144 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc. Docket Nos. ER12-2292-001
ER12-2292-002
ER12-2292-003
ER13-1123-000

ORDER ON REHEARING, COMPLIANCE FILING AND WAIVERS

(Issued September 20, 2013)

1. On October 22, 2012, Acciona Wind Energy USA LLC (Acciona) filed a request for rehearing of the Commission's order issued September 20, 2012 in Docket No. ER12-2292-000, which conditionally accepted revisions to Attachment AE of Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (Tariff) to permit the systematic[1] and automated curtailment of Non-Dispatchable Resources,[2] including qualifying facilities (QFs), in SPP's Energy Imbalance Service (EIS) Market.[3] In this order, the Commission denies Acciona's request for rehearing, for the reasons discussed below.

[1] By using the term "systematic," SPP means that its market software tools will send instructions directing Non-Dispatchable Resources to curtail output, rather than sending instructions that merely reflect the resource's actual output and that do not contemplate or instruct that the resources change the amount of the output. SPP July 23, 2012 Filing in Docket No. ER12-2292-000 at 7-8.

[2] In Attachment AE of the Tariff, Section 1.1 – Definitions, SPP defines a "Non-Dispatchable Resource" as "A Resource meeting any of the following conditions: (a) operating in Shut-down Mode; (b) operating in Start-up Mode; (c) operating in Test Mode; (d) operating under Exigent Conditions; (e) is an Intermittent Resource; or (f) is a Qualifying Facility."

[3] *Southwest Power Pool, Inc.*, 140 FERC ¶ 61,225 (2012) (September 20 Order).

2. On February 13, 2013, SPP filed a request for a temporary limited waiver in Docket No. ER12-2292-002 (February 13 Waiver Filing) of the September 20 Order, to delay implementation of systematic and automated curtailment rules, contained in Section 4.3 of Attachment AE to the SPP Tariff, for *new* Non-Dispatchable Resources that became commercially operable on or after October 15, 2012. As discussed below, the Commission grants SPP's request for a temporary limited waiver.

3. On March 1, 2013, SPP submitted a filing (March 1 Compliance Filing) proposing revisions to Attachment AE of its Tariff to comply with the September 20 Order.[4] The Commission conditionally accepts SPP's proposed Tariff revisions effective March 19, 2013, subject to a further compliance filing, as discussed below.[5]

4. On March 18, 2013, SPP filed a request for a waiver (March 18 Waiver Filing) of the Tariff revisions accepted in the September 20 Order, contained in Section 4.3 of Attachment AE to the SPP Tariff, providing for systematic and automated curtailment of Non-Dispatchable Resources which became commercially operable after October 15, 2012. Specifically, SPP requests waiver to delay implementation of systematic and automated curtailment rules for one Non-Dispatchable Resource, i.e., the Ensign Wind Unit, for the period from March 19, 2013 to June 1, 2013. In this order, we grant the waiver, as discussed below.

I. Background

5. On July 23, 2012, SPP proposed tariff revisions in Docket No. ER12-2292-000 to Attachment AE of its Tariff to permit the systematic and automated curtailment of Non-Dispatchable Resources, including QFs, in SPP's EIS Market, effective October 15, 2012. In that filing, SPP proposed to use market rules[6] incorporated in its Market Operating System (MOS) and Curtailment Adjustment Tool (CAT) software tools to calculate and send automatic curtailment (dispatch) instructions to reduce the output of Non-Dispatchable Resources during periods of transmission congestion as a more efficient and equitable process than the existing manual process of issuing curtailment instructions to relieve transmission constraints. It also proposed that Non-Dispatchable

[4] *Id.* PP 47, 50, 53 and Ordering Paragraph (B).

[5] Southwest Power Pool, Inc., FERC FPA Electric Tariff, Open Access Transmission Tariff, Sixth Revised Volume No. 1, Att AE Section 1.1 C, Attachment AE Section 1.1 C, 1.0.0; Att AE Section 4.3, Attachment AE Section 4.3, 2.1.0; Att AE Section 5.5, Attachment AE Section 5.5, 2.1.0.

[6] The market rules (or Market Protocols) detail how Market Participants will be instructed to dispatch resources during congested intervals, and these protocols are appropriately included in business practice manuals.

Resources would be curtailed in accordance with their existing transmission service priority, based on whether the resource is: (1) scheduling against a transmission reservation; (2) a QF exercising its rights under the Public Utility Regulatory Policies Act of 1978 (PURPA)[7] to deliver its net output to its host utility; or (3) using unscheduled service. Additionally, SPP amended Section 4.3 – Coordination of Market Operations under SPP Congestion Management, and specifically Section 4.3(i) to clarify that the curtailment level of a Non-Dispatchable Resource shall be the sum of the curtailed unscheduled and scheduled portion of the output of the Non-Dispatchable Resource as determined in CAT.

6. In its September 20 Order, the Commission conditionally accepted SPP's Tariff revisions to allow automated curtailment for all *new* Non-Dispatchable Resources that become commercially operable on or after October 15, 2012. The Commission also conditionally accepted automated curtailment for *existing* Non-Dispatchable Resources that were not commercially operable prior to October 15, 2012, subject to SPP making a compliance filing with tariff revisions reflecting the results of stakeholder process addressing issues raised by existing Non-Dispatchable Resources in a manner that is consistent with ensuring reliability, with results of the stakeholder process to become effective a year from the date of the September 20 Order, or September 20, 2013. The Commission directed SPP to address the following in its compliance filing:

(1) Revisions to proposed Section 4.3 of the Tariff to specify that automated curtailment applies only prospectively to Non-Dispatchable Resources becoming commercially operable on or after October 15, 2012.

(2) Revisions to proposed Section 4.3 of the Tariff to apply automated curtailment to existing Non-Dispatchable Resources (i.e., commercially operable prior to October 15, 2012) to be effective one year from the date of the September 20 Order, and reflecting the results of a stakeholder process established to address the issues raised by the existing Non-Dispatchable Resources relating to automating the curtailment of existing Non-Dispatchable Resources.

(3) Revisions to proposed Sections 4.3(i) and 5.5(f) to delete the reference to "all of" in the phrase "Qualifying Facility exercising its rights under PURPA to deliver all of its net output to its host utility" to be consistent with section 292.304(d)(1) of the Commission's regulations.

(4) Revisions to proposed Section 4.3(c) of the Tariff that provide that: (i) for point-to-point service, a Non-Dispatchable Resource will receive Transmission Loading Relief (TLR) level 5 priority, up to the amount of

[7] 16 U.S.C. § 824a-3(m) (2006).

firm transmission service that has been reserved for the Non-Dispatchable Resource, regardless of whether the output is scheduled or unscheduled; and (ii) to the extent that a Non-Dispatchable Resource is a designated Network Resource, it will be assigned TLR level 5 curtailment priority, on an equivalent basis with other firm designated Network Resources, up to the level of output designated for that Resource (provided that the aggregate generation from designated Network Resources for a particular network load does not exceed the associated network load plus losses). In the alternative, SPP can explain the reasons why it cannot operationally satisfy these requirements.

(5) An explanation of how the treatment of Non-Dispatchable Resources, including the transition process resulting from the September 20 Order's required stakeholder process, will work within the proposed Integrated Marketplace.

II. Filings

A. Acciona's Request for Rehearing

7. In its request for rehearing, Acciona argues that the Commission's September 20 Order unduly discriminates against QFs in service areas of SPP where the Commission has previously granted relief under section 210(m) of PURPA.[8] Acciona contends that the Commission erred in not requiring SPP to provide QFs (in those service areas relieved of the mandatory purchase obligation) the same protections from curtailment and immunity from Uninstructed Deviation Charges that SPP must provide to QFs selling under PURPA.[9]

8. According to Acciona, when the Commission previously granted relief of the mandatory purchase obligation to utilities in SPP service areas (but not including the area served by Southwestern Public Service Company), the relief was granted based on an assumption that the QFs in those service areas would have an opportunity to sell into the SPP EIS Market and that no market rules prevented QFs in those service areas from participating in the EIS Market.[10] Acciona argues, however, that the curtailment priorities that the Commission approved in the September 20 Order, now discriminatorily create a curtailment risk for QFs in the areas where PURPA section 210(m) relief was granted and place such QFs at a disadvantage compared with QFs outside those service

[8] Acciona Request for Rehearing at 2 and 4.

[9] *Id.* at 2.

[10] *Id.* at 4.

areas where the relief was granted. Acciona asserts that, in the September 20 Order, the Commission summarily dismissed Acciona's argument of such discrimination by stating that the rationale that protected QFs selling pursuant to PURPA did not apply to QFs in service areas where PURPA section 210(m) relief had been previously granted. According to Acciona, this limited explanation failed to mention the circumstances of the PURPA waivers and related arguments made by Acciona in the proceeding.[11] Acciona characterizes the result as an unjust, unintended and unreasonable result that was not contemplated by the Commission when it granted the PURPA section 210(m) relief.[12]

9. Acciona also argues that the Commission should grant rehearing to require SPP to offer make-whole payments as payments for compliance to curtailed Non-Dispatchable Resources. Acciona's protest in Docket No. ER12-2292-000, argued that Non-Dispatchable Resources that are curtailed should receive make-whole payments to compensate them. Acciona asserts that the September 20 Order was arbitrary and capricious because the Commission did not explain its reasoning for not requiring SPP to offer make-whole payments to Non-Dispatchable Resources that are curtailed by SPP.[13]

10. According to Acciona, SPP answered in Docket No. ER12-2292-000 that because it does not use offer curves of Non-Dispatchable Resources to determine the offer stack and it is not possible to predict what the output would have been without the curtailment, it did not intend to offer such make-whole payments.[14] Acciona, instead claims, that this fails to recognize the success in using resources plans based on meteorology forecast models integrated over the production profile of a resource to accurately describe the expected production of a Non-Dispatchable Resource. Acciona further asserts that the accuracy of these forecast models is well established, and argues that SPP applies such models to wind generation forecasts for generation planning.[15]

B. SPP's February 13 Waiver Filing

11. SPP filed its request for waiver to delay implementation of the systematic and automated curtailment rules pertaining to *new* Non-Dispatchable Resources from the October 15, 2012 effective date until March 19, 2013 for two reasons: (1) to facilitate SPP's proposal to determine curtailment priorities of Non-Dispatchable Resources with firm transmission service based on reservations (rather than schedules) consistent with

---

[11] *Id.* at 4-5 & n.13.

[12] *Id.* at 5-6.

[13] *Id.*

[14] *Id.* at 6 (citing SPP Answer at 12-13 in the Docket No. ER12-2292-000).

[15] *Id.* at 7.

the September 20 Order; and (2) to ensure the software required to implement the systematic curtailment of Non-Dispatchable Resources is fully functional.[16]

12. SPP claims that as of the time of its February 13 Waiver Filing, it is unable to operationally implement the Commission's September 20 Order to determine curtailment priorities for Non-Dispatchable Resources with firm transmission service based on reservations (rather than schedules).[17] SPP explains that its proposal for systematic curtailment of Non-Dispatchable Resources did not include determining curtailment priorities for Non-Dispatchable Resources with firm transmission service based on transmission service reservations. Consequently, in developing its market tools software, SPP did not provide for this capability. Therefore, SPP claims that it must modify its market tools to accommodate the new mechanism, and as a result, SPP states that it is not able to implement the new mechanism for systematically curtailing any Non-Dispatchable Resource.[18]

13. SPP further explains that when it attempted to activate the tools for systematic curtailment of Non-Dispatchable Resources with a planned effective date of October 15, 2012, implementation issues arose. The software did not work as expected in production and was turned off as soon as the issue was discovered. SPP states that it worked diligently to address the issue and has solved the problem. However, the SPP stakeholders approved a delay in activating the market tools to systematically curtail all Non-Dispatchable Resources until the new logic to implement curtailment of Non-Dispatchable Resources with firm transmission service could be activated. The stakeholders believed this to be the best solution because, without the new logic, the Non-Dispatchable Resources with firm transmission service subject to systematic curtailment might be curtailed prior to a TLR level 5, which would violate the Commission's directive in the September 20 Order. SPP states that by delaying the overall implementation, all similarly situated Non-Dispatchable Resources with firm transmission service will be treated similarly.[19]

14. SPP states that when it files to comply with the September 20 Order it will propose a stakeholder approved mechanism as an alternative whereby both the unscheduled and scheduled output of Non-Dispatchable Resources with long-term firm transmission service for the full capacity of the Non-Dispatchable Resource, and Non-Dispatchable Resources with monthly short-term firm transmission service that have

[16] SPP February 13 Waiver Filing at 4.

[17] *Id.* at 5.

[18] *Id.* at 7.

[19] *Id.* at 8.

pending requests for long-term firm transmission service, will be curtailed equivalent to firm service. According to SPP, this mechanism will result in both the unscheduled and scheduled portions of the output from such resources receiving firm treatment by SPP's CAT.[20]

15. According to SPP, it needs until March 19, 2013 to implement this alternative proposal to apply to *new* Non-Dispatchable Resources (effectively postponing the date of implementing the curtailment provisions for *new* Non-Dispatchable Resources from October 15, 2012 to March 19, 2013).

C. <u>SPP's March 1 Compliance Filing</u>

16. In its March 1 Compliance Filing, SPP's proposes revisions to Attachment AE of its Tariff, as follows.

17. SPP proposes amending Section 1.1 – Definitions C, of Attachment AE of its Tariff to include the definition "Commercial Operation," which it references in Attachment V of the Tariff.

18. SPP additionally proposes amending Section 4.3(b) of Attachment AE of its Tariff[21] by adding a new subsection (iv) which states: Unscheduled output from Non-Dispatchable Resources subject to curtailment in accordance with Section 4.3(i) in this Attachment AE.

19. SPP proposes new Section 4.3(i) – Curtailment of Non-Dispatchable Resources, of Attachment AE, which reads:[22]

> (i) Prior to October 15, 2013, a Non-Dispatchable Resource that has notified or notifies Transmission Provider pursuant to its interconnection agreement that it commenced Commercial Operation on or after October 15, 2012 shall be instructed to curtail via an XML [Extensible Markup Language] notification; all other Non-Dispatchable Resources shall be instructed to curtail via a telephone call from Transmission Provider.

---

[20] *Id.* at 5-6 and 8.

[21] Generally, Section 4.3 – Coordination of Market Operations under SPP Congestion Management, outlines the process SPP follows to coordinate the operations of the EIS Market to manage congestion.

[22] SPP also proposes to move Section 4.3(i)(iv) to Section 4.3(h) in the March 1 Compliance Filing.

(ii) On October 15, 2013 and thereafter, all Non-Dispatchable Resources shall be instructed to curtail via an XML notification, except for Intermittent Resources with interconnection agreements executed prior to May 21, 2011 and that commenced Commercial Operation prior to October 15, 2012. Such Intermittent Resources shall be instructed to curtail via telephone call from Transmission Provider.

(iii) The XML notifications to a Non-Dispatchable Resource shall include the resource name, time period of curtailment, and the curtailment level. A Non-Dispatchable Resource that is instructed to curtail via an XML notification shall operate at the lower of its (1) curtailment level or (2) actual net output.

(iv) The curtailment level of a Non-Dispatchable Resource shall be the sum of the curtailed unscheduled and scheduled portion of the output of the Resource as determined by CAT.

(v) The output of the Non-Dispatchable Resource shall be curtailed equivalent to firm service, where the Resource is: (1) a Qualifying Facility exercising its rights under PURPA to deliver its net output to its host utility; (2) a Non-Dispatchable Resource with Long-Term Service[23] for the full capacity of the Non-Dispatchable Resource; or (3) a Non-Dispatchable Resource receiving monthly short-term firm transmission service, which has a pending request for Long-Term Service for the full capacity of the Non-Dispatchable Resource.

20. SPP also proposes amending Section 5.5(f) of Attachment AE[24] to state:

> The Uninstructed Deviation Change shall be zero for a Qualifying Facility exercising its rights under PURPA to deliver its net output to its host utility that refused to register its Resource and has been registered by the Transmission Provider as outlined in Section 1.2.2(g) of this Attachment

---

[23] SPP's Tariff defines Long-Term Service as Long-Term Firm Point-To-Point Transmission Service or Network Integration Transmission Service of one year or longer. *See* Tariff, section I.1--Definitions.

[24] Section 5.5 – Uninstructed Deviation Charges, generally outlines how SPP calculates an Uninstructed Deviation Charge for Resources that fail to follow dispatch instructions in accordance with the procedures set forth in Section 4.1(d) of Attachment AE of the Tariff.

AE or any Non-Dispatchable Resource not subject to curtailment via XML notification as detailed in Section 4.3(i) of this Attachment AE.

21. SPP claims that because the Commission did not define the term "commercially operable"[25] in the September 20 Order, SPP and its stakeholders decided the definition of "Commercial Operation" used in the generator interconnection procedures in Attachment V of its Tariff would be used as meaning "commercially operable" for *new* and *existing* Non-Dispatchable Resources for applying the systematic curtailment provisions. Therefore, the reference, in Section 4.3(i)(i) of its Tariff to "Commercial Operation" means "the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation."[26] The date of Commercial Operation will be the date that Non-Dispatchable Resources will be subject to the new curtailment rules.

22. SPP states that it worked with stakeholders to develop a proposal to address issues related to the systematic curtailment of Non-Dispatchable Resources that were commercially operable prior to October 15, 2012, as well as an alternative approach to determine curtailment priorities for Non-Dispatchable Resources with firm transmission service that would be based on transmission service. According to SPP, the Tariff language proposal was reviewed and approved by its Markets Working Group, Regional Tariff Working Group, Markets and Operations Policy Committee and SPP Board of Directors/Members Committee.[27]

23. SPP and its stakeholders propose an exemption in Section 4.3(i)(ii) of its Tariff from the new curtailment rules for all Non-Dispatchable Resources that are Intermittent Resources (e.g., wind-powered) with interconnection agreements executed prior to May 21, 2011 and that commenced Commercial Operation prior to October 15, 2012. SPP argues that the Commission's concerns about compliance with the new rules only were raised with regard to wind-powered Resources and that other types of Non-Dispatchable Resources already are subject to dispatch and are responding to automated notifications. SPP further asserts that the grandfathering of Intermittent Resources (with interconnection agreements executed prior to May 21, 2011 and commencing Commercial Operation prior to October 15, 2012) complies with the Commission's order to address concerns raised by Non-Dispatchable Resources. Additionally, SPP explains that exempting Intermittent Resources with interconnection agreements executed prior to May 21, 2011, from the new systematic curtailment rules, as it proposes in revisions to

[25] September 20 Order, 140 FERC ¶ 61,225 at PP 47 and 49.

[26] SPP March 1 Compliance Filing at 6 (referring to Attachment V of the SPP Tariff).

[27] *Id.* at 3-4.

Section 4.3(1)(ii) of Attachment AE, is consistent with the market rules for similar wind-powered Variable Energy Resources (VERs) [28] in the Integrated Marketplace.[29] According to SPP, it filed similar rules for the Integrated Marketplace, in Docket No. ER12-1179, that permit wind-powered VERs to register as Non-Dispatchable VERs only if they executed interconnection agreements prior to May 21, 2011 and commenced Commercial Operation prior to October 15, 2012. SPP explains the May 21, 2011 date is the effective date of its Generator Interconnection Agreement requiring generators to be capable of reducing their generation output in increments of no more than 50 MW in five minute intervals.[30]

24. According to SPP, in its September 20 Order, the Commission also required SPP to determine curtailment priorities for Non-Dispatchable Resources with firm transmission service based on their reservations (rather than based on schedules), or in the alternative, required that SPP explain the reasons why it could not operationally satisfy this provision.

25. In its March 1 Compliance Filing, SPP asserts, that based on an analysis of SPP's market systems and feedback from stakeholders, the obstacles to determining curtailment priorities based on firm transmission service reservations are that extensive modifications to the market systems software would be required and stakeholder systems and processes would also require modification. SPP contends that because the Tariff allows

---

[28] *Id.* at 8-10 & n.28, in which SPP explains that a VER is a "device for the production of electricity that is characterized by an energy source that: (1) is renewable; (2) cannot be stored by the facility owner or operator; and (3) has variability that is beyond the control of the facility owner or operator." SPP further explains that in its Integrated Marketplace filing in Docket No. ER12-1179-003, et al., which it filed February 15, 2013, SPP proposed revisions to Attachment AE, Section 1.1 – Definitions V defining a Dispatchable VER as one that is capable of being incrementally dispatched by the Transmission Provider, and a Non-Dispatchable VER as one that is not capable of being incrementally dispatched by the Transmission Provider. SPP additionally cites Southwest Power Pool, Inc., Docket No. ER12-1179-000 filed February 29, 2012, Attachment AE, Section 1.1 – Definitions D & N.

[29] *Id.* at 9, n.28 (citing *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 85, P 117 (2012)); also citing SPP's Integrated Marketplace Filing at 41, revised Section 2.2(10) of Attachment AE to permit a wind-powered VER with an interconnection agreement executed on or prior to May 21, 2011 to register as a Dispatchable VER if it is capable of being incrementally dispatched by the Transmission Provider. *See* Integrated Marketplace Filing at proposed Tariff, Attachment AE, Section 2.2(10).

[30] *Id.* at 9 & n.28 (citing *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 117 (2012) (citing *Southwest Power Pool, Inc.*, 135 FERC ¶ 61,148 (2011))).

transmission customers on a given day to buy firm point-to-point transmission service on a daily, weekly, or monthly, basis and/or in combination with non-firm transmission service, it would be virtually impossible for SPP to base all curtailments solely on reservations, without the use of schedules to determine the varying services that could be used. Therefore, SPP avers that it cannot operationally implement the Commission's order.

26. Instead, SPP states that its proposed approach in Section 4.3(i)(v) of its Tariff revisions could be used to curtail the Non-Dispatchable Resources based on firm service reservations that have long-term firm service for the full capacity of the Non-Dispatchable Resource or that have confirmed monthly service along with pending long-term firm service requests for the full capacity of the Resource. SPP explains that this approach is operationally feasible because the information in the market tools regarding firm service is more static and does not change between market model updates. SPP further claims this approach is beneficial because it permits a Non-Dispatchable Resource with short-term firm service to be treated the same as a long-term firm service during the period that its request for long-term firm service is being studied and processed. SPP contends that this approach takes away any incentives to over schedule, because overscheduling will not be necessary to ensure that the actual output generated from the Resource is delivered.

27. SPP also proposes to remove the words "all of" included in the phrase "Qualifying Facility exercising its rights under PURPA to deliver all of its net output to its host utility" from Sections 4.3(i) and 5.5 of Attachment AE of its Tariff. SPP also proposes moving Section 4.3(i)(iii) to Section 4.3(i)(v) of Attachment AE.

28. Finally, SPP proposes amending Section 5.5 – Uninstructed Deviation Charges, to specify that any Non-Dispatchable Resource not subject to curtailment via XML notification (i.e., systematic curtailment) also will not be subject to Uninstructed Deviation Charges, consistent with SPP's current practice of not imposing such charges on Resources that are manually dispatched.

D. SPP's March 18 Waiver Filing

29. In its March 18 Waiver Filing, SPP requests a one-time limited waiver of the systematic and automatic curtailment requirements, contained in Section 4.3 of Attachment AE to the SPP Tariff and accepted in the September 20 Order, providing for systematic and automated curtailment of Non-Dispatchable Resources which became commercially operable after October 15, 2012. Specifically, SPP requests waiver to delay implementation of systematic and automated curtailment rules for one Non-Dispatchable Resource, i.e., the Ensign Wind Unit, for the period from March 19, 2013 to

June 1, 2013.[31] SPP explains that the Grey Wind Unit and Ensign Wind Unit are counted as a single Non-Dispatchable Resource in the EIS Market,[32] but the Non-Dispatchable Resource is actually comprised of two separate facilities**.** SPP further explains that the Grey Wind Unit became commercially operable prior to October 15, 2012,[33] while the Ensign Wind Unit did not become commercially operable until after October 15, 2012.[34] Therefore, SPP argues the waiver is necessary due to the different curtailment rules for the two Non-Dispatchable Resources, which have been registered in the SPP EIS Market as a combined Resource.[35]

30. SPP states that the EIS Market system applies dispatch instructions, systematic curtailment logic, and other market rules on a single registered Resource basis. When one or more units are registered as a combined Resource the market system only recognizes a single Resource and cannot differentiate the individual units and applies different rules to each unit.[36] The effect of the waiver will be to postpone the applicability of the systematic curtailment Tariff provisions as they apply to the Ensign Wind Unit until June 1, 2013 (from March 19, 2013). SPP states the waiver will provide sufficient time to make the necessary system changes to accommodate individual Resource registrations. In addition, June 1, 2013 is the next EIS Market model update to reflect system updated software and the most recent system changes will be completed at that date.[37]

---

[31] In requesting the waiver starting March 19, 2013, SPP relies on the Commission granting SPP its separate petition for waiver in Docket No. ER12-2292-002 to delay implementation of the systematic and automated curtailment rules pertaining to *new* Non-Dispatchable Resources from October 15, 2012 until March 19, 2013. *See* SPP's March 18 Waiver Filing at 4.

[32] *Id*. at 4.

[33] The Grey Wind Unit qualifies for exemption from systematic curtailment because the interconnection agreement was dated July 16, 2001 and it commenced Commercial Operation that same year. *Id.* at 4.

[34] The Ensign Wind Unit is a *new* Non-Dispatchable Resource that commenced Commercial Operation on November 16, 2012 and is subject to systematic curtailment pursuant to *Southwest Power Pool, Inc.*, 140 FERC ¶ 61,225 (2012).

[35] SPP's March 18 Waiver Filing at 2.

[36] *Id.* at 5 & n.19.

[37] *Id.* at 5 & n 20.

31. Moreover, SPP states that the Grey Wind Unit will be exempt from systematic and automated curtailment if the Commission were to accept SPP's March 1 Compliance Filing proposal to exempt from systematic and automated curtailment all Non-Dispatchable Resources which had an interconnection agreement executed prior to May 21, 2011 and that commenced Commercial Operation before October 15, 2012. SPP requests the Commission, therefore, grant its request for waiver.

III. Notices of Filings and Responsive Pleadings

A. Notices and Pleadings

32. Notice of SPP's February 23 Waiver Filing in Docket No. ER12-2292-002 was published in the *Federal Register*, 78 Fed. Reg. 12,306 (2013), with interventions and protests due on or before March 1, 2013. None was filed.

33. Notice of SPP's March 1 Compliance Filing in Docket No. ER12-2292-003 was published in the *Federal Register*, 78 Fed. Reg. 15,713 (2013), with interventions and protests due on or before March 22, 2013. Acciona filed comments, and SPP filed a reply.

34. Notice of SPP's March 18 Waiver Filing in Docket No. ER13-1123-000 was published in the *Federal Register*, 78 Fed. Reg. 18,580 (2013), with interventions and protests due on or before April 1, 2013. Exelon Corporation, NextEra Energy Resources, LLC, and KCP&L Greater Missouri Operations Company each filed motions to intervene. No adverse comments or protests were filed.

B. Acciona's Comments to SPP's March 1 Compliance Filing

35. Acciona supports SPP's March 1 Compliance Filing tariff revisions,[38] however, Acciona requests clarification with regard to certain tariff provisions.[39] Acciona wants SPP to clarify in its Tariff that manual curtailment in the EIS Market will operate consistently with manual curtailment of Non-Dispatchable VERs in the SPP Integrated Marketplace, including the manual curtailment of Non-Dispatchable Resources.[40] Acciona argues that clarification is necessary to ensure transparency, avoid the uneconomic dispatch resulting from the manual dispatch of Non-Dispatchable Resources, and avoid the exacerbated inequitable curtailment of Non-Dispatchable Resources that

---

[38] Acciona Comments to SPP's March 1 Compliance Filing at 1, 3.

[39] *Id.* at 3.

[40] *Id.* at 4.

was caused under its prior manual dispatch of Non-Dispatchable Resources.[41] Acciona contends that SPP should clarify that its proposal is consistent with its rules for SPP's Integrated Marketplace and commit to: (1) use market solutions and systematic curtailment, including solutions based on security-constrained economic dispatch (SCED) analysis, prior to resorting to manual curtailment under normal circumstances, and (2) that when manual curtailment must be utilized to address an Emergency Condition or reliability issue that systematic curtailment solutions cannot resolve, SPP shall displace the manual curtailment with a systematic market solution as soon as possible consistent with safety and reliability.[42] Acciona contends that this treatment would be consistent with the treatment of similar resources in SPP's Integrated Marketplace proposal, which was accepted by the Commission.[43] Acciona also contends that this treatment is consistent with SPP's protocols for out-of-merit-energy dispatch.[44]

36. Acciona states it does not oppose SPP's proposed approach to determine curtailment priorities for Non-Dispatchable Resources with firm transmission service based on transmission service reservations. However, Acciona questions whether firm service rates should be modified to be based on usage rather than on capacity, and whether there should be true-ups for unused capacity.[45]

C. SPP's Reply to Acciona's Comments

37. SPP asserts that while SPP uses systematic processes for determining the market solution (which includes SCED, CAT, and the Non-Dispatchable Resource logic, to resolve reliability problems), the use of manual curtailment may be necessary before use of (or instead of use of) systematic curtailment to protect the bulk electric system in its role as Reliability Coordinator. SPP states it is imperative that it has the flexibility to address these situations to preserve the reliability of the transmission grid, and that it

---

[41] *Id.* at 5 (citing *Southwest Power Pool, Inc*., 141 FERC ¶ 61,048, at P 108 (2012) (stating that SPP's proposal under the Integrated Marketplace with regard to dispatchable VERs would "improve the efficiency of SPP's real-time energy market and reliability function by reducing SPP's need to manually curtail VERs")).

[42] *Id.* at 14-15.

[43] *Id.* at 9 (citing *Southwest Power Pool, Inc*., 141 FERC ¶ 61,048, at PP 188-190 (2012)).

[44] *Id.* at 8 (citing EIS Market Protocols, Version 34 (last revised October 31, 2012) and draft 34.b, at Section 9.2.2, *available at* http://www.spp.org/section.asp?group=327&pageID=27).

[45] *Id.* at 4.

would be imprudent, therefore, to hardwire into the Tariff (or market protocol) that market solutions *always* will be used prior to manually curtail Non-Dispatchable Resources or to try or define all of the specific situations where manual curtailment is needed to address Emergency Conditions or reliability issues that systematic curtailment cannot resolve. Moreover, SPP contends it has fully complied with the September 20 Order and that no further Tariff revisions are required for compliance.[46]

38. SPP states that Acciona requests that SPP make an express commitment and guarantee to displace manual curtailment with a systematic market solution as soon as possible after a system emergency or reliability issue is resolved so that a Non-Dispatchable Resource is not manually curtailed longer than necessary. SPP affirms that once it is satisfied that the manual intervention is no longer necessary to avoid an emergency condition or resolve a reliability issue, SPP will return to using market solutions, and the manually curtailed Non-Dispatchable Resource will be notified and the manual curtailment will cease.[47]

39. SPP argues that it has fully complied with the September 20 Order and contends that if more information in the market protocols for the EIS Market or Tariff would be helpful, then the issue should be addressed in the stakeholder process. SPP asserts that the stakeholders most affected by SPP's curtailment practices can participate and ensure that the description of the process is clear and transparent.[48]

IV. Discussion

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept SPP's reply to Acciona's comments to its March 1 Compliance Filing, because SPP has provided information that assisted us in our decision-making process.

---

[46] SPP Reply at 6-7.

[47] *Id.* at 7-8.

[48] *Id.* at 8.

B. Determination

41. The Commission denies Acciona's request for rehearing, for the reasons explained below.

42. We deny rehearing with respect to Acciona's assertion that the Commission erred, in the September 20 Order, by not requiring SPP to provide QFs (in service areas where the Commission has granted utilities relief from mandatory purchase obligation) the same protections from curtailment and immunity from Uninstructed Deviation Charges that SPP must provide to QFs selling under PURPA (where relief was not granted). Contrary to Acciona's claim, the Commission did not summarily dismiss the matter without any explanation. Rather, in the September 20 Order, the Commission explained that both those QFs over 20 MW that are located in service areas where PURPA section 210(m) relief from the mandatory purchase obligation has been granted and those QFs with firm power purchase agreements whose output is not sold under PURPA are properly assigned curtailment priorities based on those QFs' transmission service rights and whether their output is scheduled or unscheduled, like any other generation resources situated similarly.[49]

43. We also deny rehearing on the matter of whether SPP should offer make-whole payments for Non-Dispatchable Resources that it curtails.[50] Make-whole payments were not applicable to curtailed Non-Dispatchable Resources in the EIS market prior to the institution of systematic automated curtailment. We see nothing in the adoption of the systematic automated curtailment of Non-Dispatchable Resources that requires the adoption of make-whole payments for curtailed Non-Dispatchable Resources in this proceeding.[51] Therefore, Acciona's request is outside the scope of this proceeding.

44. The Commission conditionally accepts the revisions to Sections 4.3(i) and 5.5(f) of its Tariff as proposed by SPP in its March 1 Compliance Filing, effective March 19, 2013, as requested, subject to a compliance filing. We note that in the text of several of the proposed Tariff provisions there are incorrect references to October 15, 2013 as the effective date for systematic and automated curtailment of *existing* Non-Dispatchable Resources. The September 20 Order ordered the systematic and automated curtailment

---

[49] September 20 Order, 140 FERC ¶ 61,225 at P 56.

[50] *See id.* PP 57-58.

[51] We note, however, that Non-Dispatchable Resources that are subject to the systematic and automated curtailment procedures in the EIS Market will be required to register as dispatchable VERs in the Integrated Marketplace, as discussed below, and will be eligible for make-whole payments in the Integrated Marketplace. *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 at P 173 (2012).

of *existing* Non-Dispatchable Resources to be effective one year from the date of the September 20 Order (i.e., September 20, 2013).[52] Therefore, we order SPP to correct the effective date for systematic and automated curtailment of *existing* Non-Dispatchable Resources in a further compliance filing.

45. SPP reports that it engaged its stakeholders in a process to further evaluate automating curtailment of existing Non-Dispatchable Resources (i.e., commercially operable before October 15, 2012), as required by the Commission in its September 20 Order. In the resulting proposed Tariff revisions, SPP proposes to exempt from its systematic and automated curtailment procedures *existing* Non-Dispatchable Resources in the EIS Market that had an interconnection agreement executed prior to May 21, 2011 and began commercial operations before October 15, 2012. SPP asserts that this is consistent with the revisions to the *pro forma* interconnection agreement accepted in Docket No. ER11-3154-000,[53] as well as the registration requirements for wind-powered Non-Dispatchable VERs in the Integrated Marketplace.[54] We note, however, that the registration requirement in the Integrated Marketplace that allows wind-powered VERs to register as Non-Dispatchable VERs (and thereby avoid the applicable systematic and automated curtailment procedures) applies to Resources that executed interconnection agreements *on or before* May 21, 2011.[55] Therefore, we will conditionally accept Section 4.3(i)(ii) of SPP's Tariff, subject to a compliance filing due within 30 days of the date of this order, to exempt from its systematic and automated curtailment procedures wind-powered Non-Dispatchable Resources that began commercial operations before October 15, 2012 and executed interconnection agreements *on or before* May 21, 2011.

46. We find that SPP has satisfied the Commission's directive to address how the treatment of Non-Dispatchable Resources will work within the Integrated Marketplace. In particular, SPP explains that Non-Dispatchable Resources that are subject to the

---

[52] *Id.* P 49.

[53] SPP March 1 Compliance Filing at 10 (citing *Southwest Power Pool, Inc.*, 135 FERC ¶ 61,148 (2011) which accepted revisions to SPP's *pro forma* Generator Interconnection Agreement requiring wind resources to be capable of reducing output in increments of 50 MW or less in five-minute intervals, effective May 21, 2011).

[54] *Id.* at 9 (citing *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048, at PP 85, 117 (2012) (October 18 Order)).

[55] In the October 18 Order, the Commission conditionally accepted SPP's proposal to require wind-powered VERs with interconnection agreements executed on or before May 21, 2011 to register as Non-Dispatchable VERs, subject to Tariff revisions to allow these resources to register as Dispatchable VERs, if they satisfy the applicable requirements. 141 FERC ¶ 61,048 at P 117.

systematic and automated curtailment procedures in the EIS Market will be required to register as dispatchable VERs in the Integrated Marketplace, and will be subject to automated dispatch in the Integrated Marketplace. Likewise, wind-powered Non-Dispatchable Resources that are exempt from the systematic and automated curtailment procedures in the EIS Market will be permitted to register as non-dispatchable VERs in the Integrated Marketplace, and will be manually curtailed in both the EIS Market and the Integrated Marketplace. We note that, in an order being issued concurrently with this order, the Commission accepts modifications to the VERs registration requirements to ensure that SPP's systematic and automated curtailment procedures apply consistently in the EIS Market and Integrated Marketplace.[56]

47. We also accept SPP's alternative mechanism in proposed Section 4.3(i)(v) of Attachment AE to allow Non-Dispatchable Resources that have long-term firm transmission service for the full capacity of the Non-Dispatchable Resource, or have short-term firm transmission service, but have a pending request for long-term firm service for the full capacity of the Non-Dispatchable Resource, to be curtailed at a level equal to firm service. SPP avers that, at this time, it cannot operationally comply with the requirement to determine curtailment priorities for Non-Dispatchable Resources that have firm transmission service based on reservations.

48. We also accept SPP's proposed amendment to Section 5.5 of Attachment AE of the Tariff which specifies that any Non-Dispatchable Resource not subject to curtailment via XML notification (i.e., systematic curtailment) also will not be subject to Uninstructed Deviation Charges, consistent with SPP's current practice of not imposing such charges on Resources that are manually dispatched.

49. We deny Acciona's request to require SPP to further clarify how and when it manually curtails Non-Dispatchable Resources as being outside the scope of what the Commission required SPP to provide on compliance in its September 20 Order.

50. We grant SPP's request for temporary limited waiver of Tariff provisions for systematic and automated curtailment of *new* Non-Dispatchable Resources effective for the period of October 15, 2012 through March 19, 2013, as requested. The Commission has granted limited waivers of tariff provisions where: (i) the applicant has been unable to comply with the tariff provision at issue in good faith; (ii) the waiver is of limited scope; (iii) a concrete problem will be remedied by granting the requisite waiver; and (iv) the waiver does not have undesirable consequences, such as harming third parties.[57] We find that the requested waiver meets these criteria.

[56] *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224 (2013).

[57] *See, e.g.*, *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at P 8 (2011); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010).

51. We additionally will grant SPP's waiver request with respect to the Grey Wind and Ensign Wind Units. SPP has demonstrated that it cannot apply different curtailment rules to the two facilities, the combined Grey Wind/Ensign Wind Units, since they are registered in the EIS Market as a single Non-Dispatchable Resource. We find that SPP's proposed waiver for the period March 19, 2013 to June 1, 2013 is reasonable and the requested waiver of limited scope and duration with no undesirable consequences.

The Commission orders:

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

(B) SPP's proposed Tariff revisions in its March 1 Compliance Filing are conditionally accepted effective March 19, 2013, as requested, subject to SPP making a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) SPP's request for waiver of its proposed Tariff revisions to delay implementation of systematic and automated curtailment of *new* Non-Dispatchable Resources that were commercially operable after October 15, 2012 is granted for the period from October 15, 2012 to March 19, 2013.

(D) SPP's request for waiver of its proposed Tariff revisions to delay the systematic curtailment provisions applying to the Ensign Wind Unit is granted for the period of March 19, 2013 to June 1, 2013, as requested.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.