

152 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Sunflower Electric Power Corporation

Docket No. EL14-38-001

v.

Kansas Municipal Energy Agency and
Southwest Power Pool, Inc.

ORDER DENYING REHEARING

(Issued September 17, 2015)

1. On July 17, 2014, the Commission issued an order denying a complaint filed by Sunflower Electric Power Corporation (Sunflower) against Kansas Municipal Energy Agency (Kansas Municipal) and Southwest Power Pool, Inc. (SPP).¹ On August 15, 2014, Sunflower sought rehearing, or in the alternative, clarification of the Complaint Order (Rehearing Request). We deny Sunflower's Rehearing Request, as discussed below.

I. Background

2. On April 10, 2014, as amended April 11, 2014, Sunflower filed a complaint consisting of two principle allegations.² First, it alleged that a power supply arrangement between Kansas Municipal and Garden City, Kansas (Garden City) was 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). According to the complaint, Kansas Municipal's firm capacity and firm transmission were insufficient to supply Garden City during January and February 2014.

¹ *Sunflower Elec. Power Corp.*, 148 FERC ¶ 61,022 (2014) (Complaint Order).

² Sunflower Electric Power Corporation, Formal Complaint, Docket No. EL14-38-000 (Apr. 10, 2014); Sunflower Electric Power Corporation, Corrected Complaint (Apr. 11, 2014) (collectively, Complaint).

3. Second, Sunflower alleged that Kansas Municipal's delivery of wind energy to Garden City did not meet dynamic scheduling requirements under section 2.12 of the SPP Criteria. In addition, Sunflower alleged that by failing to comply with dynamic scheduling requirements, Kansas Municipal violated the North American Electric Reliability Corporation (NERC) Reliability Standard BAL-005 R12.3.

4. In the Complaint Order, the Commission held that Sunflower, as the complainant, failed to meet its burden of proof with regard to each of its allegations.³ The Commission found that Sunflower provided insufficient evidence to demonstrate that, during January and February 2014, Kansas Municipal's four firm resources were insufficient to meet Kansas Municipal's obligations.⁴ In addition, the Commission found that: (1) there was no network integration transmission service agreement (NITSA) violation due to the fact that the resources were not part of the NITSA, since the transmission reservations were short-term; (2) the SPP Market Monitoring Unit's (MMU) finding of no violation of the Tariff or evidence that Kansas Municipal negatively affected the Energy Imbalance Service (EIS) Market was compelling; (3) Kansas Municipal was not required to serve Garden City load with its four firm resources; (4) Sunflower failed to demonstrate that Kansas Municipal lacked adequate installed capacity to meet the requirements of section 2 of the SPP Criteria; (5) contrary to Sunflower's claims, no Tariff provision prohibited Kansas Municipal from using short-term firm transmission service; and (6) Sunflower had not substantiated its claims that Kansas Municipal could not deliver its resources.⁵

5. In addition, with regard to dynamic scheduling, the Commission held that neither Kansas Municipal nor SPP could violate the Reliability Standard in question, because neither entity was registered as a Balancing Authority with NERC during the relevant time period.⁶ Thus, the Commission denied Sunflower's claim, finding that Sunflower failed to establish that either Kansas Municipal or SPP had any obligation with regard to dynamic scheduling.⁷

6. Finally, the Complaint Order denied Sunflower's request for additional compensation, finding that Sunflower failed to establish that SPP had any authority to

³ Complaint Order, 148 FERC ¶ 61,022 at P 15.

⁴ *Id.* P 35.

⁵ *Id.* PP 35-39.

⁶ *Id.* P 45.

⁷ *Id.*

invoice Kansas Municipal for any such charge based upon any provision in the Tariff or the SPP Criteria.⁸

II. Rehearing Request

7. In its Rehearing Request, Sunflower argues that the Complaint Order was arbitrary and capricious because the Commission failed to address “a multitude of Sunflower’s arguments regarding, *inter alia*, the deficiencies of [Kansas Municipal’s] resources used to serve the Garden City load,” SPP’s and Kansas Municipal’s violations of the SPP Tariff, SPP Criteria, and “applicable rules.”⁹ Sunflower’s principal arguments on rehearing are that the Commission erred in: (1) finding that Sunflower failed to meet its burden of proof in the Complaint; (2) determining that the Kansas Municipal/Garden City supply arrangements did not violate the Tariff and applicable rules; (3) finding that Kansas Municipal and SPP did not violate NERC rules regarding dynamic scheduling; (4) failing to find that Sunflower was entitled to compensation; and (5) failing to address Sunflower’s showing that the deficient service from Kansas Municipal to Garden City persists and poses serious reliability problems. Additionally, Sunflower requested clarification on a number of issues.

8. Sunflower argues that the Commission erred by accepting Kansas Municipal’s description of its firm resources at face value.¹⁰ Sunflower contends that the Commission erred by failing to find that the Kansas Power Pool (KPP) resource was not firm because it lacked a firm transmission path.¹¹ According to Sunflower, “WPEK.KPP” is a load point in Sunflower’s legacy Balancing Authority area and the only sources of power associated with this load point are behind-the-meter municipal generation resources at Kingman, Kansas and Attica, Kansas and a 12.5 MW wind farm in Greensburg, Kansas. Sunflower further maintains that Kansas Municipal improperly designated WPEK.KPP as a generation point instead of a load.¹² Sunflower argues that, in the Complaint Order, the Commission did not consider Sunflower’s allegation that the capacity Kansas Municipal claimed to have available at that WPEK.KPP point was improbable.¹³ Sunflower argues that the Commission did not give reasoned consideration to Sunflower’s claims that the Greensburg wind farm “could not supply much, if any accredited capacity due to its small

⁸ *Id.* P 48.

⁹ Rehearing Request at 2.

¹⁰ *Id.* at 9.

¹¹ *Id.* at 10.

¹² *Id.* at 11.

¹³ *Id.* at 12.

size.”¹⁴ Additionally, Sunflower states that the Commission erred in failing to find that the Associated Electric Cooperative (AECI) resource was not firm because SPP never performed a system impact study on the AECI’s Flat Ridge 2 wind farm source.¹⁵ Sunflower also alleges that the Commission did not address Sunflower’s showing that certain resources had not been scheduled and therefore could not be considered firm, or that the lack of deliverability of the KPP resource and the relatively low firm capacity of the AECI resource caused Kansas Municipal to fail to meet section 2 of the SPP Criteria.¹⁶ Sunflower adds that the Commission incorrectly found that Kansas Municipal was allowed to use short-term firm transmission service during the relevant period.¹⁷

9. Sunflower also contends that the Commission erred in determining that the Kansas Municipal/Garden City supply arrangement did not violate the SPP Tariff and other applicable rules. Sunflower alleges that the Commission erroneously relied on the independent MMU in its findings.¹⁸ Sunflower further maintains that the Commission erred in failing to find that SPP improperly administered its Tariff.¹⁹ According to Sunflower, the Commission also erred in failing to find that Kansas Municipal and SPP violated their respective resource plan obligations under section 2.2 of the then-effective Attachment AE of the Tariff.²⁰

10. Sunflower argues that the Commission erred in finding that Kansas Municipal and SPP did not violate NERC rules regarding dynamic scheduling. Sunflower contends that the Commission failed to give adequate consideration to Sunflower’s showing that Kansas Municipal and SPP violated section 2.12 of attachment AE of the Tariff, SPP’s EIS Market Protocols, and NERC Reliability Standard BAL-005 R12.3.²¹ According to Sunflower, these standards required the installation of certain telemetered equipment, and

¹⁴ *Id.*

¹⁵ *Id.* at 13-15.

¹⁶ *Id.* at 15-17.

¹⁷ *Id.* at 17-21.

¹⁸ *Id.* at 21-23.

¹⁹ *Id.* at 23-25.

²⁰ *Id.* at 25.

²¹ *Id.* at 26-27. These provisions are discussed in detail *infra*.

Sunflower demonstrated that neither Kansas Municipal nor SPP installed or operated the equipment.²²

11. Sunflower argues that the Commission incorrectly found that Sunflower is not entitled to additional compensation, because the Commission failed to provide reasoned explanation as to why the Tariff does not provide cost recovery.²³ Sunflower claims to have suffered tangible economic injury by providing backstop service for Kansas Municipal's non-firm energy purchases and from Kansas Municipal's improper reliance on the EIS market.²⁴ Sunflower also argues that it suffered injury arising from dynamic scheduling costs related to the lack of certain telemetered equipment.²⁵ Sunflower adds that not granting compensation would result in an inequitable result similar to that found present in *Keyspan-Ravenswood*.²⁶

12. Sunflower also argues that the Commission failed to address Sunflower's argument that deficient Kansas Municipal service to Garden City persists and poses a serious reliability problem.²⁷

13. Finally, if the Commission does not grant rehearing, Sunflower submits the following six alternative requests for clarification: (1) a Load Serving Member's resource may be deemed to be "Firm Power" or "Firm Capacity" under section 2 of the SPP Criteria even if the Load Serving Member lacks a complete transmission path to deliver power from the resource's source to the sink; (2) a Load Serving Member may satisfy the requirements of section 2 of the SPP Criteria for a given load with a resource that is simultaneously listed as a Designated Resource on another Load Serving Member's NITSA associated with a different load; (3) section 12 of the SPP Criteria need not be used to determine the amount of accredited firm capacity that may be attributed to a wind capacity contract or, alternatively, if section 12 of the SPP Criteria must be used, the load under examination in the accreditation process need not be the same load to which power from the resource is being delivered; (4) impact studies of resources are not needed to support firm deliverability under the SPP Tariff and under section 2 of the SPP Criteria; (5) a Load Serving Member may meet its firm resource obligations with up to

²² *Id.* at 26.

²³ *Id.* at 27-29.

²⁴ *Id.* at 27-28.

²⁵ *Id.* at 28.

²⁶ *Id.* at 28-29 (citing *Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 810 (D.C. Cir. 2007)).

²⁷ *Id.* at 30-31.

100 percent of resources associated with short-term firm transmission service, and the 25 percent limitation contained in section 2.2(c)(ii) of the SPP Criteria does not preclude such an arrangement; and (6) a Load Serving Member with multiple, geographically dispersed loads may meet its deliverable capacity requirements under section 2 of the SPP Criteria by delivering enough capacity to meet its total aggregate responsibility in the balancing area, even if some or all of the Load Serving Member's resources are not deliverable to each of the loads the Load Serving Member is serving.²⁸

III. Discussion

14. As discussed below, we deny Sunflower's Rehearing Request and reject Sunflower's requests for clarification.

A. Burden of Proof

15. Section 206 of the Federal Power Act (FPA) places the burden of proving a complaint on the complaining party.²⁹ As the complainant, Sunflower needed to show that Kansas Municipal's or SPP's practices were unjust, unreasonable, unduly discriminatory, or preferential.³⁰

16. The Commission has held that the party with the burden of proof must meet its burden by a preponderance of the evidence.³¹ While the Commission gave due consideration to the many allegations Sunflower proffered, Sunflower ultimately failed to meet its burden by the preponderance of the evidence. As discussed below, the Commission reconsidered all of the relevant factors discussed in the Complaint Order in light of the arguments Sunflower presented on rehearing; nonetheless, because the Commission properly weighed Sunflower's evidence against the evidence provided by Kansas Municipal and SPP, we conclude that the finding in the Complaint Order that Sunflower failed to meet its burden of proof was not in error.

²⁸ *Id.* at 7.

²⁹ "In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant." 16 U.S.C. § 824e(b) (2012) (section 206). The Commission bears the burden of proof under section 206 *only* when it initiates its own action, which is not the case here.

³⁰ *FirstEnergy Service Co. v. FERC*, 758 F.3d 346, 352 (2014).

³¹ *See Town of Highlands v. Nantahala Power and Light Co.*, Opinion No. 139, 19 FERC ¶ 61,152, at 61,276 (1982) (finding that a preponderance of evidence did not support a finding for complainant).

17. Because Sunflower failed to meet its burden of proof to demonstrate that Kansas Municipal lacked sufficient firm resources to serve the Garden City load, the Commission did not err in accepting Kansas Municipal's description of its own resources.³² While Sunflower's evidence was at odds with Kansas Municipal's evidence, we find that Sunflower's evidence was insufficient to overcome Kansas Municipal's evidence, as discussed in further detail below.

18. Sunflower alleges that Kansas Municipal's AECI resource is overstated, citing as proof section 12.1.5.3(g) of the SPP Criteria³³ and Sunflower's experiences with its own wind generation. The burden of proof lies with Sunflower to offer specific facts that the AECI resource should be considered less than stated. However, Sunflower did not submit the type of resource-specific information necessary to prove that the firm capacity of the AECI resource is less than what Kansas Municipal represented.

19. Sunflower alleges that the Commission erred by failing to recognize that Kansas Municipal's AECI resource could not be firm because SPP never performed a system impact study on the Flat Ridge 2 wind farm source. In the Complaint Order, the Commission noted that Sunflower had raised for the first time in its answer its allegation that Kansas Municipal had not established the deliverability of the KPP and AECI resources, and found that Sunflower, as the complainant, must establish the facts necessary to support its complaint in the complaint itself rather than through subsequent

³² Complaint Order, 148 FERC ¶ 61,022 at P 35.

³³ To determine the net capability of wind, section 12.1.5.3(g) of the SPP Criteria states:

- i. Assemble up to the most recent ten years, with a minimum of the most recent five years, of hourly net power output (MW) data, measured at the system interconnection point. Values may be calculated from wind data, if measured MW values are not yet available. Wind data correlated with a reference tower beyond fifty miles is subject to Generation Working Group approval. For calculated values, at least one year must be based on site specific wind data.
- ii. Select the MW values occurring during the top 10% of load hours for the SPP region for each month (*e.g.*, 72 hours for a typical 30 day month).
- iii. Select the MW value that can be expected from the plant at least 85% of the time.
- iv. A seasonal or annual net capability may be determined by selecting the appropriate monthly MW values corresponding to the host control area's peak load month of the season of interest.
- v. The net capability calculation shall be updated at least once every three years.

unauthorized pleadings. However, the Commission also found, that, in any event, Sunflower had not substantiated its allegations as they pertain to the deliverability of the KPP and AECI resources. Sunflower's only evidence to support its allegation that the AECI resource could not be firm is an affidavit from its Vice President of Power Supply and Delivery. At the same time, Kansas Municipal proffered employee affidavits affirming that the resource was firm.³⁴ Absent anything more specific, Sunflower's affidavit, when weighed against Kansas Municipal's affidavits, is insufficient to satisfy Sunflower's burden of proof to show that the AECI resource was not firm. Thus, the Commission did not err in denying this claim.

20. Sunflower also states that the other parties did not refute its claims on this sub-issue. Although Kansas Municipal may have been silent regarding the system impact study, Kansas Municipal specifically represented that the AECI resource was firm. Kansas Municipal's silence does not require the Commission to accept Sunflower's claims or conclusions at face value. Because Kansas Municipal represented that the AECI resource ultimately was firm, under the totality of the circumstances, we do not find Kansas Municipal's silence on this sub-issue to be fatal. Additionally, as discussed below, a system impact study was not needed for these resources because Kansas Municipal used short-term firm transmission. Therefore, Sunflower's claim regarding the absence of a system impact study does not require us automatically to find that the AECI resource was not firm.

21. Sunflower argues that the Commission erred by accepting the capacity of Kansas Municipal's KPP resource, which Sunflower alleges is improperly designated. Sunflower states that the source designation WPEK.KPP is a load point and not a power source. We note that SPP performed system impact studies on WPEK.KPP, which can be found on the SPP Open Access Same-Time Information System (OASIS).³⁵ The presence of WPEK.KPP on the SPP OASIS indicates that SPP considers WPEK.KPP a valid source point because it has performed a system impact study from this point to the Garden City load. Consequently, we find that Sunflower has not supported its allegation that the point is improperly designated, and we deny its request for rehearing on this issue.

³⁴ Kansas Municipal Energy Agency, Answers, Docket No. EL14-38-000, Ex. KME-2 at 2-3; *see generally* Ex. KME-1 (filed Apr. 30, 2014).

³⁵ The results of impact studies performed by SPP can be found on the SPP OASIS. Southwest Power Pool, *System Impact Study SPP-2013-021 for Transmission Service Requested by KMEA From WPEK.KPP to SECI-KMEA-GARC for a Reserved Amount of 16 MW for 1/1/2014 – 10/1/2014* (Dec. 2013), http://sppoasis.spp.org/documents/swpp/transmission/studies/files/2013_Impact_Studies/SPP-2013-021.pdf.

22. We also disagree with Sunflower's assertion that the Commission did not address Sunflower's speculation that it was "improbable" that the WPEK.KPP resource actually consisted of 16 MW of firm capacity. On the contrary, in the Complaint Order, the Commission addressed this assertion and found it to be unavailing in view of the contravening evidence adduced by Kansas Municipal.³⁶ Not only did the Commission review Sunflower's speculations,³⁷ but it found that Sunflower had "failed to meet its burden of proof."³⁸ Sunflower's speculation about what is "improbable" regarding the Kansas Power Pool resource is insufficient to overcome Kansas Municipal's clear representation that it could deliver a 16 MW firm resource.³⁹ Moreover, Kansas Municipal contends that SPP has direct knowledge that this is a firm resource.⁴⁰

23. Likewise, Sunflower's allegations that the Commission erroneously relied on the MMU's findings are specious.⁴¹ The Commission weighed the MMU's findings and Sunflower's criticisms thereof and found the conclusions of the MMU, as the independent authority charged with monitoring SPP's Tariff, to be compelling evidence.⁴²

24. Sunflower alleges that the Commission erred by accepting Kansas Municipal's showing of its AECI and KPP wind resources and by not considering Sunflower's argument that Kansas Municipal's wind capacity should be reassessed and found to be lower than alleged. In light of Sunflower's burden of proof to demonstrate that Kansas Municipal's wind resources operate at a lower capacity, the Commission did not err in

³⁶ Complaint Order, 148 FERC ¶ 61,022 at P 35.

³⁷ *Id.* PP 24-25.

³⁸ *Id.* P 35.

³⁹ As previously noted in the Complaint Order, Kansas Municipal does not have an obligation to share its power supply plans with Sunflower. *Id.* P 37.

⁴⁰ Kansas Municipal and Garden City representatives traveled to SPP offices to explain their power supply plan to SPP staff on October 23, 2013; a conference call between SPP, KPP, and Kansas Municipal staff clarifying the requirements for KPP to sell capacity to Kansas Municipal was held on October 25, 2013; and a conference call between SPP, AECI, and Kansas Municipal staff clarifying the requirements for AECI to sell capacity to Kansas Municipal was held on November 20, 2013. Kansas Municipal Energy Agency, Answers, Docket No. EL14-38-000, Ex. KME-1 at 7 (filed Apr. 30, 2014).

⁴¹ Rehearing Request at 21-23.

⁴² *See* Complaint Order, 148 FERC ¶ 61,022 at P 36.

accepting Kansas Municipal's showing of the capacity of its resources. As discussed earlier, Kansas Municipal's showing may be at odds with Sunflower's, but Sunflower failed to meet its burden of proof, which required it to submit data in rebuttal sufficient to warrant the Commission rejecting Kansas Municipal's showing. Merely stating Sunflower's personal experience with wind resources does not rise to the level of proof sufficient to sustain the Complaint.⁴³

25. Sunflower believes that the Commission erred by failing to find that under section 2 of the SPP Criteria, Kansas Municipal's KPP and AECI resources were not firm. Sunflower argued that Kansas Municipal's AECI resource should be considered short-term firm capacity because Kansas Municipal used short-term firm transmission service.⁴⁴ The Commission addressed this issue in the Complaint Order and found that Kansas Municipal's arrangements were sufficient to meet the resource plan requirements of section 2.2 of then-effective Attachment AE.⁴⁵ Sunflower has failed to convince us on rehearing that the Commission erred in this regard.

26. Sunflower claims that the Commission erred by failing to address Sunflower's showing that Kansas Municipal failed to meet the requirements under section 2 of the SPP Criteria due to the lack of deliverability of the KPP resource and the low firm capacity of the AECI resource. However, the Commission in the Complaint Order addressed Sunflower's allegations regarding deliverability, and found that Sunflower had not substantiated its allegations.⁴⁶ Sunflower has failed to convince us on rehearing that the Commission's finding was in error.

27. Sunflower argues that the Commission's ruling on short-term firm transmission service was in error because it "cannot be reconciled" with SPP's aggregate study process requirements. However, the Commission found no such conflict. As the Commission stated in the Complaint Order, SPP's aggregate study process is required for long-term firm transmission service, which Kansas Municipal has not scheduled. Kansas Municipal used short-term firm transmission service, which the Commission found sufficient to meet its resource plan obligations.⁴⁷

⁴³ Sunflower failed to provide information specific to the operation of Kansas Municipal's wind farms sufficient to refute Kansas Municipal's representations.

⁴⁴ Sunflower Electric Power Corporation, Reply to Answers, Docket No. EL14-38-000, at 15-17 (filed May 28, 2014).

⁴⁵ Complaint Order, 148 FERC ¶ 61,022 at P 35.

⁴⁶ *Id.* P 39.

⁴⁷ *Id.* P 38.

28. We also reject Sunflower's argument that the *use* of short-term firm transmission violates the Tariff. As the Commission explained in the Complaint Order, "[t]he Tariff and the SPP Criteria provide no delineation as to whether the firm service must be short-term or long-term."⁴⁸ On its face, the Tariff does not support Sunflower's attempts to read-in a long-term firm requirement.⁴⁹ Kansas Municipal could not have violated the Tariff because the Tariff does not require Kansas Municipal to use long-term firm transmission service to support service to Sunflower.

29. Sunflower alleges that the Commission did not address its showing that the WPEK.KPP and AECI resources were not actually dispatched.⁵⁰ However, the Commission specifically stated that Kansas Municipal was not required to use those resources to serve load because it was also permitted to use economic energy purchases from non-designated resources.⁵¹

B. Kansas Municipal's Supply Arrangements

30. On rehearing, Sunflower contends that the Commission ignored its arguments regarding Kansas Municipal's available supply arrangements serving the Garden City load. However, contrary to Sunflower's claims, the Commission evaluated Sunflower's arguments, and found that Sunflower failed to meet its burden of proof regarding whether Kansas Municipal lacked firm power sufficient to serve the Garden City load.⁵²

31. Sunflower also alleges that the Commission erred in finding that Kansas Municipal and SPP did not violate their resource plan obligations under section 2.2 of then-effective Attachment AE.⁵³ However, in order to find a violation, the Commission

⁴⁸ *Id.*

⁴⁹ Furthermore, Sunflower's concern about the reliability impacts of a Load Serving Member being unable to renew short-term firm transmission contracts could also apply to long-term firm contracts. Thus, we find this argument unpersuasive.

⁵⁰ Rehearing Request at 24.

⁵¹ Complaint Order, 148 FERC ¶ 61,022 at P 36.

⁵² *Id.* P 35.

⁵³ Section 2.2 of then-effective Attachment AE states:

A Market Participant's Energy Schedule shall be submitted according to the following:

(a) Energy Schedules shall be submitted using the data formats and procedures defined in the Market Protocols.

(continued ...)

would have to accept Sunflower's earlier claims regarding deliverability as well as its many claims regarding Kansas Municipal's KPP and AECI wind resources. As discussed above, Sunflower failed to provide evidence to prove such a violation. The Commission correctly found that there were no violations arising from Kansas Municipal's supply arrangement or resource plan obligations for serving Garden City load.

C. Violations of NERC Rules Regarding Dynamic Scheduling Requirements

32. On rehearing, Sunflower argues that the Commission inadequately considered Sunflower's showing that section 2.12 of Attachment AN of the SPP Tariff (the agreement between SPP and SPP Balancing Authorities relating to the implementation of the EIS Market), SPP's EIS Market Protocols, and NERC Reliability Standard BAL-005 R12.3⁵⁴ required the installation of telemetered equipment capable of transmitting real-time data from the Spearville source.⁵⁵ We disagree. The Commission weighed Sunflower's arguments but found that they were not sufficiently substantiated, or did not apply.⁵⁶ The Commission stated that neither SPP nor Kansas Municipal had an obligation to install or operate the telemetering equipment under the then-existing

(b) Such hourly Energy Schedules must specify a megawatt per hour amount of energy at the source, which may include self provision of Transmission System losses, and a megawatt per hour amount of energy at the sink.

(c) Market Participants must associate Energy Schedules with a specified source and sink that are valid Settlement Locations in order for the Energy Schedules to be utilized in the calculation of Imbalance Energy.

(d) Market Participants that submit Energy Schedules are required to ensure that the total of the scheduled megawatt per hour injections submitted is equal to the total of the scheduled megawatt per hour withdrawals submitted plus self-provided Transmission System losses for through or out transactions per Attachment M.

(e) Market Participants that are parties to Grandfathered Agreements shall identify to the Transmission Provider which party is responsible for submission of Energy Schedules.

⁵⁴ NERC Reliability Standard BAL-005 R12.3 states: "Balancing Authorities shall install common metering equipment where Dynamic Schedules or Pseudo-Ties are implemented between two or more Balancing Authorities to deliver the output of Jointly Owned Units or to serve remote load."

⁵⁵ Rehearing Request at 26.

⁵⁶ Complaint Order, 148 FERC ¶ 61,022 at P 45.

Tariff.⁵⁷ Sunflower failed to provide any evidence to the contrary and has not persuaded us on rehearing that the Commission's finding was in error.⁵⁸

33. We affirm the finding in the Complaint Order that neither SPP nor Kansas Municipal could be in violation of BAL-005 R12.3 because neither was registered with NERC as a Balancing Authority during the time of the Complaint.⁵⁹ While Sunflower alleges that Kansas Municipal and SPP were aware of the metering problem, nothing before us indicates that either party was responsible for addressing the deficiency, because neither was a Balancing Authority during the relevant time period.

D. Sunflower is not Entitled to Additional Compensation

34. In the Complaint Order, the Commission denied Sunflower's claim to compensation beyond its energy imbalance charges previously settled through the EIS Market. The Commission found that Sunflower failed 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.⁶⁰ On rehearing, Sunflower argues that the Commission erred by not giving reasoned consideration to Sunflower's arguments for additional compensation.⁶¹ As discussed below, the Commission provided reasoned explanations to Sunflower's arguments. The Commission did not award Sunflower with additional compensation because Sunflower's claims were unsubstantiated.

35. Sunflower argues that because Kansas Municipal lacked sufficient firm power and "improperly" relied on the EIS market, Sunflower incurred expenses providing backstop service for which it should be compensated. However, as discussed above, Sunflower did not prove that Kansas Municipal lacked sufficient firm power. Moreover, Sunflower

⁵⁷ *Id.*

⁵⁸ Section 2.12 of Attachment AN simply defines a dynamic schedule, and does not clarify which party is responsible for installing equipment related to dynamic schedules. The then-existing EIS Market Protocols likewise only define what a dynamic schedule is, and not the responsible party. However, Reliability Standard BAL-005 R12.3 requires Balancing Authorities to install common metering equipment where dynamic schedules or pseudo-ties are implemented between two or more Balancing Authorities to deliver the output of a jointly-owned unit or to serve remote load.

⁵⁹ Complaint Order, 148 FERC ¶ 61,022 at P 45.

⁶⁰ *Id.* P 48.

⁶¹ Rehearing Request at 27.

failed to prove that Kansas Municipal improperly relied on the EIS market.⁶² If Sunflower provided such service, it did so without authorization under the SPP Tariff and at its own expense. Additional compensation would be inappropriate. Therefore, we deny rehearing on this issue.⁶³

36. Sunflower argues that it was injured by dynamic scheduling costs related to the missing telemetered equipment. However, as noted earlier, as the Balancing Authority, Sunflower failed to demonstrate that either Kansas Municipal or SPP was at fault for any possible dynamic scheduling issues. Thus we deny rehearing on this issue.

37. Sunflower cites *Keyspan-Ravenswood* for the proposition that the Commission should order compensation here. However, *Keyspan-Ravenswood* is inapposite. In that case, the petitioners successfully argued that the filed rate doctrine was violated because the Commission allowed an independent system operator to modify its tariff without making a filing at the Commission.⁶⁴ Additionally, because the independent system operator actually ordered the petitioner to provide reliability services, the court found that it was inequitable for the Commission to reject refunds on the grounds that reliability problems did not arise.⁶⁵ Unlike in *Keyspan-Ravenswood*, Sunflower failed to show that Kansas Municipal or SPP violated any statute or regulations. Further, it has not been shown that SPP, the independent system operator here, ever ordered Sunflower to undertake any reliability actions.

38. In arguing for compensation, Sunflower also cites section 3.1 of the Network Operating Agreement between SPP, Sunflower, and Kansas Municipal.⁶⁶ However, section 3.1 details how a network customer must operate its facilities under appropriate

⁶² Complaint Order, 148 FERC ¶ 61,022 at P 36.

⁶³ Furthermore, much of Sunflower's argument on this issue again confuses the burden of proof issues discussed above. Sunflower argues that the compensation issue was decided in error because the Commission did not explain why, under the Tariff, Sunflower was not entitled to compensation. Sunflower Rehearing Request at 28-29. However, as the complainant under section 206 of the FPA, Sunflower – and not the Commission – possesses the burden to show why it should be compensated under the Tariff.

⁶⁴ *Keyspan-Ravenswood*, 474 F.3d at 812-813.

⁶⁵ *Id.*

⁶⁶ Sunflower Electric Power Corporation, Reply to Answers, Ex. 17 at 1 (filed May 28, 2014).

industry standards; it does not deal with compensation.⁶⁷ Therefore, section 3.1 provides no basis for compensation.

39. Sunflower also cites section 12.0 of the same Network Operating Agreement;⁶⁸ however, while this section assigns cost responsibility, the costs outlined in section 12.0 do not include capacity charges.⁶⁹ Sunflower's capacity charge calculation would instead arise from its Wholesale Member Tariff. Because Kansas Municipal is not a member of the Sunflower Cooperative, Kansas Municipal is not required to pay under the Wholesale Member Tariff. Consequently, we deny Sunflower's request for rehearing on this issue.

E. System Reliability

40. Sunflower argues that the Commission ignored its showing that Kansas Municipal's supply inadequacy creates significant reliability issues, and that the Commission ignored Sunflower's showing that Kansas Municipal's service arrangement constitutes an ongoing violation of the non-discriminatory requirements of the FPA by "free-riding" at the expense of all other SPP members and customers in a manner that is unfair, unduly preferential, and economically inefficient. As discussed above, Sunflower has not presented any information to support its claims that Kansas Municipal had insufficient capacity to serve the Garden City load. Consequently, Sunflower failed to substantiate its allegations of significant reliability issues or "free-riding."⁷⁰

⁶⁷ Section 3.1 states: "The Network Customer must design, construct, and operate its facilities safely and efficiently in accordance with Good Utility Practice, NERC, SPP, or any successor requirements, industry standards, criteria, and applicable manufacturer's equipment specifications, and within operating physical parameter ranges (...) required by the Host Transmission Owner and Transmission Provider." *Id.*

⁶⁸ Rehearing Request at 29.

⁶⁹ Section 12.0 relates to the costs required to "implement the provisions" of the Network Operating Agreement. Costs included in section 12.0 include normal and extraordinary engineering, administrative and general expenses, and material and labor expenses.

⁷⁰ If Sunflower believes that a NERC Reliability Standard has been violated, or that serious, immediate reliability risks are posed to the Bulk Electric System, Sunflower should notify NERC via its hotline, reporting form, or by other means. The links to NERC and FERC's hotline information are, respectively: <https://www.nerc.net/hotline/> and <http://www.ferc.gov/enforcement/staff-guid/enforce-hot.asp>.

F. Requests for Clarification

41. Sunflower's requests for clarification generally fall outside the scope of the Complaint Order's holdings. The Complaint Order principally rested on Sunflower failing to meet its burden of proof. In contrast, Sunflower's requests for clarification are general questions regarding the operation of the SPP Tariff. The requests are not specific to the instant proceeding and are inappropriate to raise at this late stage of the proceeding. As a result, we deny Sunflower's requests for clarification.

The Commission orders:

The Rehearing Request is hereby denied as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Sunflower Electric Power Corporation
v.

Docket No. EL14-38-001

Kansas Municipal Energy Agency and
Southwest Power Pool, Inc.

(September 17, 2015)

MOELLER, Commissioner, *concurring*:

I concur that rehearing should be denied, based upon the entire record, and because the complainant did not meet its burden, especially with respect to establishing tariff violations.

Yet the premise of the complaint is one which this Commission needs to address: with the increased penetration of intermittent renewable sources being integrated into the grid, what is the value of base load power that needs to be available throughout the year in order to back up the power system when the wind stops blowing and the sun is unavailable? Moreover, how should this value be compensated? Without base load power to back up intermittent power, the grid would collapse. This Commission will need to provide adequate revenues to assure that base load power is available when needed.

Therefore, I respectfully concur.

Philip Moeller
Commissioner