

161 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, and Robert F. Powelson.

Buffalo Dunes Wind Project, LLC, Enel Green Power North America, Inc., Alabama Power Company, and Southern Company Services, Inc.      Docket No. EL17-69-000

v.

Southwest Power Pool, Inc.

ORDER ON COMPLAINT

(Issued October 19, 2017)

1. On May 1, 2017, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)<sup>1</sup> and Rules 206 and 212 of the Commission's Rules of Practice and Procedure,<sup>2</sup> Enel Green Power North America, Inc. (Enel), on behalf its subsidiary Buffalo Dunes Wind Project, LLC (Buffalo Dunes), and Southern Company Services, Inc., (Southern Company) on behalf of its subsidiary Alabama Power Company (Alabama Power) (collectively, Complainants), filed a complaint (Complaint) against Southwest Power Pool, Inc. (SPP) and motion for interim relief (Motion for Interim Relief). The Complaint alleges that Alabama Power and Enel are harmed by SPP's practices regarding the eligibility for Auction Revenue Rights (ARRs) and Long-Term Congestion Rights

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h (2012).

<sup>2</sup> 18 C.F.R. §§ 385.206, 212 (2017).

(LTCRs)<sup>3</sup> of Network Integration Transmission Service (network service) customers with service subject to redispatch while necessary transmission upgrades are constructed.<sup>4</sup> Complainants request interim relief from the Commission that orders SPP not to allocate new ARR and LTCRs for the 2017-2018 annual ARR allocation year to customers with network service subject to redispatch until the issues raised in the Complaint are resolved.

2. In this order, we find that SPP was not barred from allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch during the 2017-2018 annual allocation process, and therefore we deny the Complaint and Motion for Interim Relief.

## **I. Background and Related Proceedings**

### **A. Previous and Concurrent Proceedings**

3. As part of the design of its Integrated Marketplace, SPP established mechanisms to provide market participants with financial tools to manage congestion costs and to allow them to sell their rights to others (i.e., ARRs and TCRs).<sup>5</sup> Transmission customers

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<sup>3</sup> LTCRs are long-term (i.e., a period of more than one year) Transmission Congestion Rights (TCRs), which are financial instruments entitling the holder to a stream of revenues, or obligating it to pay charges, based upon the difference between the hourly day-ahead marginal congestion component of the locational marginal price at the source and sink settlement locations associated with the TCR. TCRs are obtained in TCR auctions, either through purchase or self-conversion of ARRs, or through secondary sales of TCRs. *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at n.330 (2012) (Integrated Marketplace Order), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013). ARRs are rights that entitle the holder to a share of the auction revenues generated in the applicable TCR auctions. An ARR can result in a credit or charge to the holder, based upon the TCR auction clearing price on the particular ARR path. Eligible entities may either self-convert awarded ARRs into TCRs or hold the ARR to receive a share of the revenue SPP collects from auction purchasers of TCRs. *Id.* at n.329.

<sup>4</sup> Under the SPP Open Access Transmission Tariff (Tariff), when a firm transmission service request requires new transmission upgrades, SPP commences service prior to the transmission upgrades being placed in service if SPP is able to address the constraint identified in the system impact studies through redispatch until the transmission upgrades are placed into service. This order uses the phrase “subject to redispatch” to describe such transmission service until transmission upgrades are placed into service, unless otherwise indicated.

<sup>5</sup> Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 229.

and market participants with firm transmission service are eligible to nominate ARR from a specific source point serving a specific sink point consistent with their firm service, and SPP allocates the portion of the nominated ARRs that are simultaneously feasible given SPP's transmission system.<sup>6</sup> ARRs are allocated annually in April of each year, with additional monthly or seasonal ARR allocations made as needed to address new transmission service.<sup>7</sup>

4. Section 13.5 of the Tariff currently provides that customers with firm point-to-point transmission service subject to redispatch are not eligible to obtain ARR allocations associated with that service, except for the times of the year and for the amounts of service that are not subject to redispatch, and are not eligible to obtain LTCRs associated with that service.<sup>8</sup> Section 34.6 of the Tariff currently does not specify whether customers with network service subject to redispatch are eligible to obtain ARR or LTRC allocations associated with that service.

5. In March 2016, in Docket No. ER16-1286-000, SPP proposed, among other things, to revise section 34.6 of its Tariff to include additional language that stated that customers with network service subject to redispatch are eligible to obtain ARRs and LTCRs associated with that service.<sup>9</sup> On September 23, 2016, the Commission rejected SPP's proposed revisions to section 34.6, finding that SPP had not shown that the proposed language was just, reasonable, and not unduly discriminatory or preferential for network service subject to redispatch. In addition to rejecting SPP's proposed revisions, the Commission found that the existing language in section 34.6 may be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allows SPP to provide ARRs and LTCRs to network service customers with service subject to redispatch. Accordingly, the Commission instituted a paper hearing proceeding pursuant to FPA section 206 to examine SPP's Tariff.<sup>10</sup> An order addressing the examination of

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<sup>6</sup> *Id.* P 246.

<sup>7</sup> *Id.*

<sup>8</sup> The Commission approved this limited eligibility for ARRs with respect to point-to-point service subject to redispatch in its order accepting SPP's Integrated Marketplace Filing. *Id.* PP 267-268. The Commission approved the limitation on eligibility for LTCRs in a subsequent order issued September 23, 2016. *Southwest Power Pool, Inc.*, 156 FERC ¶ 61,217, at P 28 (2016) (September 2016 Order).

<sup>9</sup> SPP, Filing, Docket No. ER16-1286-000, at 9-10 (filed March 30, 2016).

<sup>10</sup> September 2016 Order, 156 FERC ¶ 61,217 at PP 30, 35-37.

SPP's Tariff under FPA section 206 is being issued in Docket No. EL16-110-000 concurrently with this order.<sup>11</sup>

6. On October 24, 2016, in Docket No. ER16-1286-002, Southern Company, as agent for Alabama Power, Georgia Power Company, Gulf Power Company, and Mississippi Power Company sought clarification, or in the alternative rehearing, of the September 2016 Order. Alabama Power requested clarification that the September 2016 Order did not address and did not foreclose firm point-to-point transmission customers who were possibly under-allocated ARRs from pursuing retroactive relief. If the September 2016 Order did foreclose that option, then Alabama Power sought rehearing of the order because it claimed there was an insufficient record on which to base the decision.<sup>12</sup> An order addressing Alabama Power's request for clarification is being issued in Docket No. ER16-1286-002 concurrently with this order.<sup>13</sup>

7. Also on October 24, 2016, in Docket No. EL17-11-000, Alabama Power filed a complaint against SPP requesting relief under sections 205, 206, 306, and 309 of the FPA concerning an alleged violation of the SPP Tariff.<sup>14</sup> Alabama Power argued that SPP violated its Tariff by treating network service subject to redispatch as eligible to receive ARRs and LTCRs for such transmission service, which, Alabama Power contended, resulted in an under-allocation of ARRs to Alabama Power. An order addressing Alabama Power's complaint is being issued in Docket No. EL17-11-000 concurrently with this order.<sup>15</sup>

8. On May 9, 2017, in Docket No. ER17-1575-000, SPP filed revisions to section 34.6 of its Tariff that would apply the same ARR and LTCR eligibility limitations on network service subject to redispatch that the Tariff currently applies to point-to-point service subject to redispatch.<sup>16</sup> On July 13, 2017, pursuant to the authority delegated by

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<sup>11</sup> *Southwest Power Pool, Inc.*, 161 FERC ¶ 61,071 (2017) (Paper Hearing Order).

<sup>12</sup> Request for Clarification, or in the Alternative Rehearing, of Southern Companies, Docket No. ER16-1286-002 (filed Oct. 24, 2016).

<sup>13</sup> *Southwest Power Pool, Inc.*, 161 FERC ¶ 61,072 (2017).

<sup>14</sup> Complaint of Alabama Power Company, Docket No. EL17-11-000 (filed Oct. 24, 2016).

<sup>15</sup> *Alabama Power Company v. Southwest Power Pool, Inc.*, 161 FERC ¶ 61,073 (2017) (Complaint I Order).

<sup>16</sup> SPP, Filing, Docket No. ER17-1575-000, at 8-9 (filed May 9, 2017).

the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,<sup>17</sup> SPP's Tariff revisions were accepted for filing, suspended for a nominal period, subject to refund and further Commission order.<sup>18</sup> On August 14, 2017, Complainants filed a request for rehearing of the delegated letter order issued in Docket No. ER17-1575-000. An order addressing SPP's Tariff filing and Complainants' request for rehearing is being issued in Docket Nos. ER17-1575-000 and ER17-1575-001 concurrently with this order.<sup>19</sup>

## **B. Complaint**

9. Complainants request that the Commission direct SPP to follow its Tariff with regard to the provisions setting forth ineligibility for ARR and LTCRs in Attachment AE. Complainants assert that SPP's practice of treating non-firm network service as firm service for purposes of ARR and LTCR allocation harms Alabama Power and Enel by causing them to subsidize hedging benefits granted to network service subject to redispatch and by denying them the opportunity to offset congestion costs for their unconditional firm service. Complainants state that SPP has granted new ARRs for ineligible network service reservations during the 2017-2018 annual process for ARR and LTCR allocations, and by doing so has denied Alabama Power and other firm transmission customers ARRs to which they are entitled under the SPP Tariff. Complainants maintain that immediate action from the Commission is necessary to direct SPP to cease and desist from allocating ARRs and LTCRs to customers with network service subject to redispatch.<sup>20</sup>

10. Complainants note that Alabama Power holds 202 megawatts (MW) of unconditional firm point-to-point transmission service, but for the 2017-2018 allocation year Alabama Power was allocated no new LTCRs, no additional ARRs during the off-peak period, and only 3.5 MW and 10.6 MW of ARRs for two out of twelve months during the on-peak period. Complainants contend that the 2017-2018 allocation results and SPP's alleged efforts to protect the interests of customers with network service subject to redispatch are contrary to the SPP Tariff and the September 2016 Order. Complainants state that if SPP continues its practices for the 2017-2018 allocation year, it

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<sup>17</sup> *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

<sup>18</sup> *Sw. Power Pool, Inc.*, Docket No. ER17-1575-000 (Jul. 13, 2017) (delegated letter order).

<sup>19</sup> *Southwest Power Pool, Inc.*, 161 FERC ¶ 61,075 (2017).

<sup>20</sup> Complaint at 1-3.

will have material adverse financial impacts on Complainants and other firm transmission customers.<sup>21</sup>

11. Complainants request that the Commission provide immediate interim relief by issuing an order stating that Complainants have presented a prima facie case that: (1) SPP's plan to allocate ARRs and LTCRs to non-firm service subject to redispatch violates the SPP Tariff and the FPA; (2) that SPP's actions may cause unlawful cost and benefit shifts; (3) and that SPP's plan may require transmission service and congestion settlements to be resettled in possible violation of the FPA. Complainants also request that the Commission order SPP not to allocate new ARRs or LTCRs to network service customers with firm service subject to redispatch for the 2017-2018 allocation year until the issues in this proceeding are resolved. Additionally, Complainants request fast-track processing of the Complaint.<sup>22</sup>

12. Complainants assert that SPP's practices ignore the Commission's findings in the September 2016 Order by allocating new ARRs to non-firm network service, and that the facts have not changed for the 2017-2018 allocation year. Complainants also maintain that it is unjust and unreasonable that the SPP Board voted to grandfather and continue SPP's allocation practices, and state that the SPP Board adhered to the vote of stakeholders who have financial interests in expansive grandfathering.<sup>23</sup>

13. Additionally, Complainants state that there is a finite pool of ARRs and LTCRs that is limited by the physical capability of the physical transmission system as represented by SPP's simultaneous feasibility test.<sup>24</sup> Complainants state that the simultaneous feasibility test does not consider the portion of a firm transmission service request that is subject to redispatch, and that network service and point-to-point service customers "with a portion of firm transmission service subject to redispatch have a lower priority type of service for the redispatch piece."<sup>25</sup> Complainants point to section 32.8 of

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<sup>21</sup> *Id.* at 3-5.

<sup>22</sup> *Id.* at 6-9.

<sup>23</sup> *Id.* at 23-25.

<sup>24</sup> A simultaneous feasibility test is a test for a state in which each set of injections and withdrawals associated with LTCRs, ARRs, and TCRs would not exceed any thermal, voltage, or stability limits within the transmission system under normal operating conditions or for monitored contingencies. SPP, OATT, Sixth Revised Volume No. 1, Attachment AE, § 1.1 S (1.0.0).

<sup>25</sup> Complaint at 26.

SPP's Tariff as showing that customers with network service subject to redispatch are granted unconditional firm service only to the point that the existing grid can feasibly accommodate their requests.<sup>26</sup> Complainants contend that if ARRs and LTCRs are granted to customers with network service subject to redispatch at a greater level than can be feasibly accommodated as unconditional firm service, there is a mismatch of costs and benefits. Complainants assert that customers with network service subject to redispatch have no legitimate expectation for firm service, and that any award of ARRs or LTCRs beyond what the grid can accommodate is unjust and unreasonable.<sup>27</sup>

14. Complainants contend that they have a right to ARRs and LTCRs commensurate with SPP's grant of 202 MW of unconditional firm transmission service, but that SPP's allocation practices have left Complainants exposed to congestion costs for approximately 92 percent of their point-to-point service under the relevant transmission service agreements. Complainants state that this has resulted in congestion costs that are twice as high as would be the case if they were properly hedged.<sup>28</sup> Complainants assert that the principle of cost causation requires that Complainants receive the benefit for which they have paid. Additionally, Complainants state that the Commission's open access transmission policies work on a first-in-time principle, and that Complainants' first-in-time status (compared to network service subject to redispatch) gives them the right to have ARRs to nominate equivalent to their 202 MW of unconditional firm service or their simultaneous fair share among other unconditional firm transmission customers.<sup>29</sup>

15. Complainants further state that SPP's allocation practices take rights that customers with unconditional firm transmission service have paid for and provides them to customers with network service subject to redispatch, which Complainants maintain is an improper subsidy under the FPA. Moreover, Complainants assert, SPP's allocation practices impede Alabama Power's statutory entitlement to firm transmission rights pursuant to section 217(b)(2) of the FPA.<sup>30</sup> Complainants also contend that SPP's allocation practices violate section 7.1.1 of Attachment AE of its Tariff because the portion of a network service customer's firm service that is subject to redispatch does not have an "existing transmission service entitlement[]," does not have transmission service

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<sup>26</sup> *Id.* (citing SPP, OATT, Sixth Revised Volume No. 1, § 32.8 (0.0.0)).

<sup>27</sup> *Id.* at 25-28.

<sup>28</sup> *Id.* at 28-29 (referencing Affidavit of David C. Marshall, Project Manager, Asset Management in Fleet Operations and Trading, Southern Company).

<sup>29</sup> *Id.* at 29-30.

<sup>30</sup> *Id.* at 30-32 (citing 16 U.S.C. § 824q (2012)).

that “span[s] the entire monthly or seasonal period for which ARR’s are allocated,” and does not have transmission service that “span[s] the entire annual period for which LTCRs are allocated.”<sup>31</sup>

16. Additionally, Complainants state that SPP’s allocation practices provide network customers with firm service subject to redispatch with an undue preference over point-to-point customers with firm service subject to redispatch in violation of the FPA, and note that there are no differences in facts that justify the different treatment for the 2017-2018 allocation year. Noting that Alabama Power is a load-serving entity (LSE) for purposes of section 217 of the FPA and that customers with network service subject to redispatch may also be LSEs to which section 217 of the FPA applies, Complainants assert that SPP’s allocation practices result in an undue preference as between these two classes of LSEs that are not similarly situated.<sup>32</sup>

## **II. Notice and Responsive Pleadings**

17. Notice of the Complaint was published in the *Federal Register*, 82 Fed. Reg. 21,536 (2017), with interventions and protests due on or before May 31, 2017. Timely motions to intervene were filed by the American Wind Energy Association; Mid-Kansas Electric Company, LLC; Missouri Joint Municipal Electric Utility Commission, Kansas Power Pool, and City of Independence, Missouri; SPP; Sunflower Electric Power Corporation; and Xcel Energy Services Inc. (Xcel). Western Farmers Electric Cooperative filed a motion to intervene out-of-time.

18. On May 8, 2017, SPP filed an answer to the Motion for Interim Relief. On May 31, 2017, SPP filed an answer to the Complaint (SPP Answer) and Xcel filed a protest (Xcel Protest).<sup>33</sup> On June 23, 2017, Complainants filed a motion for leave to answer and answer (Complainants Answer). On July 14, 2017, SPP filed a motion to reject the Complainants Answer, or in the alternative, motion for leave to answer and answer.

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<sup>31</sup> Complaint at 32-34 (quoting SPP, OATT, Sixth Revised Volume No. 1, Attachment AE, § 7.1.1 (0.0.0)).

<sup>32</sup> *Id.* at 34-36.

<sup>33</sup> Xcel filed its protest on behalf of Southwestern Public Service Company (Southwestern), its utility operating company affiliate.



**A. SPP Answers**

19. SPP requests that the Commission dismiss the Complaint on the grounds that the Complaint is based on the incorrect claim that SPP's current Tariff prohibits allocations of ARR and LTCR to network service subject to redispatch. SPP asserts that Complainants' interpretation of the Tariff is inconsistent with the plain language of the Tariff, the regulatory history behind the adoption of the relevant Tariff provisions, and the September 2016 Order. SPP states that during the 2017-2018 ARR and LTCR allocation process it relied on its long-standing interpretation of its Tariff and that doing otherwise would have exposed SPP to claims that it had failed to follow its currently-effective Tariff.<sup>34</sup>

20. SPP maintains that it is immaterial whether the allocation of ARR and LTCR to network service subject to redispatch causes Complainants' allocations to be reduced, provides a benefit to network service subject to redispatch that is not provided to point-to-point-service subject to redispatch, or should now be found to be unjust and unreasonable. SPP states that these issues may be relevant to whether the Tariff should be revised, but have no bearing on whether Complainants are entitled to retroactive or injunctive-type relief.<sup>35</sup>

21. SPP asserts that Complainants disregard the difference in eligibility limitations set forth in the current Tariff, namely that section 13.5 of the Tariff explicitly provides that customers with point-to-point service subject to redispatch are not eligible for ARR except when redispatch is not required, while section 34.6 of the Tariff places no such limitation on network service subject to redispatch. Additionally, SPP explains that, contrary to Complainants' claims, network service subject to redispatch is a firm service and is not subordinate to other firm service for curtailment purposes.<sup>36</sup> SPP states that after a request for network service subject to redispatch is confirmed, the customer has firm transmission rights, although during certain periods the firm obligation is met through redispatching the system. SPP states that it has always treated firm service with redispatch as subject to curtailment at the same level as all other firm transmission and native load.<sup>37</sup>

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<sup>34</sup> SPP Answer at 2-3.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 15-18 (referencing Affidavit of Richard L. Dillon, Director, Market Policy, SPP).

<sup>37</sup> *Id.*

22. SPP contends that the history behind Tariff sections 13.5 and 34.6 also support rejection of the Complaint, including the Commission's acceptance of the Tariff provisions in the Integrated Marketplace Order over a protest regarding the lack of comparability between the provisions.<sup>38</sup> SPP also maintains that SPP staff's examination in 2012 of the possibility of amending the Tariff to align the eligibility limitations governing network service subject to redispatch and point-to-point service subject to redispatch is proof of SPP's understanding of the Tariff at the time and acted as notice to stakeholders that, without Tariff changes, SPP was required to provide ARR to network service subject to redispatch. Additionally, SPP states that as a non-final order that initiated an investigation, the September 2016 Order rendered no final determinations and that it is incorrect for Complainants to claim that the September 2016 Order deemed any provision of the SPP Tariff unjust and unreasonable or required immediate suspension of SPP's allocation practices.<sup>39</sup>

23. SPP also asserts that transmission customers have no reasonable expectation of receiving congestion rights corresponding exactly to their MWs of reserved service and therefore cannot reasonably assume their congestion exposure will be fully hedged through the allocations of ARRs and LTCRs.<sup>40</sup> SPP further maintains that Complainants' arguments regarding section 217 of the FPA are meritless because they rely on the premise that network service subject to redispatch is not firm service and because Complainants do not point to any provision of section 217 indicating that customers with service subject to redispatch do not become LSEs until their service is no longer subject to redispatch.<sup>41</sup>

24. SPP contends that Complainants' financial impact estimates presume that Alabama Power would receive a 90 to 100 percent ARR allocation for its firm point-to-point reservations, which has no historical or logical basis, and ignore the fact that, even under Complainants' view of the Tariff, SPP would allocate ARRs to network service subject to redispatch during periods when redispatch is not required. SPP further argues that, although estimating financial impact is virtually impossible, evidence suggests that removing network service subject to redispatch nominations for the periods of redispatch would likely have no effect on ARR allocations to Alabama Power. SPP asserts that the

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<sup>38</sup> *Id.* at 18 (citing Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 253).

<sup>39</sup> *Id.* at 18-22.

<sup>40</sup> *Id.* at 22-23 (referencing Affidavit of Ty Mitchell, Supervisor, Congestion Hedging, SPP).

<sup>41</sup> *Id.* at 23-24.

principal factor contributing to Alabama Power's low ARR allocations is chronic congestion on the paths reserved by Alabama Power.<sup>42</sup>

25. SPP contends that the Complaint should be dismissed because it is duplicative of the complaint Alabama Power filed in Docket No. EL17-11-000 and seeks merely to re-litigate the same issues without a showing of new evidence or changed circumstances. Moreover, SPP states, the relief requested in the other complaint proceeding, if granted, would cover the period for which the Complaint seeks relief.<sup>43</sup>

26. In response to the Motion for Interim Relief, SPP states that, in the absence of a Commission quorum, there is no legal basis on which to grant the requested relief. Additionally, SPP asserts that the Commission will grant immediate, injunctive-type relief only in circumstances where there is egregious conduct and substantial supporting evidence establishing a prima facie case of a violation of a statutory or regulatory requirement, and that Complainants have not met that heightened standard here.<sup>44</sup>

### **B. Xcel Protest**

27. Xcel requests that the Commission reject the Complaint because it is based on incorrect understandings of the September 2016 Order and SPP's Tariff. Xcel states that Complainants' contentions related to SPP not implementing the September 2016 Order are misplaced because the Commission did not make any final findings that SPP's Tariff rules on ARR and LTCR allocations are unjust and unreasonable, and therefore SPP was under no obligation to make a compliance filing to revise its Tariff. Xcel also states that the refund effective date in the September 2016 Order merely sets the earliest possible date for refunds that may be granted, but does not bind the Commission to ultimately ordering refunds, and the effective date of any Tariff changes will be no earlier than the date of the order where the Commission fixes the required changes.<sup>45</sup>

28. Xcel notes that in the Integrated Marketplace Order, the Commission accepted the SPP Tariff's proposed difference in treatment between point-to-point service subject to redispatch and network service subject to redispatch, and that since then SPP has consistently applied its Tariff so as to permit network service subject to redispatch to

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<sup>42</sup> *Id.* at 28-29 (referencing Affidavit of Ty Mitchell).

<sup>43</sup> *Id.* at 25-27.

<sup>44</sup> SPP May 8, 2017 Answer at 2-4.

<sup>45</sup> Xcel Protest at 7-11.

receive ARRs and LTCRs.<sup>46</sup> With regard to section 32.8 of the Tariff, Xcel states that that section merely indicates that SPP is not obligated to provide the portion of the service that requires upgrades and that cannot be provided with redispatch before the upgrades are in place, and does not indicate, as Complainants suggest, that the portion of service offered through redispatch is not obligated to be provided or is non-firm. Xcel maintains that network service being subject to redispatch does not change the firm nature of the service and that such service is consistent with section 7.1.1 of Attachment AE of the Tariff.<sup>47</sup>

29. Xcel requests that the Commission not restrict eligibility for ARRs and LTCRs for network service subject to redispatch confirmed prior to the September 2016 Order. Xcel states that if the Complainants' position were adopted, the ability of its affiliate, Southwestern, to hedge congestion costs would be severely curtailed, exposing Southwestern to costs it could not have anticipated and that would be passed through to wholesale and retail customers. Xcel further argues that Commission policy disfavors modifying market rules upon which market participants have relied and seeks to preserve pre-existing contract rights amidst regulatory changes.<sup>48</sup>

30. Xcel asserts that the Complaint provides no facts to demonstrate that the alleged harm to Complainants is due to network service subject to redispatch being allocated ARRs and LTCRs. According to Xcel, the Complaint asks the Commission to draw the inference that the reason that Complainants' ARR or LTCR allocations may have decreased in the most recent SPP auction is directly due to network service subject to redispatch receiving ARRs and LTCRs in the auction. Xcel argues that other factors can affect ARR and LTCR allocations in a particular year, such as changes in system topology, resource or transmission facility outages, and changes in congestion in the local area of the resource associated with the request for ARRs and LTCRs. Xcel also notes that SPP made a significant change to its annual ARR process in 2016-2017 by decreasing transmission system availability from 100 percent to 60 percent during the months of October to May, and that the Commission accepted this change.<sup>49</sup> Additionally, Xcel requests that the Commission reject Complainants' request for interim relief, arguing that Complainants seek to prevent SPP from conducting current auctions

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<sup>46</sup> *Id.* at 12 (citing Integrated Marketplace Order, 141 FERC ¶ 61,048 at P 253).

<sup>47</sup> *Id.* at 12-15.

<sup>48</sup> *Id.* at 15-19.

<sup>49</sup> *Id.* at 19-20 (citing *Sw. Power Pool, Inc.*, 154 FERC ¶ 61,121, at P 26 (2016)).

in a manner consistent with its current Tariff and that Complainants seek to prematurely decide the ongoing proceedings in Docket No. EL16-110-000 in their favor.<sup>50</sup>

### **III. Discussion**

#### **A. Procedural Issues**

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant Western Farmers Electric Cooperative's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Complainants Answer, and will, therefore, reject it.<sup>51</sup>

33. We deny SPP's request to dismiss the Complaint. We recognize that many of the issues raised in the Complaint are already the subject of concurrent Commission proceedings,<sup>52</sup> and that some of the arguments in the Complaint would more appropriately have been made in those other proceedings.<sup>53</sup> However, we find that the Complaint is not duplicative of the complaint in Docket No. EL17-11-000 because the Complaint raises issues related to whether SPP was barred from continuing its practice of allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch during the 2017-2018 annual allocation process. The complaint in Docket No. EL17-11-000, on the other hand, is backwards-looking in both its assertions of alleged harm and its request for remedial relief, and it did not seek relief related to potential future allocations of ARRs or LTCRs. At the time that complaint was filed in Docket No. EL17-11-000, it was not known with certainty whether SPP would continue its ARR and LTRC allocation practices during

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<sup>50</sup> *Id.* at 20-21.

<sup>51</sup> Because we reject the Complainants Answer, we need not address SPP's July 14, 2017 alternative motion for leave to answer and answer.

<sup>52</sup> *See supra* section I.A.

<sup>53</sup> *See, e.g., infra* P 38.

the 2017-2018 annual allocation process. The fact that SPP did continue its ARR and LTCR allocation practices during the 2017-2018 annual allocation process constitutes “new evidence or changed circumstances”<sup>54</sup> and therefore we do not find it appropriate to dismiss the Complaint.

**B. Substantive Issues**

34. For the reasons discussed below, we deny the Complaint. The Complaint is premised on the notion that SPP was obligated to refrain from allocating new ARRs and LTCRs for the 2017-2018 allocation year to customers with network service subject to redispatch for the amounts and periods subject to redispatch. However, the Complaint does not identify anything that would establish such an obligation on SPP.

35. First, we find that SPP’s practice of allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch is not a violation of its current Tariff. While SPP’s Tariff limits the eligibility for ARRs and LTCRs for point-to-point service subject to redispatch, currently there is not a similar limitation in the Tariff for network service subject to redispatch.<sup>55</sup>

36. We disagree with Complainants that SPP’s allocation practice violates section 7.1.1 of Attachment AE of the Tariff because the portion of a network service customer’s firm service that is subject to redispatch does not have an “existing transmission service entitlement[,]” does not have transmission service that “span[s] the entire monthly or seasonal period for which ARRs are allocated,” and does not have transmission service that “span[s] the entire annual period for which LTCRs are

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<sup>54</sup> *So. Company Servs., Inc., et al. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,026, at P 77 (2015) (“Commission precedent prohibits the filing of successive complaints that seek to re-litigate the same issue absent new evidence or changed circumstances.”).

<sup>55</sup> *Compare* SPP, OATT, Sixth Revised Volume No. 1, § 13.5 (2.1.0) *with* § 34.6 (1.0.0).

allocated.”<sup>56</sup> Network service subject to redispatch is a form of firm transmission service, albeit firm service conditioned upon redispatch. As Mr. Dillon explains, a customer with confirmed network service subject to redispatch is entitled to firm service for the entire period of the firm reservation.<sup>57</sup> The fact that such service is subject to redispatch does not mean that the transmission customer has non-firm or lower priority transmission service, or that the transmission customer only has firm service for the periods of time not subject to redispatch. As SPP and Xcel note, section 32.8 of the Tariff<sup>58</sup> states that SPP is not required to provide the incremental portion of a network service request that cannot be provided through redispatch before upgrades are completed.<sup>59</sup> However, we find nothing in section 32.8 of the Tariff as establishing that network service subject to redispatch has a lower priority type of service for the periods of time that are subject to redispatch, as Complainants contend.<sup>60</sup> Given that SPP’s

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<sup>56</sup> Complaint at 32-33 (quoting SPP, OATT, Sixth Revised Volume No. 1, Attachment AE, § 7.1.1 (0.0.0)). Complainants also argue that network service subject to redispatch does not meet the definition of “Eligible Entity” under the Tariff, without further elaborating why they believe this to be so. *See* Complaint at 33. In the Complaint I Order, we discuss the definition of “Eligible Entity” and why it does not establish specific limitations on eligibility for ARRs and LTCRs when service is subject to redispatch. Complaint I Order, 161 FERC ¶ 61,073 at PP 25.

<sup>57</sup> SPP Answer, Affidavit of Richard L. Dillon at P 9.

<sup>58</sup> Section 32.8 provides as follows:

If the Transmission Provider determines that there will not be adequate transfer capability to satisfy the full amount of a Completed Application for Firm Network Integration Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Network Integration Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Network Integration Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

<sup>59</sup> *See* SPP Answer at 17 n.55; Xcel Protest at 14.

<sup>60</sup> Complaint at 26.

allocation practice is not a violation of its current Tariff,<sup>61</sup> we find that SPP did not violate its Tariff by continuing to use the allocation practice during the 2017-2018 annual process for ARR and LTCR allocations.

37. Second, we find that SPP's practice of allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch during the 2017-2018 annual allocation process was not in violation of the September 2016 Order. In the September 2016 Order, the Commission instituted a paper hearing proceeding pursuant to FPA section 206 to examine SPP's Tariff after finding that section 34.6 of SPP's existing Tariff may be unjust and unreasonable and unduly discriminatory or preferential to the extent that it allows SPP to provide ARRs and LTCRs to network service customers subject to redispatch.<sup>62</sup> However, the Commission's findings in the September 2016 Order were preliminary findings. The Commission did not make a final determination about whether SPP's Tariff or allocation practices were unjust and unreasonable or unduly discriminatory or preferential, and the Commission did not direct SPP to make changes to its Tariff. Because the September 2016 Order did not establish any requirement for SPP to change its Tariff or allocation practices, we find that SPP did not contravene the September 2016 Order by continuing to allocate ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch during the 2017-2018 annual allocation process.

38. Finally, the Complaint raises many arguments about why, in Complainants' view, SPP's practice of allocating ARRs and LTCRs to customers with network service subject to redispatch for the amounts and periods subject to redispatch is unjust and unreasonable

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<sup>61</sup> In the Complaint I Order that is being issued concurrently with this order, the Commission discusses further why SPP's allocation practice is not a violation of its current Tariff in response to other arguments raised in that proceeding. Complaint I Order, 161 FERC ¶ 61,073 at PP 24-28.

<sup>62</sup> September 2016 Order, 156 FERC ¶ 61,217 at PP 36-37.



and unduly discriminatory or preferential.<sup>63</sup> The issue of whether SPP's allocation practice is unjust and unreasonable or unduly discriminatory or preferential was the subject of the paper hearing proceeding that the September 2016 Order established in Docket No. EL16-110-000. Arguments related to whether SPP's allocation practice is unjust and unreasonable or unduly discriminatory or preferential would appropriately be raised in Docket No. EL16-110-000, and, to the extent Complainants raised their arguments in that proceeding, they were considered by the Commission there.

39. In the Paper Hearing Order in Docket No. EL16-110-000 that is being issued concurrently with this order, the Commission finds that section 34.6 of SPP's Tariff is unjust and unreasonable and unduly discriminatory or preferential to the extent that it allows SPP to provide ARR and LTCRs to network service customers subject to redispatch on the same basis it provides ARR and LTCRs to firm transmission customers not subject to redispatch.<sup>64</sup> In the Paper Hearing Order, the Commission further finds that, going forward from the effective date of revisions to section 34.6 required in that order, it will not be reasonable for SPP to allocate any additional ARRs to customers with network service subject to redispatch on the same basis as firm transmission customers not subject to redispatch, except for those times and amounts not subject to redispatch, and also finds that, going forward from the effective date of revisions to section 34.6 required in that order, it will not be reasonable for SPP to allocate any additional LTCRs to customers with network service subject to redispatch on

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<sup>63</sup> *E.g.*, Complaint at 5, 23-25 (arguing that allocating ARRs and LTCRs to customers with network service subject to redispatch is unjust, unreasonable, unduly discriminatory, and preferential), 24 (arguing that SPP Board vote to grandfather SPP's allocation practice is unjust and unreasonable), 27-28 (arguing that award of ARRs and LTCRs beyond what the grid can accommodate is unjust and unreasonable), 30 (arguing that SPP's allocation practice deprives Complainants of benefits which they are due under Order No. 888 transmission policy and is therefore unjust and unreasonable), 31-32 (arguing that SPP's allocation practice results in an improper subsidy to customers with network service subject to redispatch and is therefore unjust and unreasonable), 31-32 (arguing that SPP's allocation practice impedes Alabama Power's entitlement to firm transmission rights under FPA section 217 and is therefore unjust and unreasonable), 34-35 (arguing that SPP's allocation practice is unduly discriminatory and preferential as between customers with network service subject to redispatch and customers with point-to-point service subject to redispatch), 35-36 (arguing that SPP's allocation practice is unduly discriminatory and preferential as between LSEs that are not similarly situated).

<sup>64</sup> Paper Hearing Order, 161 FERC ¶ 61,071 at P 33.

the same basis as firm transmission customers not subject to redispatch.<sup>65</sup> The effective date of the revisions to section 34.6 required in the Paper Hearing Order is the issuance date of the Paper Hearing Order. Therefore, the required changes to SPP's Tariff and ARR and LTCR allocation practices required in the Paper Hearing Order apply prospectively, and do not apply to the 2017-2018 annual allocation process.

40. Because we deny the Complaint, we also deny Complainants' Motion for Interim Relief.<sup>66</sup>

The Commission orders:

The Complaint filed by Buffalo Dunes, Enel, Alabama Power, and Southern Company is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>65</sup> *Id.*

<sup>66</sup> We further note that, from the date the Complaint was filed through the date of the beginning of the 2017-2018 allocation year (i.e., June 1, 2017), the Commission lacked a quorum and could not have issued the relief requested (i.e., ordering SPP not to allocate new ARRs or LTCRs to network service customers with firm service subject to redispatch for the 2017-2018 allocation year). *See* 42 U.S.C. § 7171(e) (2012) (“... a quorum for the transaction of business shall consist of at least three members present.”).