

109 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. RT04-1-004
ER04-48-004

ORDER ON COMPLIANCE FILING

(Issued October 1, 2004)

1. In this order, we address the second compliance filing submitted in this proceeding by Southwest Power Pool, Inc. (SPP), in furtherance of its application to obtain status as a regional transmission organization (RTO). As discussed below, we will grant SPP RTO status subject to SPP filing the specific revisions discussed herein and in our concurrent order addressing SPP's joint operating agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in Docket No. ER04-1096-000.

2. Our action here benefits customers by encouraging continued development of cost-effective wholesale regional power markets and further development of RTOs.

Background

3. By order issued February 10, 2004 (February 10 Order),¹ the Commission conditionally granted SPP's application for recognition as an RTO. Pursuant to Order Nos. 2000 and 2000-A,² we directed SPP to make additional tariff, organizational and other changes prior to our granting SPP RTO status. More specifically, we directed SPP to: (1) implement its independent Board and modify its governance structure; (2) expand

¹ Southwest Power Pool, 108 FERC ¶ 61,003 (2004).

² Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,226-27 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 & 31,092 (2000), *affirmed sub nom.* Public Utility District No. 1 of Snohomish County, Washington, *et al.* v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

the coverage of its tariff to assure that SPP is the sole transmission provider; (3) obtain clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) put in place an independent market monitor to monitor the competitiveness and efficiency of the market; (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan, and prioritize those projects; and (6) have on file a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).³ We also directed SPP to file, pursuant to section 205 of the Federal Power Act (FPA),⁴ its revised Bylaws and revised Membership Agreement, as modified in accordance with the February 10 Order.

4. SPP subsequently submitted its compliance filing to the February 10 Order, which we accepted in part and rejected in part, by order issued July 2, 2004 (July 2 Order).⁵ In the July 2 Order, we stated that SPP had made significant progress toward satisfying the prerequisites for RTO status.⁶ We recognized SPP's efforts on several fronts, including: (1) seating an independent Board of Directors; (2) organizing and incorporating its Regional State Committee (RSC); (3) selecting an independent market monitor (IMM); (4) and attempting to ensure that it possesses clear authority to exercise day-to-day operational control over the appropriate facilities in its footprint, as well as the authority to independently and solely determine which projects to include in its regional transmission plan.⁷ Nevertheless, on some of these and other issues, we directed SPP to submit a further compliance filing, prior to being recognized as an RTO.

5. As further detailed below, we directed SPP to, among other things, properly format and designate its Membership Agreement and Bylaws in accordance with Order No. 614; add two stakeholder classes to its Members Committee, to include one seat for large retail customers and one seat for small retail customers, and to revise its Corporate Governance Committee accordingly; revise its Bylaws to provide that the absence of Members Committee and RSC representatives from Board of Directors meetings shall not prevent the Board from taking binding votes; file, pursuant to section 205 of the FPA,

³ February 10 Order at P 2.

⁴ 16 U.S.C. § 824d (2000).

⁵ Southwest Power Pool, Inc., 106 FERC ¶ 61,110 (2004).

⁶ July 2 Order at P 3.

⁷ Id.

a seams agreement with the Midwest ISO, detailing how both parties will coordinate RTO operations; provide a list of all transmission facilities that will be transferred to SPP's operational control and file a binding document reflecting SPP's authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; take certain measures to fully satisfy the Commission's requirement that SPP place all grandfathered and retail bundled load under the non-rate terms and conditions of the SPP open access transmission tariff (OATT); provide a timetable pertaining to compensation for customer-owned transmission facilities; and file the contract with its chosen IMM, Boston Pacific Company, Inc. (Boston Pacific), in order to address certain conflict-of-interest concerns.

6. On August 2, 2004, SPP submitted its compliance filing to the July 2 Order. SPP requests that the Commission declare SPP to be a fully-compliant RTO within 30 days of its filing.

7. Also on August 2, 2004, in Docket No. ER04-1096-000, SPP submitted, pursuant to section 205 of the FPA, a proposed, unexecuted joint operating agreement (SPP JOA) with the Midwest ISO. SPP submitted the SPP JOA pursuant to our directive in the July 2 Order that SPP file a seams agreement with the Midwest ISO. In a concurrent order, we accept the SPP JOA subject to SPP committing to either: (1) file a revised JOA that is fully supported by the Midwest ISO and addresses market to non-market issues, including congestion management; or (2) adopt the draft JOA included in the Midwest ISO's comments filed in that proceeding.

Notice of the Filing and Responsive Pleadings

8. Notice of SPP's filing was published in the *Federal Register*,⁸ with interventions and protests due on or before August 23, 2004. Lea County Electric Cooperative, Inc. and Central Valley Electric Cooperative jointly filed a timely motion to intervene. The New Mexico Attorney General filed a notice of intervention and protest. Southwest Industrial Customer Coalition (Southwest Industrial) filed a timely motion to intervene and protest. The following parties filed a timely protest: Oklahoma Renewable Energy Foundation (OREF); Missouri Joint Municipal Electric Utility Commission, the Oklahoma Municipal Power Authority, and the West Texas Municipal Power Agency (jointly, TDU Intervenors), with Lafayette Utilities System, Louisiana Energy and Power Authority and the Municipal Energy Agency of Mississippi⁹; Sunflower Electric Power

⁸ 69 Fed. Reg. 50,376 (2004).

⁹ On August 23, 2004, these parties filed an erratum to their protest.

Corporation (Sunflower Electric); Golden Spread Electric Cooperative, Inc. (Golden Spread); and InterGen Services, Inc. with Redbud Energy LP (jointly, InterGen). American Electric Power Service Corporation (AEP) filed an untimely protest.¹⁰

9. On September 7, 2004, SPP filed an answer to the protests.

10. Specific details of SPP's compliance filing and relevant protests are discussed, by issue, below.

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will accept for filing AEP's untimely protest, since we find that doing so will not cause any undue delay or prejudice to the parties.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. However, we will accept SPP's answer because it has provided information that assisted us in our decision-making process.

13. We further note that, on July 16, 2004, MidAmerican Energy Company (MidAmerican) filed a late motion to intervene in Docket Nos. RT04-1-000 and ER04-48-000, which addressed SPP's initial RTO proposal in this case. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. MidAmerican provides no explanation for its late motion and therefore has not met the higher burden of justifying its late intervention. Accordingly, we will deny MidAmerican's motion for late intervention.

14. We further note that, in protest to SPP's compliance filing, the New Mexico Attorney General reiterates several of its arguments on rehearing of the July 2 Order. Those arguments pertain to the Commission's requirements that native load be subject to the non-rate terms and conditions of SPP's OATT and that SPP members obtain Commission approval prior to withdrawal. The New Mexico Attorney General also disputes the responsibilities of the RSC, and SPP's responsibility as a reliability

¹⁰ Although AEP characterized its pleading as a motion for clarification, it is, in essence, a protest.

organization. These arguments are beyond the scope of this compliance proceeding and will be addressed in a separate rehearing order.

15. As discussed below, we find that SPP has met the requirements of the July 2 Order, both here and in Docket No. ER04-1096-000, subject to SPP agreeing to make certain modifications. On this basis, we will grant SPP RTO status.

Members Committee Representation

July 2 Order

16. In the July 2 Order, we recognized SPP's efforts in amending its Members Committee structure but found that it did not do so in a manner consistent with *WestConnect*,¹¹ as we had directed in the February 10 Order. In *WestConnect*, two of the eight proposed sectors were earmarked for end-use customers (one for "large retail customers" and one for "small retail customers").¹² These seats were in addition to one of the two sectors that the Commission required to be added, *i.e.*, public interest organizations, which included consumer advocates and other entities that are largely representative of end-use customer interests.¹³ Therefore, consistent with *WestConnect*, we required SPP to add two classes to its Members Committee to ensure that all stakeholders are represented, including one seat for large retail customers and one seat for small retail customers.¹⁴

Compliance Filing

17. Under proposed revisions to section 5.1.1.1 of SPP's Bylaws, the Members Committee shall consist of up to 18 persons, instead of the 16 seats in earlier versions of the Bylaws. Of the two new seats, "one representative shall be a large retail customer Member; and one representative shall be a small retail customer Member."

¹¹ Arizona Public Service Co., *et al.*, 101 FERC ¶ 61,033 at P 44 (2002).

¹² Id.

¹³ Id. at P 56.

¹⁴ July 2 Order at P 35.

Protests

18. Southwest Industrial argues that the proposed revisions fail to distinguish between a large and small retail customer, and impermissibly leaves SPP with discretion to determine the respective population and voting shares of the Members Committee. Southwest Industrial argues that SPP should be required to adopt the 1-MW standard used by WestConnect to distinguish between large and small retail customers.¹⁵

Discussion

19. SPP has properly added two seats for retail customers, though it has not included in its Bylaws the criteria by which SPP will distinguish between large and small retail customers. We find that SPP has met the requirements of the July 2 Order, subject to SPP revising its Bylaws to define large and small retail customers, in a manner consistent with *WestConnect*.

Corporate Governance and Board Nominee Selection Changes

July 2 Order

20. In the July 2 Order, the Commission directed SPP to revise its Corporate Governance Committee to provide for an equitable allocation of slots to various sectors, in accordance with our determination regarding the Members Committee.¹⁶

Compliance Filing

21. Under proposed revisions to section 6.6 of SPP's Bylaws, the number of seats on the Corporate Governance Committee would be increased from eight to nine. The additional seat would be for one representative of, and selected by, large/small retail members. In addition, that section provides a seat for one representative of and selected by the alternative power/public interest members, as opposed to the retail/alternative power/public interest members, as originally proposed.

¹⁵ Southwest Industrial argues that WestConnect's tariff defines large retail customers as non-residential end-use customers with individual or aggregated loads of 1-MW or more, and small retail customers as residential customers and other customers with individual or aggregated loads of less than 1-MW. Southwest Industrial cites WestConnect, FERC Elec. Tariff, Orig. Vol. 1, Att. 1: Master Definitions List.

¹⁶ July 2 order at P 39.

Discussion

22. We find that SPP has met the requirements of the July 2 Order subject to SPP revising its Bylaws to make that the definition of large and small retail customers applies to section 6.6, as well as section 5.1.1.1.

Clarifying Advisory Role of Members Committee

23. In the July 2 Order, we reiterated our concern, set forth in the February 10 Order, that sections 4.6.1 and 5.1.5 of SPP's Bylaws create a perception of undue stakeholder influence over the Board of Directors, since it appeared that the Board could not hold a meeting or make a decision without the presence of stakeholders. Noting that SPP had proposed to add language to section 4.6.1, providing that the absence of a Members Committee or RSC representative shall not prevent the Board from "convening or conducting" business, we emphasized our specific concern that such absence might prevent the Board from voting and making binding decisions. Accordingly, we directed SPP to remove language from sections 4.6.1 and 5.1.5, which creates the perception of undue influence, or further clarify the proposed language in section 4.6.1 to provide that the absence of Members Committee or RSC representatives shall not prevent the Board of Directors from convening or conducting business and taking binding votes.¹⁷

Compliance Filing

24. While SPP has not deleted any language in sections 4.6.1 and 5.1.5, it has added language to section 4.6.1, which specifically states that the failure of representatives of the Members Committee or the RSC to attend shall not prevent the Board of Directors from convening and conducting business and "taking binding votes." SPP requests that, if the Commission finds SPP has not complied on this issue, the Commission reconsider the requirements of its July 2 Order.

Discussion

25. We find that SPP has met the requirements of the July 2 Order on this issue, and no party has suggested otherwise. Accordingly, we will accept for filing the revised tariff sheet.

¹⁷ *Id.* at P 42.

Operational Authority – Identification of Facilities Under SPP’s Control

July 2 Order

26. In the July 2 Order, we found that SPP failed to satisfy the February 10 Order’s requirements regarding operational authority. In the February 10 Order, we directed SPP to “clearly identify the transmission facilities under its control [and] obtain the necessary authority to exercise day-to-day control over those facilities under normal operating conditions and system emergencies to maintain system reliability” and provide a “report on such authority and facilities that it will control.”¹⁸ In the July 2 Order, we noted that, rather than submitting the directed report identifying the transmission facilities, SPP submitted a map lacking sufficient detail regarding the facilities that will be under its operational control. In accordance with the February 10 Order, as well as *WestConnect*,¹⁹ we directed SPP to provide a list of all transmission facilities that will be transferred to its operational control.²⁰

27. We further found that SPP’s proposed Operational Authority White Paper (OA White Paper), purporting to set forth SPP’s operational authority over the facilities within its footprint, was a non-binding document that failed to provide adequate specificity regarding SPP’s operational authority. We directed SPP to revise its Membership Agreement or provide some other binding document (incorporated by reference in the Membership Agreement), in order to reflect SPP’s clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint. We directed SPP to include a detailed description of its proposed allocation of responsibilities between SPP and the control areas and the capabilities of each entity to perform its proposed responsibilities, and adopt the North American Electric Reliability Council’s (NERC) classification of service functions.²¹ We further directed SPP to address matters regarding the designation of transmission facilities (including development of a single definition of transmission) as part of its timetable for resolving issues regarding compensation of customer-owned transmission facilities.²²

¹⁸ February 10 Order at P 79.

¹⁹ 101 FERC ¶ 61,033 at P 88.

²⁰ July 2 Order at P 64.

²¹ *Id.*

²² *Id.* at P 65.

Compliance Filing

28. Attached as Appendix 2 to SPP's compliance filing is a list of transmission facilities over which SPP asserts it will have operational control. SPP also proposes to revise section 2.1.1(k) of the Membership Agreement to state that SPP "shall have the authority to direct the day-to-day operations of the Tariff Facilities in order to carry out its responsibilities as a Transmission Provider and Reliability Coordinator as described in SPP's Operational Authority Reference Document [*i.e.*, the OA White Paper.]"

Protests

29. TDU Intervenors contend that the proposed changes to section 2.1.1(k) could be construed to weaken, rather than strengthen, SPP's operational control. While the earlier version stated that SPP "shall direct" operations of the facilities, TDU Intervenors assert that the proposed revisions, providing that SPP "shall have the authority to direct" such operations, implies that SPP will not always exercise such direction. Further, TDU Intervenors argue that proposed section 2.1.1(k) merely refers to the OA White Paper, rather than expressly incorporating it by reference, making it binding on transmission owners, and requiring that any proposed changes to the OA White Paper be filed with and subject to Commission approval under section 205. In any case, TDU Intervenors contend that SPP has made no substantive changes to the OA White Paper setting forth its operational authority, and the delineation of authority between SPP and the transmission owners remains uncertain. TDU Intervenors also argue that section 2.1 of the Membership Agreement must, but does not, include a clearly stated and binding obligation on transmission owners to comply with SPP's directives.

30. Southwest Industrial similarly argues that SPP's compliance filing fails to provide either assurances or documentation to substantiate SPP's operational control of the transmission facilities listed in Appendix 2. For example, Southwest Industrial states that Attachment K to Appendix 2 indicates, without additional support, that Southwestern Public Service Company (SPS) has transferred operational control of its facilities to SPP. Southwest Industrial further argues that under proposed section 5.1 of the Membership Agreement, the agreement is subject to actions of respective state regulatory authorities to which Members may be subject. This provision, according to Southwest Industrial, further confuses the issue of whether SPP actually has operational control over the facilities listed in Appendix 2. To that end, the New Mexico Attorney General protests any implication or claim by SPP that SPS facilities have been transferred to SPP's control, or can be transferred without state approval.

SPP's Answer

31. In response to TDU Intervenors, SPP asserts that the Membership Agreement modifications fully comply with the Commission's directives. SPP states that the Commission did not mandate wholesale changes to the OA White Paper, but, rather, sought adequate revisions to either the OA White Paper or the Membership Agreement to reflect SPP's operational authority. SPP contends that revised section 2.1.1(k) meets this requirement.

Discussion

32. SPP has provided a list clearly identifying the transmission facilities that will be under its operational control as an RTO. In addition, SPP's modification to the Membership Agreement is acceptable and consistent with our direction in the July 2 Order that SPP obtain the authority to exercise day-to-day control. To explain and support its authority, SPP submits a document entitled SPP's Operational Authority Reference Document, which duplicates an earlier document submitted in SPP's May 3, 2004 compliance filing. SPP also has adopted the NERC Functional Model in identifying its responsibilities as an RTO, as required in the February 10 Order. Further, the Operational Authority Reference Document, at Appendix A, provides a comprehensive table identifying NERC functional requirements and SPP's responsibilities and where authority is granted to SPP.

33. Based upon the foregoing, we find that SPP has met the requirements of the July 2 Order, subject to SPP making the following revisions. SPP must revise the Membership Agreement to include the Operational Authority Reference Document expressly, or incorporate it by reference, and confirm by affidavit that no agreement referred to in the Operational Authority Reference Document will constrain its ability to direct revisions to transmission maintenance plans, or generation maintenance plans (where a generator maintenance plan affects SPP's ability to assure reliable operation of transmission facilities under its functional control).²³ In addition, SPP must file the Operational

²³ For example, under Operating Reliability, SPP has the authority, pursuant to certain NERC Operating Policies, certain SPP Criteria, and section 2.1.2 of the SPP Membership Agreement, to (1) enforce operational reliability requirements; (2) monitor all reliability-related parameters within the Reliability Authority Area (including generation dispatch and transmission maintenance plans), pursuant to NERC Operating Policies . . . ; (3) direct revisions to transmission maintenance plans (as required and as permitted by agreements), pursuant to . . . ; and (4) request revisions to generation and maintenance plans (as required and as permitted by agreements).

Authority Reference Document as part of the Membership Agreement, compliant with Order No. 614 requirements.

34. With respect to TDU Intervenors' concern that the Membership Agreement does not include a binding obligation on transmission owners to comply with SPP's directives, we note that the Membership Agreement is a filed tariff. As such, SPP and the jurisdictional signatories to the Membership Agreement are bound by the terms and conditions of the Membership Agreement.

35. We find beyond the scope of this compliance proceeding Southwest Industrial's and New Mexico Attorney General's concerns that utilities must seek state authorization to transfer their facilities to the SPP RTO.

Grandfathered Agreements (GFA) and Bundled Retail Load

July 2 Order

36. In the July 2 Order, we found that SPP had substantially complied with the February 10 Order's requirement to put all load under its OATT. However, we emphasized that all load should be made subject to the non-rate terms and conditions of the OATT, in order to ensure that non-discriminatory service is provided thereunder. Accordingly, we directed SPP to remove any exceptions to such requirement from its OATT.²⁴

37. We further found that SPP had not fully complied with the February 10 Order's requirement that it disclose the magnitude of its grandfathered wholesale and bundled retail load, the percentage of loads that will be grandfathered as part of the total load served under the SPP OATT, and a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest ISO.²⁵ We required SPP, as it had committed to do, to follow our guidance in Midwest ISO orders to develop a mechanism

²⁴ July 2 Order at P 75. Certain protestors had argued that section 39.1 of the SPP OATT excludes from non-rate terms and conditions certain services, including the protocols for reservation of service, load forecasting and updates, and initiative service. They further argued that, without adequate explanation, SPP exempted from non-rate terms and conditions unbundled transmission load under GFAs, as well as service provided under contracts with the Southwestern Power Administration.

²⁵ Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,145 at P 60 (2003).

to convert GFAs to the SPP OATT to ensure efficient, non-discriminatory market operations.²⁶

Compliance Filing

38. Under proposed revisions to section 39 of SPP's OATT, non-rate terms and conditions are those that would apply to network customers, but would not include two provisions under which SPP provides both primary and secondary network service and one provision requiring that the customer pay for network service.²⁷ SPP asserts that these exceptions to the non-rate terms and conditions naturally flow from the fact that a transmission owner providing service pursuant to a GFA is not taking network service.

39. In addition, SPP states that Appendix 6 to its compliance filing provides an explanation, in chart form, divided into three parts, of all currently effective GFAs. Part I provides a list of the federal GFAs involving the Southwestern Power Administration as a party. Part II provides a list of transmission-only GFAs, other than Southwestern Power Administration contracts, which do not involve the provision of bundled wholesale or retail power. SPP states that these contracts, except for contracts involving the provision of network service by a transmission owner to itself or for service to its bundled native load, are unaffected by proposed section 39 to the SPP OATT and consequently are not subject to the non-rate terms and conditions of the SPP OATT. SPP states that it has not yet determined a reserved amount to each of these contracts. SPP asserts that, for the contracts for which it has data, there is approximately 6,200 MW of capacity associated with such contracts. SPP believes that the actual total is in the range of 7,000 to 8,000 MW, which would represent 20 to 25 percent of SPP load. SPP states that the amount effectively reserved in terms of end use load is unknown. Part III provides a list of GFAs, other than Southwestern Power Administration contracts, which represents bundled service that will be the responsibility of the transmission owners as a result of section 39 of the SPP OATT. SPP states that transmission for these contracts will be subject to the non-rate terms and conditions of the SPP OATT.

²⁶ July 2 Order at P 76.

²⁷ More specifically, section 39.1 provides: "For purposes of this provision the non-rate terms and conditions are those that would apply to Network Customer except for Sections 28.3, 28.4, 34.1 and 34.1a, which shall not be included in this definition. In addition, unless a Transmission Owner executes a Service Agreement under this Part III, it will not be considered as taking Network Integration Transmission Service."

40. Concerning the Commission's requirement that SPP develop a mechanism to convert GFAs to the SPP OATT, SPP reiterates that GFAs are presently scheduled to terminate in accordance with their own terms. SPP asserts that, in the meantime, it remains committed to work with its members to pursue conversion procedures to facilitate efficient, non-discriminatory market operations. More specifically, SPP states that, within the next 120 days, it will convene a technical workshop to discuss conversion issues, and then, within the following 60 days, it will initiate discussions with each of the GFA parties to explore possible renegotiation or conversion of the GFAs. SPP states that it will submit a progress report to the Commission concerning these GFA discussions within the six months following commencement of RTO operations. SPP maintains, however, that it has limited ability to modify GFAs involving the federal government.

Protests

41. Sunflower Electric supports SPP's efforts to address GFA conversion issues, but it is concerned that a single workshop may not be sufficient and that the ensuing negotiations may be premature. Sunflower Electric contends that it is inappropriate to force SPP participants to simultaneously decide upon a market design and its possible impact on GFA parties; it would be best to conduct such negotiations when the market design is largely settled. Accordingly, Sunflower recommends that the Commission direct SPP to include a second workshop that follows a market-design consensus to allow GFA parties a reasonable opportunity to consider the impacts of a final market design.

42. OREF and InterGen argue that the July 2 Order clearly required that, without exception, all load must be subject to the non-rate terms and conditions of SPP's OATT. Accordingly, they urge the Commission to direct SPP to delete the language in section 39.1, which provides for the remaining exceptions, described above.²⁸

43. Golden Spread contends that SPP's compliance filing incorrectly states the terms of Golden Spread's GFA with Southwestern Public Service Company. Specifically, the compliance filing states that their agreement is year-to-year unless terminated by either party, whereas Golden Spread asserts that the agreement may not be terminated until 2010 and that, thereafter, two years' prior written notice is required. Golden Spread urges the Commission to direct SPP to revise its compliance filing accordingly.

²⁸ See *Id.*

44. The New Mexico Attorney General argues that several New Mexico Rural Electric Cooperatives have contracts with SPP and that SPP has provided no explanation for not grandfathering those contracts.²⁹

45. AEP argues that proposed section 39 would allow pancaked rates for certain intra-RTO transactions by TOs serving native load under the non-rate terms and conditions of the SPP OATT.

SPP's Answer

46. SPP asserts that, without the remaining exceptions in section 39, a transmission owner would be able to obtain the benefits of network service (*e.g.*, avoiding payment of point-to-point charges to bring power into its load) without taking on the full obligation of a network customer (such as payment) or executing a service agreement as required by SPP's OATT. SPP contends that, of the remaining exceptions, only one pertains to transmission owner obligations, *i.e.*, a transmission owner is not required to execute a service agreement or pay the network service charge, if it is not taking network service. SPP states that the other exceptions take away transmission owner benefits, *i.e.*, the ability to avoid paying point-to-point charges to serve load and the ability to use non-firm transmission for free. SPP states that these exceptions are necessary for proper tariff administration and continue to require that transmission owners execute a network service agreement (or have one filed unexecuted) in order to be a network customer under SPP's OATT. SPP argues that complete elimination of these exceptions would be inconsistent with the Commission's requirement that only transmission owners must comply with the non-rate terms and conditions of the SPP OATT.

47. SPP further argues that, contrary to AEP's contention, SPP will be the sole transmission provider with regard to all transmission subject to the Commission's jurisdiction. SPP also disputes AEP's argument that section 39 will result in pancaked rates. SPP states that it will charge only one transmission rate. While AEP argues that there may be an SPP charge, and that AEP's customers must also pay a bundled retail rate that includes transmission, SPP argues that this situation does not constitute rate-pancaking.³⁰ SPP adds that, in order to avoid point-to-point charges to serve its load, AEP need only execute a service agreement for network service.

²⁹ The New Mexico Attorney General also reiterates its rehearing arguments on this issue. We will address those arguments in a separate order on rehearing.

³⁰ SPP cites *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,250 at 62,086-87 (2002).

Discussion

48. We note that SPP has categorized the GFAs in Appendix 6 and has identified the amount of affected SPP load. In addition, SPP has committed to take the following actions: SPP will, within 120 days of the date of its compliance filing, convene a technical workshop to discuss conversion issues as they relate to currently effective GFAs. Further, within 60 days after the workshop, SPP will initiate discussions with each of the GFA parties to explore renegotiation/conversion of the GFAs. We accept these commitments.

49. With regard to SPP's remaining proposed exceptions to the non-rate terms and conditions of its OATT, we remind SPP that the February 10 Order required TOs, on behalf of their entire load including grandfathered wholesale and bundled retail loads, take service under the non-rate terms and conditions in the SPP OATT. Accordingly, we find that SPP has met the requirements of the February 10 and July 2 Orders, subject to SPP removing from section 39, and any other relevant tariff provisions, any exceptions to the requirement that all TO load be made subject to the non-rate terms and conditions of its OATT.

50. We find that remaining arguments concerning the nature and terms of specific agreements are beyond the scope of this proceeding.

51. AEP's argument that section 39 will result in pancaked rates is not convincing. In short, AEP seeks to create a unique service arrangement, in which it is entitled to full network benefits without executing a network service agreement under the SPP tariff.

Compensation for Customer-Owned Transmission Facilities

July 2 Order

52. Noting that SPP failed to submit a timetable for resolving concerns regarding compensation for customer-owned transmission facilities, as directed in the February 10 Order, the Commission again directed SPP to do so.³¹

Compliance Filing

53. SPP states that it has constituted a task force to examine this issue and develop a proposal, expected to be submitted to the Board of Directors in early 2005. The Board of Directors expects to take final action by July 31, 2005.

³¹ July 2 Order at P 80.

Protests

54. Sunflower Electric submits that the determination of compensation presents complex rate issues and that, therefore, the proposed dates in SPP's timeline should be treated as goals rather than absolute dates for completion.

55. On the other hand, TDU Intervenors argue that SPP's proposed timeframe is unreasonably long. They assert that SPP should be required to file its proposal for compensation by a date certain, preferably no later than February 2005. TDU Intervenors further argue that SPP should submit its proposal, regardless of whether it has been able to reach stakeholder consensus, since, according to TDU Intervenors, such consensus may be impossible to reach on this issue. TDU Intervenors contend that the failure to promptly resolve the customer credits issue discourages transmission dependent utilities from joining the SPP RTO or from making required improvements.

SPP's Answer

56. SPP disputes TDU Intervenors' call for a shorter timetable for addressing this issue. SPP asserts that the July 2 Order did not specify a particular deadline or suggest that the matter should be handled outside the normal stakeholder process. SPP states that the task force approach is the most effective and efficient process for dealing with customer compensation issues and that it is standard operating procedure for addressing issues with potentially broad membership implications.

Discussion

57. We will accept SPP's proposed timetable for resolving the customer credit issue as meeting the requirements of the July 2 Order. We disagree with the TDU Intervenors' assertion that SPP's timeframe is unreasonably long, given that this is a significant issue for all stakeholders that will take time to resolve. Because of its importance, we will direct SPP, on behalf of the task force, to report to the Commission if the Board of Directors does not take action on a proposal by July 31, 2005.

Available Transmission Capability (ATC) Calculations

July 2 Order

58. In the July 2 Order, we found that the data used in SPP's process for deriving ATC is unclear. We required SPP to submit examples detailing how ATC is derived under its OATT with regard to Attachments C and O. We stated that the example must explain how the data is collected.³²

Compliance Filing

59. SPP submits a five-page narrative describing how it determines ATC for short and long-term transmission requests under Attachments C and O of its OATT, respectively. SPP claims that it determines ATC for all transmission service provided using models it developed. It states that, in addition to information it develops, information is provided by TOs, transmission customers, adjoining systems, and NERC. SPP states that it analyzes and verifies this information prior to its use as a basis for data included in its models to calculate ATC. It further claims its calculation is a Level 3 process.

60. SPP states that ATC for the provision of short-term service will be determined pursuant to Attachment C of its OATT, which allows for consideration of capacity benefit margin (CBM) and transmission reliability margin (TRM) in determining ATC. However, SPP states that, to date, it has chosen not to include any set-aside for CBM in its computation of ATC, but does use a set-aside for TRM to accommodate its Operating Reserves Sharing Program.

61. SPP asserts that, for the provision of short-term service, SPP assesses ATC using its Open Access Same Time Information System (OASIS), as described in Attachment C. SPP contends that its ATC calculation process depends upon reservations entered on the OASIS schedules entered on the E-Tagging system, load forecasts, resource forecasts, unit commitment schedules, and maintenance and outage schedules as provided by all transmission users and accepted by SPP for the applicable time frame.

62. SPP states that it determines the provision of long-term firm service pursuant to Attachment O of its OATT, titled "Coordinated Planning Procedures." For the purpose of long-term transmission planning, seasonal power flow models are developed annually out to 10 years. In its model develop process, SPP states that it collects annually data from each transmission owner and NITS transmission customer, including load forecasts, resource plans, generation dispatch, transactions and circuit characteristics.

³² *Id.* at P 91.

Protests

63. TDU Intervenors argue that SPP's explanation does not reveal whether SPP has a system for tests and checks that ensure customers of coordinated and unbiased data, *i.e.*, a verification process, which TDU Intervenors assert is required by Order No. 2000. TDU Intervenors maintain that non-discriminatory transmission service can only be assured by making clear the authority and responsibility of SPP to independently verify all inputs to the determination of ATC.

64. TDU Intervenors further assert that SPP has failed to address set-asides affecting ATC. They argue that, if there are no set-asides, SPP should make that clear and delete language from its tariff providing for such set-asides.³³ If there are set asides, TDU Intervenors states that SPP must identify them, and explain whether and how they affect ATC calculations.

65. In addition, TDU Intervenors argue that SPP must update the criteria referenced in Appendix 7 for its ATC calculations to ensure consistency with Order No. 2000, *i.e.*, to make clear SPP is the sole transmission provider and single OASIS site administrator.

SPP's Answer

66. SPP asserts that the issues raised by TDU Intervenors should not delay final approval of SPP as an RTO. SPP reiterates the assertions in its compliance filing on this issue, and confirms that there are no other set-asides currently included in SPP's determination of ATC beyond the TRM set-aside described in its compliance filing.

67. SPP further states that its criteria for ATC calculations are reliability criteria that generally apply to all members, or those that perform functions, of the SPP Regional Reliability Council in calculating ATC. SPP explains that the footprint of the SPP Regional Reliability Council does not necessarily coincide with the expected footprint of the SPP RTO, as is the case with the Midwest ISO and PJM.

³³ TDU Intervenors assert that Attachment C to SPP's OATT provides that "[c]onstrained facility ATC represents capacity remaining on constrained facilities after reduction for base flows, previously approved transmission service requests and a margin (if appropriate)."

Discussion

68. We find that SPP's filing meets the requirements of the July 2 Order, subject to SPP clarifying Attachment C to specify when ATC is reduced by a "margin," detailing the nature of that margin, and whether it is CBM or TRM. We are satisfied that, as an independent entity, SPP develops unbiased information for use in its models. While SPP is not explicit in its explanation, we conclude that SPP should independently verify any discrepancies between the information it develops and that provided by a transmission owner and take appropriate actions subject to its authority. While we share TDU Intervenors' concern with SPP's tariff language in Attachment C, which it suggests allows for set-asides beyond CBM or TRM, SPP's obligation to detail any "margins" should resolve its concern.

69. In regard to TDU Intervenors' argument about the need to update criteria to be compliant with Order No. 2000, we accept SPP's explanation that Criteria 4 is written to cover the possibility that an entity could be a transmission provider within the SPP Regional Reliability Council region but is not a transmission owner under the SPP RTO, i.e., is not a signatory to the SPP Membership Agreement. In any event, we note that SPP's Criteria 4 prescribes how all Transmission Providers within the SPP region must calculate ATC.³⁴ Accordingly, we reject TDU Intervenors' argument.

Market Monitoring

70. In the July 2 Order, we expressed concerns regarding the independence and possible conflicts-of-interest of SPP's chosen market monitor, i.e., Boston Pacific Company, Inc. (Boston Pacific).³⁵ We stated that a firm may not at once act as a market monitor for an RTO and have financial relationships with parties that have an interest in that RTO's market or other markets that are connected to it. We further find that, in order to ensure that Boston Pacific, or any other chosen IMM, has sufficient independence as a market monitor, SPP must file its contract with its IMM. We stated that the contract should clearly reflect that the IMM may not: (1) directly represent market participants within SPP's region in proceedings before state regulators or this

³⁴ SPP Answer at 15-16.

³⁵ July 2 Order at P 98. We noted protestors' argument that Boston Pacific has and continues to represent market participants within the Southeast and regulatory proceedings before state regulators and before the Commission. *Id.* at P 94.

Commission; (2) work for clients with SPP-related business interests; or (3) work for clients that have business interests in markets inextricably connected to SPP (such as the Midwest ISO).³⁶

Compliance Filing

71. SPP submits a revised Independent Market Monitoring Services Agreement (IMM Agreement) between SPP and Boston Pacific, which SPP asserts strikes a reasonable balance between SPP's need to obtain an experienced, qualified IMM and the Commission's concerns about the IMM's independence and avoidance of conflicts.

72. Pursuant to Attachment C of the IMM Agreement, section 4.0, titled "Conflicts of Interest," Boston Pacific: (1) will not advise any client on SPP matters, including matters involving SPP's markets, transmission system, or market rules; (2) will not represent any client in any litigation, regulatory docket, alternative dispute resolution proceeding, or arbitration with SPP; (3) will not appear for, or against, an SPP market participant before a state regulatory commission within the SPP footprint, except as required by its role as SPP IMM or as requested by the state regulatory commission; (4) will not appear for or against any SPP market participant before the Commission on any matter within the SPP footprint, except as required by its role as the SPP IMM or as requested by the Commission; and (5) must clear other engagements with the SPP Board of Directors when such engagements involve the electricity business and are within the boundaries of the SPP footprint. In addition, persons within Boston Pacific or its subcontractors who are involved with the SPP RTO engagement may not have direct equity or other financial interest in a market participant in the SPP markets or in a parent, subsidiary, or affiliate of an SPP market participant that is involved in the electricity business.

73. SPP believes that the IMM Agreement addresses, as fully as practical, the Commission's concerns regarding market monitor independence. SPP asserts that an IMM need not be beholden to a single RTO and that, in other RTO contexts, the Commission imposed conditions regarding IMM independence, with due regard for business realities.³⁷

³⁶ *Id.* at P 98.

³⁷ For example, SPP states that the Midwest ISO's conflict-of-interest policy provides adequate protection of market participants by prohibiting the IMM from: (1) advising any client on Midwest ISO matters; (2) revealing any Midwest ISO confidential information; and (3) holding a financial interest in a Midwest ISO market participant.

74. SPP also attaches the affidavit of Boston Pacific's President, Craig Roach, in which he testifies that the IMM Agreement exceeds the industry standard for independent monitors in most, if not all, states hiring independent monitors. Mr. Roach further states that, if the Commission finds the IMM Agreement to be non-compliant on this issue, Boston Pacific would likely decline to serve as SPP's IMM and any attempt to find a qualified replacement would inevitably encounter the same compliance problems. He asserts that such an outcome would harm RTO markets, because the Commission would have effectively denied truly experienced companies, with relevant nationwide practices, from serving as IMM³⁸. SPP further submits similar testimony from its President, Nicholas Brown.³⁹

75. Based upon the foregoing, SPP requests that the Commission find the IMM Agreement to be in compliance with the July 2 Order. Alternatively, SPP requests rehearing on this issue.

Comments and Protests

76. Sunflower Electric reiterates SPP's assertion that the IMM Agreement represents a reasonable balance between the need for market monitor independence and business realities.

77. Golden Spread argues that, rather than properly requesting rehearing of the July 2 Order, SPP submitted an IMM contract that is blatantly inconsistent with the conditions set forth in that order. With respect to the first condition, that the IMM may not represent any market participant within SPP's region in proceedings before the Commission or any state regulators, Golden Spread argues that the IMM Agreement only prohibits Boston Pacific from appearing before the seven state commissions in the SPP footprint on behalf of SPP members. With respect to the second condition, that the IMM may not work for clients with SPP-related business interests, Golden Spread argues that Boston Pacific only agrees not to advise clients on SPP matters. Golden Spread asserts that the IMM Agreement does not limit Boston Pacific's ability to undertake matters outside the SPP footprint for clients that have business interests within the SPP footprint. Golden Spread argues that the IMM Agreement would allow one hundred percent of Boston Pacific's revenue (other than revenue from its contract to serve as IMM) to come from clients with business interests in SPP. With respect to the third condition, that the IMM may not work for clients with business interests in markets inextricably connected to SPP (such as

³⁸ Roach Affidavit at 9-11.

³⁹ Brown Affidavit at 4.

the Midwest ISO), Golden Spread argues that the contract with Boston Pacific treats all engagements outside the SPP footprint equally, without regard as to whether the non-SPP matter is inextricably connected to SPP. Golden Spread asserts that SPP chose an IMM with only limited independence and foreseeable conflicts of interest, when other options exist for finding an IMM with technical competence and absolute independence.⁴⁰

78. TDU Intervenors also contend that SPP has failed to comply with the July 2 Order. TDU Intervenors assert that the IMM Agreement would allow Boston Pacific to work for clients in the Midwest ISO, without Board Approval, and for clients in SPP if the relevant agreements were cleared by the SPP Board and did not involve SPP-operated markets, SPP market rules or SPP transmission. TDU Intervenors contend that the ability to represent clients active in the Midwest ISO (for example, on matters regarding the Midwest ISO/SPP seams agreement) would likely require extensive coordination on monitoring and mitigation across the seam, and would jeopardize Boston Pacific's independence. According to TDU Intervenors, the IMM Agreement also appears to permit Boston Pacific to represent a client seeking to negotiate a contract for bilateral energy or capacity sales in the SPP footprint. TDU Intervenors urge the Commission to condition such representation of clients outside the SPP footprint upon Board Approval and to prohibit altogether any electricity business engagements that could relate to SPP markets. TDU Intervenors also urge the Commission to require SPP to include in the IMM Agreement a prohibition on the use of non-public information.

79. The Attorney General of New Mexico argues that any appointment by SPP of a market monitor constitutes an unlawful delegation of the Commission's statutory duty to determine that rates are just and reasonable.

SPP's Answer

80. SPP states that, contrary to Golden Spread's argument, it requested rehearing of the July 2 Order on this issue. In further response to Golden Spread, SPP emphasizes that the IMM Agreement prohibits Boston Pacific from representations on behalf of, or against, SPP members before a state regulatory agency within the SPP footprint or the Commission. In addition, SPP argues that Golden Spread's suggested alternatives to using Boston Pacific, such as hiring university faculty, are impractical and imprudent and that, in any case, universities would not be immune from dealing with conflict-of-interest issues, due to donor funding and other business relationships.

⁴⁰ For example, Golden Spread argues that SPP should explore the feasibility of establishing the role of IMM at one or more of the state universities in the SPP footprint.

81. In response to TDU Intervenors, SPP argues that the IMM Agreement (Article 4.1) explicitly prohibits Boston Pacific from advising anyone in the Midwest ISO or anywhere else on whether and how to participate in SPP markets or services. SPP further argues that TDU Intervenors are mistaken that the language prohibiting use of confidential information in other matters is missing from the IMM Agreement; SPP states that this information is provided in section 8. SPP disputes TDU Intervenors' argument that the IMM Agreement is inferior to the Midwest ISO's market monitoring procedures. SPP asserts that the protections in the IMM Agreement are far more expansive than those in effect for any other RTO market monitor.

Discussion

82. The New Mexico Attorney General contends, without explanation or support, that by virtue of the fact that the Commission has approved an IMM for SPP, that it has improperly delegated authority to establish just and reasonable rates. We disagree. The rates, terms, and conditions for jurisdictional services provided pursuant to the SPP tariff are established by the Commission. The fact that SPP has an IMM in no way diminishes the Commission's proper exercise of its statutory responsibilities.

83. We emphasize that the three conditions set forth in the July 2 order regarding IMM independence are necessary to ensure that Boston Pacific does not undertake assignments that conflict with its role as SPP's market monitor. We find that the proposed IMM Agreement sufficiently addresses the first condition, that the IMM may not directly represent market participants within SPP's region in proceedings before state regulators or this Commission. While certain protestors argue that provisions in the IMM Agreement are too lenient on this issue, we find that their suggested modifications are too restrictive and would, in effect, significantly and unnecessarily hinder SPP's ability to hire a qualified IMM.

84. On the other hand, we find that the IMM Agreement does not sufficiently comply with the second and third conditions set forth in the July 2 Order. These conditions prohibit the IMM from working for clients with SPP-related business interests or for clients that have business interests inextricably connected to SPP. However, the IMM Agreement would allow Boston Pacific, largely without restriction or disclosure, to work for, and be paid by, such clients. Such engagements could jeopardize SPP's markets by creating a conflict-of-interest or giving the appearance of impropriety on the part of SPP's IMM. As a result, the restrictions included in the July 2 Order should be retained. However, we find appropriate, SPP's approach in having the Board of Directors review engagements that may raise conflict-of-interest concerns (or result in a material appearance of conflict). We believe that this approach will further the ability of the IMM to undertake its function fairly and objectively with the confidence of the Board and market participants.

85. Accordingly, we find that SPP has met the requirements of the second and third conditions set forth in the July 2 Order, subject to SPP replacing section 4.2 of Attachment C to the IMM Agreement with the following language: “Before the Boston Pacific Team accepts any engagement that involves clients with SPP-related business interests or clients with business interests in markets inextricably connected to SPP, it must inform the SPP Board of Directors of such potential engagement and obtain the Board’s determination that such engagement would not present a conflict of interest or result in the material appearance of conflict before accepting such engagement.” We will also direct SPP to delete section 4.3 of Attachment C (Non-Prohibited Engagements) and any other provisions in Attachment C, which are inconsistent with section 4.2 (as revised in accordance with this order). We believe that this will allow Boston Pacific to both function as SPP’s IMM and undertake other assignments, while ensuring that it retains the requisite independence to fulfill its function without questions regarding its integrity and allegiance. We expect the Board to exercise its fiduciary duty to SPP and SPP members in reviewing proposed engagements, with a focus on assuring market participants and regulators that its IMM’s non-SPP engagements do not create real or perceived conflicts. As SPP’s Board is an independent body, we believe it should be able to make such judgments fairly in the interest of the SPP market. We note that the IMM does not have enforcement authority and that the Commission will perform oversight and enforcement.

86. In addition, we note that Order No. 2000’s market monitoring requirements may be satisfied with various market monitoring unit structures. If SPP determines that another structure to meeting its market monitoring obligations is appropriate, such as through an internal market monitoring unit, SPP may propose such a market monitoring unit consistent with what the Commission has approved for other RTOs.

Designation of Tariff Sheets

July 2 Order

87. In the July 2 Order, we conditionally accepted for filing the Membership Agreement and Bylaws, provided SPP properly formatted and designated those sheets in accordance with Order No. 614, and otherwise modified those documents as provided for in the July 2 Order.

Discussion

88. In accordance with Order No. 614, we find that SPP properly formatted and designated its Membership Agreement and Bylaws. Accordingly, we will accept those documents for filing, subject to modification in accordance with this order.

The Commission orders:

(A) SPP's compliance filing is hereby accepted for filing, and SPP is hereby granted RTO status, subject to SPP submitting a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order, and committing to file a joint operating agreement, as discussed in the Commission's order in Docket No. ER04-1096-000.

(B) MidAmerican's motion for late intervention is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket Nos. RT04-1-004
and ER04-48-004

(Issued October 1, 2004)

BROWNELL, Commissioner, dissenting:

Based on its second compliance filing, SPP has failed to satisfy two critical prerequisites to qualify as an RTO under Order Nos. 2000 and 2000-A. Therefore, I would not grant RTO status to SPP.

In our February 10 Order, we emphasized that, for RTO status, SPP must have clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint. Specifically, SPP must have the necessary authority to exercise day-to-day operational control over these facilities under normal operating conditions and system emergencies to maintain system reliability. In our July 2 Order, we found that SPP failed to satisfy the February 10 Order's requirements regarding operational authority. We noted that neither the OA White Paper nor the Membership Agreement provided adequate specificity regarding SPP's operational authority. We noted particularly that the OA White Paper indicates certain SPP functions as an RTO will be subject to "agreements". Further, SPP rather than submitting a report, as directed, identifying the facilities under its control, SPP submitted a map lacking in sufficient detail regarding the facilities it will have under its operational control.

In its compliance filing to our July 2 Order, SPP did finally provided a list of facilities over which SPP asserts it will have operational control. However, SPP failed to provide any further information explaining the agreements it referenced in its earlier filing. Instead, SPP merely resubmitted the OA White Paper and Membership Agreement, proposing only to change section 2.1.1(k) of the Membership Agreement to state that SPP "shall have the authority to direct the day-to-day operations of the Tariff Facilities in order to carry out its responsibilities as a Transmission Provider and Reliability Coordinator as described in SPP's Operational Authority Reference Document [i.e., the OA White Paper.]"

It is still unclear whether SPP has adequate authority to direct the day-to-day operations of the facilities within its footprint. Moreover, the protesters assert that the

change to section 2.1.1(k) of the Membership Agreement weakens rather than strengthens operational control. The protesters point out that the previous version stated that SPP “shall direct” the operations of the facilities while the proposed version only states that SPP “shall have the authority” to direct, thereby implying that SPP will not always exercise such directions. Since questions remain whether SPP has the essential hands-on involvement in the day-to-day operations, I can not find that SPP has satisfied this prerequisite for RTO status.

In our July 2 Order, we established three very clear prohibitions in order to assure the independence of the market monitor (IMM). We required that the contract with the IMM reflect that the IMM may not: (1) directly represent market participants within SPP’s region in proceedings before state regulators or this Commission; (2) work for clients with SPP-related business interests; or (3) work for clients that have business interests in markets inextricably connected to SPP (such as Midwest ISO).

The three prohibitions in our July 2 Order were absolute. In its compliance filing, SPP submitted an IMM contract that reflected the prohibition against state and federal regulatory activities, ignored most of the prohibited business activities, and allowed certain prohibited business activities if the IMM receives approval from SPP’s Board of Directors. The majority finds that the IMM may engage in all the previously enumerated prohibited business activities as long as the IMM receives Board approval. I do not believe Board approval is a sufficient safeguard to assure the IMM’s independence. Our February 10 and July 2 Orders were quite clear about the steps SPP needed to take to earn the status as RTO. Yet, SPP continues to disregard those requirements and offer evasive, incomplete responses.

For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner