

148 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunflower Electric Power Corporation

Docket No. EL14-38-000

v.

Kansas Municipal Energy Agency and
Southwest Power Pool, Inc.

ORDER ON COMPLAINT

(Issued July 17, 2014)

1. On April 10, 2014, as amended April 11, 2014, Sunflower Electric Power Corporation (Sunflower) filed a complaint (Complaint) against Kansas Municipal Energy Agency (Kansas Municipal) and Southwest Power Pool, Inc. (SPP) pursuant to sections 206, 306, and 309 of the Federal Power Act¹ and Rule 206 of the Commission's Rules of Practice and Procedure.² Sunflower alleges that a power supply arrangement, between Kansas Municipal and Garden City, Kansas (Garden City), is unjust, unreasonable and unduly discriminatory and preferential, or otherwise in violation of the Commission's and SPP's rules, including SPP's Open Access Transmission Tariff (Tariff), and the reliability requirements of the North American Electric Reliability Corporation (NERC).³ In this order, we deny the Complaint.

¹ 16 U.S.C. §§ 824e, 825e, and 825h (2012).

² 18 C.F.R. § 385.206 (2013).

³ Sunflower requests Fast Track processing pursuant to Rule 206(h) of the Commission's regulations. 18 C.F.R. § 385.206(h) (2013).

I. Background

2. Sunflower describes itself as a non-jurisdictional generation and transmission electric cooperative, with six rural electric distribution cooperative members. Sunflower states that it is fully regulated as to wholesale sales to non-members and all transmission services by the Kansas Corporation Commission. Sunflower states that it is also a transmission owner and transmission owning member of SPP under the Tariff.

3. On March 1, 2014, SPP transitioned from operating an Energy Imbalance Service Market (EIS Market) to an Integrated Marketplace. Under the Integrated Marketplace, SPP administers day-ahead and real-time energy markets, operating reserve markets, and a market for transmission congestion rights and auction revenue rights. In connection with the Integrated Marketplace, SPP also combined 16 separate balancing authorities formerly operating within the SPP footprint into a single balancing authority area operated by SPP. Sunflower previously acted as a balancing authority area in the EIS Market, but no longer serves that function in the Integrated Marketplace.

II. Complaint

4. Sunflower argues that the Kansas Municipal-Garden City supply arrangement is defective, resulting in various violations of SPP and Commission rules and causing harm to Sunflower and its customers.⁴

5. Sunflower explains that prior to January 1, 2014, one of Sunflower's six member cooperatives, Wheatland Electric Cooperative, Inc. (Wheatland), provided bundled wholesale service to Garden City. However, Sunflower notes, Garden City selected Kansas Municipal to be its new power provider commencing January 1, 2014.⁵ According to Sunflower, in order to facilitate the transmission of power to Garden City, Kansas Municipal entered into a series of service arrangements that included a Network Integration Transmission Service Agreement (NITSA) with SPP and a Network Operating Agreement (NOA) with SPP and Sunflower.⁶ Sunflower maintains that under the NITSA, the only designated load is Garden City, and the only designated network resource to serve the Garden City load is a Displacement Agreement with the Western

⁴ Complaint at 18.

⁵ *Id.* at 4.

⁶ The NITSA and NOA were accepted for filing by delegated letter order on March 10, 2014. *Southwest Power Pool, Inc.*, Docket No. ER14-1175-000 (Mar. 10, 2014) (delegated letter order).

Area Power Administration (Western) for 2.3 MW, which Sunflower claims is 3.2 percent of Garden City's historical 2013 peak load.⁷ Sunflower asserts that Kansas Municipal also served Garden City's load with 10 MW received under a contract with Kansas City Power and Light Company (KCP&L) sourced from the Spearville Wind Farm in the former KCP&L balancing area (Spearville Wind Farm).⁸

6. Sunflower alleges that Kansas Municipal and SPP violated section 2 of the SPP Criteria⁹ because Kansas Municipal was allowed to serve the Garden City load with insufficient firm power.¹⁰ According to Sunflower, the SPP Criteria require that every load serving member of SPP have sufficient firm power to meet its load and that the firm power must be "continuously available."¹¹ Sunflower asserts that Kansas Municipal did not meet this requirement. Specifically, Sunflower argues that Kansas Municipal's

⁷ Complaint at 9-10.

⁸ *Id.* at 11.

⁹ The SPP Criteria contain the policies, standards or principles of conduct by which the coordinated planning and operation of SPP's interconnected electric system is achieved. Southwest Power Pool, Inc. FERC FPA Electric Tariff Open Access Transmission Tariff, Sixth Revised Volume No. 1, [Attachment AD Exhibit 1, Attachment AD Exhibit 1, 0.0.0](#). Section 2 of the SPP Criteria requires and provides for the sharing of capacity between SPP members.

¹⁰ Sunflower states that the SPP Criteria provide the following definition of firm power:

Firm Power shall mean electric power which is intended to be continuously available to the buyer even under adverse conditions, i.e., power for which the seller assumes the obligations to provide capacity (including SPP defined Capacity Margin) and energy. Such power shall meet standards of reliability and availability as that delivered to native load customers. For purchases and sales, the contract amount governs regardless of the amount actually delivered at the time of such Load Serving Member's greatest Net Load. Power purchased shall only be considered to be Firm Power if Firm Transmission Service is in place to the Load Serving Member for delivery of such power. Firm Power does not include "financially firm" power.

Complaint at n. 24.

¹¹ *Id.* at 21.

combined firm power from Western and the Spearville Wind Farm, 12.3 MW, was well short of Garden City's January 2014 and February 2014 peak loads of approximately 40 MW and minimum loads of 25 MW. According to Sunflower, Kansas Municipal made up the shortfall using various scheduled non-firm energy purchases and non-firm energy and transmission associated with SPP's EIS Market. Sunflower maintains that Kansas Municipal's reliance on non-firm resources to address its firm power deficiencies should not have been permitted under the Tariff.¹²

7. Sunflower argues that Kansas Municipal and SPP also violated section 2 of the SPP Criteria by failing to meet the base system capacity requirements that establish the minimum amount of firm capacity a load serving member must acquire in order to have access to the benefits provided by the SPP energy market.¹³ According to Sunflower, a reasonable projection of Garden City's peak load for 2014 is 71.52 MW and Kansas Municipal did not have the required firm power, i.e., deliverable capacity, to meet this amount.¹⁴ Sunflower also contends that Kansas Municipal has not demonstrated that it provided the 12 percent capacity margin required by section 2.1.9 of the SPP Criteria.¹⁵

8. Sunflower also asserts that it is likely that for the period from January 1, 2014 through February 28, 2014, Kansas Municipal submitted flawed resource plans to SPP in violation of section 2.2 of the then-effective Attachment AE (EIS Market) of the Tariff. This provision requires a market participant to have sufficient energy to meet its energy obligations at all times.¹⁶ Sunflower argues that SPP failed to administer its Tariff

¹² *Id.* at 21-22.

¹³ *Id.* at 22.

¹⁴ Sunflower reiterates that Kansas Municipal's only current firm designated network resource is 2.3 MW from Western, and that, even if Kansas Municipal could consider the 10 MW of wind power from KCP&L "Firm" for purposes of section 2.2 of the SPP Criteria, Kansas Municipal does not have the required firm power to meet Garden City's annual peak load. *Id.* at 23.

¹⁵ *Id.*

¹⁶ *Id.* at 25. Under the then-effective Attachment AE, a market participant must submit a resource plan that provides a sufficient amount of available energy to meet all of the market participant's energy obligations. The market participant may do so by: (1) using scheduled energy from third parties; (2) using planned operating levels of self-dispatched resources as identified in the resource plan; or (3) making its resources available to the transmission provider for dispatch with sufficient dispatchable operating range, as identified in the resource plan, such that in aggregate, they are capable of

(continued...)

properly by accepting and relying on those defective resource plans and allowing Kansas Municipal to supplement its firm power purchases with considerable scheduled non-firm purchases and its purchases through the EIS Market. Sunflower asserts that SPP also failed to comply with its Tariff by routinely permitting Kansas Municipal to have “insufficient energy supply” in violation of the requirements of section 7.1 of the EIS Market Protocols.¹⁷

9. Sunflower also alleges that Kansas Municipal and SPP violated SPP and NERC rules, because the delivery of 10 MW of wind energy to Garden City did not meet dynamic scheduling requirements. Specifically, Sunflower states that section 2.12 of the then-existing Attachment AN (SPP Balancing Authority Agreement) and the then-existing EIS Market Protocols required a telemetered reading or value to be updated in real-time. In addition, Sunflower notes that NERC Reliability Standard BAL-005 R12.3 requires the provision of metering equipment for dynamic schedules that are implemented between two balancing authorities to serve a remote load. Sunflower asserts that neither Kansas Municipal nor SPP installed or operated the equipment needed to provide Sunflower with real-time metering information on the actual wind energy produced by the wind farm used by Kansas Municipal to serve the Garden City load.¹⁸ Because the 10 MW schedule was not properly metered and did not show up in Sunflower’s net interchange as it was required, Sunflower maintains that it had no choice but to provide the energy for the entire 10 MW above its own load obligations in order to maintain the required balance between load and resources within the Sunflower balancing area.¹⁹

10. According to Sunflower, the failure by Kansas Municipal and SPP to follow the established rules for service to the Garden City load provided Kansas Municipal with valuable benefits, was unduly discriminatory and caused Sunflower tangible and significant economic harm. Specifically, Sunflower contends that, as the applicable balancing authority from January 1, 2014 to February 28, 2014, Sunflower was forced to “firm up” the various deficiencies arising under Kansas Municipal’s supply arrangement

producing sufficient energy to meet the market participant’s energy obligations at all times.

¹⁷ Section 7.1 of the EIS Market Protocols provides that a market participant shall be deemed as having insufficient energy supply if the following condition is met: $\text{sum of Max Dispatchable-MW} < \text{Energy Obligation}$.

¹⁸ Complaint at 27-28.

¹⁹ *Id.* at 14.

with Garden City.²⁰ Sunflower states that it took steps to ensure system reliability by backstopping Kansas Municipal's non-firm energy purchases and its purchases in the EIS Market.

11. Sunflower also states that, in the absence of real-time metering, Sunflower incurred dynamic scheduling costs associated with Kansas Municipal's reliance on Spearville Wind Farm power, and that Sunflower should be compensated for these costs.²¹ Sunflower characterizes Kansas Municipal as "free riding" at the expense of all other SPP members and customers. Sunflower and its witness Mr. Linville also argue that the lack of firm, deliverable capacity is a particularly serious concern in the remote area of Sunflower's service territory, and that Kansas Municipal is creating a significant reliability issue by failing to meet the SPP Criteria deliverability obligations.²²

III. Notice of Filing and Responsive Pleadings

12. Notice of the Complaint was published in the *Federal Register*, 79 Fed. Reg. 21,752 (2014), with answers, interventions and protests due on or before April 30, 2014. On April 30, 2014, the respondents, Kansas Municipal and SPP, filed answers to the Complaint. On that same day, Garden City filed a timely motion to intervene. On May 1, 2014, Westar Energy, Inc. (Westar) filed a motion to intervene out-of-time. On May 28, 2014, Sunflower filed a motion for leave to reply and reply. On June 13, 2014, Kansas Municipal filed an answer to Sunflower's reply. On June 27, 2014, SPP filed an answer to Sunflower's reply.

²⁰ Sunflower states that NERC requirements and section 6 of the SPP Criteria compelled Sunflower to provide the Kansas Municipal firm capacity shortfall. *Id.* at 30-31.

²¹ Sunflower maintains that the value of providing the 10 MW of imbalance energy for January 2014 was \$353,141 and for February 2014 was \$514,628. Sunflower also states that it should be compensated \$11,617 for January 2014, and \$11,617 for February 2014, for additional ancillary services it provided associated with the 10 MW. *Id.* at 32-34.

²² *Id.* at 36-37 (citing Linville Aff. Ex. 1 ¶¶ 34-35).

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motion to intervene serves to make Garden City a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 214(d) (2013), the Commission will grant Westar's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

15. As discussed below, we deny Sunflower's Complaint. We find that Sunflower has failed to meet its burden of proof to demonstrate that the Kansas Municipal-Garden City supply arrangement violated the Tariff, the SPP Criteria, or NERC Reliability Standards.

1. Kansas Municipal-Garden City Power Supply

16. Kansas Municipal asserts that it had sufficient firm capacity and energy to serve Garden City and was not in violation of the Tariff, SPP Criteria, or EIS Market Protocols. Specifically, Kansas Municipal states that it had 48.3 MW of firm capacity in place during January and February 2014, all supported with firm transmission service and therefore had more than enough capacity to cover Garden City's peak demand and reserve obligation of 41 MW in January and 44 MW in February. Kansas Municipal and its expert witnesses explain that Kansas Municipal's resources for serving Garden City included: (1) 2.3 MW of firm capacity and energy from Western; (2) 10 MW of firm capacity and energy purchases from the KCP&L Spearville Wind Farm; (3) 16 MW of firm capacity and energy purchases from the Kansas Power Pool; and (4) 20 MW of firm capacity and energy purchased from Associated Electric Cooperative.²³

²³ Kansas Municipal April 30, 2014 Answer at 4 (citing Saitta Aff. Ex. KME-1 ¶ 6 and Rowland Aff. Ex. KME-2 ¶ 4).

17. Kansas Municipal explains that, while it had the firm capacity to meet the Garden City load, it made third-party non-firm purchases to serve that load because it was more economical to do so. According to Kansas Municipal, it was acting as a rational market participant given the economic circumstances and its actions were not in violation of section 2 of the SPP Criteria.²⁴ Kansas Municipal also notes that SPP and the SPP Market Monitoring Unit (MMU) found no issue with Kansas Municipal's power supply arrangements because it had the necessary capacity and firm energy, and associated transmission arrangements, to serve Garden City.²⁵

18. Kansas Municipal also refutes Sunflower's allegation that Kansas Municipal violated the SPP Criteria by using short-term resources to serve Garden City. Kansas Municipal contends that Sunflower incorrectly characterizes Kansas Municipal's resources as short-term because its current transmission service is a combination of one month and 11 month reservations of firm service. Kansas Municipal contends that the actual resources are long-term firm resources. Kansas Municipal also maintains that each of the Kansas Municipal resources is for a term that is greater than one year, making each of them a long-term contract.²⁶ However, Kansas Municipal notes that the only resource listed in the NITSA is the 2.3 MW from Western. Kansas Municipal's expert Mr. Rowland explains that each of the other non-Western resources is considered "new" service for purposes of transmission under the Tariff.²⁷ Mr. Rowland further explains that Kansas Municipal could not add them to the NITSA without going through the SPP aggregate transmission study process, which suffers from substantial backlog and could take several years to complete. Accordingly, Mr. Rowland states that the only alternative Kansas Municipal had was to evaluate delivery of each of the three remaining resources using short-term firm service.²⁸ Kansas Municipal maintains that the short-term firm service requests were submitted and processed through the SPP Open Access Same-Time Information System (OASIS) and were granted prior to January 1, 2014 for service through the end of September 2014.²⁹

²⁴ *Id.* at 9-10.

²⁵ *Id.* at 7.

²⁶ *Id.* at 10-11.

²⁷ *Id.* at Rowland Aff. Ex. KME-2 ¶ 6.

²⁸ *Id.* at Rowland Aff. Ex. KME-2 ¶ 7.

²⁹ *Id.* at 11-12.

19. In response to Sunflower's allegation that a reasonable projection of Garden City's peak load for 2014 is 71.52 MW, Kansas Municipal asserts that it has planned sufficient firm resources to serve Garden City's peak load for the entire year. Kansas Municipal maintains that it is not obligated to disclose to Sunflower its power supply plans for Garden City, but that Kansas Municipal has coordinated fully and continues to coordinate with SPP.³⁰

20. Kansas Municipal also asserts that its resource plans reflected adequate resources to serve Garden City's load and met the requirements of the then-effective Attachment AE to the Tariff and the EIS Market Protocols. Kansas Municipal states that Sunflower bases statements on its assumptions about Kansas Municipal's resource plans for serving Garden City, but Sunflower is not privy to such plans. Moreover, Kansas Municipal asserts that, because it had sufficient energy and capacity to serve Garden City's load, and because Kansas Municipal did not rely on the EIS Market except for imbalance energy, Kansas Municipal did not violate the then-existing Tariff.³¹

21. Finally, Kansas Municipal argues that Sunflower failed to take any meaningful steps to attempt to resolve its issues before bringing its Complaint. Kansas Municipal notes that Sunflower did not protest the NITSA designating the 2.3 MW Western resource to serve Garden City's load, even though the filing was made January 28, 2014, four weeks after Kansas Municipal began serving Garden City.³² According to Kansas Municipal, its first indication that Sunflower had any issues with its power supply arrangements was on April 9, 2014, when Sunflower sent Kansas Municipal a letter requesting payment for "services it provided to [Kansas Municipal] during the months of January and February 2014."³³

22. In its answer, SPP contends that Sunflower has provided no evidence that SPP failed to enforce, or that it otherwise violated, the terms of the Tariff. SPP states that on the contrary, after being contacted by Sunflower with respect to Kansas Municipal's service to Garden City, the SPP MMU investigated Sunflower's concerns and determined

³⁰ *Id.* at 12.

³¹ *Id.* at 13.

³² *Id.* at 18.

³³ *Id.* at 20.

that no Tariff violation or market impact resulted from Kansas Municipal's service to Garden City.³⁴

23. SPP asserts that it did not violate the provisions of its Tariff concerning the submission and review of resource plans. SPP notes that Sunflower itself recognizes this argument is speculative, stating that "it is likely" that flawed resource plans were submitted for January 1, 2014 to February 28, 2014.³⁵ SPP notes further that under section 2.4.2 of the then-effective Attachment AE of the Tariff, SPP was required to assess the adequacy of supply both at the level of each market participant's resource plan and at the level of each balancing authority area. SPP maintains that SPP is required to notify the resource-deficient market participant to direct it to submit a revised resource plan only if this analysis identifies a supply deficiency at the balancing authority level. According to SPP, because in this case no supply deficiency was found at the balancing authority area level, no further analysis or curative action was required.³⁶

24. In response, Sunflower asserts that Kansas Municipal has concealed the details on its "purported" firm resources and that these resources cannot provide proper support for the Kansas Municipal-Garden City supply arrangement.³⁷ Sunflower argues that during January and February 2014, Kansas Municipal neither used nor scheduled its Kansas Power Pool and Associated Electric Cooperative resources to serve Garden City's load.³⁸ Sunflower asserts that both section 2.2 of the then-effective Attachment AE and section 6.6.3 of the then-effective EIS Market Protocols required scheduling of the energy obtained from third parties to meet a market participant's load obligations, and that Kansas Municipal never scheduled from the Kansas Power Pool and Associated Electric Cooperative resources. According to Sunflower, the resources have never been offered

³⁴ SPP April 30, 2014 Answer at 4-6. SPP states that the SPP MMU identified an average deficit of 1.4 MW for 23 days of January and that deficits on two additional days of 37 percent and 29 percent were considered outliers. The SPP MMU concluded that that there was no evidence that Kansas Municipal's behavior was having a negative impact on the EIS Market and reported its conclusions to the Commission's Office of Enforcement. *Id.* at 5.

³⁵ *Id.* at 8 (citing Complaint at 25).

³⁶ *Id.* at 9-10.

³⁷ Sunflower Reply at 3.

³⁸ *Id.* at 4-5.

into the market, and thus, they have never been capable of serving Kansas Municipal's Garden City load obligations at all times.³⁹

25. Sunflower also questions the amount of capacity available from the Kansas Power Pool and Associated Electric Cooperative resources and whether the necessary firm transmission service has been obtained to deliver from these resources. Specifically, Sunflower contends that, although it is not sure what capacity Kansas Municipal has procured from the Kansas Power Pool, Sunflower assumes that this capacity must be tied to 6.7 MW of capacity from two behind-the-meter generation resources listed in the Kansas Power Pool's most recent transmission service agreement.⁴⁰ Sunflower questions how Kansas Municipal can claim 16 MW of capacity where there appears to be only 6.7 MW available. Sunflower also contends that Kansas Municipal has not obtained a complete transmission path from the behind-the-meter generation resources to Garden City; thus, such resources cannot be used to satisfy Kansas Municipal's firm capacity requirements under the SPP Criteria.⁴¹ Sunflower similarly argues that the 20 MW from Associated Electric Cooperative cannot be considered firm capacity under the SPP Criteria because it has not been shown to be 20 MW of accredited capacity.⁴² Sunflower also questions whether the short-term firm transmission service reservation SPP granted Kansas Municipal from the Associated Electric Cooperative resource is appropriate given an initial misspelling of the resource when the reservation was submitted to SPP, and

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 7 (citing SPP, Submission of Network Integration Transmission Service Agreement and Network Operating Agreement, Docket No. ER14-1613-000 (filed Mar. 31, 2014)).

⁴¹ *Id.* at 8.

⁴² Sunflower states that to establish accredited capacity, section 12.1.5.3(g) of the SPP Criteria requires a calculation of the net power output available at least 85 percent of the time during the load service member's top 10 percent load hours during the peak load month of the season. Sunflower also argues that the default accredited percentage for wind facilities in commercial operation three years or less is three percent of nameplate capacity. Sunflower states that without further support, Kansas Municipal's firm capacity associated with the Associated Electric Cooperative resource should be considered to be, at most, three percent of the 310 MW nameplate, or 9.312 MW. *Id.* at 10-11.

given the fact that SPP did not complete the required system impact study for the reservation.⁴³

26. Sunflower also disputes Kansas Municipal's claim that each of its four resources serving Garden City is for a term that is greater than one year, making each of them a long-term contract. Sunflower maintains that, based on a review of the SPP OASIS, Kansas Municipal has short-term firm transmission reservations for its Spearville Wind Farm, Associated Electric Cooperative, and Kansas Power Pool resources, and none of these transmission reservations are for a period of one year or longer.⁴⁴ Sunflower reiterates that, under section 2.2(c)(ii) of the SPP Criteria, only 25 percent of the capacity may come from short-term resources, and because the 2.3 MW from Western is the only long-term resource, Kansas Municipal falls short of its obligation. Sunflower argues that, if Kansas Municipal were unable to renew its short-term firm reservations for its Spearville Wind Farm, Kansas Power Pool and Associated Electric Cooperative resources, then these resources would not be deliverable, and Kansas Municipal would not be able to use them to meet its Garden City load obligations.⁴⁵

27. In response to Kansas Municipal's claim that it had no indication of Sunflower's concern with the power supply arrangements until April 9, 2014, Sunflower states that Sunflower and Mid-Kansas brought the issue to Kansas Municipal's attention in July 2013. Sunflower maintains that on or about July 12, 2013, Sunflower offered Kansas Municipal firm capacity under Sunflower's Wholesale Member Tariff, but Kansas Municipal declined to purchase the service. According to Sunflower, had Kansas Municipal taken service under the Wholesale Member Tariff to obtain the necessary capacity to serve the Garden City load, Kansas Municipal would have had to pay Sunflower for 12 months of capacity charges, the minimum term allowed under the Sunflower Wholesale Member Tariff, or \$4,255,951.⁴⁶ Sunflower maintains that it attempted to work with Kansas Municipal to address the problem, but its efforts were rebuffed.⁴⁷

⁴³ *Id.* at 11-12 (citing Linville Aff. Ex. 12 ¶¶ 12-13).

⁴⁴ *Id.* at 14.

⁴⁵ *Id.* at 15-16.

⁴⁶ Complaint at 32.

⁴⁷ Sunflower Reply at 19-20.

28. In response to SPP, Sunflower maintains that SPP cannot rely on the MMU's study to relieve SPP of its Tariff responsibilities. According to Sunflower, one foundational error of the study is the MMU's statement that SPP's Tariff "supply adequacy rules do not require the energy obligation be met with firm power."⁴⁸ In response to SPP's statement that there was no evidence that Kansas Municipal's behavior had an impact on the EIS Market, Sunflower argues that there is no such criterion under the Tariff.⁴⁹ Sunflower also asserts that the MMU's determinations are premised on questionable arithmetic and unsound analytic methodology. Specifically, Sunflower claims that the MMU's 1.4 MW average deficit figure for the January 9-31 period is in error, as it is not supported and cannot be replicated under the data available to Sunflower as the applicable balancing authority.⁵⁰ Sunflower asserts that the data are skewed downward because they do not consider the deficits for January 7 and January 8, 2014, which should have been scrutinized more carefully.⁵¹

29. Sunflower asserts that Kansas Municipal's supply inadequacies should have been apparent from the resource plans Kansas Municipal submitted, and that SPP had many tools with which to address such deficiencies.⁵² Sunflower contends that SPP could have directed Kansas Municipal to commit additional resources to correct the deficiency under the then-effective Attachment AE. According to Sunflower, SPP did not need to wait until a reliability problem or an emergency condition before it had authority to take a more direct and appropriate action.⁵³

30. Kansas Municipal states that, because the Complaint lacks foundation in evidence and is based on assumption and not fact, it must be denied. Kansas Municipal also states that Sunflower's Complaint and its answer fail to cite to a Tariff provision that would grant Sunflower the relief it seeks.⁵⁴ According to Kansas Municipal, Sunflower is retaliating against Kansas Municipal and Garden City for Garden City's decision to leave

⁴⁸ *Id.* at 23 (citing SPP MMU Study Ex. SPP-1 at 1).

⁴⁹ *Id.* at 24.

⁵⁰ *Id.* at 26.

⁵¹ *Id.* at 27-29.

⁵² *Id.* at 30-32.

⁵³ *Id.* at 32.

⁵⁴ Kansas Municipal June 13, 2014 Answer at 4.

Wheatland and Sunflower, and such efforts needlessly raise Kansas Municipal's and Garden City's costs.⁵⁵

31. SPP responds that Sunflower's reply is an untimely and unauthorized attempt to shore up the Complaint's deficiencies. According to SPP, the Complaint should be rejected as improper because all documents and data should have been included in the initial filing.⁵⁶ SPP also states that Sunflower's reply fails to rectify the Complaint's core deficiency; i.e., that Sunflower has not identified a single Tariff violation or pointed to a single Tariff provision that would authorize or require SPP to provide payment to Sunflower for the services it claims to have provided.⁵⁷

32. SPP reiterates that Sunflower's reliance on section 2 of the SPP Criteria to impute a firm capacity requirement in the EIS Market is unavailing. Specifically, SPP states that, while section 2 of the SPP Criteria establishes a capacity margin requirement for members of SPP, it does not, as Sunflower suggests, impose a requirement to serve load in real-time only with firm power.⁵⁸ SPP asserts that this section also does not require that, in real-time, load-serving members serve their load with the same capacity resources that were used to satisfy the SPP Criteria capacity margin requirements.⁵⁹ SPP concludes that had it intended to prescribe a firm resource obligation in connection with its resource plan procedures, it would have done so by specific reference to "firm resources" in section 2.2 of the SPP Criteria.⁶⁰

33. SPP asserts that Sunflower offered no evidence that Kansas Municipal's resource profile, as reflected in Kansas Municipal's resource plan, created a supply deficiency at the balancing authority area level.⁶¹ SPP reiterates that the language of section 2.4.2 of the SPP Criteria confirms that SPP's evaluation of resources plans was properly

⁵⁵ *Id.* at 5.

⁵⁶ SPP June 27, 2014 Answer at 5.

⁵⁷ *Id.*

⁵⁸ *Id.* at 6.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8-9.

⁶¹ *Id.* at 10.

conducted on a balancing authority area basis.⁶² According to SPP, the MMU also followed the Tariff when finding that, to the extent Kansas Municipal had deficiencies, such deficiencies did not contribute to an emergency condition and therefore no Tariff violation occurred.

34. SPP asserts that while Sunflower is correct that section 7.1 of the EIS Market Protocols requires SPP to review each market participant's load forecasts, resource plans, ancillary service plans, and schedules to determine whether each market participant has "inadequate supply," Sunflower fails to recognize that only when a particular *balancing authority area* has inadequate supply would SPP contact the market participant to correct the inadequacy.⁶³ Thus, SPP concludes that it properly enforced its market rules and that no further action or reporting was required by the MMU.⁶⁴

Commission Determination

35. We find that Sunflower has failed to meet its burden of proof to demonstrate that Kansas Municipal lacked sufficient firm power to serve the Garden City load. We also find that Sunflower has failed to demonstrate that Kansas Municipal and SPP violated the resource plan obligations in the Tariff.⁶⁵ As demonstrated by Kansas Municipal and its expert witness, Kansas Municipal had four firm resources in place during January and February 2014 to serve Garden City: (1) 2.3 MW of firm capacity and energy from Western; (2) 10 MW of firm capacity and energy purchases from the KCP&L Spearville

⁶² *Id.* at 11 (citing section 2.4.2(a) of the SPP Criteria which provides that: "If the Transmission Provider determines there is an Energy Obligation Deficiency or Energy Obligation Excess in any hour of the next Operating Day within a Balancing Authority Area, the Transmission Provider shall immediately notify those Market Participants within that Balancing Authority Area that have an Energy Obligation Deficiency or Energy Obligation Excess, as applicable, in that hour.").

⁶³ *Id.* at 14.

⁶⁴ *Id.*

⁶⁵ We have no statutory obligation to enforce the terms of the EIS Market Protocols which are not part of a tariff filed with the Commission. *See New York Indep. Sys. Operator, Inc.*, 118 FERC ¶ 61,216 (2007) (finding no statutory obligation to enforce New York Independent System Operator's Installed Capacity Manual's terms); *see also Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810 (D.C. Cir. 2007) (an unfiled manual is insufficient to support a finding that the public utility complied with section 205(c) and is therefore unenforceable).

Wind Farm; (3) 16 MW of firm capacity and energy purchases from the Kansas Power Pool; and (4) 20 MW of firm capacity and energy purchased from Associated Electric Cooperative.⁶⁶ We find such resources to be sufficient to meet the resource plan obligations set forth in section 2.2 of the then-effective Attachment AE. Moreover, we find no requirement that each of these resources was required to be listed in the NITSA at the time of filing.⁶⁷ In fact, as pointed out by Kansas Municipal,⁶⁸ these resources could not be added to the NITSA without first going through the SPP aggregate study process.⁶⁹

36. We find compelling that the SPP MMU found no violation of the Tariff in its review of the supply arrangement and that it found no evidence that Kansas Municipal's behavior was having a negative impact on the EIS Market. The SPP MMU maintained that there is no "firm power requirement in the satisfaction of the energy obligation."⁷⁰ Thus, while Kansas Municipal was required to have the necessary firm power in place to serve Garden City, it was not required to use those resources to serve the load.⁷¹ In fact, the Tariff explicitly permits the use of economic energy purchases from non-designated resources to serve network load.⁷²

⁶⁶ Kansas Municipal April 30, 2014 Answer at 4 and Saitta Aff. Ex. KME-1 ¶ 6.

⁶⁷ *See, e.g.*, Tariff, § 30.2 (permitting network customers to change or designate new network resources upon notice to the transmission provider).

⁶⁸ Kansas Municipal April 30, 2014 Answer at 12.

⁶⁹ Tariff, § 30.2 ("Requests for new or changed Network Resources having a term of one year or longer associated with Network Integration Transmission Service shall be part of the Aggregate Transmission Service Study as specified in Attachment Z1.").

⁷⁰ Sunflower Reply Ex. 16 at 1.

⁷¹ Section 28.1 of the Tariff provides that network integration transmission service is a transmission service that allows network customers to efficiently and economically utilize their network resources (as well as other non-designated generation resources) to serve their network load.

⁷² *See* Preamble to Part III of the Tariff, providing that network integration transmission service also may be used by the network customer to deliver economy energy purchases to its network load from non-designated resources on an as available basis without additional charge.

37. We also find that Sunflower has failed to demonstrate that Kansas Municipal lacked adequate installed capacity to meet the requirements of section 2 of the SPP Criteria. As noted by Kansas Municipal in its answer, it has planned sufficient firm resources to serve Garden City's peak load for the entire year and does not have the obligation to share its power supply plans with Sunflower.⁷³

38. Moreover, contrary to Sunflower's claims, we find no provision in the Tariff or the SPP Criteria prohibiting Kansas Municipal's use of short-term firm service to serve the Garden City load for the period of January and February 2014. The Tariff states: "The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads. . ." ⁷⁴ Section 2.1.12 of the SPP Criteria defines Firm Transmission Service as "the service defined in any applicable transmission service provider tariff." The Tariff and the SPP Criteria provide no delineation as to whether the firm service must be short-term or long-term.

39. Sunflower raises for the first time in its answer its allegation that Kansas Municipal has not established the deliverability of the Kansas Power Pool and Associated Electric Cooperative resources. Sunflower, as the complainant, must establish the facts necessary to support its complaint in the complaint itself rather than through subsequent unauthorized pleadings.⁷⁵ In any event, we find that Sunflower has not substantiated its allegations as they pertain to the deliverability of the Kansas Power Pool and Associated Electric Cooperative resources, and therefore, we deny Sunflower's claims on this point.

2. Dynamic Scheduling Requirements

40. Kansas Municipal contends that it did not violate NERC Reliability Standard BAL-005 R12.3 because that standard requires *balancing authorities* to install metering equipment where dynamic schedules are implemented between two balancing authorities. Kansas Municipal maintains that telemetering is a matter between Sunflower, as the balancing authority, KCP&L, as the generation owner and other balancing authority, and

⁷³ Kansas Municipal April 30, 2014 Answer at 12.

⁷⁴ See Tariff, § 28.3.

⁷⁵ *330 Fund I, L.P. v. N.Y. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,151, at P 12 (2009). We note that, while a complainant may not refine its complaint through an answer to an answer, a complainant may subsequently amend or supplement its complaint, but this would entitle the respondent to submit an additional answer. 18 C.F.R. § 385.206(f) (2013).

perhaps, SPP as the regional transmission organization and Regional Entity. Kansas Municipal explains that it does not qualify as any of these entities and that it does not have the responsibility or the ability to install telemetering equipment at a plant that it neither owns nor operates.⁷⁶

41. Kansas Municipal also characterizes as “nonsense” Sunflower’s claim that Sunflower must be compensated because it incurred “dynamic scheduling costs” associated with the Spearville Wind Farm.⁷⁷ Kansas Municipal states that the resource is located inside of Sunflower’s balancing area, and Kansas Municipal produces a tag every day, which Sunflower and SPP approved. Kansas Municipal further states that it informed Sunflower that it was receiving the first 10 MW produced out of the Spearville Wind Farm and there is nothing more within Kansas Municipal’s purview that it could have done.

42. SPP describes as baseless Sunflower’s arguments that SPP violated SPP and NERC rules related to dynamic scheduling. SPP contends that Sunflower is unable to identify a single Tariff provision or NERC requirement that imposes an obligation on SPP to install or direct the installation of real-time metering equipment prior to the implementation of dynamic scheduling from the KCP&L balancing authority area.⁷⁸ SPP also contends that Sunflower should have denied the e-tag associated with the schedule if Sunflower believed the required telemetry was not in place and Sunflower was left without adequate information to process the schedule. According to SPP, by failing to do so, Sunflower essentially affirmed that it had received all required information and that the schedule could be implemented.⁷⁹

43. In response, Sunflower contends that it had discussions with both Kansas Municipal and SPP about the lack of real-time metering for the Spearville Wind Farm. Sunflower states that, in those discussions, SPP recognized that the lack of electric real-time data for this resource was a problem for Sunflower because it was being dynamically scheduled. Sunflower maintains that its efforts and SPP’s efforts to contact Kansas Municipal independently to resolve the real-time data problem were rebuffed.⁸⁰

⁷⁶ Kansas Municipal April 30, 2014 Answer at 14.

⁷⁷ *Id.* at 17.

⁷⁸ SPP April 30, 2014 Answer at 10.

⁷⁹ *Id.* at 11.

⁸⁰ Sunflower Reply at 34-35.

44. SPP responds that it is dispositive that, at all times relevant to the Complaint, neither SPP nor Kansas Municipal was the balancing authority area operator. Accordingly, SPP asserts that during the relevant time period, SPP was not responsible for metering arrangements associated with dynamic scheduling under either the Tariff or relevant NERC Reliability Standards. Thus, SPP contends that it was not required or authorized to compensate Sunflower for any dynamic scheduling undertaken in support of Kansas Municipal's load requirements.⁸¹

Commission Determination

45. We find that neither Kansas Municipal nor SPP could be in violation of Reliability Standard BAL-005 R12.3, because neither entity was registered as a balancing authority with NERC during the relevant time period.⁸² In addition, we find that Sunflower has not substantiated that SPP or Kansas Municipal assumed any responsibilities to effectuate the dynamic transfer that they are alleged to have violated. The provisions of the then-existing Tariff relied upon by Sunflower do not place the obligation for installation or operation of metering equipment on SPP or Kansas Municipal. Thus, we deny Sunflower's claims that Kansas Municipal and SPP violated SPP and NERC rules because delivery of the 10 MW of wind energy did not meet dynamic scheduling requirements.

3. Compensation

46. Kansas Municipal and SPP both assert that Sunflower was fully compensated for imbalance energy produced by Sunflower and consumed by Garden City by the operation of the EIS Market and market settlements.⁸³ SPP also argues that there is no basis under the Tariff for passing through the additional ancillary service charges that Sunflower claims it incurred as a result of the dynamic schedule.⁸⁴ SPP claims that, while Sunflower argues that Kansas Municipal should be required to compensate Sunflower for

⁸¹ SPP June 27, 2014 Answer at 16.

⁸² Reliability Standard BAL-005 R12.3 requires balancing authorities to install metering equipment where dynamic schedules or pseudo-ties are implemented between two or more balancing authorities to deliver the output of jointly owned unit or to serve remote load.

⁸³ Kansas Municipal April 30, 2014 Answer at 17; SPP April 30, 2014 Answer at 11-12.

⁸⁴ SPP April 30, 2014 Answer at 12.

capacity that Sunflower was required to provide to backstop Kansas Municipal's service to Garden City, Sunflower fails to point to any provision of section 2 of the SPP Criteria, the EIS Market Protocols or the Tariff that supports its right to such compensation or to SPP's authority to invoice Kansas Municipal for such charges.⁸⁵

47. Sunflower responds that it has not been compensated for the many services it provided Kansas Municipal to support Kansas Municipal's service to Garden City.⁸⁶ Sunflower asserts that it is entitled to payment pursuant to its NOA, a Commission-sanctioned contract offered under the Tariff, Commission policy and precedent, and basic principles of justice and fair play.⁸⁷

Commission Determination

48. We deny Sunflower's claim to compensation, beyond its energy imbalance charges previously settled through the EIS Market. We agree with SPP that Sunflower fails to point to any provision in the Tariff or the SPP Criteria that supports Sunflower's right to additional compensation or to SPP's authority to invoice Kansas Municipal for such charges. In particular, we find no merit in Sunflower's claim that had Kansas Municipal taken service under the Wholesale Member Tariff to obtain capacity to serve Garden City load, those charges would have been \$4,255,951, and therefore, Sunflower is owed that amount. Thus, we deny Sunflower's claim to any compensation beyond what it has received pursuant to energy imbalance settlements under the EIS Market.

⁸⁵ *Id.* at 7.

⁸⁶ Sunflower Reply at 33.

⁸⁷ *Id.* at 36 (citing 16 U.S.C. § 825(h) and *Investigation of Wholesale Rates of Public Utility, Sellers of Energy and Ancillary Services in the Western Market Systems Coordinating Council*, 135 FERC ¶ 61,176, at P 41 (2011)).

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.