § 7.2.

⁵³ SPP tariff, Attachment AG, proposed § 7.2.3.

⁵⁴ SPP Filing at 15-16 (citing SPP tariff, Attachment AE § 6).

⁵⁵ *Id.* at 16.

44. In addition, we also accept SPP's justification for its policy regarding the aggregation of offer and cost data. We find that SPP's policy of not aggregating data, masking data, and changing resource identifiers on an annual basis is sufficient to protect market participants while fostering market transparency.

8. Tailored Requests for Information

a. Compliance Requirement

45. In the existing section 8 preamble of Attachment AE, SPP's tariff stated that the confidentiality provisions in section 8 would be applicable only to confidential information referenced within Attachment AE, Attachment AF (Mitigation Plan), and Attachment AG (Monitoring Plan). In the November 20 Order, the Commission required SPP to add Attachment AJ (which contains the External Advisor Agreement) to this list. The Commission also directed SPP to revise section 8 of Attachment AJ-1 in the External Advisor Agreement to refer to confidentiality provisions in section 8 of Attachment AE, as this section incorrectly referred to section 7.⁵⁶

46. The Commission also found that the choice of market monitoring structure would affect the External Advisor Agreement and the Monitoring Plan, in terms of confidentiality and information request provisions. As an example, if SPP chose a hybrid market monitoring structure, it would have to designate whether the internal market monitor, the external market monitor, or both, would respond to information requests. The Commission also noted that choosing a hybrid market monitoring structure would affect other tariff sections relating to information requests. For example, the Commission stated that section 8.2 of Attachment AE would need to be revised to state that references to the market monitor applied to both the internal and external market monitors. The Commission directed SPP to make appropriate changes relating to confidentiality and information request provisions in its tariff if it chose a hybrid market monitoring structure.⁵⁷

b. SPP's Filing

47. Consistent with its proposal to remove the External Advisor Agreement from Attachment AJ, SPP does not propose any modifications to the disclosure provisions in section 8 of Attachment AE.⁵⁸

⁵⁶ November 20 Order, 129 FERC ¶ 61,163 at P 156.

⁵⁷ *Id.* P 158.

⁵⁸ SPP Filing at 17.

c. Commission Determination

48. We find that SPP's proposal to remove the External Advisor Agreement from Attachment AJ renders moot our finding in the November 20 Order that it needs to add Attachment AJ to the list of confidentiality provisions in section 8 of its tariff. Thus, we find that this aspect of SPP's compliance filing meets the requirements of Order No. 719.

9. Commission Referrals

a. Compliance Requirement

49. In the November 20 Order, the Commission found that if SPP chose a hybrid market monitoring structure, it must include tariff language clearly specifying whether the internal or external market monitors would share or divide responsibility for making referrals to the Commission.⁵⁹ The Commission also required SPP to include a reference to the regulation⁶⁰ that sets forth the Commission's protocols for referrals to the Commission for suspected market violations and for perceived market design flaws and recommended tariff changes.⁶¹

b. SPP's Filing

50. SPP proposes to revise sections 4.3 ("Compliance with Market Behavior Rules and SPP Tariff") and 4.5 ("Monitoring for Potential Transmission Market Power Activities") in its Monitoring Plan to reference the Commission's protocols for Market Monitoring Unit referrals.⁶²

c. Commission Determination

51. We will accept SPP's revisions to sections 4.3 and 4.5 in its Monitoring Plan because these changes meet the compliance requirement specified in the November 20 Order. We note that because SPP has chosen an internal market monitoring structure, its internal market monitor will have sole responsibility for making referrals to the Commission.

⁵⁹ November 20 Order, 129 FERC ¶ 61,163 at P 161.

⁶⁰ 18 C.F.R. § 35.28(g)(3)(iv) (2010).

⁶¹ November 20 Order, 129 FERC ¶ 61,163 at P 162.

⁶² SPP tariff, Attachment AG, proposed §§ 4.3, 4.5.

10. Market Monitoring Bylaw

a. Compliance Requirement

52. In regard to section 3.17 in SPP's Bylaws, the Commission directed SPP to clarify that SPP's management representatives on the Board must be excluded from overseeing the internal market monitor.⁶³ The Commission also directed SPP to clarify that public reports must be provided to the Board, Commission staff, staff of interested state commissions, SPP management, and market participants.⁶⁴ The Commission also directed SPP to revise section 3.17 to reference the market monitoring functions described in SPP's tariff, including the three core market monitoring functions specified in Order No. 719.⁶⁵ Finally, the Commission also noted that further revisions to this Bylaw may be necessary depending on SPP's choice of market monitoring structure and directed SPP to submit proposed changes stemming from its structural choice in its compliance filing.⁶⁶

b. SPP's Filing

53. SPP proposes to modify section 3.17 of its Bylaws to state that the internal market monitor shall report to the Board, with any management representatives on the Board excluded from overseeing the internal market monitor.⁶⁷ SPP also proposes to revise this section to state that public reports submitted to the Board shall be provided concurrently to Commission staff, staff of interested state commissions, SPP management, and market participants. SPP further proposes to delete reference to "the appropriate regulatory body or bodies." In addition, SPP proposes to add language to section 3.17 stating that the market monitoring functions shall include those duties as delineated and approved in SPP's tariff. SPP finally proposes to remove the current list of market monitoring

⁶³ November 20 Order, 129 FERC ¶ 61,163 at P 164.

⁶⁴ *Id.* P 165.

⁶⁵ *Id.* P 166.

⁶⁶ *Id.* P 167.

⁶⁷ SPP explains that the President of SPP currently sits on the Board and will recuse himself from any Board votes related to the market monitor function. SPP Filing at 18.

functions in this section because these functions are duplicative and already listed in its Monitoring Plan.⁶⁸

c. Commission Determination

54. We will accept SPP's revisions to section 3.17 of its Bylaws because these changes meet the compliance requirements specified in the November 20 Order.

The Commission orders:

(A) SPP's compliance filing is hereby accepted in part and rejected in part, with revisions to Attachment AJ of the SPP tariff effective December 31, 2009, and all other tariff and Bylaw changes effective February 18, 2010, as discussed in the body of this order.

(B) 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.

⁶⁸ *Id.* at 18-19. *See also* SPP Bylaws, proposed § 3.17.