

170 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Southwestern Public Service Company

Docket No. QM19-4-000

ORDER GRANTING APPLICATION TO TERMINATE MANDATORY PURCHASE
OBLIGATION

(Issued January 31, 2020)

1. On September 5, 2019, pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978 (PURPA)¹ and section 292.310 of the Commission's regulations,² Xcel Energy Services Inc. (Xcel), on behalf of Southwestern Public Service Company (SPS), filed an application seeking to terminate, on a service territory-wide basis, SPS's obligation under section 292.303(a) of the Commission's regulations³ to enter into new power purchase obligations or contracts to purchase electric energy and capacity from qualifying cogeneration or small power production facilities (QFs) that have a net capacity greater than 20 megawatts (MW) (Application). As discussed below, we grant the Application, to become effective September 5, 2019, as requested.

I. Background

2. On October 20, 2006, the Commission issued Order No. 688,⁴ revising its regulations governing electric utilities' obligations to purchase electric energy produced

¹ 16 U.S.C. § 824a-3(m) (2018).

² 18 C.F.R. § 292.310 (2019).

³ 18 C.F.R. § 292.303(a).

⁴ *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, 117 FERC ¶ 61,078 (2006), *order on reh'g*, Order No. 688-A, 119 FERC ¶ 61,305 (2007), *aff'd sub nom. Am. Forest and Paper Ass'n v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

by QFs. Order No. 688 implements PURPA section 210(m),⁵ which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts to purchase electric energy from QFs, if the Commission finds that the QFs have nondiscriminatory access to, as relevant here:

(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and (ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market[.]⁶

3. In Order No. 688, the Commission found that the markets administered by Southwest Power Pool, Inc. (SPP) satisfy the criteria of PURPA section 210(m)(1)(B)(i), adding that a “member electric utility of the SPP may rely on this finding in its application to be relieved of the obligation to enter into new contracts to purchase QF electric energy.”⁷ In 2008, the Commission found that the markets within SPP’s footprint also satisfy PURPA sections 210(m)(1)(B)(ii).⁸ The Commission’s regulations establish a rebuttable presumption that a QF interconnected with member electric utilities within a market that meets the above criteria, such as SPP’s markets, has nondiscriminatory access to the markets if it is eligible for service under a Commission-accepted open access transmission tariff (OATT) or Commission-filed reciprocity tariff, and Commission-accepted interconnection rules. A QF may seek to rebut the presumption of access to the markets by demonstrating that it does not have access to the markets due to operational

⁵ Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005) (codified at 16 U.S.C. § 824a-3(m)).

⁶ 16 U.S.C. § 824a-3(m)(1)(B).

⁷ Order No. 688, 117 FERC ¶ 61,078 at P 164; *see also* 18 C.F.R. § 292.309(g) (2019).

⁸ *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,048, at P 44 (2008 Order), *reh’g denied*, 124 FERC ¶ 61,073 (2008).

characteristics or transmission constraints.⁹ The Commission's regulations establish a second rebuttable presumption that QFs with a net capacity at or below 20 MW do not have nondiscriminatory access to markets sufficient to warrant termination of the mandatory purchase obligation.¹⁰

4. In 2007, Xcel, on behalf of SPS and three other applicants,¹¹ filed a joint application pursuant to PURPA section 210(m) to terminate their respective obligations under section 292.303(a) of the Commission's regulations¹² to enter into new power purchase obligations or contracts to purchase electric energy and capacity from QFs that have a net capacity greater than 20 MW.¹³ The application was protested.¹⁴ The Commission granted the application for the other applicants but denied the application for SPS, without prejudice to SPS filing a new PURPA section 210(m) application.¹⁵ With respect to SPS, the Commission found that JD Wind, in the protest, provided evidence of significant transmission constraints and thus rebutted the presumption of nondiscriminatory access to the relevant market.

II. Application

5. SPS states that it is a transmission-owning member of SPP. SPS points to the finding in Order No. 688 that SPP's markets meet the criteria of section 210(m)(1)(B)(i) of PURPA to demonstrate that SPS satisfies the conditions identified in section 292.309(a)(2)(i) of the Commission's regulations.¹⁶ SPS adds that the QFs located in SPS's service territory have nondiscriminatory access to SPP's markets because, since the 2008 Order was issued, SPS has invested \$2.1 billion in the

⁹ 18 C.F.R. § 292.309(c).

¹⁰ *Id.* § 292.309(d)(1).

¹¹ The other applicants were Oklahoma Gas and Electric Company (OG&E), Public Service Company of Oklahoma, and Southwestern Electric Power Company.

¹² 18 C.F.R. § 292.303(a).

¹³ Joint Application, Docket No. QM07-5-000 (filed Sept. 25, 2007).

¹⁴ The protest was filed by JD Wind 1, LLC; JD Wind 2, LLC; JD Wind 3, LLC; JD Wind 4, LLC (JD Wind 4); JD Wind 5, LLC; and JD Wind 6, LLC (collectively, JD Wind).

¹⁵ *See supra* note 8.

¹⁶ Application at 4-5.

SPS transmission facilities subject to the SPP OATT. SPS also explains that, region-wide, SPP's transmission-owning members, including SPS, have invested over \$8.3 billion in transmission facilities subject to the SPP OATT.¹⁷ SPS notes that the SPP 2018 State of the Market Report found that congestion on the SPS transmission system has been reduced to the point that there are now no Frequently Constrained Areas on the SPS system.¹⁸

6. SPS asserts that QFs and potential QFs affected by this Application have access to competitive wholesale markets, as required by section 292.309(a)(2)(ii) of the Commission's regulations.¹⁹ SPS points out that, in the 2008 Order, the Commission found that there is "active wholesale market activity in SPP, which provides QFs and potential and future QFs a meaningful opportunity to sell their electric output to purchasers other than the interconnected utility."²⁰ SPS notes, however, that the Commission declined to apply this finding to SPS because protestors had shown that they lacked access to markets due transmission constraints that affected the SPS system, rather than due to the characteristics of the SPP markets. SPS asserts that the transmission constraints addressed in the 2008 Order have since been resolved.²¹ SPS notes that, in 2014, SPP implemented its day-ahead market (Integrated Marketplace). SPS adds that, since 2015, the Commission has issued nine delegated orders finding that electric utilities located in the SPP region satisfied the requirement of section 292.309(a)(2)(ii) of the Commission's regulations for "competitive wholesale markets," based on market findings in the 2008 Order and the features of the SPP Integrated Marketplace.²²

¹⁷ *Id.* at 6.

¹⁸ *Id.* (citing SPP Market Monitoring Unit, State of the Market 2018 at 153 (May 15, 2019), <https://www.spp.org/Documents/59861/2018%20Annual%20State%20of%20the%20Market%20Report.pdf>) (SPP 2018 State of the Market Report).

¹⁹ *Id.* at 7.

²⁰ *Id.* (citing 2008 Order, 122 FERC ¶ 61,048 at P 33).

²¹ *Id.* at 8.

²² *Id.* at 9-10 (citing *Midwest Energy, Inc.*, 167 FERC ¶ 62,184 (2019); *Sunflower Elec. Power Corp.*, 164 FERC ¶ 62,044 (2018); *Omaha Pub. Power Dist.*, 162 FERC ¶ 62,161, *reh'g denied*, 164 FERC ¶ 61,238 (2018); *Neb. Pub. Power Dist.*, 162 FERC ¶ 62,081 (2018); *Missouri River Energy Servs.*, 162 FERC ¶ 61,064 (2018); *NorthWestern Corp. (South Dakota)*, 157 FERC ¶ 62,192 (2016); *Okla. Mun. Power Auth.*, 157 FERC ¶ 62,075 (2016); *Ark. Elec. Coop. Corp.*, 153 FERC ¶ 62,162 (2015)).

III. Notice and Responsive Pleadings

7. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 48,137 (2019), with interventions or protests due on or before October 3, 2019. The Commission served notice of the Application on the potentially-affected QFs identified by the Application by letter dated September 6, 2019.

8. GlidePath Development LLC (GlidePath), Golden Spread Electric Cooperative, Inc., Leeward Renewable Energy, LLC (Leeward), and Western Farmers Electric Cooperative filed timely motions to intervene. GlidePath and Leeward filed individual protests. On October 22, 2019, SPS filed an answer to the protests (Answer). On November 4, 2019, SPS filed a supplement to update its certificate of service (Supplement to Application). On November 6, 2019, SPS filed a supplement to its answer (Supplemental Answer). On November 21, 2019, GlidePath filed a response to SPS's Supplemental Answer (GlidePath Response). On December 5, 2019, SPS filed an answer to the GlidePath Response (SPS December 5 Answer).

9. Notice of the Supplement to Application was published in the *Federal Register*, 84 Fed. Reg. 65,807 (2019), with interventions or protests due on or before December 2, 2019. On November 25, 2019, the Commission served notice of the Application on the potentially-affected QFs identified by the Supplement to Application.

A. Protests

10. GlidePath and Leeward argue that SPS has not adequately demonstrated that QFs have nondiscriminatory access to wholesale markets. GlidePath and Leeward assert that persistent congestion continues to exist in the SPS footprint. GlidePath and Leeward claim that SPS does not point to any specific project that relieved the constraints identified in the 2008 Order.²³

11. GlidePath and Leeward assert that SPS has not relieved all major transmission constraints. GlidePath and Leeward argue that the SPP 2018 State of the Market Report found that one of the top 10 flowgate constraints on the entire SPP system is at SPS's Hale County-Tuco 115kV Swisher County-Tuco 230kV flowgate (Hale-Swisher Flowgate). GlidePath and Leeward state that the SPP 2018 State of the Market Report found that no project had been identified at that time to relieve the constraint.²⁴

12. GlidePath and Leeward contend that persistent negative prices exist within SPS's service territory. GlidePath and Leeward state that their respective QFs experience

²³ GlidePath Protest at 6-7; Leeward Protest at 5, 7-8.

²⁴ GlidePath Protest at 6; Leeward Protest at 5.

negative average hourly locational marginal prices (LMPs) between 10 to 20 percent of the time. GlidePath and Leeward claim that the presence of these negative LMPs indicate transmission congestion and therefore a lack of nondiscriminatory access to buyers other than SPS.²⁵ GlidePath states, for example, that the Porterhouse QF experienced average hourly real-time LMPs that were \$10 or more below the prices at the SPP South Hub for nearly 28 percent of all hours.²⁶ Leeward points to a history of volatile and mostly negative basis differentials for its Caprock QF.²⁷

13. Leeward also claims that the Caprock QF is interconnected at a point that is essentially a long radial system with a relatively weak interconnection to the rest of SPP.²⁸ Leeward contends that the only reasonable trading hub is SPP South, which Leeward asserts is illiquid and volatile.²⁹ Leeward suggests that SPS should have constructed an alternate transmission path to address this issue if it intended to meet the minimum requirements to terminate its QF obligations for the Caprock QF.³⁰

14. GlidePath notes that among the reasons that the Commission rejected SPS's application in the 2008 Order was JD Wind's inability to "secure a third-party purchase agreement for its JD Wind No. 4 project in large part because of buyers' concerns over the lack of transmission service."³¹ GlidePath notes that the Commission found that JD Wind had provided "sufficient QF-specific evidence that its JD Wind [No. 4] Facility lack[ed] access to third-party purchasers due to transmission constraints and thus rebuts the presumption of access conferred in 292.309(c)."³² GlidePath states that it is now the owner of JD Wind No. 4, which has been renamed the Porterhouse QF. GlidePath asserts

²⁵ GlidePath Protest at 7-8; Leeward Protest at 7.

²⁶ GlidePath Protest at 7.

²⁷ Leeward Protest at 7, App. A.

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ *Id.* at 6-7.

³¹ GlidePath Protest at 5 (citing 2008 Order, 122 FERC ¶ 61,048 at P 28).

³² *Id.*

that there is still significant congestion in SPS's territory in the area in which the Porterhouse QF is located.³³

15. GlidePath and Leeward ask the Commission to deny the Application or, alternatively, if the Commission grants the Application, exempt the Caprock QF and the Porterhouse QF.³⁴ If the Commission grants the Application with the exception of the Caprock QF and Porterhouse QF, GlidePath asks the Commission to also clarify that repowering and/or retrofitting a QF exempted from SPS's terminated purchase obligation would not affect its ability to retain its PURPA sale rights.³⁵

B. SPS Answer and Supplemental Answer

16. SPS reiterates that it meets the requirements of PURPA section 210(m) for the Commission to grant relief from SPS's obligation to enter into new contracts or obligations to purchase electric energy and capacity from QFs with a net capacity greater than 20 MW.³⁶ SPS argues that it was not required to affirmatively show in its Application that QFs connected to SPS have nondiscriminatory access to the markets because the Commission's regulations presume that QFs connected to SPS have such access.³⁷ SPS asserts that the presumption of nondiscriminatory access to markets pursuant to section 292.309(c) of the Commission's regulations applies to all applications under section 292.309, including this Application. SPS argues that the protestors have the burden to rebut the presumption of nondiscriminatory access to markets conferred by section 292.309(c) of the Commission's regulations.³⁸

17. SPS contends that protestors do not provide support for their assertions that SPS has not relieved transmission constraints since the time of the 2008 Order. SPS maintains that investments made over the past ten (10) years have mitigated transmission constraints within the SPS transmission system and enhanced access to SPP's markets. SPS states that it has completed 10 significant transmission upgrade projects, noting that,

³³ *Id.* at 7.

³⁴ GlidePath Protest at 8-9; Leeward Protest at 8.

³⁵ GlidePath Protest at 9.

³⁶ SPS Answer at 21.

³⁷ *Id.* at 2, 4-5.

³⁸ *Id.* at 5-6.

between 2013 and 2019, SPS also rebuilt three transmission lines within its system.³⁹ SPS argues that these projects allow both more energy transfer between the northern and southern portions of the SPS transmission system and more energy transfer between the SPS system and the rest of the SPP footprint. SPS claims that these investments have reduced LMP differentials between the SPS system and the rest of the SPP footprint. SPS argues that protestors' claims ignore a decade of advances.⁴⁰

18. Regarding protestors' assertions about the Hale-Swisher Flowgate, SPS contends that neither protestor asserts that the congestion on the Hale-Swisher Flowgate affects its QFs or prevents its QFs from accessing the markets. SPS also argues that, in any case, any congestion or transmission constraints on the Hale-Swisher Flowgate would not affect either the Caprock QF or the Porterhouse QF because the QFs are not located near the Hale-Swisher Flowgate. SPS adds that, since the release of the SPP 2018 State of the Market Report (upon which protestors rely in making this claim), SPS has improved the Hale-Swisher Flowgate's capacity by 32 percent (80 MVA to 106 MVA), so the Hale-Swisher Flowgate is no longer included in SPP's list of top 10 congested flowgates within the market.⁴¹

19. SPS asserts that protestors' claims about negative LMPs are inaccurate. SPS states that negative LMPs generally indicate that there is more energy supplied in a particular location than there is demand for that energy, which provides an economic signal for a resource to reduce output. SPS contends that, thus, it cannot be assumed that negative LMPs occur as a result of transmission constraints.⁴² SPS argues that negative pricing for the Caprock QF and Porterhouse QF strongly correlates with periods during which prices across the entire SPP South Hub (which has over 450 pricing nodes) were also negative. SPS claims that this fact suggests that protestors' negative LMPs were not the result of transmission constraints uniquely affecting protestors but rather resulted from too much generation during a particular hour.⁴³ SPS points for support to the SPP 2018 State of the Market Report, which indicates that negative LMPs are the result of: (a) a high proportion of SPP generation units that are offered in a self-commitment status;

³⁹ *Id.* at 7-8.

⁴⁰ *Id.* at 9, 11.

⁴¹ *Id.* at 12; SPS Supplemental Answer at 2 (citing October 29, 2019 Annual Meeting of the SPP Board of Directors and the SPP Members Committee & October 21, 2019 SPP Corporate Metrics 3rd Quarter 2019 Report).

⁴² SPS Answer at 15 (citing SPS Answer, Ex. SPS-001 (Testimony and Exhibits of William A. Grant) at 18-19 (Grant Test.)).

⁴³ *Id.* at 18.

and (b) the fact that many wind generation resources do not submit offers in the day-ahead market but continue to participate only in the real-time balancing market.⁴⁴ SPS adds that protestors' argument that QFs are subject to negative LMPs approximately 10 to 20 percent of the time also means that those QFs experience non-negative LMPs approximately 80 to 90 percent of the time.⁴⁵

20. In response to protestors' concerns about persistent negative basis differentials, SPS argues that these differentials could be due to any number of factors other than transmission congestion. SPS points out that protestors do not claim that the basis differentials prevent their QFs from making economical sales to the market.⁴⁶ SPS adds that protestors' own data shows that observed basis differentials have been steadily improving, especially since the February 2018 addition of OG&E's Windspeed II transmission project.⁴⁷

21. Regarding Leeward's concerns about being interconnected with essentially a long radial system, SPS contends that this fact does not indicate that Leeward's Caprock QF lacks nondiscriminatory access to buyers other than SPS.⁴⁸ SPS provides testimony that this area is rural with minimal load.⁴⁹ SPS also states that the 115kV radial line is tied to a substation that has a strong 230kV connection that is close to the heart of the SPS transmission system.⁵⁰ SPS states that the reliability of this line is exemplary with an availability record of 99.999892 percent.⁵¹

22. With respect to the Porterhouse QF's sales, SPS argues that the Porterhouse QF is currently transacting directly in the SPP Integrated Marketplace, which demonstrates that the QF has nondiscriminatory access to SPP's markets.⁵² SPS notes that the Commission

⁴⁴ *Id.* at 15-16.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 19.

⁴⁷ *Id.*

⁴⁸ *Id.* at 13.

⁴⁹ Grant Test. at 14.

⁵⁰ SPS Answer at 13.

⁵¹ Grant Test. at 15.

⁵² SPS Answer at 7.

previously found that a QF making actual sales into a market justifies the finding that the QF had nondiscriminatory access to the market.⁵³ While SPS argues that this information supports finding that Porterhouse QF has nondiscriminatory access, if the Commission finds that GlidePath and Leeward have presented sufficient evidence to rebut the presumption from section 292.309(c), SPS asks the Commission to grant it relief from the mandatory purchase obligation except for the Porterhouse QF and Caprock QF.⁵⁴

C. GlidePath Response

23. GlidePath argues that SPS's statement in its Supplemental Answer regarding the alleviation of congestion from the Hale-Swisher Flowgate is not sufficient to prove that QFs have nondiscriminatory access to SPP's markets. GlidePath asserts that relief on this one flowgate has not resulted in widespread relief of congestion and transmission constraints throughout the SPP system and that the Porterhouse QF still does not have access to SPP's markets. GlidePath further contends that, since the upgrade, LMPs have remained negative 13 percent of the time and basis differentials have exceeded 10 dollars during 13 percent of the time.⁵⁵

D. SPS December 5 Answer

24. SPS argues that GlidePath's pricing data demonstrates that LMPs and basis differentials at the Porterhouse QF have improved in the last few years. SPS also asserts that GlidePath has failed to show that limited periods of negative LMPs undermine its ability to sell the output from the Porterhouse QF into the SPP Integrated Marketplace. SPS further contends that GlidePath has failed to establish that its LMP and pricing differential data show that SPS's system is subject to significant transmission constraints and that GlidePath provides no basis to rebut the presumption that the Porterhouse QF has nondiscriminatory access to the market.⁵⁶

⁵³ *Id.* (citing *City of Burlington, Vt.*, 145 FERC ¶ 61,121, at P 33 (2013) (*Burlington*); *Fitchburg Gas and Elec. Light Co.*, 146 FERC ¶ 61,186, at P 33 (2014)).

⁵⁴ *Id.* at 22 (citing *Entergy Servs., Inc.*, 154 FERC ¶ 61,035, at P 73 (2016)).

⁵⁵ GlidePath Response at 5.

⁵⁶ SPS December 5 Answer at 2-3 (citing GlidePath Response at 4-5).

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SPS's answers and GlidePath's answer because they have provided information that assisted us in our decision-making process.

B. Commission Determination

27. In Order No. 688, the Commission found that the markets administered by SPP satisfy the criteria of PURPA section 210(m)(1)(B)(i).⁵⁷ In 2008, the Commission found that the markets within SPP's footprint also satisfy PURPA section 210(m)(1)(B)(ii).⁵⁸ SPS is an SPP member and relies upon the rebuttable presumption that QFs in SPP have nondiscriminatory access to a market that satisfies the requirements of section 210(m) of PURPA. As explained further below, protestors have not adequately rebutted this presumption. Accordingly, we find that QFs over 20 MW within SPS have nondiscriminatory access to wholesale markets for the sale of capacity and energy warranting termination of SPS's mandatory purchase obligation pursuant to section 210(m) of PURPA. For that reason, we grant the Application with respect to all new contracts or obligations for QFs larger than 20 MW located in SPS's service territory.

28. The Commission's regulations establish a rebuttable presumption that a QF interconnected with an SPP member electric utility has nondiscriminatory access to the markets.⁵⁹ A QF may seek to rebut the presumption of access to the markets by demonstrating that it does not have nondiscriminatory access to the markets due to operational characteristics or transmission constraints.⁶⁰

⁵⁷ Order No. 688, 117 FERC ¶ 61,078 at P 164; *see also* 18 C.F.R. § 292.309(g).

⁵⁸ 2008 Order, 122 FERC ¶ 61,048 at P 44.

⁵⁹ 18 C.F.R. §§ 292.309(a)(2)(ii), (g).

⁶⁰ *Id.* § 292.309(c).

29. We find unpersuasive protestors' argument that the transmission constraints that were present at the time of the 2008 Order persist today. SPS has provided several metrics indicating that the transmission constraints have been mitigated over the past decade.⁶¹ As SPS has explained, in the past decade, it has invested \$2.1 billion in the SPS transmission facilities subject to the SPP OATT and that, region-wide, SPP's transmission-owning members, including SPS, have invested over \$8.3 billion in transmission facilities subject to the SPP OATT.⁶²

30. Protestors' arguments that transmission constraints persist because the Hale-Swisher Flowgate was one of the top 10 most congested flowgates in SPP are unavailing. As SPS explains, the Hale-Swisher Flowgate is well to the south of the Porterhouse QF, but the primary path to buyers other than SPS is located north of the Porterhouse QF; the Hale-Swisher Flowgate therefore has little effect on the Porterhouse QF's ability to access the market. We also find persuasive SPS's explanation that the impacts of the Hale-Swisher Flowgate are localized, primarily impacting generators close to Lubbock, Texas and therefore the effect of such an alleged constraint on the QFs would be minimal.⁶³ Moreover, we note that since the release of SPP 2018 State of the Market Report, SPS has improved the Hale-Swisher Flowgate's capacity by 32 percent (80 MVA to 106 MVA) and a newer SPP report lists no SPS flowgates, including the Hale-Swisher Flowgate, as among the 10 most congested flowgates in SPP.⁶⁴ Accordingly, we find that protestors have failed to demonstrate that congestion on the Hale-Swisher Flowgate significantly affects their ability to make sales to buyers other than SPS.

31. GlidePath argues that, although the upgrades at the Hale-Swisher Flowgate may have helped relieve congestion at that one specific flowgate, congestion and transmission constraints continue to exist throughout the SPP system. Specifically, GlidePath claims that, from October 2018 (when the flowgate repair was completed) to September 2019, LMPs at the Porterhouse QF have remained negative for 13 percent of all hours. However, we are not convinced that the negative LMPs during a small fraction of hours were caused by transmission constraints uniquely affecting protestors. As SPS explains, these negative LMPs do not appear to be due to transmission constraints uniquely affecting the protestors but rather are more likely the result of too much generation

⁶¹ SPS Answer at 7-10; SPS Supplemental Answer at 2-3.

⁶² Application at 6.

⁶³ SPS Answer at 12; *see* SPS Answer, Ex. SPS-002 (Selected Transmission Projects Constructed by SPS Since 2013) at 1.

⁶⁴ SPS Answer at 12; SPS Supplemental Answer at 2.

supply coinciding with too little energy demand.⁶⁵ Specifically, the SPP 2018 State of the Market Report indicates that negative LMPs are the result of: (a) a high proportion of SPP generation units that are offered in a self-commitment status; and (b) the fact that many wind generation resources do not submit offers in the day-ahead market but continue to participate only in the real-time balancing market.⁶⁶ Thus, based on this record, we find that the negative LMPs do not demonstrate the presence of significant transmission constraints that would warrant our denying the Application.

32. GlidePath also claims that, from October 2018 to September 2019, basis differentials at the Porterhouse QF remained negative for 13 percent of all hours. However, it is not apparent that the basis differentials to which GlidePath points prevent QFs from making economic sales to the market. We also agree with SPS that protestors' own data indicates that large basis differentials are decreasing due to system improvements that SPS has made since the 2008 Order.⁶⁷

33. Regarding Leeward's argument that its Caprock QF is interconnected to what is essentially a long radial system, SPS presents evidence that this radial line is connected to a substation with a strong 230 kV connection close to the center of the SPS transmission system (with an availability factor of 99.999892 percent).⁶⁸ In light of this persuasive evidence, we find that Leeward has failed to show that its Caprock QF lacks nondiscriminatory access to buyers other than SPS.

34. Finally, SPS points to evidence from Electric Quarterly Reports that GlidePath's Porterhouse QF has been making sales directly into the SPP Integrated Marketplace.⁶⁹ The Commission has previously determined that a QF making sales into an RTO market is persuasive evidence that the QF has nondiscriminatory access to those markets.⁷⁰ For this reason, we find that there are no significant existing barriers to the Porterhouse QF's ability to access the SPP markets.

⁶⁵ SPS also explains that the negative LMPs experienced by the QFs are an SPP South-wide event. SPS Answer at 18.

⁶⁶ *Id.* at 15-16.

⁶⁷ *Id.* at 19.

⁶⁸ *Id.* at 13; Grant Test. at 14-15.

⁶⁹ SPS Answer at 19-21.

⁷⁰ *Burlington*, 145 FERC ¶ 61,121 at P 33.

35. As an SPP member, SPS is entitled to the presumption that QFs within its footprint have nondiscriminatory access to the markets. We find that the protestors have failed to rebut this presumption. Accordingly, we grant the Application.

The Commission orders:

SPS's Application is hereby granted, to become effective September 5, 2019, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.