

155 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Southwest Power Pool, Inc., Western Area Power
Administration, Basin Electric Power Cooperative,
Heartland Consumers Power District

Docket No. EL12-60-001

Southwest Power Pool, Inc.

Docket Nos. ER12-1586-002
ER12-1586-003

ORDER ON CLARIFICATION, REHEARING, AND COMPLIANCE

(Issued April 21, 2016)

1. On September 18, 2012, the Commission conditionally accepted for filing a joint operating agreement between Southwest Power Pool, Inc. (SPP) and Western Area Power Administration – Upper Great Plains Region (Western) (Western-SPP JOA), subject to SPP filing certain revisions to sections 5.4-5.6 of the Western-SPP JOA, including revisions to clarify the meaning of the term “energy exchange” in section 5.6.1.¹ In the September 18 Order, the Commission also granted a petition for declaratory order (Petition) filed by SPP, and Western, Basin Electric Power Cooperative (Basin), and Heartland Consumers Power District (Heartland) (collectively, Integrated System Parties) in Docket No. EL12-60-000, requesting that the Commission interpret the joint operating

¹ *Sw. Power Pool, Inc.*, 140 FERC ¶ 61,199, at PP 101, 106 (2012) (September 18 Order).

agreement between SPP and Midcontinent Independent System Operator, Inc. (MISO)² (MISO-SPP JOA) in light of the Western-SPP JOA.³

2. MISO filed a request for clarification or rehearing of the September 18 Order⁴ and MISO Transmission Owners also filed a request for rehearing.⁵ In addition, SPP and Integrated System Parties filed a joint request for clarification of the September 18 Order's directive to revise section 5.6.1 of the Western-SPP JOA to clarify the meaning of the term "energy exchange."

3. SPP submitted a compliance filing that included alternative proposed revisions to section 5.6.1 of the Western-SPP JOA consistent with the SPP's and Integrated System Parties' request for clarification. MISO and MISO Transmission Owners both protested SPP's compliance filing.

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

³ See September 18 Order, 140 FERC ¶ 61,199 at P 45. No entity requested rehearing or clarification of the findings involved in granting the Petition. Therefore, the findings in the September 18 Order pertaining to the Petition are final, and we terminate the proceeding in Docket No. EL12-60-001.

⁴ MISO October 18, 2012 Request for Clarification, or in the Alternative, Rehearing (MISO Request).

⁵ MISO Transmission Owners October 18, 2012 Request for Rehearing (MISO Transmission Owners Request). For purposes of this filing, MISO Transmission Owners are: Ameren Services Co., as agent for Union Electric Co.; Ameren Illinois Co. and Ameren Transmission Co. of Illinois; American Transmission Co. LLC; Big Rivers Electric Corp.; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corp. for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Co.; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

4. In this order, as discussed below, we grant in part and deny in part MISO's request for clarification or rehearing, deny MISO Transmission Owners' request for rehearing, grant SPP's and Integrated System Parties' joint request for clarification, and accept SPP's compliance filing.⁶

I. Background

5. In April 2012 in Docket No. ER12-1586-000, SPP submitted the Western-SPP JOA for filing pursuant to section 205 of the Federal Power Act (FPA).⁷ Shortly thereafter SPP and Integrated System Parties jointly submitted the above-referenced Petition requesting that the Commission make certain findings interpreting the MISO-SPP JOA in light of the Western-SPP JOA. As pertinent here, in the September 18 Order the Commission found that the Western-SPP JOA enhances coordination between SPP and Western (as administrator of the Integrated System) and does not affect SPP's contract path capacity sharing with MISO pursuant to section 5.2 of the MISO-SPP JOA. The Commission rejected arguments that the contract path capacity limitations in sections 5.4-5.6 of the Western-SPP JOA conflict with the contract path capacity sharing provision (section 5.2) in the MISO-SPP JOA.⁸

⁶ We note that effective October 1, 2015, the Integrated System Parties joined SPP as transmission owning members, and therefore SPP and the Integrated System Parties have not operated under the Western-SPP JOA since that date. An appeal of the Commission orders on SPP's revisions to its Open Access Transmission Tariff, Bylaws, and Membership Agreement to facilitate the Integrated System Parties' integration was filed with the United States Court of Appeals for the District of Columbia Circuit on December 14, 2015 in Case No. 15-1447.

⁷ 16 U.S.C. § 824(d) (2012).

⁸ Sections 5.4-5.6 of the Western-SPP JOA provide that SPP and Western will limit their contract path capacities to each system's individual contract path capacities. At the time of SPP's filing and the September 18 Order, section 5.2 of the MISO-SPP JOA provided that SPP and MISO would share their combined contract path capacities to the same entity. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011), *reh'g denied*, 138 FERC ¶ 61,055 (2012). On January 21, 2016, the Commission approved a settlement under which, among other things, MISO and SPP agreed to revise section 5.2, and add sections 5.3 and 5.4 to the MISO-SPP JOA to provide that, if MISO or SPP exceeds its contract path capacity and thus relies on the combined contract path capacity, the party doing so will negotiate a compensation arrangement. *See Sw. Power Pool, Inc.*, 154 FERC ¶ 61,021, at P 2 (2016).

6. In the September 18 Order, the Commission also rejected MISO's and MISO Transmission Owners' arguments that sections 5.4-5.6 of the Western-SPP JOA would be incompatible with market-to-market coordination between MISO and SPP when SPP's "Day 2" market, the Integrated Marketplace, began operations, which was scheduled for 2014.⁹ In rejecting this argument, the Commission pointed out that MISO had successfully operated a Day 2 market while also being party to a seams operating agreement with Mid-Continent Area Power Pool (MISO-MAPP Seams Agreement) and providing MISO Seams Service¹⁰ as originally implemented (i.e., prior to the insertion of provision for contract path capacity sharing),¹¹ neither of which provided for contract path capacity sharing.¹²

7. In the September 18 Order, the Commission also rejected MISO's and MISO Transmission Owners' arguments that sections 5.4-5.6 of the Western-SPP JOA equate to assessing compensation for loop flow, which they argued cannot be assessed without authorization from the Commission based on a showing of adverse effects from loop flow.¹³ The Commission also found that the treatment of capacity in sections 5.4-5.6 of

⁹ September 18 Order, 140 FERC ¶ 61,199 at P 105. *See also Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013). SPP's Integrated Marketplace, in fact, began operations on March 1, 2014.

¹⁰ As the Commission explained in the September 18 Order, 140 FERC ¶ 61,199 at n.12, services provided by MISO under its Congestion Management Coordination Service section of its Tariff are referred to as "Seams Service." As originally implemented, MISO Seams Service did not include a provision for contract path capacity sharing. The Commission subsequently accepted MISO's proposal to include such a provision. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,290 (2005) (accepting the MISO-MAPP Seams Agreement). The Integrated System's interconnections with MISO were governed by the MISO-MAPP Seams Agreement.

¹¹ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265 (2008) (conditionally accepting MISO's proposal to offer implementation of the Congestion Management Process, or CMP, as a service under Part II of Module F of the MISO tariff); *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,205 (2011) (accepting MISO's proposal to insert a contract path capacity sharing provision in MISO Seams Service).

¹² September 18 Order, 140 FERC ¶ 61,199 at PP 102, 105.

¹³ *Id.* P 104 (citing *Am. Elec. Power Serv. Corp.*, 93 FERC ¶ 61,151, at 61,474 (2000) (*AEP*)).

the Western-SPP JOA was distinct from the treatment of loop flow, which is governed by the Congestion Management Process, an attachment to the Western-SPP JOA. Specifically, the Commission found that sections 5.4-5.6 addressed obligations to obtain transmission service while the CMP addressed energy flows and congestion management in real time.¹⁴

8. In the September 18 Order, the Commission conditioned acceptance of the Western-SPP JOA on SPP filing revisions to the Western-SPP JOA that were proposed by SPP in its July 20, 2012 response to a deficiency letter from Commission staff. The Commission also directed SPP to file revisions to clarify the meaning of the term “energy exchange” in section 5.6.1.¹⁵ The Commission explained that revising section 5.6.1 was necessary to ensure that it reflects SPP’s and Western’s intent that the Western-SPP JOA will not affect the rights of third parties, including MISO.¹⁶ To make this clear, the Commission directed SPP to submit a compliance filing revising section 5.6.1 to clarify that the term “energy exchange” relates only to energy sourced in SPP or the Integrated System.¹⁷

II. Requests for Rehearing or Clarification by MISO and MISO Transmission Owners

9. In response to the September 18 Order, MISO filed a request for clarification or rehearing and MISO Transmission Owners filed a request for rehearing. MISO Transmission Owners argue that the Commission erred when it accepted the Western-SPP JOA because the Western-SPP JOA does not provide for contract path capacity sharing between SPP and Western and instead provides for contract path capacity limitations between them. MISO Transmission Owners argue that, in accepting the Western-SPP JOA, the Commission overlooked their arguments as to the adverse effects of the contract path limitations between SPP and Western on market-to-market coordination between SPP and MISO.¹⁸ MISO also argues that the September 18 Order

¹⁴ *Id.* P 105. The Western-SPP JOA contains implementation provisions for the Congestion Management Process. The Congestion Management Process is common to the MISO-SPP JOA, MISO Seams Service, and other “reciprocal coordination” agreements.

¹⁵ *Id.* P 106.

¹⁶ *Id.* (citing SPP Answer, Docket No. ER12-1586-000 at 5 (filed May 29, 2012)).

¹⁷ *Id.*

¹⁸ MISO Transmission Owners Request at 5-8.

failed to address valid concerns about the effect of the Western-SPP JOA's contract path capacity limitations on market-to-market coordination between SPP and MISO.¹⁹ MISO further states that the Western-SPP JOA's contract path capacity limitations conflict with the Commission's encouragement of market-to-market coordination protocols, such as those between MISO and PJM Interconnection, L.L.C. (PJM) and the protocols that the Commission directed PJM and the New York Independent System Operator, Inc. to develop.²⁰

10. MISO Transmission Owners also argue that the Commission's acceptance of the contract path capacity limitations and "excess use" provisions in sections 5.4-5.6 of the Western-SPP JOA was in error because it amounts to allowing a transmission owner to charge for loop flow without the requisite showing of harm or burden from the loop flow.²¹ MISO Transmission Owners claim that in the September 18 Order the Commission overlooked their arguments that such compensation is only permitted after a demonstration that the subject loop flow impacts system reliability or the economic operation of its system, which SPP and Western had not demonstrated. MISO also makes this claim.²²

11. MISO and MISO Transmission Owners both point to Commission staff's deficiency letter, and SPP's response thereto, as evidence that the "excess use" provisions in the Western-SPP JOA constitute loop flow compensation.²³ MISO and MISO Transmission Owners both note that the deficiency letter asked SPP to state whether loop flow had jeopardized reliability on SPP's system and the Integrated System or diminished SPP's or Western's ability to operate their systems in the most economical manner, which they argue are facts that must be demonstrated under *AEP* and other precedent in order to receive Commission authorization to charge for loop flow. In addition, MISO and MISO Transmission Owners both refer to the Commission's statement in the September 18 Order that the Western-SPP JOA was SPP's and Western's "chosen

¹⁹ MISO Request at 7.

²⁰ *Id.* at 8 (citing *New York Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,276, at P 32 (2010)).

²¹ MISO Transmission Owners Request at 8-9.

²² MISO Request at 11-15.

²³ *Id.* at 12-13 (citing Commission Staff's July 19, 2012 Deficiency Letter at 2, 6); MISO Transmission Owners Request at 10.

method for addressing loop flow.”²⁴ MISO claims that the statement indicates that the Commission is contradicting itself to find that the provisions do not amount to loop flow compensation.²⁵ MISO Transmission Owners allege that the statement ignores that Commission policy requires a transmission provider wishing to receive compensation for loop flow to show that the loop flow has caused adverse effects.²⁶ In addition, MISO notes that the Commission misstated MISO’s position as being that *AEP* “prohibits all compensation for loop flows,” whereas MISO’s position actually is that *AEP* allows compensation for loop flows if the utility makes the showings required under *AEP* and other orders.²⁷

12. MISO also asks the Commission to direct SPP either to submit a detailed proposal under section 205 of the FPA explaining how the “excess use” provisions (sections 5.5.2 and 5.6.2) of the Western-SPP JOA will operate, including how “excess use” charges will be determined and allocated.²⁸ MISO also asserts that sections 5.4-5.6 of the Western-SPP JOA would allow a jurisdictional transmission provider such as SPP to require its transmission customers to pay the full tariff rate of another transmission provider for service occurring on the other transmission provider’s system.²⁹ According to MISO, this presents the potential for abuse, especially when the other transmission provider, like Western, is a non-jurisdictional entity whose transmission rates are not subject to the Commission’s rate review authority.³⁰ MISO further argues that requiring a third party to pay an additional “excess use” charge would restrict access to transmission service and would represent a modification of the *pro forma* OATT, which SPP and Western would

²⁴ MISO Request at 13-14 (quoting September 18 Order, 140 FERC ¶ 61,199 at P 104); MISO Transmission Owners Request at 10-11.

²⁵ MISO Request at 14.

²⁶ MISO Transmission Owners Request at 11.

²⁷ MISO Request at 13 (quoting September 18 Order, 140 FERC ¶ 61,199 at P 104).

²⁸ *Id.* at 17.

²⁹ *Id.* at 14.

³⁰ *Id.*

be required to demonstrate is consistent with or superior to the *pro forma* OATT, which they have not done.³¹

13. MISO also asks the Commission to clarify whether, under section 5.6.1 of the Western-SPP JOA as revised pursuant to the directive in the September 18 Order, energy sourced in MISO will not be subject to the contract path capacity limitations and “excess use” charges in the Western-SPP JOA.³²

14. SPP and Integrated System Parties filed an answer to the rehearing requests of MISO and MISO Transmission Owners.³³

III. Request for Clarification by SPP and Integrated System Parties

15. SPP and Integrated System Parties ask the Commission to clarify the Commission’s directive in the September 18 Order to revise section 5.6.1 of the Western-SPP JOA to reflect SPP’s and Western’s stated intention that the Western-SPP JOA not reduce MISO or other third party rights, by clarifying that the term “energy exchange” applies only to energy generated in SPP or the Integrated System.³⁴ SPP and Integrated System Parties also ask the Commission to confirm that the SPP compliance filing’s proposed alternative revisions to section 5.6.1 address the concerns underlying the Commission’s directive and are acceptable.³⁵

16. SPP and Integrated System Parties explain that the Commission’s assumption that section 5.6.1 does not apply to energy sourced outside of SPP or the Integrated System may have resulted from unclear statements in SPP’s response to the deficiency letter. Specifically, SPP and Integrated System Parties point to SPP’s response to Question 6 of the deficiency letter, in which SPP stated that the Western-SPP JOA does not apply to energy generated by a third party (including MISO). SPP and Integrated System Parties explain that SPP meant that the Western-SPP JOA does not apply to transmission service

³¹ *Id.* at 16.

³² *Id.*

³³ SPP/Integrated System Parties November 2, 2012 Answer (SPP/Integrated System Parties Answer).

³⁴ SPP/Integrated System Parties October 18, 2012 Request for Clarification at 1, 5-6 (SPP/Integrated System Parties Request).

³⁵ *Id.* at 4.

provided pursuant to a third party's tariff, or to deliveries of generation by a third party (including MISO) within its own system or to another third party.³⁶ SPP and Integrated System Parties confirm that the Western-SPP JOA applies to third party customers or generation sources delivering within or across SPP or the Integrated System, and that the Western-SPP JOA only limits the transmission service provided by SPP and/or Western.³⁷

IV. Discussion

A. Procedural Matters

17. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015), prohibits an answer to a request for rehearing. Therefore, we reject the SPP/Integrated System Parties Answer.

B. Substantive Matters

18. As noted above, SPP and the Integrated System Parties have not operated under the Western-SPP JOA since the Integrated System Parties joined SPP on October 1, 2015. However, because the Western-SPP JOA has not been cancelled or withdrawn, we find it appropriate to address the clarification and rehearing requests as follows. Specifically, with respect to MISO's request for clarification, we agree with MISO that the characterization in the September 18 Order of MISO's claim regarding loop flow compensation policy as set forth in *AEP* was incomplete.³⁸ We clarify here that MISO's claim was that *AEP* allows compensation for loop flow provided that the utility has made the requisite showings. We also conclude that the statement in the September 18 Order, that sections 5.4-5.6 of the Western-SPP JOA are SPP's and Western's "chosen method for addressing loop flow," was unclear.³⁹ We clarify here that sections 5.4-5.6 of the Western-SPP JOA are SPP's and Western's chosen method for addressing contract path capacity determinations, which is dependent on whether the parties will (or will not, as is the case here) combine their contract path capacities in making their determinations. As the Commission stated elsewhere in the September 18 Order, sections 5.4-5.6 of the

³⁶ *Id.* at 3.

³⁷ *Id.* at 4.

³⁸ MISO Request at 13 (referring to September 18 Order, 140 FERC ¶ 61,199 at P 104).

³⁹ September 18 Order, 140 FERC ¶ 61,199 at P 104.

Western-SPP JOA do not govern loop flow; rather, loop flow is governed by the Congestion Management Process.⁴⁰

19. As discussed below, we deny MISO's other requests for clarification or rehearing, and we deny the requests for rehearing filed by MISO Transmission Owners. We affirm the determination that sections 5.4-5.6 of the Western-SPP JOA do not violate market-to-market coordination principles and do not constitute unauthorized loop flow compensation. We also grant the joint request for clarification of SPP and Integrated System Parties.

1. Contract Path Capacity Limitations

20. We reject MISO's and MISO Transmission Owners' assertions that sections 5.4-5.6 of the Western-SPP JOA should be rejected as incompatible with market-to-market coordination, particularly coordination between MISO's Day 2 market and SPP's Day 2 market (the Integrated Marketplace), which began operating on March 1, 2014. MISO and MISO Transmission Owners incorrectly assert that sections 5.4-5.6, by not providing for SPP and Western to combine their systems' capacities, are inconsistent with SPP's operation of a Day 2 market and inconsistent with market-to-market dispatch assumptions and principles. As the Commission stated in the September 18 Order, capacity sharing with neighboring transmission systems is not a requirement for operation of a Day 2 market, as illustrated by MISO's operation of a Day 2 market while being party to the MISO-MAPP Seams Agreement and providing Seams Service (as originally implemented), which did not provide for capacity sharing. MISO and MISO Transmission Owners argue that MISO's being party to the MISO-MAPP Seams Agreement and MISO Seams Service as originally implemented do not illustrate that agreements that do not provide for capacity sharing can work in the context of coordination between Day 2 markets. We disagree. We believe the MISO-MAPP Seams Agreement and MISO Seams Service do, in fact, illustrate that capacity sharing with an adjacent non-market system is not required for operation of a Day 2 market.

⁴⁰ *See, e.g., id.* P 105, where the Commission stated:

[s]ections 5.4-5.6 address different issues from the CMP; sections 5.4-5.6 address obligations to obtain transmission service, while the CMP addresses energy flows and congestion management in real-time.

21. We also disagree with MISO's arguments regarding market-to-market coordination protocols. MISO may have market-to-market coordination protocols in place with other Day 2 markets (including PJM and SPP⁴¹), but that does not invalidate the Western-SPP JOA. As pointed out by SPP and Integrated System Parties, the Western-SPP JOA applies only to coordination between SPP and Western, and will thus not affect seams coordination, including market-to-market coordination, between MISO and SPP under the MISO-SPP JOA.

22. Furthermore, we reject MISO's argument that the contract path capacity limitations and "excess use" provisions in the Western-SPP JOA should be rejected because they could impose other transmission providers' charges on SPP's transmission customers. Sections 5.4-5.6 of the Western-SPP JOA do not impose any charges on customers; to the contrary, they state that, if a customer wishes to obtain transmission service on the Integrated System or SPP, the customer must arrange for such service under the Integrated System tariff or SPP tariff and, if insufficient transfer capability is available, then the remaining needed transmission service must be obtained pursuant to the tariff of another system that has sufficient transfer capability. Requiring customers to arrange for adequate transmission service to meet their needs is not unreasonable or unduly burdensome. Having customers request and pay for the transmission service they need, pursuant to transmission providers' open access transmission tariffs, is consistent with the principles underlying open access and available transmission capability calculations. We therefore reject MISO's and MISO Transmission Owners' requests that we reject sections 5.4-5.6 of the Western-SPP JOA. Moreover, because we find this approach to be consistent with open access principles, we reject MISO's arguments that the provisions constitute a modification of the *pro forma* OATT that would need to be justified by a showing that the provisions are consistent with or superior to the terms of the *pro forma* OATT.

23. Beyond declining to reject the "excess use" provisions we also deny MISO's and MISO Transmission Owners' requests for clarification or rehearing as to how the "excess use" provisions would operate, including clarification of how the amount of "excess use" would be calculated, and whether SPP and Western would reserve and pay for any transmission service determined to be "excess use." No clarification is needed as the provisions in the Western-SPP JOA are sufficiently clear: Western and SPP will treat energy deliveries above contract path capacity as "excess use" and will require transmission customers to obtain transmission service pursuant to the tariff of a transmission provider that has sufficient capacity.

⁴¹ See *Sw. Power Pool, Inc.*, 150 FERC ¶ 61,033 (2015) (conditionally accepting market-to-market protocols with MISO as an attachment to the MISO-SPP JOA).

24. We also reject MISO's and MISO Transmission Owners' claims that SPP and Western are required to arrange for or absorb the cost of the "excess use" transmission service the customer must obtain from another transmission provider. Arranging and paying for needed transmission service is a matter appropriately handled between the transmission customer and the transmission provider, pursuant to the applicable tariff. The "excess use" provisions in the Western-SPP JOA do not impose additional transmission costs or steps beyond what would otherwise be required under open access procedures.

25. Likewise, we reject MISO's request that the Commission require SPP to submit an FPA section 205 filing providing details about how the "excess use" provisions will operate. The "excess use" provisions in the Western-SPP JOA (as revised pursuant to the proposed revisions in SPP's response to the deficiency letter) are sufficiently clear: the transmission provider that receives the request for transmission will determine how much it can provide, and any amounts in excess of what that transmission provider can provide must be obtained pursuant to the appropriate tariff of another transmission provider that has available transmission capability. No further clarification is needed as to the provisions or their operation.

2. "Excess Use" Provisions and Loop Flow Compensation

26. MISO and MISO Transmission Owners argue that the Commission was arbitrary and capricious in accepting sections 5.4-5.6 of the Western-SPP JOA, because the provisions amount to unauthorized compensation for loop flow. We reject these arguments. Sections 5.4-5.6 of the Western-SPP JOA do not address loop flow; rather, as discussed above, they address SPP's and Western's choice not to combine their contract path capacities in determining the amount of transmission service available. The contract path capacity limitations and "excess use" determinations under the Western-SPP JOA address how Western and SPP will define their system capabilities in responding to requests for transmission service.

27. We also reject the claim that sections 5.4-5.6 of the Western-SPP JOA amount to SPP and Western obtaining unauthorized loop flow compensation. Sections 5.4-5.6 do not provide for compensation to SPP or Western and do not involve loop flow. As noted above, sections 5.4-5.6 provide that SPP and Western will respect each other's contract path capacity, and transmission service beyond the contract path capacity must be obtained from, and any compensation paid to, another transmission provider that can provide it. Because sections 5.4-5.6 neither address loop flow nor provide for compensation to SPP or Western (beyond what they would otherwise receive under their tariffs), we affirm the finding in the September 18 Order that sections 5.4-5.6 of the Western-SPP JOA do not constitute unauthorized loop flow compensation for SPP and Western.

28. We also reject MISO's and MISO Transmission Owners' argument that questions in Commission staff's deficiency letter reflect a "recognition" on the part of Commission staff or the Commission that sections 5.4-5.6 of the Western-SPP JOA represent compensation for loop flow, and that this recognition was ignored or contradicted without explanation in the September 18 Order. The deficiency letter reflected a recognition by Commission staff that sections 5.4-5.6 were not clear, particularly as to the relationship, if any, between "excess use" deliveries and loop flow.⁴² SPP's response to the deficiency letter clarified the distinction between loop flow and "excess use" deliveries and stated that SPP and Western had identified no instances of "excess use" deliveries, i.e., instances in which SPP or Western had attempted to provide transmission service in excess of its system's contract path capacity.⁴³ SPP's response also proposed clarifying revisions to sections 5.4-5.6. In the September 18 Order, the Commission accepted these proposed revisions, and used the explanations in SPP's response to inform its finding that the provisions did not amount to compensation for loop flow. Thus, we reject the claim that the September 18 Order ignored or contradicted the deficiency letter.

3. Application of the Term "Energy Exchange" in Section 5.6.1

29. SPP and Integrated System Parties request that the Commission clarify that revising section 5.6.1 to clarify that the term "energy exchange" applies to transactions in which SPP or Western is involved as transmission provider satisfies the directive in the September 18 Order that the provision be revised to ensure that it reflects SPP's and Western's intent that the Western-SPP JOA not affect the transmission rights or service of third parties. We grant the requested clarification.

⁴² For example, Question 2 of the deficiency letter asked whether "excess use" deliveries are a concern on SPP's system or the Integrated System, and whether SPP or Western had any studies on the effects of "excess use" deliveries. Question 6 asked whether energy generated in MISO had caused loop flow on the Integrated System that would be considered "excess use" deliveries under the Western-SPP JOA, and whether the loop flow had affected reliability or diminished Western's ability to operate the system in the most economical manner.

⁴³ SPP's response to the deficiency letter also stated that the Western-SPP JOA does not apply to energy generated in MISO. SPP and Integrated System Parties clarify that their intended meaning was that the Western-SPP JOA does not apply to energy generated in MISO in transactions that do not involve SPP or Western as transmission provider. *See, e.g.*, SPP/Integrated System Parties Request at 2.

30. The directive in the September 18 Order provides the following:

[w]e find that certain wording in section 5.6.1 requires further clarification. Specifically, the term “energy exchange” in section 5.6.1 could encompass energy generated outside of the two regions, including in MISO. While SPP and Western state that the provisions do not affect the transmission service or rights of third parties, including MISO [], we believe the wording should be revised, to ensure that section 5.6 reflects SPP and Western’s stated intention. Therefore, we direct SPP to file, within 30 days of the date of this order, revisions to clarify that the term “energy exchange” as applied in sections 5.4-5.6 relates only to energy sourced in Western or SPP.^[44]

The Commission’s underlying concern in this directive was that, without clarification, the term “energy exchange” in section 5.6.1 may be interpreted in a manner that adversely affects the rights of third parties, contrary to SPP’s and Western’s stated intention that the Western-SPP JOA not adversely affect the rights of third parties. The Commission’s understanding, based on statements by SPP and Integrated System Parties, was to reflect this intent. Thus, the Commission found that section 5.6.1 should be revised to clarify that the term “energy exchange” relates only to energy sourced in SPP or the Integrated System.⁴⁵ We now understand from SPP’s and Integrated System Parties’ request for clarification that the statements on which the Commission based its understanding were unclear and that, therefore, the revisions specified in the Commission’s directive (i.e., that the term be clarified to apply only to energy sourced in SPP or the Integrated System) were inaccurate.

31. SPP and Integrated System Parties explain that to ensure that the rights of third parties will not be adversely affected by the Western-SPP JOA, section 5.6.1 should be revised to clarify that the term “energy exchange” applies only to transactions in which SPP or Western is involved as a transmission provider. We agree with SPP and Integrated System Parties that applying the provision only to transactions in which SPP or Western is involved as a transmission provider is just and reasonable and does not adversely affect the rights of third parties. We also agree that having the term “energy exchange” apply only to energy sourced in SPP or Western could lead to transmission service that is inconsistent with open access and unduly discriminatory toward energy

⁴⁴ September 18 Order, 140 FERC ¶ 61,199 at P 106 (internal citations omitted).

⁴⁵ *See, e.g.*, SPP July 19, 2012 Response to Deficiency Letter at 8, stating in pertinent part, “The SPP-Western JOA does not apply to any energy generated by MISO or any other Third Party . . . Section 5.6 does not apply to energy generated by MISO.”

sourced in SPP or the Integrated System. Therefore, we grant SPP's and Integrated System Parties' request for clarification on this issue.

V. SPP's Compliance Filing

32. In compliance with the September 18 Order, SPP submitted the proposed revisions to sections 5.4-5.6 of the Western-SPP JOA that SPP had proposed in its response to the deficiency letter.⁴⁶ In response to the September 18 Order's directive to clarify section 5.6.1 to reflect the parties' intent that the term "energy exchange" applies only to energy sourced in SPP or the Integrated System, SPP instead submitted proposed revisions to section 5.6.1 to reflect that the term "energy exchange" only applies to transactions in which SPP or Western is involved as a transmission provider, reflecting SPP's and Integrated System Parties' request for clarification. Specifically, SPP proposes the following revisions:⁴⁷

5.6.1 General Terms of Use. Each Party agrees to limit its energy exchange transactions with a Third Party in a manner that does not exceed its own system's Contract Path capacity with that Third Party and that does not exceed ~~subject to the appropriate additional~~ transmission service being reserved in accordance with the Party's ~~and Third Party's~~ tariffs. For purposes of this section, the total amount of a Party's Contract Path capacity on its system between ~~at~~ that Party and Third Parties shall be limited to:

1. The sum of capacity of all direct interconnections between the Party and Third Party; and
2. Any ~~c~~Contractual transmission agreements that provide Contract Path capacity on the Party's system between ~~the~~ that Party and the Third Party.

SPP states that these alternative proposed revisions clarify that section 5.6.1 applies only to transmission service provided by SPP or Western and their obligations to respect their system's contract path capacity limits, and that section 5.6.1 does not apply to or affect

⁴⁶ SPP October 18, 2012 Compliance Filing, Transmittal at 2-4. SPP also proposes to revise the Western-SPP JOA to reflect that SPP's mailing address has changed since the Western-SPP JOA was executed.

⁴⁷ *Id.* at 4-5. The underlined text reflects SPP's proposed alternative revisions, redlined against the provision as revised in SPP's response to the deficiency letter.

transmission service provided by any third party or limit deliveries of generation by third parties within their own systems or to other third party systems.⁴⁸

33. SPP states that the proposed alternative revisions are justified because the directive in the September 18 Order to clarify the provision regarding the source of the energy was inaccurate because it does not reflect SPP's and Western's intended meaning for the term or the provision.⁴⁹ According to SPP, the Western-SPP JOA applies to transactions in which either Western or SPP is involved as the transmission provider, regardless of whether the energy in the transaction is sourced inside or outside of the Integrated System or SPP, e.g., a customer could request through-and-out service.⁵⁰ SPP also notes that, if section 5.6.1 were revised as directed in the September 18 Order, this would create an inconsistency between transmission service provided under the Western-SPP JOA and transmission service provided otherwise.⁵¹ SPP also argues it would create the potential for undue discrimination, because SPP or Western could exceed its system's contract path capacity for energy purchased from a third party, but not for energy delivered to a third party.⁵²

A. Notice and Responsive Filings

34. Notice of SPP's compliance filing was published in the Federal Register, 77 Fed. Reg. 65,871 (2012), with interventions and protests due on or before November 8, 2012. MISO and MISO Transmission Owners filed timely protests. On November 21, 2012, SPP and Integrated System Parties jointly filed an answer to the protests.

1. MISO's and MISO Transmission Owners' Protests

35. MISO and MISO Transmission Owners urge the Commission to reject the alternative proposed revisions in SPP's compliance filing and ask the Commission to instead require SPP to comply with the directive in the September 18 Order that section

⁴⁸ *Id.* at 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 5-6.

5.6.1 be revised to clarify that “energy exchange” applies only to energy sourced in SPP or the Integrated System.⁵³

36. MISO and MISO Transmission Owners argue that the alternative proposed revisions should be rejected outright, as not compliant with the Commission’s directive.⁵⁴ MISO notes that the Commission’s directive in the September 18 Order was reasonable, based on SPP’s statements in the response to the deficiency letter that the Western-SPP JOA does not apply to energy generated by MISO and does not affect MISO’s energy deliveries to SPP.⁵⁵ MISO and MISO Transmission Owners both allege that the alternative proposed revisions show that SPP and Western intend to use the Western-SPP JOA to restrict their energy exchanges with third parties including MISO.⁵⁶

37. MISO also disputes the argument by SPP and Integrated System Parties that applying “energy exchange” only to energy sourced in SPP or the Integrated System and not to energy sourced on a third party system including MISO would be unduly discriminatory. According to MISO, undue discrimination applies only to similarly-situated entities, and MISO is not similarly situated to Western and SPP, because MISO is not a party to the Western-SPP JOA.⁵⁷

38. MISO Transmission Owners argue that SPP’s proposed alternative revisions should be rejected because the term “energy exchange” is not defined outside of section 5.6.1, so adopting an alternative clarification of its meaning in section 5.6.1 alters its meaning in other provisions in the Western-SPP JOA, such as in section 5.5.2.⁵⁸ MISO

⁵³ MISO November 19, 2012 Protest (MISO Protest) at 4; MISO Transmission Owners November 19, 2012 Protest (MISO Transmission Owners Protest) at 3-5.

⁵⁴ MISO Protest at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,222, at P 15 (2006)); MISO Transmission Owners Protest at 3-4 (citing 18 C.F.R. § 154.203(b) (2012) (stating that a compliance filing that does not comply with the applicable order in every respect may be rejected); *El Paso Natural Gas Co.*, 115 FERC ¶ 61,280, at P 5 (2006)).

⁵⁵ MISO Protest at 6.

⁵⁶ *Id.* at 4; MISO Transmission Owners Protest at 5.

⁵⁷ MISO Protest at 5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,163, at P 40 (2010)).

⁵⁸ MISO Transmission Owners Protest at 4.

Transmission Owners claim that altering the meaning of “energy exchange” to include energy sourced outside of SPP and the Integrated System will increase the applicability of the Western-SPP JOA’s contract path capacity limitations. They allege that this will detrimentally affect third parties and is contrary to the Commission’s directive in the September 18 Order that the term “energy exchange” be clarified to relate only to energy sourced in Western or SPP.⁵⁹

2. SPP’s and Integrated System Parties’ Answer

39. SPP and Integrated System Parties answer that MISO’s and MISO Transmission Owners’ arguments against the proposed alternative revisions should be rejected as arguing form over substance and as repeating arguments that the Commission rejected in the September 18 Order.⁶⁰ SPP and Integrated System Parties claim that while the Commission generally requires compliance filings to reflect revisions directed in the order, in this case the Commission’s directive was intended to ensure that the provision matched SPP’s and Integrated System Parties’ stated intent.⁶¹ SPP and Integrated System Parties state that, because SPP’s response to the deficiency letter was unclear, the specific revision directed by the Commission did not reflect SPP’s and Integrated System Parties’ intent. SPP and Integrated System Parties state that the alternative proposed revisions reflect their intended meaning. They claim that, for this reason, the proposed alternative revisions address the Commission’s concerns in the September 18 Order.⁶²

40. SPP and Integrated System Parties add that, if the Commission were to reject the proposed alternative revisions as not complying with the directive, then SPP and Integrated System Parties could subsequently refile the revisions as an amendment to the Western-SPP JOA. However, SPP and Integrated System Parties contend that this would be a waste of the Commission’s and the parties’ resources. Instead, they argue, the Commission should accept the alternative proposed revisions in this proceeding.⁶³

⁵⁹ *Id.* at 5-6.

⁶⁰ SPP/Integrated System Parties November 21, 2012 Answer to Protests at 2.

⁶¹ *Id.*

⁶² *Id.* at 2-3.

⁶³ *Id.* at 3.

41. SPP and Integrated System Parties repeat their arguments concerning why it is inappropriate, unjust, and unreasonable to define “energy exchange” in section 5.6.1 as applying only to energy sourced in SPP or the Integrated System.⁶⁴ SPP and Integrated System Parties also note that MISO’s assertion that section 5.6.1 should be revised such that “energy exchange” applies only to transactions in which the energy is sourced in SPP or the Integrated System, rather than the meaning intended by SPP and Western, may only be considered if the Commission finds that the revisions proposed by SPP are unjust and unreasonable.⁶⁵

42. SPP and Integrated System Parties also contend that MISO is incorrect to argue that the Western-SPP JOA would not produce the potential for undue preference or undue discrimination because MISO is not similarly situated to SPP and Western due to MISO not being a party to the Western-SPP JOA.⁶⁶ SPP and Integrated System Parties assert that MISO’s not being a party to the Western-SPP JOA does not affect the potential for undue preference or undue discrimination presented by the Western-SPP JOA if it is required to be revised to define “energy exchange” as applying only to transactions in which the energy is sourced in SPP or the Integrated System.⁶⁷ SPP and Integrated System Parties maintain that applying the contract path limitations in section 5.6 only to transactions in which the energy is sourced in SPP or Western would result in transmission providers treating customers differently based on the location of the source of their energy, which conflicts with the Commission’s open access transmission policy.⁶⁸ SPP and Integrated System Parties also note that, because Western is not a public utility subject to FPA section 205, were the Commission to accept MISO’s assertions, the Commission could not require Western to do so in this proceeding.⁶⁹

⁶⁴ *Id.* at 3-5.

⁶⁵ *Id.* at 3 (citing *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,337, at P 27 (2005) (noting that a proposal must first be found to be unjust, unreasonable, or unduly discriminatory before alternative proposals are ripe for consideration)).

⁶⁶ *Id.* at 4.

⁶⁷ *Id.*

⁶⁸ *Id.* at 4-5.

⁶⁹ *Id.* at 5.

B. Discussion**1. Procedural Matters**

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by SPP and Integrated System Parties because it has provided information that assisted us in our decision-making process.

2. Substantive Matters

44. We accept all of the proposed revisions to the Western-SPP JOA presented in SPP's compliance filing, effective June 20, 2012. As discussed above regarding SPP's and Integrated System Parties' request for clarification, we find the alternative proposed revisions to be just and reasonable.

45. MISO and MISO Transmission Owners argue that the proposed alternative revisions to section 5.6.1 should be rejected because they do not comply with the Commission's directive to revise section 5.6.1 of the Western-SPP JOA to clarify that the term "energy exchange" relates only to energy sourced in the Integrated System or SPP. We find that the proposed alternative revisions to section 5.6.1 comply with the September 18 Order, as clarified above. Therefore, we do not agree that they should be rejected.

46. Regarding SPP's and Integrated System Parties' request for clarification, we explain above, in granting the clarification, that we now understand that it was inappropriate to state that "energy exchange" relates only to energy sourced in SPP or the Integrated System and we clarify that "energy exchange" only relates to transactions in which SPP or Western is involved as a transmission provider. SPP's proposed alternative revisions implement this clarification. Therefore we accept the proposed alternative revisions.

47. MISO Transmission Owners also argue that SPP's alternative proposed revisions should be rejected because the term "energy exchange" is not defined elsewhere in the Western-SPP JOA, so that adopting a different definition will change the meaning of the term elsewhere in the Western-SPP JOA, such as in section 5.5.2. We disagree. Requiring SPP and Western to define "energy exchange" as applying only to transactions in which the energy is sourced in SPP or the Integrated System, based on a misunderstanding of SPP's explanation, would incorrectly alter the meaning of the term elsewhere in the Western-SPP JOA. MISO Transmission Owners have not provided any evidence that SPP's alternative proposed definition for the term "energy exchange" in section 5.6.1 (transactions in which SPP or Western is involved as a transmission

provider) conflicts with the term's use elsewhere, such as in section 5.5.2. Therefore, we reject MISO Transmission Owners' argument.

The Commission orders:

(A) MISO's request for clarification or rehearing of the September 18 Order is hereby granted in part, and denied in part, and MISO Transmission Owners' request for rehearing of the September 18 Order is hereby denied, as discussed in the body of this order.

(B) SPP's and Integrated System Parties' request for clarification is hereby granted, as discussed in the body of this order.

(C) The revisions to the Western-SPP JOA proposed in SPP's compliance filing are hereby accepted, effective June 20, 2012, as discussed in the body of this order.

(D) The proceeding in Docket No. EL12-60-001 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.