

124 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. RT04-1-023

ORDER GRANTING WAIVER

(Issued September 3, 2008)

1. On May 19, 2008, Southwest Power Pool, Inc. (SPP) requested waiver of the Commission's regulations that require SPP to perform an audit of its independence from market participants, as required of all Regional Transmission Organizations (RTO) under the Commission's regulations.¹ As discussed below, the Commission will grant SPP's waiver request.

Background

2. In Order No. 2000, the Commission stated that, at a minimum, an RTO must have four characteristics: (1) independence from market participants; (2) appropriate scope and configuration; (3) operational authority over transmission facilities within the region; and (4) exclusive authority to maintain short-term reliability.² In that order, the Commission further provided that:

The [RTO] must be independent of any market participant. The [RTO] must include, as part of its demonstration of independence, a demonstration that it meets the following: (i) The [RTO], its employees, and any non-stakeholder directors must not have financial interests in any market participant; (ii) The [RTO] must have a decision-making process that is independent of control by any market participant or class of participants; (iii) The [RTO] must have exclusive and independent authority under

¹ See 18 C.F.R. § 35.34(j)(1)(iv) (2008).

² *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

Section 205 of the Federal Power Act . . . to propose rates, terms and conditions of transmission service. . . .³

3. In Order No. 2000, the Commission further stated that it would require a system of independent auditing to insure an RTO's independence from market participants if market participants either have an ownership interest in the RTO or play a role in the RTO's decision-making process.⁴ The Commission provided that an RTO should perform a compliance audit two years after approval of the RTO both for RTOs in which market participants have an ownership interest and those in which market participants have a role in the RTO's decision-making process, but do not have an ownership interest.

4. Through a series of orders, the Commission has addressed SPP's RTO status. In February 2004, the Commission conditionally granted SPP RTO status, subject to satisfaction of several requirements pursuant to Order Nos. 2000 and 2000-A.⁵ SPP has since submitted the required compliance filings, and the last of these compliance filings was accepted by the Commission on June 23, 2006.⁶

5. While the Commission's regulations ordinarily would require SPP to conduct a post-approval independence audit, SPP requests that the Commission waive this requirement.

SPP's Waiver Request

6. SPP argues that it should not be required to perform an audit of its independence from market participants because the Commission is currently performing an audit that will investigate the issue in Docket No. PA08-2-000.⁷ SPP explains that the Commission initiated this audit to determine whether SPP is operating in compliance with its Bylaws and Membership Agreement, the transmission provider obligations described in the SPP

³ See Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,061-76; 18 C.F.R. § 35.34(j)(1) (2008).

⁴ See Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, at 31,367-68; 18 C.F.R. § 35.34(j)(1)(iv)(A) (2008).

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

⁶ See *Southwest Power Pool, Inc.*, Docket No. ER05-1352-003 (June 23, 2006) (unpublished letter order).

⁷ See *Southwest Power Pool, Inc.*, Docket No. PA08-2-000 (Oct. 4, 2007) (unpublished letter order).

OATT, and other obligations and responsibilities as approved by the Commission. SPP argues that its independence from market participants falls within the broad scope of this comprehensive audit, and requiring SPP to undergo an additional audit would be unnecessarily duplicative and administratively inefficient. SPP further points out that the Commission has previously waived this audit requirement for the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.⁸ SPP therefore argues that good cause exists for the Commission to waive the requirement in its regulations that SPP perform a compliance audit.

Notice and Comments

7. Notice of SPP's filing was published in the *Federal Register*, 73 Fed. Reg. 31,452 (2008), with interventions, protests, and comments due on June 6, 2008, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure.⁹ No parties filed motions to intervene or protests.

Discussion

8. The Commission is currently performing an audit that addresses many aspects of the independence of SPP. In light of this ongoing audit, the Commission finds that there is no need for SPP to perform the compliance audit of the independence of its decision-making process required by the Commission's regulations. An individual audit on the part of SPP would be duplicative of the Commission's current audit and would be administratively inefficient. Therefore, the Commission will grant SPP's request for waiver of the audit requirement.

The Commission orders:

The SPP's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See *PJM Interconnection. L.L.C.*, 106 FERC ¶ 61,668, at P 5 (2004).

⁹ See 18 C.F.R. 385.211 (2008); 18 C.F.R. 385.214 (2008).