121 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwest Power Pool, Inc. Docket Nos. ER06-451-025
ER07-1255-000
ER07-1255-001

ORDER REJECTING FILING

(Issued October 15, 2007)

1. On August 3, 2007, as amended on August 16, 2007, Southwest Power Pool, Inc. (SPP) filed revisions to its Open Access Transmission Tariff (OATT or tariff) to allow external generators to participate in SPP's real-time energy imbalance service market (EIS Market), as required by the Commission's March 20, 2006 order.[1] As discussed below, the Commission rejects the filing and directs SPP to file revised tariff sheets within 60 days of the date of this order.

I. Background

2. On January 4, 2006, SPP filed with the Commission proposed OATT revisions intended to implement the EIS Market and establish a market monitoring and market power mitigation plan. On March 20, 2006, the Commission issued an order accepting SPP's EIS Market (subject to numerous conditions) and, among other things, conditioned acceptance on SPP revising its tariff to allow participation by external generators in the EIS Market.[2] In that order, the Commission found that participation by external generators in SPP's EIS Market is critical to addressing issues of market power and bid insufficiency.[3] Indeed, the Commission required SPP to file the relevant tariff revisions

[1] *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, *order on reh'g*, 116 FERC ¶ 61,289 (2006) (March 20 Order).

[2] *Id*.

[3] *Id*. at P 227.

two months after the start of market operations to permit external generator participation in the EIS Market within six months of the start of the market, at the same time that system-wide bid caps would be removed.[4]

II. Instant Filing

3. After an approved delay,[5] on August 3, 2007, as amended on August 16, 2007,[6] SPP filed tariff revisions allowing external generators to participate in its EIS Market. Under SPP's proposal, external generators must establish a pseudo-tie mechanism, which SPP states is necessary to make external generators comparable to internal generators for purposes of participating in the EIS Market. SPP defines a pseudo-tie as a non-physical electrical interconnection point between the source and sink balancing authorities, whereby all or a portion of an external resource is electronically moved from an external balancing authority to another balancing authority that is located in SPP's market footprint. SPP establishes the requirement that external generators implement pseudo-ties, in part, through a *pro forma* tariff agreement that would be among SPP, the external generator, the source balancing authority, and the sink balancing authority within SPP.[7]

4. In addition to establishing the pseudo-tie mechanism, section 2 of the *pro forma* agreement provides that external generators are responsible for securing and paying for the transmission service necessary to deliver power to the sink balancing authority.[8]

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[4] *Id*. The EIS Market began on February 1, 2007.

[5] On April 3, 2007, the Commission issued a notice extending the compliance filing date to May 2, 2007. On May 1, 2007, the Commission further extended the compliance filing date to July 31, 2007, in response to SPP's motion for an extension of time.

[6] On August 16, 2007, SPP notified the Commission that in its initial filing it inadvertently replaced original text of section 2(c) of the new Attachment AO with the text from section 2(a). In its amended filing, SPP submitted the correct language for section 2(c) and reiterated its request for an October 2, 2007 effective date.

[7] SPP explains that it is proposing a *pro forma* agreement to address the operational issues of implementing pseudo-ties because external balancing authorities are not subject to the requirements of SPP's OATT, so only revising the OATT would not have been sufficient. The *pro forma* agreement will be new Attachment AO to SPP's OATT.

[8] Pursuant to section 3 of the *pro forma* agreement, external generators will be responsible for loss compensation to transmission providers to deliver their energy to SPP's EIS Market footprint.

External generators must secure firm service, except as provided in section 2(c) of the *pro forma* agreement, which permits external generators to use non-firm service, so long as external generators can provide a guarantee from the source balancing authority and any intermediary transmission service providers that they will only request an adjustment to the pseudo-tie values from the dispatch instructions under emergency conditions requiring immediate action due to the violation of an interconnection reliability operating limit.

5. Section 2(f) of the *pro forma* agreement also provides that the external generators are responsible for designing, constructing, operating, and maintaining systems and communications equipment to receive SPP deployment instructions in accordance with SPP EIS Market protocols. In addition, section 2(g) requires external generators to design, construct, operate and maintain, at the external generators' expense, the real-time and historical systems and communications equipment necessary to provide the source and sink balancing authorities with the corresponding real-time pseudo-tie value.

6. Also pursuant to section 2(m), if the external generator or the source balancing authority deviate from the anticipated real-time pseudo-tie value, the external generator is responsible for any costs incurred by the sink balancing authority as a result of the deviation, including any cost associated with the sink balancing authority's request for assistance from the SPP Reserve Sharing Group. Failure by the external generator to provide real-time pseudo-tie values in a timely manner and consistent with the SPP dispatch instruction constitutes a basis for immediate suspension of the agreement by the source or sink balancing authority. The external generator is obligated to remedy the cause of the failure prior to resumption of participation in the EIS Market. In the event of two suspensions within a 30-day period, the agreement may be terminated at the sole discretion of the source or sink balancing authority.

7. Pursuant to section 4, external generators are required to compensate the source and sink balancing authorities for any and all reasonable implementation and operations related costs borne by the balancing authorities as a result of the agreement.

8. SPP notes that several of the provisions in the *pro forma* agreement subject external generators to different terms and conditions than those applied to internal generators, but SPP argues that this does not present a problem because the Federal Power Act (FPA) does not prohibit discrimination, only undue discrimination. SPP argues that in this instance, the discrimination is not undue because internal and external generators are not similarly situated. SPP states that the Commission has previously accepted tariff provisions that treat internal and external generators differently based on

their dissimilar operating characteristics.[9] SPP further asserts that under the applicable legal standard, SPP is only required to demonstrate that its proposal is reasonable and SPP contends its tariff revisions meet this standard.

9. SPP also modified certain sections of Attachment AE to its OATT to accommodate participation in the EIS Market by external generators.[10] Among other changes, SPP added the following limitations to section 4.1(b) of Attachment AE: (i) the total dispatch instructions of external resources may not exceed the SPP Contingency Reserve Requirement for the Operating Day,[11] and (ii) the total dispatch instructions of external resources sinking in an individual SPP balancing authority area may not exceed the capacity of the largest generation resource within that balancing authority area.

10. SPP states that all of the material revisions to its OATT have been vetted through the SPP stakeholder process, with all interested entities able to participate in the development and approval of the revisions. SPP contends that this vetting should provide a presumption that the filing is reasonable. SPP requests an effective date of October 2, 2007. SPP explains that while its EIS Market systems for external generation are not expected to be in place until March 1, 2008, SPP will have to negotiate the *pro forma* agreement proposed in the instant filing necessitating an earlier effective date.

III. Notice of Filing, Interventions and Protests

11. Notice of SPP's filing was published in the *Federal Register*, 72 Fed. Reg. 46,619 (2007), with interventions and protests due on or before August 24, 2007, 2007. Notice of SPP's corrected filing was published in the *Federal Register*, 72 Fed. Reg. 50,355 (2007), with interventions and protests due on or before September 6, 2007. Western Farmers Electric Cooperative, the East Texas Cooperatives, Dogwood Energy LLC, Union Power Partners, L.P, and Reliant Energy, Inc. filed timely motions to intervene.

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[9] SPP cites to *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 207 (2006) (finding that internal and external generators were not similarly situated because imports could not be dispatched on a five-minute basis, while internal resources could).

[10] Attachment AE contains the provisions detailing SPP's EIS Market.

[11] SPP's Minimum Daily Contingency Reserve Requirement is equal to the generating capacity of the largest unit scheduled to be online. Normally, a second Contingency Reserve will also be added that is equal to half of the next largest generating unit scheduled to be online within each SPP Reserve Sharing Group each day. SPP imposes these Contingency Reserve Requirements on its Reserve Sharing Groups to ensure that capacity resources are available to use as backup in the case of a contingency within the group, such as the complete loss of a generating unit. *See* SPP's FERC Electric Tariff, Fifth Revised Volume No. 1, section 6.

Entergy Services Inc. (Entergy), Lafayette Utilities System of Lafayette, Louisiana (Lafayette), Missouri Joint Municipal Electric Utility Commission (MJMEUC) and the Oklahoma Municipal Power Authority (OMPA) filed motions to intervene and protests. On September 11, 2007, SPP filed an answer to the protests. On September 26, Entergy filed an answer to SPP's answer. On October 11, 2007, SPP filed an answer to Entergy's answer.

12. In its protest, Lafayette first argues that SPP's proposal imposes significant practical and financial obstacles that will deter external generator participation in the EIS Market.[12] Specifically, Lafayette contends that pseudo-ties are more appropriate for long-term arrangements than for short-term opportunity sales into the real-time EIS Market because implementing pseudo-ties will require significant financial investment by the external generator in communications, metering, and telemetering equipment. Lafayette further asserts that external generators will be unable to reasonably transact with many of the balancing authorities necessary to implement the pseudo-ties because, as competitors, these balancing authorities have the incentive to prevent external generators from selling in the EIS Market.

13. Lafayette also argues that external generators will be deterred from market entry because they are required to ensure firm deliveries. Lafayette argues that adding the cost of either firm transmission or backup generation service to the cost of sales into a non-firm market will render the price of an external generator's product uncompetitive. Lafayette also objects to assigning all of the costs of implementing pseudo-ties to external generators. Lafayette argues that external generators should not bear all of the implementation costs because they are not the only parties to benefit from external generator participation in the EIS Market. Lafayette contends that SPP's consumers will enjoy lower prices as a result of a more competitive market. Lafayette also argues that the consequences to external generators for any discrepancy between the pseudo-tie value and the dispatch instructions are too harsh.

14. Lafayette's second line of argument is that SPP's proposal unduly discriminates against external generators. Lafayette argues that the obligations SPP seeks to impose on external generators exceed that which is necessary, and therefore, put external generators

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[12] Lafayette argues that SPP's proposal would accommodate EIS Market entry by only two categories of external generators. The first, according to Lafayette, is an external generator that has already pseudo-tied into the SPP footprint using firm transmission service, such as American Electric Power. Lafayette states that the second is an external generator that is eligible for the exception in section 2(b) of Attachment AO for resources that are connected to SPP's transmission system, but located outside of the EIS Market footprint, such as Redbud Energy.

at a competitive disadvantage in the EIS Market as compared to internal generators. Specifically, Lafayette asserts that requiring external generators to ensure firm deliveries, either through the purchase of firm transmission service or by securing a backup arrangement with the source balancing authority, is not comparable to what is required of internal generators. In addition, Lafayette contends that SPP's imposition of a cap on the maximum amount of external resource generation SPP may dispatch to supply the EIS Market is unduly discriminatory because there is no similar limit on the amount of energy SPP may dispatch from internal resources.

15. Third, Lafayette argues that SPP's requirement that external generators ensure firm deliveries is not the least restrictive means of protecting reliability. Lafayette notes that while ensuring reliability is important, promoting a competitive market is also important. To the extent the two goals conflict, Lafayette argues that the Commission should protect reliability in the manner that is least burdensome on competition. Lafayette further asserts that SPP's firmness requirement is duplicative of other limitations designed to maintain reliable service, such as limiting the total dispatch instructions of external generators so they may not exceed SPP's Contingency Reserve Requirement for the operating day or the capacity of the largest generation resource within that balancing authority area. According to Lafayette, these limitations are not the least restrictive balance between promoting competition and protecting reliability.

16. Lafayette's fourth argument is that SPP omits essential background information from its filing. Specifically, Lafayette contends that SPP failed to include the recommendations of its external market monitor, Boston Pacific Company, Inc. (Boston Pacific). Boston Pacific evaluated SPP's tariff revisions and, in a memorandum to the SPP Board of Directors (Board), concluded that SPP's proposal is not likely to be effective in promoting EIS Market entry.[13] Lafayette also asserts that SPP failed to mention that the Board approved SPP's proposal as an interim measure, pending further consideration of Boston Pacific's findings by the SPP Markets and Operations Policy Committee (MOPC). Lafayette further contends that SPP failed to note that the Board's original choice for facilitating EIS Market entry for external generators was to implement dynamic scheduling, and not pseudo-ties. Finally, Lafayette argues that SPP failed to meet the filing deadline established in the March 20 Order because of poor management of the stakeholder process.

[13] Boston Pacific also proposed to allow an external generator to purchase non-firm transmission service if it was able to obtain the agreement of the *sink* balancing authority to provide energy reserves to cover any external generator outages or any curtailment of the external generator's non-firm external transmission service. This differs from SPP's proposal, which requires the *source* balancing authority to limit the outages and curtailments associated with the external generators.

17. Finally, Lafayette argues that SPP's proposal does not comply with the Dynamic Transfer Reference Document published by the North American Energy Reliability Corporation (NERC) because it leaves the responsibility for contingency services and regulation to the external generator and source balancing authority. Lafayette requests that the Commission reject SPP's filing, direct SPP to reconvene the stakeholder process and to submit regular progress reports every 15 days.

18. MJMEUC and OMPA adopt the arguments and positions set forth in Lafayette's protest.

19. Entergy argues that SPP fails to adequately delineate the responsibilities of the source balancing authority in providing imbalance services when the external resource over- or under-generates. Entergy contends that, under SPP's proposal, source balancing authorities may be subject to both the responsibility and the cost of ramping up or down other generation to keep the source balancing authority in balance when the amount of energy delivered by the external resource differs from SPP dispatch instruction embodied in the real-time pseudo-tie value. Entergy contends that, in addition to creating potential reliability and generation cost issues, this obligation could subject source balancing authorities to NERC penalties for violation of Area Control Error (ACE) limits. In addition, Entergy contends that SPP's *pro forma* agreement contains no clear mechanism by which source balancing authorities may receive compensation for this service, nor does it impose any penalties on the external generator for failing to meet its target. Entergy asserts that without solutions to these problems, the Commission cannot find SPP's proposal just and reasonable.

20. Entergy also argues that SPP fails to consider that the services required by source balancing authority under its proposal are jurisdictional services, and therefore, require the source balancing authority to file with the Commission for approval of the rates, terms, and conditions of that service. As such, Entergy argues that every executed version of SPP's *pro forma* agreement should be freely negotiated and then filed with the Commission.

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's or Entergy's answers and will, therefore, reject them.

B. **Analysis**

23. In the March 20 Order, the Commission stated that participation of external generators in SPP's EIS Market is key to addressing the issues of market power and bid insufficiency and ordered SPP to revise its tariff to provide for such participation. Pursuant to SPP's proposal, external generators are responsible for designing, constructing, operating, and maintaining the real-time and historical systems and communications equipment necessary to implement the pseudo-tie mechanism.[14] This proposal, in essence, directly assigns all of the costs of implementing the pseudo-tie approach, including those of both the sink and source balancing authorities, to external generators. We agree with the protestors that this significant financial obligation will unreasonably deter external generators from entering the market. As the Commission explained in the March 20 Order, participation by external generators in the EIS Market is key to addressing issues of market power and bid insufficiency in the EIS Market.[15] The Commission finds SPP's tariff revisions to be unjust and unreasonable, as the financial burdens of external generators are too significant to satisfy the requirements of the March 20 Order.

24. Placing the entire financial burden of implementing the pseudo-ties on external generators is also unduly discriminatory, as internal generators do not bear a similar financial burden. Under SPP's current proposal, external generators are financially responsible for their communications and telemetering equipment necessary to receive dispatch instructions from SPP, as well as the source and sink balancing authorities' system upgrades needed to establish and manage the pseudo-tie arrangement.[16] In comparison, to access the EIS Market, internal generators only directly pay for their own communications and telemetering equipment necessary to receive dispatch instructions.[17] In its filing, SPP does not provide sufficient justification for the disparate treatment of these two sets of parties. SPP contends that internal and external generators are not similarly situated, and therefore, SPP's discrimination against external generators is not undue. However, in proposing disparate treatment between external and internal generators in the EIS Market, SPP misconstrues the Commission's directive in the March 20 Order. In that order, the Commission conditioned acceptance of SPP's market monitoring and mitigation on robust participation by external generators in order to increase bid sufficiency and decrease the opportunity for internal generators to exercise market power. Thus, while we agree that external and internal generators are not

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[14] SPP's Proposed Attachment AO, sections 2(f), 2(g), and 4.

[15] March 20 Order at P 227.

[16] SPP's proposed Attachment AO, section 2(f), 2(g), and 4.

[17] SPP's FERC Electric Tariff, Attachment AE, section 1.3.6.

similarly situated in every respect, we disagree that this conclusion allows SPP to impose all of the costs of participating in the EIS Market on external generators. The Commission recognizes that external generators will have to pay some costs to access the EIS Market,[18] however, these costs must be just and reasonable and well-balanced against the need for external generator participation in the EIS Market. In this case, SPP has not demonstrated the reasonableness of imposing the entire financial burden of accessing the EIS Market on external generators, especially since we view a portion of these costs to be market start-up costs to which all parties should contribute. We, therefore, conclude that in addition to being unjust and unreasonable, SPP's proposal is also unduly discriminatory.

25. SPP is still obligated to comply with the March 20 Order and this decision is without prejudice. Therefore, we direct SPP to file an alternative proposal for external generator participation, within 60 days of the issuance of this order, that involves SPP and other EIS Market participants bearing a portion of the costs of permitting external generators to access the EIS Market. This is consistent with the approach the Commission accepted for the California Independent System Operator (CAISO).[19] Because we have set a new deadline for compliance with the March 20 Order, we decline to order a specific stakeholder process or require progress reports, as Lafayette requests.

26. We direct SPP to determine whether a pseudo-tie mechanism or dynamic scheduling is the appropriate mechanism to facilitate entry by external generators into the EIS Market.[20] According to the minutes from the June 21, 2007 SPP Board meeting, SPP chose the pseudo-tie mechanism over dynamic scheduling because it was a faster and less expensive option for SPP to implement.[21] However, since the external generators will no longer be responsible for all of the costs of accessing the EIS Market,

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[18] For example, external generators should expect to pay costs specific to the external generator, such as the costs related to their own systems and communication equipment, similar to internal generators. External generators should also pay for any transmission service necessary to access SPP's EIS Market.

[19] In Docket No. ER06-58-000, the Commission conditionally accepted an agreement proposed by the CAISO to establish a pseudo-tie for Calpine's Sutter generating plant. *See Cal. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,261 (2005). Section 2.1.1 of Schedule 2 of the agreement states that the CAISO will establish the pseudo-tie between the ISO control area and the native control area.

[20] The Commission discussed the difference between pseudo-ties and dynamic scheduling in *Duke Energy Carolinas, LLC*, 120 FERC ¶ 61,142 (2007).

[21] *See* SPP Board of Directors/Members Committee Meeting Minutes at 2 (June 21, 2007), posted at http://www.spp.org/publications/BOD062107.pdf.

SPP may find that dynamic scheduling is in fact a more cost-effective option, especially if large numbers of external generators are interested in participating in the market. As such, before SPP submits another proposal to the Commission, we direct SPP to assess the extent of external generator interest in the EIS Market by, for example, holding an open season.

27. We decline to address the remaining issues raised in the protests, including the justness and reasonableness of the firm delivery requirement and the caps on the amount of energy external generators may deliver to the market. These issues may be rendered moot by SPP's new external generator proposal. In its next filing of an external generator proposal, we direct SPP to address the remaining issues raised by protestors or explain why the remaining issues are no longer relevant given changes in the proposal.

28. Finally, if SPP determines it would be appropriate to revise its method of recovering its EIS Market costs, including the additional costs to permit external generator participation, the Commission would consider such a filing under section 205 of the FPA.

<u>The Commission orders</u>:

(A) SPP's filing is rejected without prejudice, as discussed in the body of this order.

(B) SPP is hereby required to file revised tariff sheets, as described in the body of this order, within 60 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.