UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services, Inc. Docket No. EL07-28-000

v.

Southwest Power Pool, Inc.

ORDER ON COMPLAINT

(Issued March 22, 2007)

1. In this order, the Commission addresses a complaint filed on January 4, 2007, by Xcel Energy Services, Inc., on behalf of itself and its operating company, Southwestern Public Service Company (collectively, Xcel) against the Southwest Power Pool, Inc. (SPP). The complaint alleges that, contrary to SPP's Open Access Transmission Tariff (OATT or tariff) and its Market Protocols, SPP improperly registered qualifying facilities (QFs) owned and operated by subsidiaries of John Deere Wind Energy (J.D.Wind) to Xcel for participation in SPP's new energy imbalance service market (imbalance market). Xcel requests that the Commission: (1) find that SPP lacks authority under its tariff to register the J.D.Wind facilities to Xcel for participation in the imbalance market; and (2) order SPP to remove the J.D.Wind assets from the list of facilities currently registered to SPS. Finally, Xcel requests that the Commission afford this complaint Fast Track Processing. The Commission finds that SPP does not meet the applicable SPP OATT definitions or registration requirements of a Market Participant and, therefore, SPP lacks authority pursuant to the SPP OATT to register generation facilities as resources for the imbalance market. Accordingly, we grant Xcel's complaint.

Background

2. In 2004, the Commission granted authority for SPP to establish itself as a regional transmission organization (RTO).[1] Thereafter, SPP committed to develop an imbalance market, including implementation of a real-time, offer-based energy market to calculate the price of imbalance energy. In the *Order on Market Readiness Certification*,[2] the Commission granted SPP authority to commence operating its imbalance market, which SPP began operating on February 1, 2007.

Xcel Complaint

3. According to Xcel, in preparation for the commencement of the imbalance market, SPP required all Market Participants to register their generation resources with SPP in order that SPP could complete its imbalance market network model. Xcel explains that in November 2005 and June 2006, it notified SPP that the QF facilities owned and operated by the J.D.Wind subsidiaries[3] should be included in this modeling because they deliver energy to the transmission grid and, therefore impact the market flows within SPP.[4] Thereupon, Xcel explains, SPP undertook two actions. First, it added the J.D.Wind facilities to its imbalance market network model. Second, over the objection of

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[1] *Southwest Power Pool, Inc*., 109 FERC ¶ 61,009 (2004).

[2] *Southwest Power Pool, Inc*., 118 FERC ¶ 61,055 (2007).

[3] According to Xcel, J.D.Wind subsidiaries own six QFs in Hansford and Sherman County, Texas. J.D.Wind 1, 2, 3, 5 and 6 are interconnected, either directly or indirectly through distribution facilities, to Xcel owned transmission facilities. Xcel complaint at 5. J.D.Wind explains in its Answer of January 16, 2007 at 4 that J.D.Wind 4 is beginning commercial operation this month, and that J.D.Wind 4 is interconnected to Xcel through its transmission-level facilities.

[4] Xcel comments that it understood that if the J.D.Wind facilities were not registered in the imbalance market, these facilities would be treated as behind-the-meter generation and would function as negative load, thereby adversely impacting Xcel's ability to accurately forecast and manage its own load. Xcel complaint at 7.

Xcel, SPP registered these J.D.Wind facilities as resources for Xcel in the imbalance market.[5]

4. Xcel represents that it only agreed to SPP's registration of the J.D.Wind facilities for the limited purpose of certain deployment tests, and only agreed after SPP had completed this registration.[6] Further, Xcel insists that it repeatedly requested that SPP not register these facilities as resources for Xcel within the imbalance market because SPP has no authority under the SPP OATT or Market Protocols for this registration. Finally, Xcelexplains that SPP's registration of the J.D.Wind facilities to Xcel would inappropriately impose on Xcel operational responsibilities for these facilities.[7]

5. On January 4, 2007, Xcel filed this complaint protesting SPP's registration of the J.D.Wind facilities as resources for Xcel. Xcel argues that pursuant to the SPP OATT and Market Protocols, only Market Participants are authorized to register energy resources.[8] SPP does not qualify as a Market Participant, argues Xcel, and it, therefore, cannot register these facilities for participation in the imbalance market.[9]

6. Xcel requests that the Commission find SPP lacks authority under the SPP OATT and Market Protocols to register the J.D.Wind facilities as a resource to Xcel. Xcel also requests that the Commission direct SPP to remove the J.D.Wind assets from the list of generation facilities for which Xcel is registered in the imbalance market.

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[5] At the time of the filing of the complaint, SPP had registered J.D.Wind 1 through 4 as resources for Xcel. On January 26, 2007, SPP notified the Commission that it had registered two additional J.D.Wind facilities, J.D.Wind 5 and 6, and that the registration was expected to take about 20 days.

[6] Xcel complaint at 8, n. 12.

[7] Xcel represents that the parties attempted to resolve this matter starting in the summer of 2006. Xcel complaint, Attachment A, Affidavit of Terri K. Eaton.

[8] Xcel cites to section 1.18b of the SPP OATT for the definition of a Market Participant, and sections 1.2.2 of the SPP OATT (Attachment AE) and section 12.2.1 of SPP's Market Protocols as authority for registering energy resources.

[9] Xcel comments that either Xcel or J.D.Wind might become Market Participants, but at present, as Xcel explains, Xcel cannot register these facilities for the imbalance market, and J.D.Wind is not seeking to become a Market Participant.

7. Xcel argues that it cannot register the J.D.Wind facilities as its resource, in accordance with the registration provisions of the SPP OATT, because to do so would impose upon Xcel operational and financial responsibilities that Xcel cannot assume at this time. Further, Xcel argues that it lacks information necessary to fulfill its scheduling and forecasting obligations[10] related to the J.D.Wind facilities and that it cannot be held financially responsible for those facilities' imbalances. While Xcel explains that it has entered into negotiations with J.D.Wind to formalize terms for operating in the imbalance market, the parties have not finalized operating agreements. Without these agreements, Xcel insists that it cannot assume responsibility for the J.D.Wind assets as Xcel resources.

8. Xcel argues that the Commission need not look beyond the SPP OATT and Market Protocols to resolve this dispute. However, it acknowledges that it has an obligation to purchase power from the J.D.Wind subsidiaries, pursuant to the Public Utility Regulatory Policies Act of 1978, as amended, (PURPA) and the implementing regulations of the Public Utility Commission of Texas (PUCT). Pursuant to these authorities, Xcel explains that it has received from J.D.Wind notices informing it of J.D.Wind's intent to sell power from its QF facilities (net of station power), and that, in fact, it has purchased energy from J.D.Wind on a non-firm, as available basis.[11] Xcel also explains that while J.D.Wind contends that Xcel is obligated to purchase from J.D.Wind on a long-term basis, and that J.D.Wind cannot sell energy to third parties, Xcel disputes these points. Instead, Xcel contends that J.D.Wind is able to sell its output to whomever it wants under PURPA.[12]

Notice of Filings and Responsive Pleadings

9. Notice of Xcel's complaint was issued in the *Federal Register*, 72 Fed. Reg. 1,716 (2007), with interventions and protests due on or before January 16, 2007. A

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[10] According to Xcel, these responsibilities would include scheduling the J.D.Wind facilities in real-time in the imbalance market and providing SPP with a day-ahead resource plan for these facilities.

[11] These purchases have been made pursuant to Southwestern Public Service Company Tariff No. 7009, as filed with the PUCT on December 20, 1993 in PUCT Docket No. 11520. There is an ongoing dispute as to whether, under the state implementation of PURPA, this tariff is applicable to these sales and whether Xcel is properly compensating J.D.Wind for the energy purchased.

[12] Xcel complaint at 6, n 7.

timely motion to intervene was filed by Golden Spread Electric Cooperative, Inc. A timely motion to intervene and protest was filed by J.D.Wind. SPP filed an answer, and Xcel filed a motion for leave to file an answer and answer. Finally, J.D.Wind filed an answer to the Xcel answer.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. We will also accept the answers filed herein because they are helpful to the Commission's resolution of this dispute.

Answer and Protests

11. SPP and J.D.Wind filed motions and answers in opposition to the Xcel complaint. SPP contends that its registration of the J.D. Wind facilities, although not explicitly authorized by its tariff, should be accepted by the Commission as necessary to the start-up of the imbalance market. J.D.Wind supports SPP's registration of its QF facilities because it argues that Xcel is obligated under PURPA, as implemented by PUCT, to purchase all of the output from its subsidiaries' QFs.

12. SPP concedes that neither its OATT nor its Market Protocols clearly address whether it can hold a transmission owner-purchaser responsible for operational-type, resource-related information necessary for implementing the SPP imbalance market. SPP explains that it is a "reluctant referee" in this matter, and that it only intervened and registered the J.D.Wind QFs when it became clear that Xcel and J.D.Wind were not resolving this matter in time for including these QFs at the start of the imbalance market.[13] However, SPP contends that the proper issues before the Commission are whether the J.D.Wind facilities constitute a resource of Xcel and whether SPP's actions to obtain information and data regarding the operation of the J.D.Wind generating facilities was reasonable. SPP argues that it is required to have specific scheduling and supply information for each resource in order that it may operate the imbalance market and properly account for all energy flows into and out of the transmission grid.

13. Moreover, SPP agrees with Xcel that the Commission can resolve this dispute without addressing the state regulatory matters governed by PURPA. However, SPP offers that should the Commission find it needs to address the obligations under PURPA, the Commission should find that all of the available output from the J.D.Wind QFs (net of station power) is being purchased by Xcel, and that because J.D.Wind represents that

[13] Parties represent that they engaged in discussions over the course of many months prior to the filing of this complaint. Xcel complaint at 9 and 12; SPP answer at 9.

its sales commitment to Xcel is exclusive and fixed for a 20-year term, the necessary legal obligations exist for these QFs to be registered as a resource to Xcel.

14. Finally, SPP argues that the Commission should dismiss the complaint and direct Xcel to provide to SPP information and data pursuant to section 12.2.1.1 of the SPP Market Protocols. Alternatively, SPP requests that the Commission provide specific guidance to SPP to ensure its ability to manage and account for all resources in the imbalance market, or direct OATT or Market Protocol modifications to effectuate the necessary result.

15. In its opposition to the Xcel complaint, J.D.Wind asserts that Xcel is factually and legally incorrect in its contention that there is no legally enforceable obligation for J.D.Wind to sell solely to Xcel. J.D.Wind argues that pursuant to PURPA and the PUCT rules implementing PURPA, there exists a legally enforceable obligation between the J.D.Wind QFs and Xcel under which J.D.Wind is committed to deliver and sell its entire output to Xcel for a 20-year term. As a result, J.D.Wind argues, Xcel is obligated to purchase and receive the output from the J.D.Wind QFs at the interconnection points for this specific term. J.D.Wind explains that it cannot sell to a purchaser other than Xcel because it has not made transmission arrangements and, in fact, has committed not to sell energy and/or capacity from the J.D.Wind QFs to any other party or into the SPP market, and has not done so. On the basis of Xcel's mandatory purchase obligation under PURPA, and the legally enforceable obligations pursuant to regulations of the PUCT, J.D.Wind contends that there is a contract equivalent in place that makes J.D.Wind a resource for Xcel.

16. J.D.Wind also argues that although it does not have a formal coordination agreement with Xcel, Xcel has all the information it needs to register the wind facilities in the imbalance market. J.D.Wind comments that the notices it filed with the PUCT and the Notices of Self-Certification[14] filed with the Commission contain sufficient information for completion of the SPP imbalance market registration. Moreover,

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[14] J.D.Wind 1 filed a notice of self-certification in Docket No. QF05-114-000 on May 18, 2005. J.D.Wind 2 filed a notice of self-certification in Docket No. QF05-116-000 on May 18, 2005. J.D.Wind 3 filed a notice of self-certification in Docket No. QF05-115-000 on April 29, 2005. J.D.Wind 4 filed a notice of self-certification in Docket No. QF03-13-000 on November 18, 2002, and filed a notice of self-certification in Docket No. QF03-13-001 on May 30, 2006. J.D.Wind 5 filed a notice of self-certification in Docket No. QF06-289-000 on July 5, 2006. J.D.Wind 6, Docket No. QF06-290-000 on July 5, 2006. All of the J.D.Wind QFs are 10 MW, except for J.D.Wind 4 which is 79.8 MW.

J.D.Wind argues that Xcel provided information to SPP for including the wind facilities in the imbalance market network model in July 2006.

17. Xcel filed an answer in which it argues that SPP assumes that Xcel has an entitlement to information regarding the operation and status of J.D.Wind facilities that, in fact, Xcel does not have available to it. Further, Xcel disagrees with J.D.Wind's characterization of its PURPA obligations and explains that, at present, it is purchasing energy from J.D.Wind on a non-firm, as available basis, under a QF purchase tariff filed with the PUCT. Moreover, Xcel contends that SPP's argument that this dispute could be quickly resolved by modifying the SPP OATT, either by the Commission so doing or by Commission directive, overlooks the stakeholder procedures through which OATT changes must be considered and approved and then subsequently submitted to the Commission for its approval.

18. Finally, on January 30, 2007, J.D.Wind filed an answer to the Xcel answer to notify the Commission that J.D.Wind believes Xcel has a right to essential information regarding the operations and status of the wind facilities and, further, that J.D.Wind will provide information about the operation and status of its facilities to Xcel.

Discussion

19. The SPP OATT establishes the authority and procedures for registration of market resources in the new imbalance market. Section 1.2.2(a) and (b) of the OATT provide for the application and registration of market participants in the imbalance market as follows:[15]

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[15] Section 1.18b of the SPP OATT defines a Market Participant as: An entity that generates, transmits, distributes, or sells electricity or provides ancillary services with respect to such services (or contracts to perform any of the foregoing activities) within, into, out of, or through the Transmission System. Market Participant expressly includes: (a) Transmission Owner(s) and any of their affiliates including Transmission Owners providing transmission service to: (i) bundled retail load for which such transmission Owners are taking neither Network Integration Transmission Service nor Firm Point-to-Point Transmission Service under this Tariff; and (ii) load being served under Grandfathered Agreements for which such Transmission Owners are taking neither Network Integration Transmission Service nor Firm Point-to-Point Transmission Service under this Tariff, (b) Transmission Customers, (c) Network Customers, (d) Generation Interconnection Customers and (e) any Eligible Customer offering Resources for sale into the EIS Market that executes the Service Agreement specified in Attachment AH. In order to be a Market Participant, the Eligible Customer must be a Transmission

(continued)

Application and Asset Registration

(a) Applications for a Market Participant to provide services in the EIS Market must be submitted to the Transmission Provider no later than 45 Calendar Days prior to the expected date of participation. Completed applications must contain the required information specified under the application procedures in the Market Protocols.

(b) As part of the application process, Market Participants must register all load, including applicable load associated with Grandfathered Agreements, and Resources with the Transmission Provider in accordance with the registration process specified in the Market Protocols.[16]

20. This OATT language clearly specifies that Market Participants (MP) are the entities authorized to undertake this registration process. The OATT does not extend this authority to any other entity, such as SPP. We, therefore, do not find authority within these OATT provisions for SPP to undertake these registration responsibilities.

21. The parallel SPP Market Protocols, section 12.2.1 and section 12.2.1.1, provide additional information regarding the registration process:

Section 12.2.1: Registration of Generation Resources and Loads Acting as A Resource

Any MP operating Resources within SPP must register with SPP. To register a resource, an applicant must submit a Registration Packet (Appendix A) and be capable of performing the functions of a Resource as described herein. Resources are registered on a nodal basis to Settlement Locations. Resources at the same physical and electrically equivalent injection point to the transmission grid may register at the unit or plant level.

Customer; must have executed a Service Agreement or on whose behalf an unexecuted Service Agreement has been filed with the Commission; or must be otherwise bound by the terms of this Tariff. SPP OATT, Fourth Revised Vol. No. 1, Fourth Revised Sheet No. 12.

[16] SPP OATT, Fourth Revised Vol. No. 1, Fourth Revised Sheet No. 626.

Section 12.2.1.1: Responsibilities of the Resource

> Each MP shall be responsible for conducting its operations in accordance with all applicable SPP market rules and guidelines. Each MP shall supply operating characteristics of its Resource, including, but not limited to: Capability, Ramp Rate, Location of Physical Resource, Legal Owner. To the extent that Resources are energy limited and/or intermittent it is the responsibility of the MP to ensure that their Resource Plan reflects the proper availability. Registration shall also include the Settlement Location and Settlement Area of the Resource. The MP is responsible for ensuring that real-time meter data is submitted to SPP.

Here, again, we agree with Xcel that the SPP Market Protocols authorize only market participants to register market resources. This authority is not extended to SPP or any other entity. The Market Protocols specify that the registration is the responsibility of the "[Market Participant] operating resources." Here, Xcel is not the operator of the J.D.Wind resources and has no clear means of ensuring that the operations of the J.D. Wind resources are conducted "in accordance with all applicable SPP market rules and guidelines" as required under these sections. Therefore, in the absence of an operating agreement establishing Xcel having operational information and sufficient control over the J.D.Wind facilities, Xcel cannot be held to be a "[Market Participant] operating resources"[17] Consequently, because Xcel is not operating the J.D.Wind facilities, it cannot be deemed "capable of performing the functions of a Resource" as described in the Market Protocols. [18]

22. Although SPP argues that resolution of this dispute should not turn on whether SPP can "register" these facilities or whether Xcel fulfils the definition of "operating" the J.D.Wind facilities, we do not agree that we can overlook the clear language of the SPP

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[17] Xcel argues that SPP conceded the point that Xcel does not operate the J.D.Wind facilities in an e-mail on November 17, 2006 sent from Pat Bourne, SPP Director of Transmission and Regulatory Policy, to Terri Eaton, XES Manager of Market Operations. Xcel complaint, Attachment A, Exhibit 4.

[18] While some of the operational information concerning the J.D.Wind facilities may be available to Xcel as a matter of public record, there is no obligation on the part of J.D.Wind subsidiaries to provide real time operational information concerning the facilities' current status, such as outage information to Xcel. (*See also* P 24.)

OATT and Market Protocols.[19] These terms are controlling and must be applied to these circumstances.

23. Similarly, we do not accept SPP's argument that section 12.2.1.1 is applicable only to "resources" and not to "operating resources." The resource responsibilities designated in these sections are operating responsibilities and include supplying operating characteristics such as capability, ramp rate, location of physical resources, legal owner and availability and conducting operations in accordance with the applicable SPP market rules and guidelines. These are implicitly the responsibilities of the "operating Resources." Further, the issue of which entity is authorized under the SPP OATT to register resources is central to this controversy. We will not circumvent the authority of the SPP OATT, as SPP seeks, and consequently, we do not accept SPP's theory that we should look beyond the SPP OATT and consider whether these QFs constitute a resource of Xcel.[20]

24. SPP also argues that pursuant to section 30.1 of the SPP OATT,[21] if a network customer designates a resource as its network resource, SPP would be required to give effect to this designation. At this time, Xcel is not seeking to designate the J.D.Wind facilities as a resource. In fact, Xcel represents that it specifically asked SPP not to include the J.D.Wind facilities as a resource and only agreed to doing so for the limited purpose of SPP testing its network model of the imbalance market.

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[19] *See City of Holland v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,076, *reh'g denied* 112 FERC ¶ 61,105 (2005) (granting complaint against Midwest ISO for failure to comply with OATT provisions).

[20] SPP answer at 10.

[21] Under section 30.1 of the SPP OATT, a network customer may designate a resource as one of its network resources if the generation is "owned, purchased or leased," and may not include resources that are "committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis." SPP Tariff Fourth Revised Vol. No. 1, Original Sheet No. 75.

25. Registration of a market resource requires the registrant to have specific information about the market resource.[22] The parties disagree as to whether Xcel is privy to all the information required for the registration process. J.D.Wind argues that Xcel has sufficient information to register these wind facilities because Xcel provided information to SPP for its network modeling. However, J.D.Wind also admits that "it would be helpful to have a reasonable agreement in place by which to facilitate the registration by [Southwestern Public Service Company] of the J.D.Wind QF as resources of SPS as well as other coordination issues."[23] J.D.Wind subsequently offered to provide essential registration information to Xcel. This offer of cooperation confirms that the parties do not have arrangements in place for Xcel to serve as the registrant for the J.D.Wind facilities. J.D.Wind's offer does not, without more, bind Xcel.

26. Further, SPP's Market Protocols contemplate specific documentation be completed by both parties where one party is to serve as the other's designee. The registration forms included in Appendix A to the SPP Market Protocols include

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[22] These registration forms are contained in Appendix A to the SPP Market Protocols. They include:

a. Application as a Transmission Customer for Market Operations

b. Point of Contact Form

c. Local Security Administrator (LSA) form

d. Application for Generation Company (GenCo)

e. Generation Assets Form

f. Application for Load Serving Entity (LSE)

g. Load Asset Form

h. Metering Agent (MA) Form

i. Designated Agent Form

j. Third Party Scheduler Form

[23] J.D.Wind Opposition to Complaint, P 18, citing to J.D.Wind Exhibit Nos. 2 and 3.

instructions specifying that "a Transmission Customer is the only entity that has a legal and financial relationship with SPP." Included in the registration package is a form entitled "Designated Agent Form" that is to be completed by the Market Participant. The form requires the designation of an agent who would be responsible for scheduling the resource, managing settlements and submitting bid curves on behalf of another entity. This form must also be signed by the designated party. Once executed, this agreement allows SPP to accept information from the transmission customer or its designated agent, which in this case would be Xcel. In this instance, we are without evidence that this form has been completed and signed by Xcel. In fact, the evidence indicated that it has not. This designation would also offer protection to SPP, as the transmission provider, in the event that it received misinformation that adversely impacts the market resource, or J.D.Wind.

27. While PURPA and our regulations implementing PURPA impose on Xcel an obligation to interconnect with the J.D.Wind QFs,[24] to sell energy and capacity to the QFs,[25] and to purchase any energy and capacity made available from the J.D.Wind QFs[26] at avoided cost rates,[27] the implementing regulations do not, absent more, also require Xcel to serve as the registrant for such facilities. While purchasing utilities are not required under PURPA and related regulations to register QF facilities as resources under coordination arrangements, such as those contemplated by J.D.Wind, such agreements are consistent with the PURPA purchase obligation, and we expect utilities, such as Xcel, that are requested to enter into such arrangements, will in good faith negotiate and enter into such arrangements. In this regard, failure to enter into such arrangements will not excuse utilities from the obligations to interconnect with and purchase from QFs, imposed by PURPA and our regulations implementing PURPA. Accordingly, this order

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[24] 18 C.F.R. § 292.303 (c) (2006).

[25] 18 C.F.R. § 292.303(b) (2006). In addition, an electric utility must sell a QF, upon request, supplementary power, back-up power, maintenance power, and interruptible power. 18 C.F.R. § 292.305(b) (2006).

[26] 18 C.F.R. § 292.303 (a) (2006).

[27] 18 C.F.R. § 292.304 (2006). The PUCT determines avoided costs, pursuant to our regulations.

should in no way be taken as permission for Xcel to refuse to purchase from or to discontinue its purchases from the J.D.Wind facilities.[28]

28. Thus, because the parties do not now have such arrangements in place, SPP cannot act to impose upon the parties obligations that they have not established. To do otherwise would hold Xcel responsible for operating the J.D.Wind facilities without the necessary arrangements in place.

29. SPP also argues that the circumstances presented by this complaint are not addressed or contemplated by the SPP OATT or Market Protocols because here the Market Participant holds exclusive purchase rights to generation and effectively controls, but does not operate, an energy resource. SPP does not offer any other OATT provisions or other sources of authority upon which it bases its actions. Instead, SPP explains that it registered the J.D.Wind facilities because it is responsible for accounting for all load requirements and resource commitments within this service territory. SPP argues that its registration was "nominal" and reasonable to effectuate the commencement of the imbalance market, and should be endorsed by the Commission. No party in this proceeding contends that the J.D.Wind facilities should not be accounted for within the imbalance market. However, we are not persuaded that SPP can operate outside the clear language of its OATT, regardless of the justification it offers for its action. Rather, SPP is obligated to implement and adhere to the provisions of its OATT and, in conjunction, its Market Protocols.

30. Finally, SPP argues that Xcel does not offer an alternative for enabling SPP to obtain the resource-related information necessary to account for the J.D.Wind energy output, nor how to manage these resources in the SPP imbalance market. While we note that J.D.Wind has offered to make necessary information available, we are unaware that Xcel has accepted this arrangement. Further, SPP's argument overlooks the function of the SPP OATT. SPP's efforts to commence and manage the imbalance market must comply with the SPP OATT.

31. Because we find that SPP lacks authority under its OATT and Market Protocols to register resources for its imbalance market, we will not address SPP's request that the Commission take action to ensure that SPP receives the data and information it seeks.

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[28] The dispute between Xcel and J.D.Wind concerning the rate for and the terms and conditions governing this sale are a matter to be resolved pursuant to Texas' implementation of PURPA.

The Commission orders:

The complaint filed by Xcel is granted.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Philis J. Posey,
Acting Secretary.