

171 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc. Docket No. EL19-92-000

ORDER ON SECTION 206 INVESTIGATION

(Issued June 18, 2020)

1. On October 17, 2019, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² the Commission instituted proceedings to consider how the exemption for immediate need reliability projects that the Commission permitted to Order No. 1000's³ requirement to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission developer with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation is being implemented.⁴ In this order, we find that there is insufficient evidence in the record to find under FPA section 206 that Southwest Power Pool, Inc.'s (SPP) implementation of the exemption for immediate need reliability projects is unjust, unreasonable, or unduly discriminatory or preferential.⁵ Accordingly, we terminate this FPA section 206 proceeding.

¹ 16 U.S.C. § 824e (2018).

² 18 C.F.R. § 385.209(a) (2019).

³ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴ *ISO New England Inc.*, 169 FERC ¶ 61,054 (2019) (October 2019 Order).

⁵ The October 2019 Order instituted proceedings against ISO New England Inc. (ISO-NE), PJM Interconnection, L.L.C. (PJM), and SPP. ISO-NE's and PJM's

I. Background

A. Immediate Need Reliability Project Exemption

2. In Order No. 1000, the Commission required that public utility transmission providers, among other things: (1) “eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal⁶ for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation”;⁷ (2) “establish . . . procedures to ensure that all projects are eligible to be considered for selection in the regional transmission plan for purposes of cost allocation . . . [that] could be, for example, a non-discriminatory competitive bidding process . . . [and] could also allow the sponsor of a transmission project selected in a regional transmission plan for purposes of cost allocation to use the regional cost allocation method associated with the transmission project”;⁸ and (3) provide that “a nonincumbent transmission developer must have the same eligibility as an incumbent transmission developer to use a regional cost allocation method or methods for any sponsored transmission facility selected in the regional transmission plan for purposes of cost allocation.”⁹

3. In its Order No. 1000 compliance filing, SPP proposed to create an exemption where a federal right of first refusal may be retained for transmission facilities that are

implementation of the exemption for immediate need reliability projects are addressed in Docket Nos. EL19-90-000 and EL19-91-000, respectively.

⁶ The phrase “a federal right of first refusal” refers only to rights of first refusal that are created by provisions in Commission-jurisdictional tariffs or agreements. Order No. 1000-A, 139 FERC ¶ 61,132 at P 415.

⁷ “Transmission facilities selected in a regional transmission plan for purposes of cost allocation are transmission facilities that have been selected pursuant to a transmission planning region’s Commission-approved regional transmission planning process for inclusion in a regional transmission plan for purposes of cost allocation because they are more efficient or cost-effective solutions to regional transmission needs.” Order No. 1000, 136 FERC ¶ 61,051 at P 63.

⁸ *Id.* P 336.

⁹ *Id.* P 332. The Commission also stated that “the cost of a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation, whether proposed by an incumbent or by a nonincumbent transmission provider, may not be recovered through a transmission planning region’s cost allocation method or methods.” *Id.*

needed in a short time frame to address reliability needs (i.e., immediate need reliability projects). The Commission partially accepted this proposal,¹⁰ explaining that, to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for SPP to create a class of transmission projects that are exempt from competition.¹¹ The Commission also stated that “such an exception should only be used in certain limited circumstances.”¹² To that end, the Commission established five criteria for the exemption, which it believed would place reasonable bounds on SPP’s discretion to determine whether there is sufficient time to permit competition and, as a result, would ensure that the exemption is used only in limited circumstances.¹³ Those five criteria are:

- i. The project must be needed in three years or less to solve reliability criteria violations (Criterion One);¹⁴
- ii. The Regional Transmission Organization (RTO) must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity (Criterion Two);
- iii. The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and

¹⁰ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at PP 195-198 (2013) (SPP First Compliance Order), *order on reh’g and compliance*, 149 FERC ¶ 61,048, at P 166 (2014) (SPP Second Compliance Order), *order on reh’g and compliance*, 151 FERC ¶ 61,045 (2015).

¹¹ SPP First Compliance Order, 144 FERC ¶ 61,059 at P 195.

¹² *See id.* (finding the exemption is acceptable “in limited circumstances”).

¹³ *Id.* PP 195-196.

¹⁴ The Commission has stated that it is proper to use the date a reliability need must be addressed rather than the expected in-service date of the project chosen to address that need to calculate whether a transmission project qualifies as an immediate need reliability project. *See PJM Interconnection, L.L.C.*, 156 FERC ¶ 61,030, at PP 22-24 (2016).

- (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier (Criterion Three);
- iv. Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available (Criterion Four); and
- v. The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year (Criterion Five).

B. Order Instituting Section 206 Proceedings

4. In the October 2019 Order, the Commission stated that, based on initial analysis, it was concerned that SPP may be implementing the exemption in a manner that is inconsistent with the Commission direction and, therefore, may be unjust and unreasonable, unduly preferential and discriminatory.¹⁵ The Commission therefore directed SPP to respond to questions outlined in the October 2019 Order to:

(1) demonstrate how it is complying with the immediate need reliability project criteria; (2) demonstrate that the provisions in the SPP Open Access Transmission Tariff (Tariff), as implemented, containing certain exemptions to the requirements of Order No. 1000 for immediate need reliability projects remain just and reasonable; and (3) consider additional conditions or restrictions on the use of the exemption for immediate need reliability projects to appropriately balance the need to promote competition for transmission development and avoid delays that could endanger reliability.¹⁶

II. Notice of Section 206 Investigation and Responsive Pleadings

5. Notice of the institution of the instant section 206 proceeding and the refund effective date was published in the *Federal Register*, 84 Fed. Reg. 57,720 (Oct. 28, 2019), with interventions due within 21 days of publication of notice in the *Federal Register*. RTO responses were due 60 days from the publication of notice, and comments on the RTO responses were due 30 days after the due date of the RTO response.

¹⁵ October 2019 Order, 169 FERC ¶ 61,054 at P 1.

¹⁶ *Id.* PP 1, 4, 16.

6. On December 27, 2019, SPP filed its response (Response) to the October 2019 Order. Arkansas Public Service Commission; Kansas Corporation Commission; Louisiana Public Service Commission; Maryland Public Service Commission; Mississippi Public Service Commission and the Mississippi Public Utilities Staff; New Jersey Board of Public Utilities; and Pennsylvania Public Utility Commission filed notices of intervention. American Electric Power Service Corporation (AEP); Anbaric Development Partners, LLC; Avangrid Networks, Inc; City of Independence, Missouri, Developers Advocating Transmission Advancements (DATA);¹⁷ Edison Electric Institute (EEI); Evergy Kansas Central, Inc., Evergy Metro, Inc., and Evergy Missouri West, Inc.; Golden Spread Electric Cooperative, Inc.; GridLiance High Plains LLC; ITC Great Plains, LLC; Kansas Power Pool; LSP Transmission Holdings II, LLC (LS Power); Mid-Kansas Electric Company, Inc.; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; National Grid USA; National Rural Electric Cooperative Association; New York Transco, LLC; New York Transmission Owners;¹⁸ NextEra Energy Transmission, LLC; NRG Power Marketing LLC; Oklahoma Gas and Electric Co.; Oklahoma Municipal Power Authority; Public Citizen, Inc.; Public Service Electric and Gas Company; SPP; Sunflower Electric Power Corporation; Western Farmers Electric Cooperative; and Xcel Energy Services Inc. filed timely motions to intervene.

7. AEP; DATA; EEI; Industrial Energy Consumers of America; and LS Power filed comments. Indicated SPP Transmission Owners¹⁹ and LS Power filed reply comments.

¹⁷ DATA is an ad hoc coalition of transmission owning affiliates of National Grid; PSEG Companies; Ameren Services Co.; and ITC Holdings Corp.

¹⁸ New York Transmission Owners comprise Central Hudson Gas & Elec. Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Lighting Company; Long Island Power Authority; Niagara Mohawk Power Corp.; New York Power Authority; New York State Elec. & Gas Corp.; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corp.

¹⁹ Indicated SPP Transmission Owners include AEP: Evergy Kansas Central, Inc., Evergy Metro, Inc., Evergy Missouri West, Inc., all subsidiaries of Evergy, Inc; Oklahoma Gas and Electric Company; and Xcel Energy Services Inc., on behalf of Southwestern Public Service Company.

III. Discussion

A. Procedural Matters

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

B. Substantive Matters

9. We find that there is insufficient evidence in the record to find under FPA section 206 that SPP's implementation of the immediate need reliability project exemption is unjust, unreasonable, or unduly discriminatory or preferential. We also find insufficient evidence in the record to find that SPP implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than the Commission directed. We find that SPP complies with the five criteria established for the immediate need reliability project exemption. We therefore terminate the proceeding, as discussed below.

1. SPP's Compliance with and Implementation of the Immediate Need Reliability Project Exemption

10. SPP states that, since January 1, 2015, SPP has designated five transmission projects as Short-Term Reliability Projects (STRPs)²⁰ in accordance with Attachment Y, section I.3 of the Tariff.²¹ SPP points out that only five of its 144 transmission projects identified in the Integrated Transmission Planning studies for purposes of cost allocation since study year 2016 have been STRPs.²²

a. Criterion One: The project must be needed in three years or less to solve reliability criteria violations.

11. SPP explains that it determines need-by dates in accordance with the staging criteria found in section 6.3 of the Transmission Planning Manual. SPP explains that it uses North American Electric Reliability Corporation (NERC) Transmission Planning

²⁰ SPP defines a Short-Term Reliability Project as, "any upgrade that would otherwise be considered a Competitive Upgrade but is needed to meet a time sensitive need." Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1, Attachment Y, section I.3.

²¹ SPP Response at 3.

²² *Id.* at 15-16.

(TPL) Reliability Standards and SPP planning criteria for evaluation of any projected STRPs.²³

12. SPP states that it determines the need-by date of each transmission project in its regional transmission plan using the earliest reliability need that the transmission project solves. However, SPP explains that, if a transmission project solves a reliability need that first appears in a transmission planning model of a later year, but the reliability need does not appear in transmission planning models of earlier years, the reliability criteria violation is interpolated between the two transmission planning models to determine the need-by date. As an example, SPP explains that, if a transmission project is predicted to solve 93% of a reliability need in the 2022 summer model and 105% of a reliability need in the 2025 summer model, the need-by date would be interpolated to be June 1, 2024. SPP states that if the need-by date, determined through this staging process, is within three years or less, then the transmission project may be deemed an STRP in accordance with Attachment Y, section I.1.3 of SPP's Tariff.²⁴

13. SPP states that it estimates a transmission project's in-service date by using a standard set of historical durations for common transmission projects at varying kilovolt levels and then determines the estimated date for the transmission project's approval by the SPP Board of Directors. The expected in-service date is then designated as detailed in section 6.3.2 of the Integrated Transmission Planning Manual.²⁵

14. SPP states that when a transmission project's expected in-service date occurs after the need-by date identified in the Notification to Construct,²⁶ SPP Business Practice No. 7060 requires the Designated Transmission Owner to provide a mitigation plan. SPP explains that it tests that mitigation plan against the transmission planning models from which the transmission project and its associated need(s) originated and if the mitigation solves the violation(s), then SPP accept the mitigation plan. If the mitigation does not

²³ *Id.* at 4-5.

²⁴ *Id.*

²⁵ *Id.* at 9.

²⁶ SPP defines a Notification to Construct as a formal document directing the Designated Transmission Owner for the commencement of construction of Network Upgrades that have been approved or endorsed by the SPP Board of Directors intended to meet the construction needs of the SPP Transmission Expansion Plan, SPP Tariff, or RTO. Southwest Power Pool, Inc., Open Access Transmission Tariff Business Practices, at Business Practice 7060.1.

solve the violation(s), SPP notifies the Designated Transmission Owner of the remaining needs and asks it to provide further mitigation.²⁷

15. SPP also explains that none of the STRPs it has designated have a need-by date after the date of the study that identified the need for the transmission project.²⁸ SPP states that most reliability projects could not have need-by dates prior to or in the year that the transmission projects are approved because a transmission project's need-by date is based on the earliest transmission planning model set built for that study. When it comes to transmission projects that address persistent reliability operational needs, SPP designates the need-by date as the same date that SPP issues the transmission project a Notification to Construct. In this scenario, an STRP could have a need-by date the same year as the project is issued.²⁹

- b. **Criterion Two: The RTO must separately identify and then post an explanation of the reliability violations and system conditions in advance for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity.**

16. SPP states that if a transmission project's need-by date, determined through the staging process described above, is within three years or less, then the transmission project may be deemed an STRP in accordance with Attachment Y, section I.1.3 of SPP's Tariff.³⁰

17. SPP states that it posts STRP information, including an explanation of the reliability violations and system conditions for which there is a time-sensitive need, with sufficient detail of the need and time-sensitivity on its website and in the applicable STRP Report in advance. According to SPP, these documents provide the detailed explanation of the study process and determination of the STRPs.³¹

²⁷ SPP Response at 11.

²⁸ *Id.*

²⁹ *Id.* at 10.

³⁰ *Id.* at 4-5.

³¹ *Id.* at 6-7.

- c. **Criterion Three: The RTO must provide to stakeholders and post on its website a full and supported written description explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier.**

18. SPP states that it posts STRP information, including a full and supported written description on its website and in the applicable STRP report explaining: (1) the decision to designate an incumbent transmission owner as the entity responsible for construction and ownership of the project, including an explanation of other transmission or non-transmission options that the region considered; and (2) the circumstances that generated the immediate reliability need and why that need was not identified earlier. SPP also posts a needs list that includes alternative solutions considered, the circumstances and data that generated an STRP.³²

19. SPP states that, in accordance with Attachment Y, section I.1.3 of the SPP Tariff, if a transmission project is approved as a STRP, the incumbent transmission owner will be the Designated Transmission Owner for the transmission project.³³

- d. **Criterion Four: Stakeholders must be permitted time to provide comments in response to the project description, and such comments must be made publicly available.**

20. SPP states that it posts information regarding the identification of an STRP and provides stakeholders 30 days to comment. SPP includes all stakeholder comments in the STRP report that is submitted to the SPP Board of Directors for approval and posted on the SPP website.³⁴

³² *Id.*

³³ *Id.* at 7.

³⁴ *Id.* at 8.

- e. **Criterion Five: The RTO must maintain and post a list of prior year designations of all immediate need reliability projects for which the incumbent transmission owner was designated as the entity responsible for construction and ownership of the project. The list must include the project's need-by date and the date the incumbent transmission owner actually energized the project. The RTO must also file the list with the Commission as an informational filing in January of each calendar year covering the designations of the prior calendar year.**

21. SPP reports STRPs designated by the SPP Board of Directors in its annual informational filings filed with the Commission each January in Docket No. ER13-366-000.³⁵

2. SPP's Current Tariff and Business Practices

a. SPP Response

22. SPP asserts that its implementation of the immediate need reliability project exemption has been consistent with Order No. 1000 and the Commission's regulations and is working as intended.³⁶

b. Comments and Reply Comments

23. Exelon, AEP, DATA, and EEI argue that SPP's implementation of immediate need reliability project exemption is just and reasonable and not unduly discriminatory.³⁷ AEP urges the Commission to continue to support SPP's immediate need reliability project exemption and its existing transmission planning processes. AEP asserts that immediate need reliability projects reflect the dynamic nature of the transmission system and are necessary to maintain reliability. According to AEP, the process for determining

³⁵ See SPP Informational Filings, Docket No. ER13-366-000 (filed Jan. 28, 2016, Jan. 31, 2017, Jan. 24, 2018, Jan. 24, 2019, Jan. 15, 2020).

³⁶ SPP Response at 17.

³⁷ Exelon Comments at 2-3; DATA Comments at 1-3; AEP Comments at 2; EEI Comments at 3.

immediate need reliability projects appropriately balances reliability and competitive considerations and no changes are warranted.³⁸

24. In terms of not identifying a need earlier, EEI asserts an RTO may identify an immediate need in the near-term that it did not identify in prior transmission planning studies because evolving system dynamics can change certain assumptions. EEI asserts that even though a need-by date may occur before a resolution is identified and outside of an RTO's control, this does not make the need any less urgent.³⁹

25. DATA also asserts that, because need-by date assessments are based on publicly available, objective criteria that are largely codified in Commission-jurisdictional agreements, they are not susceptible to gaming of the immediate need reliability project exemption to remove certain transmission projects from the solicitation process.⁴⁰

26. Conversely, Industrial Energy Consumers of America argue that immediate need reliability projects appear to be a “convenient loophole” to avoid being subject to the competitive processes mandated by the Commission under Order No. 1000.⁴¹ LS Power argues that the immediate need reliability project exemption is unjust and unreasonable and unnecessary as SPP has shown that it regularly manages its system when projects are not expected to be in-service to resolve a reliability need for three or more years.⁴²

27. With regard to the selection of a transmission owner for a designated STRP and how a particular transmission option or non-transmission option is chosen, LS Power argues that SPP’s process of selecting transmission projects that meet the most needs at the lowest cost and that need to be in service within three years, does not produce the most efficient outcome. LS Power asserts that the current process discourages nonincumbent transmission providers from proposing transmission projects that could meet a potential “immediate” need and eliminates the benefits of a potential competitive selection process.⁴³

³⁸ AEP Comments at 2-5.

³⁹ EEI Comments at 8-9.

⁴⁰ DATA Comments at 9.

⁴¹ Industrial Energy Consumers of America Comments at 1.

⁴² LS Power Comments at 1-2.

⁴³ *Id.* at 4.

28. In its reply comments, Indicated SPP Transmission Owners contend that immediate need reliability projects are a necessary and appropriate classification of projects to maintain grid reliability. According to Indicated SPP Transmission Owners, immediate need reliability projects allow SPP and other RTOs to adapt to rapidly changing circumstances and reflect the realities of the dynamic nature of the transmission system. Indicated SPP Transmission Owners also argue that SPP's ability to successfully maintain reliability in the interim period while projects are being constructed is not a sign that SPP's planning process is unjust and unreasonable as LS Power contends, but rather demonstrates that SPP is successfully fulfilling its role and responsibilities as the RTO. According to Indicated SPP Transmission Owners, no party to this proceeding has demonstrated, and there is no evidence in this proceeding, that SPP has failed to properly apply the immediate need reliability projects exemption in its Tariff. They assert that the SPP planning process is working as intended and no changes are warranted.⁴⁴

3. Additional Conditions or Restrictions on the Immediate Need Reliability Project Exemption

a. October 2019 Order

29. The October 2019 Order included several questions regarding additional conditions or restrictions that the Commission could consider imposing on the immediate need reliability project exemption to help maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Specifically, the Commission suggested that those additional conditions or restrictions could include the following: (1) shortening the current three-year time frame for immediate need reliability projects (Question 15a); (2) requiring the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility (Question 15b); (3) requiring each relevant incumbent transmission owner to provide the RTO and stakeholders periodic, detailed status reports on each immediate need reliability project (Question 15c); (4) requiring the RTO to reevaluate each immediate need reliability project that does not go into service by its need-by date (Question 15d), (5) prohibiting projects with specific characteristics from qualifying as immediate need reliability projects (e.g., those that exceed a certain voltage level, line mile, or capital cost thresholds) (Question 15e); and (6) creating an abbreviated competitive process for immediate need reliability projects (Question 15f).

30. In response, SPP states that the immediate need reliability project exemption is working as intended and no additional conditions or restrictions are necessary.⁴⁵ SPP

⁴⁴ Indicated SPP Transmission Owners Reply Comments at 1-2.

⁴⁵ SPP Response at 17.

further states that the additional conditions or restrictions proposed in the October 2019 Order would have very little impact on increasing the number of projects subject to competition and could increase reliability risks incurred due to delays in construction caused by implementing the competitive bidding process.⁴⁶

31. SPP states that it issues Notifications to Construct for transmission projects approved for construction in accordance with Attachment Y, section IV of the Tariff. SPP explains that, after the Notification to Construct has been issued, SPP may reevaluate the transmission project in accordance with section 6 or 7 of Business Practice No. 7060 or Business Practice No. 7160.⁴⁷ SPP indicates that, if an existing STRP is reevaluated for an immediate need and is determined to still meet that requirement, then the three-year time frame will be extended based on the most current models. SPP explains that reevaluations are treated like a new study because reevaluations are conducted with the most current transmission planning model.⁴⁸

32. AEP, DATA, and EEI all assert that SPP's immediate need reliability project exemption does not require any modifications as contemplated by the Commission in the October 2019 Order.⁴⁹

33. Indicated SPP Transmission Owners contend that three years is a reasonable bound on an RTO's discretion to establish immediate need reliability projects and that shortening this timeframe will not provide any benefits to reliability.⁵⁰ Indicated SPP Transmission Owners argue that the suggestion that, in order to qualify for the immediate need reliability project exemption, a transmission project's in-service date of less than three years must first be established appears designed to gut the exemption entirely. Indicated SPP Transmission Owners further argue that the fundamental purpose of the immediate need reliability project exemption is not to guarantee that a transmission project will be in place as of the first date a need exists, but rather to minimize delays in constructing and placing into service a solution because of the imminent nature of such need. Indicated SPP Transmission Owners contend that considering a transmission project's anticipated in-service date as part of a competitive solicitation does nothing to

⁴⁶ *Id.* at 16-17.

⁴⁷ *Id.* at 15.

⁴⁸ *Id.*

⁴⁹ Exelon Comments at 2-3; DATA Comments at 1-3; AEP Comments at 2; EEI Comments at 3.

⁵⁰ Indicated SPP Transmission Owners Reply Comments at 7.

reduce the scope or impact of the solicitation process itself on the overall project timeframe.⁵¹

34. LS Power, on the other hand, asserts that if the Commission does not remove the immediate need reliability project exemption, the Commission should order SPP to use the anticipated in-service date instead of the need-by date to determine if the need is truly immediate, arguing that SPP is able to mitigate the reliability need of a transmission project until the expected in-service date.⁵²

35. Indicated SPP Transmission Owners emphasize that the criteria to determine an immediate need reliability project exemption should be its need-by date. Indicated SPP Transmission Owners argue that relying on a transmission project's in-service date to determine the eligibility of an immediate need reliability project would shift the focus from solving the actual immediate need itself. They add that the in-service date should not be used to determine an immediate need reliability project exemption because the in-service date is susceptible to delays beyond a developer's control.⁵³ Indicated SPP Transmission Owners also note that LS Power acknowledges that, “[i]t is not likely that a new transmission facility can be in service in less than three years.”⁵⁴ In addition, Indicated SPP Transmission Owners argue that a mitigation plan should be the exception and used as a last resort because a long-term mitigation plan can leave the transmission system vulnerable to daily contingencies and using it in the transmission planning process does not take into account the plan failing.⁵⁵

36. In response to Indicated SPP Transmission Owners comments, LS Power clarifies that reliance on mitigation should not be a permanent solution, and the focus should instead be on an abbreviated competitive process.⁵⁶ LS Power notes that Indicated SPP Transmission Owners rely on mitigation plans to ensure reliability when invoking immediate need reliability projects, and it is not arguing for Indicated SPP Transmission Owners to do anything different. In addition, LS Power argues that SPP can still conduct a competitive process with mitigation because every immediate need reliability project

⁵¹ Indicated SPP Transmission Owners Reply Comments at 7.

⁵² LS Power Comments at 6.

⁵³ Indicated SPP Transmission Owners Comments at 6-7.

⁵⁴ Indicated SPP Transmission Owners Reply Comments 7 (citing LS Power Comments at 4).

⁵⁵ *Id.* at 4-5.

⁵⁶ LS Power Reply Comments at 4.

has an anticipated in-service date three years or more past the need-by date and can still ensure reliability.⁵⁷

37. LS Power argues that SPP could adopt an expedited competitive process when necessary.⁵⁸ For instance, LS Power submits, SPP could streamline its competitive process by focusing on specific project implementation criteria (i.e., cost and expedited in-service date), without additional review of bidder qualification information that has been previously reviewed prior to deeming an entity to be qualified to participate.

38. LS Power further argues that if the Commission does not require SPP to eliminate the immediate need reliability project exemption, then it should require SPP to show that it considered whether the need can be mitigated to extend the need-by date to accommodate an abbreviated competitive process, and if not, why not.⁵⁹ LS Power also believes SPP can shorten the competitive process in order to minimize the duration of the mitigation plan.⁶⁰

39. Indicated SPP Transmission Owners argue that delaying resolution of time-sensitive reliability needs simply in the hope that a competitive solicitation may be available is wholly inconsistent with the Commission's responsibilities to protect the reliability of the bulk power system.⁶¹ Indicated SPP Transmission Owners assert that the concerns expressed by SPP regarding the time required for competition are well-founded and grounded in the realities of transmission planning.

40. AEP asserts that time is an important consideration because delayed project development denies customers the benefits of transmission investments, such as increased reliability.⁶² AEP also asserts that the introduction of competition would merely delay the in-service date, during which the reliability of the grid and service to load would be placed at additional unnecessary risk.

⁵⁷ *Id.* at 5.

⁵⁸ LS Power Comments at 5.

⁵⁹ *Id.* at 6.

⁶⁰ *Id.* at 5.

⁶¹ Indicated SPP Transmission Owners Reply Comments at 5-6.

⁶² AEP Comments at 4.

b. Commenter-Proposed Conditions or Restrictions

41. LS Power proposes that if the Commission chooses to retain the immediate need reliability project exemption, the Commission should require SPP to request a case-by-case determination from the Commission that it is just and reasonable to assign a project directly to a transmission owner if a truly immediate need arises.⁶³ According to LS Power, SPP has demonstrated that it is capable of operating its transmission system notwithstanding immediate needs unfulfilled for years.

42. Indicated SPP Transmission Owners argue that the Commission should summarily dismiss LS Power's suggestion.⁶⁴ Indicated SPP Transmission Owners submit that SPP is an independent entity and has no incentive to make a discriminatory determination that an immediate need exists. Indicated SPP Transmission Owners argue that a case-by-case determination of whether an immediate need exists is a factual planning question that is not amenable to case-by-case litigation before the Commission, and that is best addressed by SPP in its role as the RTO. Indicated SPP Transmission Owners also argue that a case-by-case determination would take a significant amount of time and would introduce uncertainty into the transmission planning process, creating unnecessary risk to SPP's ability to perform its reliability functions and threatening the overall reliability of the bulk power system. Indicated SPP Transmission Owners argue that introducing more time and more process through a case-by-case determination would defeat the purpose of this category of projects.

43. LS Power answers that the Commission has the ability to act, and has acted, on an expedited basis when circumstances warranted.⁶⁵ LS Power submits that if these are "reliability needs that must be addressed immediately" or risk "threatening the overall reliability of the bulk power system," then there is little doubt that the Commission will

⁶³ LS Power Comments at 5.

⁶⁴ Indicated SPP Transmission Owners Reply Comments at 4.

⁶⁵ LS Power Reply Comments at 3 (citing *Powerex Corp.*, 138 FERC ¶ 61,099 (2012) (granting Powerex Corp. a waiver of a market-based rate tariff to allow it to provide regulating reserve service to NorthWestern Corporation following an emergency shut down of a natural gas generator); *Entergy Services, Inc.*, 124 FERC ¶ 61,226 (2008) (granting a waiver request in two days during an emergency conditions resulting from Hurricane Gustav); *Southwest Power Pool, Inc.* 138 FERC ¶ 61,054 (2012) (granting a waiver request in just over 30 days)).

act quickly as it has in other critical situations and the Commission's review will not result in uncertainty and a significant amount of time.⁶⁶

IV. Commission Determination

44. We find that SPP has demonstrated that it remains in compliance with the five criteria established for the immediate need reliability project exemption. We further find that the record in this proceeding does not support a finding under FPA section 206 that the provisions in SPP's Tariff containing the immediate need reliability project exemption are unjust, unreasonable, or unduly discriminatory or preferential. We also find no evidence in the record to support a finding that SPP has implemented the immediate need reliability project exemption in a manner that is inconsistent with or more expansive than what the Commission directed. Finally, we find that we need not impose additional criteria on the immediate need reliability exemption. We therefore terminate the proceeding.

45. As an initial matter, no party has argued that SPP has violated its Tariff. We also note that no party has identified any change in implementation or circumstances since the immediate need reliability project exemption provisions' origin that would render the provisions unjust, unreasonable, or unduly discriminatory or preferential today. Furthermore, as discussed below, we disagree with commenters' arguments asserting that the immediate need reliability project exemption provisions, or their implementation, are not just and reasonable.

46. First, we reject requests by LS Power and Industrial Energy Consumers of America for the Commission to no longer allow RTOs to have an immediate need reliability project exemption. The Commission has already found the exemption to be just and reasonable, and neither LS Power nor Industrial Energy Consumers of America has provided information showing that the exemption itself to be unjust and unreasonable, unduly preferential and discriminatory.⁶⁷ They assert that the exemption is unnecessary because SPP can manage its system when transmission projects are not expected to be in-service within three years. We disagree. Furthermore, notwithstanding SPP's ability to manage its system when projects are delayed, we continue to find the exemption to be just and reasonable.

⁶⁶ LS Power Reply Comments at 3-4.

⁶⁷ Because we are not removing the immediate need reliability project exemption, we also reject LS Power's request to implement the immediate need reliability project exemption on a case-by-case basis necessary. We also agree with the commenters that argue that having a case-by-case approval process is impractical because it may cause delays in addressing time-sensitive reliability violations.

47. Furthermore, we are not convinced that we should modify Criterion One to shorten the current three-year time frame for immediate need reliability projects or to require the use of the anticipated in-service date instead of the need-by date to determine immediate need reliability project eligibility. There are a multitude of factors in determining the appropriate length of time needed to solve reliability criteria violations and when a project can be placed in service, such as the time needed to open a proposal window, the consideration of alternatives, siting and permitting, and construction, in proposing a three-year time frame. These hurdles are largely out of the control of the RTO, so we do not believe Criterion One should be modified to link the timeframe for immediate need reliability projects to factors beyond the reliability criteria violation and need-by date. We further agree with Indicated SPP Transmission Owners that mitigation should be used as a last resort. Thus, we find that the three-year time frame outlined in Criteria One and the practice of using the need-by date to calculate the three-year time frame for immediate need reliability projects continues to strike a reasonable balance and find there is insufficient evidence to support shortening that time frame at this time.

48. In addition, we find that the record does not support changing the criteria to require the RTO to create an abbreviated competitive process for immediate need reliability projects.

49. Accordingly, we find that the criteria for the immediate need reliability exemption adopted by the Commission appropriately maintain the balance between reliability and competition and ensure that immediate need reliability projects continue to be designated as an exception that should only be used in limited circumstances. Thus, we will not impose additional conditions or restrictions on the immediate need reliability project exemption and do not require SPP to include additional conditions or restrictions, either those proposed in the October 2019 Order or those proposed by commenters, on the use of the exemption for immediate need reliability projects and terminate the proceeding.

The Commission orders:

The proceeding in Docket No. EL19-92-000 is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.