

123 FERC ¶ 61,062
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. ER08-340-000

ORDER ACCEPTING FILING SUBJECT TO CONDITIONS

(Issued April 21, 2008)

1. On December 14, 2007, Southwest Power Pool, Inc. (SPP) filed with the Commission a revised plan to allow external generators to participate in SPP's real-time energy imbalance service market (EIS Market). SPP made this filing in response to the Commission's October 15, 2007 order, which rejected SPP's August 3, 2007 filing without prejudice.¹ As discussed below, the Commission will accept SPP's filing to be effective October 15, 2008, subject to conditions.

I. Background

2. On January 4, 2006, SPP filed with the Commission proposed Open Access Transmission Tariff (OATT or tariff) revisions intended to implement an EIS Market and establish a market monitoring and market power mitigation plan. In an order issued March 20, 2006, the Commission directed SPP to submit further tariff revisions to allow participation of external generators in the EIS Market.² In that order, the Commission found that participation by external generators in SPP's EIS Market is critical to addressing issues of market power and bid insufficiency.

3. On August 3, 2007, as amended on August 16, 2007, SPP filed revisions to its tariff to allow external generators to participate in its EIS Market (August 3 Filing). SPP

¹ *Southwest Power Pool, Inc.*, 121 FERC ¶ 61,029 (2007) (October 15 Order).

² *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 227 (2006), *order on reh'g*, 116 FERC ¶ 61,289 (2006) (March 20 Order).

proposed facilitating external generator participation in the EIS Market through a pseudo-tie mechanism,³ which would be implemented, in part, through a *pro forma* tariff agreement among SPP, the external generator, the source balancing authority,⁴ and the sink balancing authority within SPP.⁵

4. On October 15, 2007, the Commission issued an order rejecting SPP's August 3 Filing without prejudice. The Commission found that SPP's proposal would, in effect, directly assign all of the costs of implementing the pseudo-tie approach to external generators. The Commission concluded that this would unreasonably deter external generators from entering the market, and would be contrary to the requirements of the March 20 Order concerning issues of potential market power and bid insufficiency in the EIS Market. The Commission, therefore, directed SPP to file an alternative proposal involving SPP and other EIS Market participants bearing a portion of the costs of permitting external generators to access the EIS Market. The Commission further required SPP to determine whether a pseudo-tie mechanism or dynamic scheduling is the appropriate means to facilitate entry by external generators into the EIS Market by, for example, holding an open season. Finally, the Commission required SPP to address in its next filing the remaining issues raised by protestors or explain why these issues are no longer relevant.

II. SPP's Filing

5. On December 14, 2007, SPP submitted a modified version of its initial proposal to accommodate external generator participation in the EIS Market through a pseudo-tie mechanism (December 14 Filing). SPP maintains its proposal to implement the pseudo-tie arrangement with a *pro forma* agreement among SPP, the external generator, and the source and sink balancing authorities.⁶ While many of the provisions of the *pro forma* agreement have not changed, SPP did modify certain sections of the agreement in an

³ SPP defines a pseudo-tie mechanism as a non-physical electrical interconnection point between the source and sink balancing authorities, whereby all or a portion of an external generator is electronically moved from an external balancing authority to another balancing authority that is located in SPP's market footprint. See SPP's December 14 Filing at 2.

⁴ The source balancing authority is the balancing authority outside of the SPP footprint where the external generator is located.

⁵ The sink balancing authority is the balancing authority within the SPP footprint to which the external generator is dispatching.

⁶ The *pro forma* agreement discussed in this order will be Attachment AO to SPP's tariff.

effort to comply with the October 15 Order. Specifically, SPP revised the *pro forma* agreement to allocate a portion of the cost of implementing the pseudo-tie mechanism to SPP and its system users. In addition, SPP expanded the opportunities for external generators to use non-firm transmission service to transport power from the external generator to the border of SPP. The various provisions of SPP's proposed *pro forma* agreement are discussed in detail below.

6. SPP explains that some of the provisions it proposes in its filing are unique to external generators. SPP contends these provisions are necessary to maintain reliable operations to benefit the load served within the SPP EIS Market footprint, and in recognition that SPP's tariff does not address the relationship between the external generator and the source balancing authority. SPP also states that such provisions are consistent with the Commission's finding in the October 15 Order that internal and external generators are not similarly situated, and that the Commission has previously accepted tariff provisions that treat internal and external generators differently.⁷ SPP further argues that other Regional Transmission Organizations (RTO) have operational limitations for external transactions.⁸

7. SPP argues that the applicable standard of review for its filing only requires SPP to demonstrate that its proposal is reasonable, and not that it is the most desirable or that other proposals are not reasonable or less reasonable. SPP explains that its tariff revisions were developed through the SPP stakeholder process and were approved by the SPP Board on December 11, 2007. SPP argues that the thorough vetting of the proposal through SPP's stakeholder process should provide a presumption that the filing is reasonable.

III. Notice and Protests

8. Notice of SPP's filing was published in the *Federal Register*, 72 Fed. Reg. 74,280 (2007), with interventions and protests due on or before January 4, 2008. Dogwood Energy LLC (Dogwood), Lafayette Utilities System of Lafayette, Louisiana (Lafayette), Cleco Power LLC (Cleco), Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy

⁷ SPP cites *Cal. Ind. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 207 (2006), *order on reh'g*, 119 FERC ¶ 61,076, at P 76 (2007).

⁸ SPP cites ISO New England, Inc.'s Manual for Market Operations, Manual M-11 at section 6.5.3 (available at www.iso-ne.com/rules_proceeds/isone_mnls/M11/m_11_market_operations_revision_25_10_12_07.doc) (providing for ramp limitation on external transactions).

New Orleans, Inc. (collectively, Entergy) filed timely motions to intervene and protests. MidAmerican Energy Company (MidAmerican) and Oklahoma Municipal Power Authority (OMPA) filed timely motions to intervene and comments. Southwestern Power Administration, East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and American Electric Power Service Corporation filed timely motions to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The protests are discussed in detail below.

9. On January 22, 2008, SPP filed an answer to the protests. On February 7, 2008, Lafayette filed an answer to SPP's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁰ prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's or Lafayette's answers and will, therefore, reject them.

IV. Discussion

10. The Commission finds that SPP's revised tariff sheets are just and reasonable and generally comply with the March 20 Order and October 15 Order, subject to the modifications discussed below.¹¹

A. Pro Forma Agreement

1. SPP's Proposal

11. SPP maintains its proposal to implement the pseudo-tie arrangement through a *pro forma* agreement among SPP, the external generator, the source and the sink balancing authorities. SPP states that the *pro forma* agreement will address operational issues related to external generator participation in the EIS Market. SPP explains it is not proposing to revise its tariff to address these issues because source balancing authorities are not subject to the requirements of SPP's tariff. SPP asserts that a *pro forma* agreement is necessary to bind the source balancing authorities.

⁹ 18 C.F.R. § 385.214 (2007).

¹⁰ 18 C.F.R. § 385.213(a)(2)(2007).

¹¹ Lafayette requests the Commission suspend the filing and set it for hearing and settlement judge procedures. *See* Lafayette's January 4, 2008 Motion to Intervene and Protest at 4. The Commission declines to take such action because the record contains sufficient information for the Commission to make a decision on the merits without a hearing.

2. Protests

12. Entergy argues the Commission should not find SPP's *pro forma* agreement to be presumptively correct. Entergy agrees with SPP that the appropriate agreements need to be executed to establish the pseudo-tie arrangement, and Entergy recognizes SPP's desire for uniformity among these agreements. However, Entergy argues that the unique, customer-specific nature of the pseudo-tie arrangements would be more properly implemented by negotiations between the parties rather than in a standardized *pro forma* agreement.¹² Entergy is willing to work with generators on a case-by-case basis towards the goal of permitting external generator participation in the EIS Market, but asserts that any agreement will differ from the *pro forma* agreement filed by SPP.

13. Cleco states it does not object to SPP's use of the pseudo-tie approach, though it does object to SPP's efforts to bind source balancing authorities not subject to SPP's tariff through a *pro forma* agreement. Cleco asserts the "one size fits all" approach SPP proposes will not work in this situation and contends external balancing authorities should be able to negotiate the terms and conditions of the agreements implementing the pseudo-tie arrangement.

14. MidAmerican states it takes no position on the merits of SPP's filing as a mechanism for external generators to participate in the EIS Market, and in fact, recognizes the advantages of such participation. However, MidAmerican argues that SPP's proposal offers, at best, a cumbersome mechanism for external entities to participate in the EIS Market. MidAmerican contends a more effective means of encouraging external generator participation would be to create a mechanism for market participants outside the SPP market region to submit offers for fixed schedules, rather than having to bilaterally negotiate such schedules with market participants inside the SPP market region, as they do currently. MidAmerican cites the arrangement offered by the Midwest ISO as an example.

3. Commission Determination

15. The Commission finds SPP's proposal to implement the pseudo-tie approach through a *pro forma* agreement to be just and reasonable, subject to the conditions discussed below. While some of the terms of SPP's proposed *pro forma* agreement must be modified to make it just and reasonable, we find that a *pro forma* agreement is a suitable means by which to implement the pseudo-tie arrangement. As SPP asserts, source balancing authorities are not bound by SPP's tariff. Thus, a separate agreement is necessary to establish the rights and responsibilities of the parties involved in

¹² Entergy cites *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 630 (2007).

implementing the pseudo-tie mechanism. The Commission finds that a *pro forma* agreement is a reasonable solution to SPP's problem of launching a service that requires the cooperation of parties not bound by SPP's tariff.

16. The protestors argue that a one-size-fits-all *pro forma* agreement is not appropriate and that they should be able to negotiate the terms of the agreements implementing the pseudo-tie arrangement on a case-by-case basis. The Commission recognizes that some of the parties involved in establishing the pseudo-tie arrangement may have unique circumstances that are not addressed by the *pro forma* agreement. These parties are free to negotiate and amend the terms and conditions of the *pro forma* agreement, and then file it with the Commission as a non-conforming agreement.

17. In Order No. 890-A, we stated that “[t]he unique, customer-specific nature” of pseudo-tie arrangements are “more properly arranged by negotiation between the relevant parties....”¹³ Accordingly, the Commission did not require transmission providers to adopt standardized tariff provisions for implementing pseudo-ties.¹⁴ Consistent with that approach, here, we are accepting the *pro forma* agreement to serve as a starting point to facilitate negotiation of pseudo-tie arrangements. By approving the *pro forma* agreement, we do not intend to bind parties to an agreement that is unworkable for them. Rather, the *pro forma* agreement sets forth a basis from which the parties can work to negotiate appropriate pseudo-tie arrangements on a case-by-case basis. We believe having a *pro forma* agreement to work from, rather than starting from scratch, will accelerate the negotiations process, allowing external generators to participate in the EIS Market with minimal delay. As such, the Commission finds SPP's proposal to implement the pseudo-tie mechanism through a *pro forma* agreement to be just and reasonable, subject to the revisions discussed below.

18. The Commission expects the parties to negotiate the terms of these agreements in good faith as they have proposed. Parties may avail themselves of the alternative dispute resolution services available through the Commission if they encounter problems during the negotiations process. If, nonetheless, parties are unable to resolve any issues, SPP should file the unexecuted agreement with the Commission for resolution. Thus, within 30 days of the date of this order, SPP must make a compliance filing revising the *pro forma* agreement to state that if the parties cannot reach an agreement, SPP will file an unexecuted *pro forma* agreement, including all agreed-upon non-conforming deviations, with the Commission.

¹³ *Id.*

¹⁴ *Id.*

B. Pseudo-Tie Mechanism v. Dynamic Scheduling¹⁵

1. SPP's Proposal

19. SPP decided to maintain the pseudo-tie mechanism as the means to facilitate external generator participation in the EIS Market. SPP explains that a pseudo-tie mechanism is necessary to make external generators more comparable to generators internal to the EIS Market. SPP states that pseudo-tie mechanisms generally used in other contexts presume a percentage split of a generator's output in real time. SPP explains that the pseudo-tie mechanism in its proposal blends the dispatchability of dynamic scheduling with comparable treatment to internal generators by including the external generator in the sink balancing authority.¹⁶ According to SPP, this design presumes a response to a specific dispatch instruction, regardless of the generator's obligation to other parties. SPP explains that energy delivered from an external generator to the sink balancing authority in SPP's EIS Market is treated as the sink balancing authority's responsibility.

20. SPP states that it chose the pseudo-tie mechanism because it is more cost-effective than dynamic scheduling, may not require the tagging of schedules as dynamic scheduling does, and demands higher performance standards by the two balancing authorities.

21. In accordance with the October 15 Order, SPP issued a survey to determine interest in external generator participation in the EIS Market.¹⁷ SPP states that it sent this survey to approximately 150 entities and received responses from six, with three indicating interest in participation. According to SPP, the maximum participation

¹⁵ The North American Electric Reliability Corporation (NERC) considers both pseudo-tie mechanisms and dynamic scheduling to be forms of dynamic transfers which will be discussed in greater detail below.

¹⁶ Dynamic scheduling is another form of dynamic transfer whereby the transaction is generally reflected in the scheduled interchange between balancing authorities (i.e., the amount of energy scheduled to flow between balancing authorities is adjusted dynamically to reflect changes in actual flows due to changes in the generation output or load subject to the dynamic transfer). In contrast, under the pseudo-tie approach, the generation output or load is electronically moved from the balancing authority in which it is physically located to another balancing authority (i.e., the transaction is not treated as a scheduled interchange, and is reflected in the actual metered interchange as if the resource had been physically relocated within the balancing authority receiving the dynamic transfer).

¹⁷ October 15 Order at P 26.

indicated by these responses are fifteen generators representing up to 1,440 MWs of capacity. SPP notes that no respondents interested in participating in the EIS Market qualified such interest on the particular design of the proposal.

22. With regard to the cost issue, SPP explains that its start-up costs for the pseudo-tie approach¹⁸ versus dynamic scheduling¹⁹ are not dependent on the level of participation by external generators, but that the start-up costs for balancing authorities will vary based on the level of participation by external generators.²⁰ SPP also states that the total start-up and annual operational costs (to both SPP and the balancing authorities combined) are less for the pseudo-tie approach no matter how many external generators participate.²¹ Further, SPP states the cost per megawatt is less for the pseudo-tie mechanism, versus dynamic scheduling, no matter how many generators participate.²² SPP therefore argues that the pseudo-tie approach is a more cost-effective method for providing external generator participation in the EIS Market.

2. Protests

23. Lafayette asserts that SPP provided no support for its estimate of the costs of implementing a pseudo-tie mechanism versus dynamic scheduling. As such, Lafayette requests that after SPP implements the pseudo-tie mechanism, the Commission require SPP to file a report on the costs of implementing the pseudo-tie mechanism, along with an explanation of how those costs varied from the estimate SPP submitted in its filing. In

¹⁸ SPP states that its start-up costs to implement the pseudo-tie approach would be approximately \$700,000.

¹⁹ SPP states that its start-up costs to implement the pseudo-tie approach would be approximately \$700,000, and approximately \$2,900,000 to implement dynamic scheduling.

²⁰ SPP asked the sink balancing authorities within the SPP EIS Market footprint to estimate the costs of implementing the pseudo-tie mechanism versus dynamic scheduling. While not all of the sink balancing authorities responded to SPP's inquiry, the figures SPP presents in its filing are based on the information SPP received from the sink balancing authorities that did respond. *See* December 14 Filing at 12.

²¹ *Id.*

²² SPP states the cost per megawatt, assuming a 1,440 MW commitment (i.e., the participation of 15 external generators), is \$556 for the pseudo-tie approach, and \$2,035 for dynamic scheduling. *Id.*

addition, if implementation takes longer than the six months SPP estimates, Lafayette requests that the Commission require SPP to file an explanation and updated implementation plan.

3. Commission Determination

24. The Commission finds that SPP's choice of the pseudo-tie approach over dynamic scheduling is just and reasonable. SPP presented data in its filing demonstrating that the pseudo-tie mechanism is the most cost-effective method for facilitating external generator participation in the EIS Market. Based on this information, the Commission agrees that the pseudo-tie approach will be less expensive to implement than dynamic scheduling. The data in SPP's filing satisfies the Commission that SPP's choice of the pseudo-tie approach is just and reasonable.

25. Lafayette requests that the Commission require SPP to file a report on the costs of implementing the pseudo-tie approach, along with an explanation of how those costs varied from the estimates SPP submitted in its filing. The Commission will not require SPP to make such a filing. SPP explains in its filing that the figures it presents are good faith estimates, and the Commission recognizes these costs are subject to change, either because more external generators ultimately choose to participate in the EIS Market, or because the actual cost of implementing the pseudo-tie mechanism in accordance with this order is different from expectations. Since SPP will be responsible for a portion of the cost of the pseudo-tie mechanism, SPP has an incentive to keep costs as low as possible. Therefore, the Commission sees no reason for SPP to provide further updates on these costs.

26. Lafayette further requests, if implementation takes longer than the six months SPP estimates, that the Commission require SPP to file an explanation for the delay and updated implementation plan. The Commission declines to require such a filing, but agrees with Lafayette that it is important for SPP to implement the pseudo-tie arrangement in a timely manner. In the March 20 Order, the Commission stated that provisions for external generator participation in the EIS Market must be in effect within six months of the start of SPP's imbalance market.²³ While that deadline has passed, the Commission's directive that SPP facilitate meaningful participation by external generators in its EIS Market as soon as possible remains. The Commission expects that SPP will implement its proposal for external generator participation in the EIS Market as set forth in its tariff.

²³ March 20 Order at P 227.

C. Cost of Implementing SPP's Proposal

27. In the October 15 Order, the Commission found that SPP's proposal improperly assigned all of the costs of implementing the pseudo-tie approach to external generators and that this would unreasonably deter external generators from participating in the EIS Market. The Commission determined that this cost assignment was contrary to the requirements of the March 20 Order which found that participation by external generators in SPP's EIS Market was critical to address issues of potential market power and bid insufficiency.²⁴ As a result, the Commission directed SPP to file an alternative proposal involving SPP and other EIS Market participants bearing a portion of the costs of permitting external generators to access the EIS Market.²⁵

1. SPP's Proposal

28. Pursuant to section 2(f) of the revised *pro forma* agreement, the external generator is still responsible for designing, constructing, operating, and maintaining the systems and communications equipment necessary to receive SPP deployment instructions in accordance with SPP's EIS Market Protocols. In addition, section 2(g) of the revised *pro forma* agreement still requires external generators to design, construct, operate, and maintain, at the external generators' expense, the real-time and historical systems and communications equipment necessary to provide the source and sink balancing authorities with the corresponding real-time pseudo-tie value. SPP asserts these provisions comply with the Commission's conclusion in the October 15 Order that external generators should expect to pay costs specific to the external generator, such as the costs related to their own systems and communications equipment. SPP explains that its proposal does not impose any equipment costs on external generators that are functionally different from those imposed on internal generators.

29. SPP modified section 4 of its proposed *pro forma* agreement, which deals with operations and implementation related costs. Section 4 states that the external generator and the source balancing authority will address the reasonable implementation and operations-related costs borne by the external generator or source balancing authority as a result of the agreement. Section 4 further requires SPP to compensate the sink balancing authority for any and all reasonable implementation and operation related costs borne by the sink balancing authority as a result of the agreement. SPP states that the intent of section 4 is to impose a portion of the costs of permitting external generator access to the EIS Market on SPP and other EIS Market participants, in accordance with the October 15 Order. SPP explains that with these revisions, the external generator will not have to bear implementation and operation costs incurred within the SPP market footprint.

²⁴ *Id.*

²⁵ October 15 Order at P 25.

2. Protests

30. Cleco requests that the Commission clarify section 4 of the *pro forma* agreement so it is apparent that source balancing authorities do not have to bear any of the costs associated with external generator participation in the EIS Market.

3. Commission Determination

31. The Commission finds that SPP's cost-sharing proposal whereby external generators, SPP, and other EIS Market participants each bear a portion of the cost of implementing the pseudo-tie approach is generally consistent with the Commission's findings in the October 15 Order, subject to the modifications discussed below. As the Commission stated in the October 15 Order, it is reasonable for SPP to require external generators to pay the expenses of accessing the EIS Market specific to the external generator because internal generators have to pay similar costs.²⁶ Thus, sections 2(f) and 2(g) of the *pro forma* agreement, which require external generators to design, construct, operate, and maintain the systems and communications equipment necessary to dispatch real-time pseudo-tie values and receive deployment instructions, are just and reasonable.

32. The Commission also finds just and reasonable SPP's revision to section 4 providing that SPP will compensate the sink balancing authority for implementation and operations-related costs borne by the sink balancing authority as a result of the agreement. With this change, SPP and other EIS Market participants will be responsible for the costs of implementing the pseudo-tie mechanism inside the SPP footprint, while external generators will pay the costs of implementation related to their own systems and communications equipment. This cost-sharing proposal reduces the Commission's concern that external generators will be deterred from participating in SPP's EIS Market because of prohibitively high start-up costs. In addition, SPP's modification to section 4 eliminates any undue discrimination between external and internal generators by requiring them to bear the similar costs to participate in the EIS Market (i.e., the costs specific to their own generator). For these reasons, the Commission finds the second half of section 4 of the *pro forma* agreement to be just and reasonable.

33. SPP also revised the first portion of section 4 of the *pro forma* agreement to state that the external generator and source balancing authority will address the implementation and operations related costs borne by the source balancing authority as result of the agreement. Cleco requests that the Commission clarify this first portion of section 4 so it is apparent that source balancing authorities do not have to bear any of the costs associated with external generator participation in the EIS Market.

²⁶ October 15 Order at P 24.

34. The Commission agrees that, as a general matter, source balancing authorities should not be responsible for the costs of implementing the pseudo-tie arrangement. As Entergy explained in its protest,²⁷ source balancing authorities do not benefit from external generator participation in the EIS Market, and therefore, should not be responsible for the associated costs. Section 4 currently leaves the cost responsibility up for negotiation between the external generator and source balancing authority. The Commission finds that doing so is unjust and unreasonable and orders SPP to revise its tariff to provide that external generators will compensate the source balancing authority for reasonable implementation and operations related costs incurred by the source balancing authority to provide services required by the *pro forma* agreement. The Commission recognizes that under certain circumstances, the external generator and source balancing authority may want to come to a different arrangement with regard to these costs, and they may do so by amending section 4 and filing the non-conforming agreement with the Commission for approval.

D. Firm Transmission Requirement

1. SPP's Proposal

35. Pursuant to section 2(b) of the *pro forma* agreement, external generators must secure and pay for all costs associated with the transmission service necessary to deliver power from the external generator to the sink balancing authority. Section 2(b) further requires that the transmission service external generators secure to the border of SPP's system is firm. SPP argues this requirement is consistent with the determination in the October 15 Order that external generators should pay for any transmission service necessary to access SPP's EIS Market.

36. In section 2(c)(i), SPP added the option for external generators to use non-firm service if SPP's Operating Reserves are used to support the transaction. SPP also modified the option in section 2(c)(ii) to allow external generators to use non-firm service if the sink balancing authority and any intermediary transmission service providers agree to only request an adjustment to the pseudo-tie values under emergency conditions due to the violation of an Interconnection Reliability Operating Limit (IROL), which requires action to be taken more quickly than the Market Operating System can recognize.²⁸

37. SPP argues that because external generators and internal generators are not similarly situated, it is not discriminatory for SPP to impose restrictions on external generators' use of non-firm service, while not imposing similar restrictions on internal

²⁷ Entergy's January 4, 2008 Motion to Intervene and Protest at 4.

²⁸ SPP's August 3 Filing already provided this option if the source balancing authority agreed to the limitation on adjusting the pseudo-tie values.

generators. SPP explains that internal generators are located inside SPP's EIS Market footprint, and therefore, do not need transmission service to the EIS Market as external generators do. SPP further argues that placing conditions on external generators' use of non-firm service is necessary for reliability reasons, since external generators are not subject to SPP's tariff.

2. Protests

38. Lafayette argues SPP's requirement that external generators maintain firm transmission service to SPP's border (unless other arrangements effectively guarantee continuous and undiminished deliveries) unduly discriminates against external generators because internal generators are not subject to a similar requirement. Lafayette further contends the requirement for firm transmission service to the SPP border makes no sense, because in a filing in Docket No. ER08-242-000, SPP is proposing to change the transmission priority of unscheduled EIS Market flows inside the market footprint to non-firm interruptible service priority. Lafayette states that if SPP is going to treat all parties as non-firm and interruptible within the footprint, then external generators should not be burdened with the cost of firming up their deliveries to the border.

39. However, Lafayette states that if the Commission does approve SPP's "firm to the border" transmission requirement, it supports the newly added section 2(c)(i), which permits external generators to use non-firm transmission service to deliver power from the external generator to the sink balancing authority if the external generator is located in a balancing authority area that participates in SPP's Reserve Sharing Group (RSG).

40. With regard to section 2(c)(ii), Lafayette argues that SPP's attempt to expand external generators' opportunities to use non-firm service with the inclusion of this section simply generates confusion as to which entity (the sink or source balancing authority) should furnish the backup service. Lafayette argues the lack of clarity may result in an external generator being bounced back and forth between the source and sink balancing authorities when it needs backup service for its use of non-firm transmission service. Lafayette argues the Commission should direct SPP to make a compliance filing outlining and clarifying the duties of the source and sink balancing authorities under the *pro forma* agreement.

3. Commission Determination

41. The Commission finds SPP's requirement that external generators obtain firm transmission service to the border of SPP, or non-firm transmission under certain circumstances, is just and reasonable. SPP asserts that the firm transmission requirement established in section 2(b) is necessary for reliability reasons and not unduly discriminatory because internal and external generators are not similarly situated. The Commission agrees. Requiring external generators to secure firm transmission service to

the SPP footprint reduces the chance that the external generator, and consequently the EIS Market, will be affected by a transmission service curtailment outside the SPP footprint.

42. Lafayette's concern that all unscheduled EIS flows will be treated as non-firm and interruptible once inside the footprint is not relevant because the Commission rejected SPP's proposal in Docket No. ER08-242-000.²⁹ Regardless of how this matter may be resolved, Lafayette's arguments regarding SPP's treatment of unscheduled EIS flows inside the SPP footprint are misplaced because the firm transmission requirement addresses how external generators will deliver power to the border of SPP, and not how these flows are treated once inside the footprint.

43. The Commission also finds that it is not unduly discriminatory for SPP to require external generators to obtain firm transmission service because internal and external generators are not similarly situated. While internal generators, by virtue of their location and direct connection, do not need transmission service to participate in the EIS Market, external generators do. As a result, external generators face potential curtailments to their transmission service outside the SPP footprint. This potential for curtailment outside of SPP, in addition to the risk of generator outages, warrants different requirements for external generators. SPP's requirement that external generators secure firm transmission service places external and internal generators on a more comparable basis by ensuring they both have a firm path to the SPP footprint.

44. Internal and external generators are also not similarly situated in terms of their probable reliance on energy reserves from SPP's RSG. Because of the risk of curtailments to transmission service outside of SPP, there is a greater likelihood that external generators will have to rely on the RSG. The obligation for external generators to secure firm transmission service reduces this likelihood and prevents overtaxing SPP's RSG. These differences between internal and external generators justify requiring external generators to obtain firm transmission service, while internal generators need not fulfill a similar requirement.

45. Lafayette argues the firm transmission service requirement provides duplicative reliability protections when combined with the dispatch caps set forth in Attachment AE of SPP's tariff. However, as external generator participation in the EIS Market has not yet been tested, the Commission does not find these requirements to be unjust or unreasonable measures to safeguard reliability, at least until participation by external

²⁹ See *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,042, at P 15-17 (2008).

generators in the EIS Market is known. In addition, as discussed below, SPP and the Commission will review the necessity of the dispatch caps after external generators begin participating in the EIS Market.

46. The Commission also finds the firm service requirement to be just and reasonable because it is not a fixed requirement. SPP gives external generators the option to use non-firm transmission service in two circumstances pursuant to section 2(c) of the *pro forma* agreement, both of which provide a level of reliability safeguards comparable to the firm transmission service requirement. The first circumstance is where SPP Operating Reserves are used to support the transaction. This option provides a backup to cover not only the outage of an external generator, but also the possibility that the external generator's non-firm transmission service outside of SPP is curtailed. The second circumstance where external generators can use non-firm transmission service is if the source or the sink balancing authority agree to limit the curtailments associated with the external generator. By revising this section to increase the flexibility of the non-firm transmission option, SPP makes participation in the EIS Market more accessible to external generators without affecting reliability.

47. Lafayette argues that the option of securing backup service from the sink or the source balancing authorities in section 2(c)(ii) will result in the external generator being bounced back and forth between the two balancing authorities, making the process more confusing and difficult. The Commission disagrees. Because the circumstances involved in each pseudo-tie arrangement are unique, the Commission believes it is appropriate for SPP to permit parties to negotiate which balancing authorities will agree to limit external generator curtailments under 2(c)(ii). Therefore, the Commission finds SPP's proposed section 2(c) to be just and reasonable.

E. Regulation and Imbalance Services

1. SPP's Proposal

48. SPP's proposal places the responsibility on source balancing authorities to provide regulation and imbalance services if an external resource generates more or less power than its real-time pseudo-tie value. Pursuant to section 2(j) of the *pro forma* agreement, the real-time pseudo-tie value related to an external generator will be based on dispatch instructions issued by SPP to that generator. Section 2(k) provides that the source and sink balancing authorities will include that pseudo-tie value in their calculations of Net

Actual Interchange (NAI)³⁰ and Area Control Error (ACE).³¹ Consequently, unless the source balancing authority adjusts its generation during real-time operations to make up for any difference between the dispatch instructions provided by SPP to the external generator and the actual output of the generator, the source balancing authority's ACE values may not comply with applicable reliability standards.

49. SPP argues this does not impose any additional risk upon source balancing authorities. SPP explains that external generators are effectively operating so as to inject a portion of their output in any interval into two balancing authorities. SPP states that when the physical generating unit does not produce enough energy to meet its total obligations, the external generator has still committed to meet SPP's dispatch instruction. SPP contends that in this instance the source balancing authority, under its provision of transmission service, has an obligation to regulate for the external generator, and the pseudo-tie arrangement does not change this obligation.

2. Protests

50. Entergy argues that the sink, and not the source, balancing authority should provide regulation and imbalance services for external generators. Entergy asserts that SPP's proposal for source balancing authorities to provide these services is contrary to the Commission's definitions of a pseudo-tie mechanism. Entergy also argues SPP's proposal is inconsistent with well-settled cost allocation principles. Specifically, Entergy opposes the allocation of a significant portion of the risk and costs of SPP's proposal on the source balancing authority, when source balancing authorities are not the parties benefiting from the proposal. Entergy also disagrees with SPP's contention that its proposal does not change the obligations of source balancing authorities. Entergy points out that regulating for pseudo-tie arrangements is more burdensome for balancing authorities than regulating for normal interchange transactions. Entergy explains that interchange transactions are normally scheduled over an hour, ramp up over a ten minute period, and remain flat for the remainder of the hour, while pseudo-tie transactions can change every five minutes, resulting in potentially greater and more frequent imbalances to be regulated by the balancing authority.

³⁰ According to NERC, NAI is the algebraic sum of all metered interchange over all interconnections between two physically adjacent balancing authority areas. See, www.nerc.com, Glossary of Terms Used in Reliability Standards, at p. 10 (May 2, 2007).

³¹ According to NERC, ACE is the instantaneous difference between a balancing authority's net actual and scheduled interchange, taking into account the effects of frequency bias and correction for meter error. See www.nerc.com, Glossary of Terms Used in Reliability Standards, at p. 1 (May 2, 2007).

51. Dogwood also opposes SPP's proposal that the source balancing authority provide regulation and imbalance service for external generators. Dogwood argues that the pseudo-tie arrangement moves the external generator from the source balancing authority to the sink balancing authority within SPP, and does not agree with SPP continuing to treat the external generator as if this movement has not occurred. Dogwood further contends that SPP's proposal is inconsistent with the NERC Dynamic Transfer Reference Document, which states that a pseudo-tie arrangement makes the sink balancing authority the provider of regulation and imbalance services.³² Dogwood requests that the Commission direct SPP to implement the pseudo-tie arrangement consistent with the NERC guidelines.

52. Lafayette states that SPP's revised proposal does not comport with NERC's Dynamic Transfer Reference Document which states that the effect of a pseudo-tie arrangement is to transfer regulation and imbalance responsibility from the source balancing authority to the sink balancing authority. Lafayette points out that if, under SPP's proposal, the source balancing authority remains responsible for providing these services, the balancing authority has not shifted, and so, the external generator has not been truly pseudo-tied into the sink balancing authority. Lafayette states that SPP is trying in its proposal to incorporate certain elements of NERC-recognized dynamic scheduling³³ with select elements of the NERC-recognized pseudo-tie mechanism, resulting in a confusing proposal.

53. Lafayette also states that SPP's proposal relies on a faulty understanding of OATT requirements. Lafayette explains that under Schedules 3 and 4 of the Commission's *pro forma* OATT, a transmission provider has no obligation to provide a transmission customer with regulation or imbalance services if the transmission provided is used to serve a load outside the transmission provider's balancing authority. Lafayette states that under SPP's proposal, the load served by the external generator is in the sink balancing authority since the external generator has been electronically removed from the source balancing authority. Therefore, Lafayette argues, requiring the source balancing authority to provide regulation and imbalance services is inconsistent with Schedules 3 and 4 of the Commission's *pro forma* OATT.

³² NERC Dynamic Transfer Reference Document, Version 1.1 (November 20, 2004).

³³ Unlike the pseudo-tie approach, dynamic scheduling "typically does not change a control area's jurisdiction; that is, the native control area continues to exercise operational jurisdiction over, and provides basic control area services to, dynamically scheduled resources." *See id.* at 5.

3. Commission Determination

54. The Commission disagrees with SPP's position that source balancing authorities are necessarily required to provide regulation and imbalance services for external generators participating in the EIS Market. SPP's position is inconsistent with its own proposed tariff, the relevant NERC guidance documents, and with the Commission's *pro forma* OATT. For example, in its proposed revisions to Attachment AE of its tariff, SPP defines a pseudo-tie mechanism as follows:

A non-physical electrical interconnection point between balancing authorities, *whereby all or a portion of an external resource is electronically moved from one balancing authority to another balancing authority that is in the SPP Market Footprint* (emphasis added).³⁴

55. In this definition, SPP recognizes that the pseudo-tie mechanism moves the external generator from the source balancing authority outside of the SPP footprint, to the sink balancing authority within SPP. Yet SPP's proposal still obligates the source balancing authority to provide the regulation and imbalance services associated with the external generator dispatching into the SPP's EIS Market.

56. SPP's position is also inconsistent with NERC guidance. NERC sets forth a description of a pseudo-tie arrangement in its Dynamic Transfer Reference Document.³⁵ The purpose of this document is to provide guidance to the industry on the responsibilities of parties involved in establishing dynamic transfers, and also to standardize the implementation and operation of dynamic transfers.³⁶ In defining a pseudo-tie arrangement, the NERC Dynamic Transfer Reference Document states:

³⁴ SPP's December 14 Filing, Exhibit II (proposed revisions to SPP's FERC Electric Tariff, Fifth Revised Volume No. 1, Attachment AE, Second Revised Sheet No. 986).

³⁵ NERC Dynamic Transfer Reference Document, Version 1.1 (November 20, 2004).

³⁶ Dynamic transfer is the term NERC uses to describe all "methods by which the control response to loads or generation is assigned, in a real-time basis, from the control area to which such loads or generation are electronically interconnected (native control area) to another control area (attaining control area)." The two types of dynamic transfers NERC recognizes are pseudo-tie mechanisms and dynamic scheduling. *See id.* at 3. NERC's use of the term "native control area" is the equivalent of SPP's use of the term "source balancing authority," and NERC's use of the term "attaining control area" is the equivalent of SPP's use of the term "sink balancing authority."

Pseudo-ties are often employed to assign generators, loads, or both from the control area to which they are physically connected into a control area that has effective operational control of them. *Thus, pseudo-ties provide for a change of control area jurisdiction from the native to the attaining control area and at the same time make the attaining control area provider of control area services* (emphasis added).³⁷

57. This definition, consistent with SPP's definition in Attachment AE, provides that a pseudo-tie mechanism moves an external generator from the source balancing outside the SPP footprint, to the sink balancing authority inside the SPP footprint. However the NERC guidelines go further than SPP's definition and state that the sink balancing authority will become the provider of regulation and imbalance services under the pseudo-tie arrangement.

58. While the NERC Dynamic Transfer Reference Document is a guidance document and is not a prescriptive standard for all pseudo-tie arrangements, SPP has failed to provide a reasonable explanation for its proposal. As support for its proposal, SPP states that source balancing authorities are already obligated to provide regulation and imbalance services to external generators. However, contrary to SPP's assertion, source balancing authorities are not always so obligated and should not be burdened by the additional costs, if any, associated with external generators participating in the EIS Market.

59. In addition, while the Commission's *pro forma* OATT provides for generator imbalance service for block hourly schedules normally required for interchange transactions, it does not provide for regulation and imbalance service for pseudo-tie transactions. Accordingly, depending on the arrangements made in the applicable generator interconnection agreements or tariffs, source balancing authorities may not have specified rates, terms, and conditions for the services required for external generators to participate in the EIS Market. In particular, the source balancing authorities could incur additional costs to accommodate the imbalances of a generator following SPP dispatch instructions that can be changed every five minutes, as compared with the block hourly schedule normally required for interchange transactions under the Commission's *pro forma* OATT. Because it is more difficult to regulate for pseudo-tie transactions than for normal interchange transactions, source balancing authorities may not be able to reliably accommodate such an arrangement, or might only be able to accommodate this agreement by procuring expensive capacity, thereby hindering the participation of external generators in the EIS Market.

³⁷ *Id.* at 7.

60. As discussed above, SPP's proposal is not consistent with the relevant guidance, and SPP offers no meaningful justification for deviating from this guidance and may increase the risks and costs of source balancing authorities. Nonetheless, the arrangement of source balancing authorities providing regulation and imbalance services for external generators participating in the EIS Market may be a reasonable approach if the affected parties, including the source balancing authority, agree to proceed in such a manner. Whether such an arrangement is workable and cost-effective is best determined by SPP and the balancing authorities involved in the pseudo-tie arrangement. As such, the Commission finds that the *pro forma* agreement should provide for SPP to negotiate with the source and sink balancing authorities as to which balancing authority should provide the regulation and imbalance services associated with external generators participating in the EIS Market. The Commission expects the parties to negotiate this issue on a good faith basis and to take advantage of the Commission's alternative dispute resolution services if necessary. If parties are still unable to resolve this issue, SPP should file the unexecuted agreement with the Commission for resolution. Therefore, within 30 days of the date of this order, SPP must make a compliance filing revising its *pro forma* agreement to provide for SPP to negotiate with the balancing authorities as to which balancing authority will provide the regulation and imbalance services for external generators participating in the EIS Market, and to require SPP to file with the Commission an unexecuted agreement, including all agreed-upon non-conforming deviations, if the parties cannot agree.

61. While parties may negotiate which balancing authority will provide regulation and imbalance services for external generators participating in the EIS Market, the cost of these services is a different matter. The Commission finds that internal and external generators should be treated in a non-discriminatory manner with regard to the cost of these services. To the extent that internal generators participating in the EIS Market are not required to compensate sink balancing authorities for providing regulation and imbalance services, external generators should not be held responsible for any such costs either. Therefore, within 30 days of the date of this order, SPP must make a compliance filing revising its *pro forma* agreement to state that internal and external generators will be treated equally with regard to the costs of regulation and imbalance services associated with participating in the EIS Market.

F. Deviations From the Pseudo-Tie Value

1. SPP's Proposal

62. Pursuant to section 2(m) of SPP's proposed *pro forma* agreement, the external generator must notify parties of any real-time circumstances that affect its ability to meet the SPP dispatch instructions. Section 2(m) further states that if the external generator or the source balancing authority deviates from the anticipated real-time pseudo-tie value,

the external generator is responsible for any costs incurred by the sink balancing authority as a result of the deviation, including any cost associated with the sink balancing authority's request for assistance from SPP's RSG.

63. SPP asserts this provision simply imposes costs on external generators when the external generators act in ways that cause costs. SPP states that when the sink balancing authority incurs costs from a deviation by the external generator or the source balancing authority, "SPP expects that a filing will be made with the Commission to recover such costs, though any such filing will be made by the entity seeking such costs so decisions as to that filing will be made by that entity."³⁸ SPP further states that costs associated with a sink balancing authority requesting assistance from the RSG will be recovered under the applicable filed rates.

2. Protests

64. Lafayette argues this section of the *pro forma* agreement discriminates against external generators by assigning deviation-related costs to the external generator, regardless of who caused the deviation. In addition, Lafayette argues that SPP's *pro forma* agreement is not the proper place to determine which party will bear deviation-related costs. Lafayette contends the issue should be decided when the sink balancing authority files with the Commission to recover the costs incurred. Lafayette also complains that the tariff revisions are silent on whether an external generator is subject to further penalties for failing to meet a dispatch instruction. Lafayette proposes the following alternative language that treats external generators and internal generators similarly:

Market Participant shall notify Parties immediately of any real-time circumstances that affect the Market Participant's obligation or ability to meet the SPP Dispatch Instructions, including any schedule curtailments. Deviations from the SPP Dispatch Instructions are subject to the same obligations and consequences as any other Resource within the SPP Market Footprint.

3. Commission Determination

65. The Commission finds section 2(m) of the *pro forma* agreement to be unjust, unreasonable, and unduly discriminatory and orders SPP to revise this section as discussed below. Pursuant to section 2(m), external generators are responsible for the costs incurred by the sink balancing authority resulting from the external generator's deviations from SPP dispatch instructions. Protestors contend that this section unduly

³⁸ SPP's December 14 Filing at p. 10.

discriminates against external generators by prematurely determining which party will be responsible for these deviation-related costs. Protestors also assert that section 2(m) is unclear as to whether external generators are also subject to penalties under SPP's tariff as a result of these deviations. The Commission agrees.

66. In this instance, with respect to deviations from SPP's dispatch instructions, internal and external generators are similarly situated. Both types of generators may encounter circumstances that will affect their ability to meet SPP's dispatch instructions, and both should be subject to the same procedures and penalties if this occurs. Therefore, as discussed above, internal and external generators should be treated equally with regard to the costs of regulation and imbalance services associated with participating in the EIS.

67. Accordingly, any parties seeking to recover deviations-related costs must undergo the same procedures to recover these costs (i.e., make a FPA section 205 with the Commission), regardless of whether the deviating generator is internal or external to SPP. There is no reason for the *pro forma* agreement to resolve this issue by obligating external generators to pay these costs straight away, when internal generators are not subject to a similar procedural shortcut. In addition, external generators should be subject to the same penalties for uninstructed deviations as internal generators under Attachment AE of SPP's tariff,³⁹ and this requirement should be clear from the *pro forma* agreement.

68. Lafayette proposes that external generators' deviations from SPP dispatch instructions be subject to the same procedures and penalties as any other generator within SPP. Lafayette's proposal is consistent with our requirement above that internal and external generators will be treated equally with regard to the costs of regulation and imbalance services associated with participating in the EIS Market and should be incorporated into the *pro forma* agreement in SPP's compliance filing thirty days from the date of this order.

G. Dispatch Caps

1. SPP's Proposal

69. SPP resubmits the modifications it made to Attachment AE⁴⁰ of its tariff to accommodate external generator participation in the EIS Market. Section 4.1(b) of modified Attachment AE proposes the following limitations: (i) the total dispatch instructions of external generators may not exceed the SPP contingency reserve

³⁹ See Attachment AE section 4.1.

⁴⁰ Attachment AE is the portion of SPP's tariff that governs its EIS Market.

requirement for the operating day, and (ii) the total dispatch instructions of external generators sinking in an individual SPP balancing authority area may not exceed the capacity of the largest generator within that balancing authority area.

70. SPP states the first modification is necessary to ensure that reliability concerns will not result in an increased cost to SPP transmission system users from an increase in reserves across the entire SPP transmission system to cover the loss of an external generator and/or an increase in financial penalties associated with violations of NERC standards. SPP argues the second modification is necessary to limit the reliability impact of a loss of an external generator. According to SPP, the amount of transmission capacity reserved in conjunction with SPP's reserve sharing program is set to accommodate the loss of the largest unit within each balancing authority. Thus, SPP argues, the proposed dispatch cap is simply an enforcement of required reliability standards.

71. SPP also proposes that nine months after the first external generator's participation in the EIS Market, it will evaluate whether relaxing the caps on dispatch instructions is in the interest of expanded participation in the EIS Market and consistent with reliability standards. Moreover, SPP asserts that twelve months after the effective date of the Commission's order accepting SPP's proposal for external generator participation in the EIS Market, SPP's Market Monitor will prepare an analysis of the effectiveness of the external generation in increasing the depth of the EIS Market.

2. Protests

72. Lafayette contests the caps on the amount of generation that can be dispatched by external generators. Lafayette argues the caps introduce a level of uncertainty as to whether the external generator will be dispatched, while internal generators are spared that same uncertainty. Even if the dispatch caps are thought to protect reliability, Lafayette states that SPP has not explained why reliability is not already adequately protected by the requirement for external generators to have firm transmission service to the border. Lafayette argues that both conditions are not necessary and merely serve to burden external generators with unnecessary requirements. Lafayette also suggests that the requirement in section 4.1(b)(ii) could induce external generators to sink in the balancing authority with the largest unit giving that balancing authority considerable market power to extract unreasonable concessions for market access.

73. If the Commission accepts SPP's proposed dispatch caps, Lafayette requests that SPP evaluate the need for the caps after nine months and file the results of this evaluation with the Commission, as SPP proposed in its revised filing. Lafayette also supports SPP's suggestion that the SPP external market monitor evaluate the participation in the EIS Market after twelve months. Lafayette further requests that SPP file both evaluations with the Commission.

74. Dogwood states that it supports SPP's proposal, but requests that the Commission direct SPP to submit a filing within one year justifying either the continuation or amendment of the caps on the maximum amount of external resource generation SPP may dispatch.

75. OMPA contends that if the Commission does accept SPP's proposal, SPP should be obligated to file with the Commission the reports it mentions in its filing.

3. Commission Determination

76. The Commission finds that SPP's revisions to Attachment AE of its tariff establishing limitations on the amount of power dispatched from external generators into the EIS Market are just and reasonable. SPP asserts that, at least initially, the caps are necessary for reliability reasons. According to SPP, these caps provide assurance that SPP has sufficient reserves in place to cover the loss of an external generator. The Commission agrees that this reliability concern is valid and finds that the dispatch caps are a reasonable safeguard to reliability during the startup phase of external generator participation in the EIS Market.

77. However, these caps may be duplicative in combination with the firm transmission service requirement, which already helps to protect the reliability of SPP's system. Therefore, the Commission will accept SPP's proposal to review the necessity of the dispatch caps and their impact on external generator participation in the EIS Market after the start of external generator participation in the EIS Market. While SPP proposed this review after nine months of experience with the external generator participation, the Commission will instead require the review after twelve months of experience with the dispatch caps and their impact on external generator participation. The review of the dispatch caps and their necessity for reliability will be more meaningful if it reflects all seasons of the year, including the peak period of the year. The Commission directs SPP to involve its External Market Monitor in this evaluation and to file the results with the Commission.

78. The Commission also accepts SPP's suggestion that twelve months after the effective date of its proposal for external generator participation in the EIS Market, SPP's Market Monitor will prepare an analysis of the effectiveness of external generation in increasing the depth of the EIS Market. The External Market Monitor should consider in this evaluation the overall effectiveness of SPP's proposal to encourage external generator participation in the EIS Market and suggestions for encouraging participation by external generation. The Commission directs SPP file the External Market Monitor's Report with the Commission.

H. Filing Rights

1. SPP's Proposal

79. Section 14 of the *pro forma* agreement states that nothing in the agreement is intended to modify or limit (1) SPP's right to submit unilateral changes to the *pro forma* agreement under both sections 205 and 206 of the Federal Power Act (FPA); (2) the right of any other party to seek unilateral changes under FPA section 206; or (3) the right of the Commission to accept any FPA section 205 filing or to initiate a proceeding or make changes under FPA section 206.

80. SPP states that if a party providing jurisdictional services associated with the pseudo-tie arrangement wants to impose a charge for these services, it may do so pursuant to a Commission-filed tariff, schedule, or contract. SPP states that some parties providing jurisdictional services may already have tariffs or schedules on file with the Commission. SPP explains that it is the responsibility of the provider of the jurisdictional services to make separate filings with the Commission to impose these charges.

2. Protests

81. Cleco is concerned that pursuant to section 14 of the *pro forma* agreement, SPP may submit unilateral changes to the *pro forma* agreement under both sections 205 and 206 of the FPA, while other parties to the agreement are only authorized to make filings under FPA section 206.

3. Commission Determination

82. In response to Cleco's concerns regarding filing rights, the Commission notes that the *pro forma* agreement is part of SPP's tariff, and therefore, only SPP can submit to the Commission unilateral changes to the *pro forma* agreement under FPA section 205. However, if Cleco, or any other party, provides jurisdictional services in connection with SPP's pseudo-tie arrangement, that party will have filing rights under FPA section 205 to propose unilateral changes to the separate Commission-filed tariff, schedule, or contract under which these services are offered.

I. Waiver and Effective Date

83. SPP requests an effective date of October 15, 2008. SPP requests waiver of the Commission's 120-day maximum notice requirement set forth in section 35.3 of the Commission's regulations.⁴¹ SPP argues waiver is appropriate because the October 15, 2008 effective date provides 60 days for the Commission's deliberation on this filing, 60

⁴¹ 18 C.F.R. § 35.3.

days for the subsequent development of any required compliance filing, and six months for system development. Because SPP needs several months to implement its proposal, we find good cause to grant waiver of the 120-day maximum prior notice requirement.

The Commission orders:

(A) SPP's filing is hereby accepted, subject to modification, to be effective October 15, 2008.

(B) SPP is hereby ordered to submit, within thirty days of the date of this order, a compliance filing, as directed in the body of this order.

(C) Waiver of the 120-day advance notice requirement is hereby granted, as discussed in the body of this order.

(D) SPP is hereby ordered to submit, twelve months after the start of external generator participation in the EIS Market, an evaluation of the effectiveness of SPP's dispatch caps, as discussed in the body of this order.

(E) SPP is hereby ordered to submit, twelve months after the effective date of SPP's proposal for external generator participation in the EIS Market, the External Market Monitor's evaluation, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.