

148 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Hastings, Nebraska, Hastings Utilities, Electric Division and City of Grand Island, Nebraska, Grand Island Utilities, Electric Division Docket No. EL14-57-000

v.

Southwest Power Pool, Inc.

ORDER DENYING COMPLAINT

(Issued September 18, 2014)

1. On May 23, 2014, the City of Hastings, Nebraska, doing business as Hastings Utilities (Hastings), and the City of Grand Island, Nebraska, doing business as Grand Island Utilities (Grand Island) (collectively, Complainants), filed a complaint, pursuant to sections 206 and 306 of the Federal Power Act (FPA),¹ against Southwest Power Pool, Inc. (SPP). Specifically, Complainants allege that SPP may have misinterpreted its Open Access Transmission Tariff (Tariff) in violation of the FPA by demanding that Complainants purchase transmission service that is not required by the Tariff and by demanding that Complainants pay unreserved use penalties that are not permitted under the Tariff. In the alternative, if the Commission finds that SPP's Tariff interpretation is correct, Complainants contend that the Tariff provisions in question are unjust and unreasonable. For the reasons discussed below, we deny the complaint, finding that SPP has appropriately interpreted its Tariff and that the Tariff provisions in question have not been shown to be unjust and unreasonable.

¹ 16 U.S.C. §§ 824e, 825e (2012).

I. Background

2. Hastings and Grand Island are municipal corporations of the State of Nebraska and are load-serving municipal utilities interconnected with Nebraska Public Power District (NPPD), an SPP transmission owner. Complainants' loads are served under the terms of certain grandfathered agreements (GFA) and purchases of point-to-point transmission service. Specifically, Complainants state that Hastings has a peak load of approximately 100 MW and is served by a total of 177 MW of generation resources, all but 13 MW of which are connected to Hastings' transmission facilities. Complainants note that the other 13 MW are deliverable via a GFA with NPPD.² With respect to Grand Island, Complainants state that it has a peak load of approximately 172 MW and is served by a total of 334 MW of generation resources, all but 61 MW of which are connected to Grand Island's transmission facilities. Of the 61 MW not connected to Grand Island's transmission facilities, Complainants note that 59 MW are delivered under six separate GFAs (five with NPPD and one with Omaha Public Power District (OPPD)), and 2 MW are delivered under two separate point-to-point transmission arrangements with SPP.³ Complainants assert that both of them are capable of serving load from their own resources, except during periods of forced or planned outages.⁴

3. Complainants state that both Hastings and Grand Island registered their generation resources in SPP's real-time Energy Imbalance Service Market (EIS Market) in 2012,⁵ putting them under SPP dispatch control for reliability and economic dispatch.⁶ Complainants state that, prior to registering their generation resources, they evaluated the costs and benefits of placing their transmission facilities under SPP control and serving their load with Network Integration Transmission Service (NITS). Complainants found it more economical to forego NITS and retain control of their transmission facilities. Complainants explain that, to the extent that their own transmission facilities were not capable of delivering power to their load, they would rely on GFAs and purchases of SPP point-to-point transmission service.⁷

² Complaint at 6.

³ *Id.* at 8-9.

⁴ *Id.* at 5, 7.

⁵ *Id.* at 6-7, 9.

⁶ The EIS Market used Security-Constrained Economic Dispatch, but lacked a centralized unit commitment process and must-offer requirements. The Integrated Marketplace replaced the EIS Market on March 1, 2014.

⁷ Complaint at 10-11.

4. Complainants state that, when SPP transitioned from the EIS Market to the Integrated Marketplace,⁸ they believed they could continue with their prior arrangements and registered their generation resources in the Integrated Marketplace. Thus, Complainants did not give SPP operational control of their transmission facilities, and Complainants' transmission facilities were not subject to cost-recovery under the SPP Tariff. Complainants state that they both arranged for Tenaska Power Services (Tenaska) to act as their market participant in the Integrated Marketplace.⁹

II. Summary of Complaint

5. Complainants state that, shortly after the commencement of the Integrated Marketplace, SPP informed Tenaska that Complainants must reserve non-firm point-to-point transmission service (short-term reservations) to support market-sourced energy for their behind-the-meter load resulting from SPP's decisions to ramp-down, de-commit, or not commit Complainants' generation resources. Complainants assert that SPP also informed Tenaska that if Complainants failed to secure sufficient short-term reservations, SPP would impose unreserved use penalties on Complainants, pursuant to section 13.7(c) of the Tariff.¹⁰ Complainants explain that unreserved use situations arise when their generation fails to clear the day-ahead market or when SPP reduces the output of their generation in the real-time market, causing their load to be served with energy sourced from generators not directly connected to their transmission systems.¹¹

6. Complainants contend that when SPP submitted its February 29, 2012 Integrated Marketplace proposal for consideration by the Commission, it was not made clear that Complainants would be required to secure short-term reservations in order to support SPP's decisions to serve their load with market energy.¹² Complainants further note that

⁸ The Integrated Marketplace is a Day-2 market that includes day-ahead and real-time energy and operating reserve markets, with a limited day-ahead must-offer requirement and a full real-time must-offer requirement. The Integrated Marketplace uses co-optimized Security Constrained Economic Dispatch and Security Constrained Unit Commitment processes.

⁹ Complaint at 7, 9.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 19.

¹² SPP February 29, 2012 Filing in Docket No. ER12-1179-000. The Commission conditionally accepted this filing. *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (Integrated Marketplace Order), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013) (Rehearing Order).

SPP's Tariff does not require load-serving entities not taking NITS to secure short-term reservations to support the delivery of market-sourced energy to their loads, or be penalized. Thus, Complainants did not intervene in the Integrated Marketplace proceeding, because neither the transmittal letter nor the testimony made reference to the imposition of unreserved use penalties in the event load-serving entities failed to secure short-term reservations.¹³ Similarly, Complainants assert that the Integrated Marketplace Order made no mention of these requirements and failed to address the justness and reasonableness of subjecting load-serving entities to massive penalties should they fail to secure short-term reservations.¹⁴

7. Complainants assert that section 205 of the FPA makes it unlawful for a public utility to "demand" any rate that is unjust and unreasonable. Complainants also state that all rates charged by a public utility must be on file with the Commission. Complainants argue that SPP's demand for payment of a charge that is not permitted by the filed Tariff is a violation of section 205 of the FPA.¹⁵ Further, Complainants contend that while section 13.7(c) of the Tariff permits SPP to assess penalties for unreserved use of the transmission system, the application of this Tariff provision must be consistent with the purposes and objectives articulated in Order No. 890.¹⁶ Complainants maintain that, at all times, they have adequate transmission rights to serve the full output of their

¹³ Complaint at 12. In their answer, Complainants argue that SPP failed to provide unambiguous notice of rate changes in its Integrated Marketplace filing, which Complainants argue is critical to the evaluation of the justness and reasonableness of SPP's proposal. Complainants' Answer at 3-4.

¹⁴ Complaint at 12.

¹⁵ *Id.* at 17 (citing 16 U.S.C. § 824d (2012)).

¹⁶ *Id.* at 18 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 838, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 451 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)). Complainants characterize Order No. 890 as deterring transmission customers from failing to maintain sufficient transmission rights to support their generation resources or from using the transmission system in a manner that requires some reaction or accommodation by the transmission provider.

generation and load.¹⁷ Complainants argue that, when market-sourced energy is supplied to their load, SPP changes the points of delivery and receipt through its dispatch instructions, not Complainants. Thus, Complainants assert that SPP is improperly demanding that Complainants pay an unreserved use penalty in these situations.¹⁸

8. Moreover, Complainants claim that SPP is discriminating against holders of other types of transmission rights by only recognizing SPP transmission service offerings. Specifically, Complainants state that SPP does not recognize their GFAs as being eligible to support market-supplied energy. Complainants also note that, when SPP calls on Complainants' behind-the-meter generation to supply energy in the Integrated Marketplace, this energy flows over Complainants' transmission facilities, and neither SPP nor the market participants benefitting from this energy have reserved the right to use Complainants' transmission facilities. Thus, Complainants do not receive compensation for this unreserved use.¹⁹

9. While acknowledging the complexity of the economic dispatch algorithms that underlie security constrained economic dispatch in the Integrated Marketplace, Complainants take issue with the failure of these algorithms to account for the incremental costs to Complainants of securing short-term reservations or paying unreserved use penalties. Complainants assert that submitting low offer prices (to reduce the possibility of SPP ramping down their generation) or setting the minimum dispatch level of their generating units above actual operating minimums (to prevent SPP from using market energy to serve their load) could trigger market manipulation concerns.²⁰ Complainants assert that if they seek to reduce their exposure to the non-economic purchase of short-term reservations and unreserved use penalties by setting their generation's minimum dispatch at levels that assure their load is served by their

¹⁷ Complainants explain that these transmission rights consist of the Complainant-owned transmission systems to which their behind-the-meter generation is connected, GFAs with NPPD and OPPD, and SPP point-to-point reservations, when needed, to transmit power from Complainants' remote generation resources, including energy required during scheduled or unscheduled outages of behind-the-meter generation. Complainants assert that any generation resources they offer into the day-ahead market are fully supported by Complainant-controlled transmission rights. *Id.* at 19.

¹⁸ *Id.* at 19-20.

¹⁹ *Id.* at 23.

²⁰ *Id.* at 16-17.

generation, SPP will lose the operational flexibility that it now exercises over that generation.²¹

10. Complainants state that they cannot precisely quantify the economic burden they will suffer if they have to secure short-term reservations or be subject to unreserved use penalties. Complainants explain that the extent of this impact would depend on, among other things, the precise parameters of future SPP dispatch decisions, the extent to which Complainants are required to ramp down their generation, and the duration of such SPP dispatch instructions. According to Complainants, if they determine that the risk of penalties is too great and thus must be mitigated by taking NITS, the estimated incremental cost to Hastings over 10 years (based on 2012 NITS) would be \$6,600,000. Complainants assert that the actual incremental cost will be significantly higher due to increases in the NITS annual transmission revenue requirement associated with SPP system upgrades. Complainants state that the estimated cost to Grand Island, which is larger than Hastings, would be proportionately higher.²²

11. Currently, Complainants are purchasing short-term reservations even though the cost of these reservations, at times, exceeds the savings realized from displacement of their generation with market energy. Complainants state that they purchase short-term reservations for any hour when they expect their forecasted load to exceed the minimum output of their generation. Complainants assert that they have taken these actions under duress.²³ According to Complainants, while taking NITS could eliminate the exposure they now face, they do not need NITS, the Tariff does not mandate that they purchase NITS, and its high cost makes it an uneconomic choice for them. Complainants note that it remains unknown whether counterparties to their GFAs would agree to terminate those agreements if Complainants take NITS.²⁴

12. According to Complainants, SPP continues to view its interpretation of the Tariff as correct, but it recognizes that mandating a choice between securing short-term reservations and facing unreserved use penalties is an unreasonable outcome.²⁵ Complainants state that SPP staff developed and submitted to the stakeholder process Transmission Revision Request TRR102M (TRR102M), which provided for after-the-fact placement of short-term reservations whenever dispatch instructions cause behind-

²¹ *Id.* at 25.

²² *Id.* at 24-25.

²³ *Id.* at 17.

²⁴ *Id.* at 16.

²⁵ *Id.* at 14.

the-meter generation output to be insufficient to serve behind-the-meter load.²⁶ Complainants state that TRR102M failed in the stakeholder process, with several transmission owners, including NPPD, voting against the proposal. Complainants note that these entities benefit from short-term reservation and penalty-based revenues.²⁷ According to Complainants, TRR102M has been referred back to the regional working group and they do not expect any Tariff modifications soon.²⁸

13. Complainants request that the Commission make the following determinations in cases where a transmission customer not taking NITS has sufficient transmission rights to serve its generation and load: (1) the SPP Tariff does not require such a transmission customer to secure short-term reservations when, due to SPP dispatch decisions, it must serve its load with market-supplied energy; (2) the unreserved use penalties in the Tariff do not apply in these situations; and (3) SPP has violated section 205 of the FPA by demanding that Complainants secure short-term reservations or risk incurring unreserved use penalties. Complainants also request that the Commission order refunds, with interest, on all amounts paid to SPP for short-term reservations in these situations. Alternatively, if the Commission determines that SPP acted appropriately under its Tariff, Complainants request that the Commission set for hearing the justness and reasonableness of the Tariff in these circumstances.²⁹

III. Notice of Filing and Responsive Pleadings

14. Notice of the complaint was published in the *Federal Register*, 79 Fed. Reg. 32,271 (2014), with respondent's answer, interventions and protests due on or before June 12, 2014.

15. SPP filed a timely answer. Motions to intervene were timely-filed by TDU Intervenors,³⁰ Tenaska, Exelon Corporation, and American Electric Power Service

²⁶ Complainants state that, while TRR102M left unresolved their problem of net noneconomic dispatch when accounting for incremental transmission costs, TRR102M would eliminate their exposure to unreserved use penalties under section 13.7(c). *Id.* at 15.

²⁷ *Id.*

²⁸ *Id.* at 16.

²⁹ *Id.* at 27.

³⁰ TDU Intervenors consist of the City of Independence, Missouri and the Missouri Joint Municipal Electric Utility Commission.

Corporation. NPPD filed a motion to intervene and answer.³¹ Motions to intervene out-of-time were filed by Xcel Energy Services, Inc., Westar Energy, Inc., Sunflower Electric Power Corporation, and Mid-Kansas Electric Company, LLC. An answer and motion for leave to answer was filed by Complainants.

A. SPP's Answer

16. According to SPP, the transmission held by Complainants under existing GFAs and point-to-point arrangements is insufficient in the Integrated Marketplace to support the delivery of market-sourced energy to Complainants' load-sink.³² SPP states that Complainants are mistaken in asserting that the Integrated Marketplace Tariff does not require them to procure transmission service to accommodate their purchases from the market or be subject to unreserved use penalties. SPP explains that market participants are required to arrange for sufficient transmission service under Article 1, section 3 of the its Tariff, which states that "[a] Transmission Customer with load not served under [NITS] must have sufficient transmission arrangements for the delivery of all services including Ancillary Services."³³ SPP asserts that this Tariff provision requires transmission customers to have sufficient transmission arrangements to deliver all services, and when a transmission customer purchases from the Integrated Marketplace to serve its load, it is availing itself of a service under the SPP Tariff and must arrange for sufficient supporting transmission service. SPP contends that these Tariff requirements are unambiguous.³⁴

17. According to SPP, when Hastings' market withdrawals exceed its GFA rights, Hastings is required by section 3 of the SPP Tariff to secure additional transmission service reservations on the SPP transmission system to serve its load because Hastings is required to maintain sufficient transmission arrangements for all deliveries. Similarly, for the portion of Grand Island's load that is sourced by the Integrated Marketplace, SPP asserts that Grand Island lacks sufficient transmission arrangements for delivery of these services.³⁵ SPP concludes that when Complainants' load is served from sources other than their behind-the-meter resources in excess of their transmission service reservations, Complainants lack sufficient transmission arrangements for the delivery of all of their

³¹ We note that because NPPD is not a named respondent in this pleading, its submission, while styled as an answer, constitutes a protest.

³² SPP Answer at 2-3.

³³ *Id.* at 6 (citing SPP Tariff, section 3).

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 14.

services. SPP asserts that this violates section 3 of the SPP Tariff and, therefore, Complainants become subject to unreserved use penalties under the Tariff.

18. In response to Complainants' allegation that they did not have notice of the Tariff requirement that Complainants must procure sufficient transmission service, SPP asserts that the proposed revisions to section 3 of the Tariff were included in the initial Integrated Marketplace filing, and these revisions were approved by the Commission without modification. Moreover, given the extended comment period for the Integrated Marketplace proposal and the months during which the proposal was under consideration by the Commission, SPP contends that Complainants had significant time to review its provisions.³⁶ SPP also disputes Complainants' comments that SPP's Integrated Marketplace filing made no reference to unreserved use penalty provisions. SPP asserts that these provisions, described in sections 13.7 and 14.5 of the Tariff,³⁷ also existed in the EIS Market and are consistent with Commission policy regarding unreserved use penalties established in Order No. 890. SPP contends that section 3 and the unreserved use provisions in the Tariff are the "filed rate," and its enforcement of them is consistent with the FPA.³⁸

19. SPP also explains that, during the Commission's consideration of SPP's Integrated Marketplace proposal, NPPD raised the issues of the proper treatment of Complainants' embedded load and generation and how to account for these assets under the Integrated Marketplace Tariff. NPPD sought assurance that it would not be responsible for the costs or requirements attributable to the generation and transmission used to serve the Complainants' loads. SPP explains that the Commission approved revisions to section 2.2 of Attachment AE of the Tariff, which requires market participants either to register their load and generation for participation in the Integrated Marketplace or to transfer to an external balancing authority.³⁹ SPP also disagrees with Complainants' comment that their experience in the EIS Market did not prepare them for the need to make sufficient transmission arrangements in the Integrated Marketplace. According to SPP, in the EIS Market, schedule 4 of the Tariff expressly provided that SPP would impose an imbalance transmission service charge for market participants not using NITS. Transmission

³⁶ *Id.* at 8.

³⁷ SPP notes that although Complainants cite to section 13.7 as the penalty provision for unreserved usage, this provision addresses firm transmission service. SPP explains that it intends to assess unreserved use penalties under section 14.5, which applies to non-firm service. *Id.* n.25.

³⁸ *Id.* at 9.

³⁹ *Id.* at 19 (citing *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,224, at P 234 (2013) (September 2013 Order)).

service was “imputed” whenever a withdrawal of imbalance energy occurred, and customers were charged accordingly.⁴⁰ SPP explains that in the Integrated Marketplace, where all load is bid and all resources are committed and dispatched by SPP based on security-constrained commitment and dispatch, market participants’ reliance on the Integrated Marketplace is not limited to addressing imbalances. Because of these operational changes from the EIS Market, SPP removed the imbalance transmission service charge from schedule 4 of the Tariff and replaced it with the transmission service requirement in section 3. SPP asserts that these Tariff revisions gave market participants notice that the treatment of transmission service in the Integrated Marketplace would differ from how transmission service was treated in the EIS Market.

20. Furthermore, SPP argues that Complainants’ alternative request that the Commission modify the SPP Tariff pursuant to section 206 of the FPA should be denied. SPP asserts that this argument is contrary to cost causation and beneficiary pays principles and would be unduly discriminatory to other market participants.⁴¹ According to SPP, when Complainants’ generation is displaced in favor of cheaper Integrated Marketplace generation, Complainants benefit from the cheaper price. However, SPP contends that Complainants seek to be excused from paying for benefits when market-sourced deliveries exceed Complainants’ reserved capacity. SPP asserts that the SPP transmission owners are entitled to compensation for use of their systems and should not have to subsidize Integrated Marketplace participants who did not place their transmission facilities under SPP control and who elected not to take NITS under the Tariff.⁴² SPP further states that Complainants may minimize their exposure to unreserved use penalties by lowering their resource offers.⁴³ SPP explains that SPP stakeholders considered a proposal to mitigate unreserved use penalty exposure through a *post hoc* imputation of short-term reservations whenever SPP’s market dispatch resulted in Complainants’ load being served by market-sourced energy. Although this proposal did not win stakeholder approval, SPP explains that SPP’s stakeholder working groups are continuing to review this proposal, and that the concepts embodied in this proposal may offer a reasonable accommodation of all affected interests. SPP comments that should the Commission find that this proposal provides a just and reasonable resolution

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 16.

⁴² *Id.* at 17.

⁴³ SPP notes that Complainants are free to bid in their generation at zero cost to ensure that there is always “self-service” from the generation to the load. *Id.* at 18.

of the issues raised in the Complaint, SPP is amendable to working with its stakeholders to address these issues or others, as ordered by the Commission.⁴⁴

B. NPPD's Answer

21. NPPD asserts that Complainants' position that SPP is violating the FPA by demanding that Complainants purchase transmission service that is not required by the Tariff should be rejected. NPPD contends that, while Complainants assert that SPP's interpretation is not supported by the language of the Tariff, Complainants have not identified which Tariff language supports their position. NPPD notes that Complainants do not reference or cite any specific language of the Tariff that SPP is allegedly violating.⁴⁵

22. NPPD contends that the basis for Complainants' position that SPP is violating its Tariff is that Complainants consider their own transmission facilities that are used to deliver power generated by their behind-the-meter generation as constituting "transmission service arrangements" within the meaning of the SPP Tariff, thereby satisfying the requirement that transmission customers have "transmission service arrangements for delivery of all services" to their loads. NPPD argues that this position fails to recognize that the issue of unreserved use of the SPP transmission system arises only when some or all of the power from Complainants' behind-the-meter generation is *not* serving Complainants' load, and such load is served instead with energy flowing over the SPP transmission system from generators that are not directly connected to Complainants' transmission systems. NPPD asserts that there is no dispute that during such periods, Complainants are using the SPP transmission system without transmission arrangements or reservations covering such use. NPPD contends that the fact that Complainants own their own transmission facilities is irrelevant, because such facilities are not providing transmission service for the power flowing over the SPP transmission system into the Complainants' system to serve their load. Thus, NPPD argues that Complainants have failed to demonstrate that SPP is violating its Tariff by requiring Complainants to secure transmission service under the SPP Tariff.⁴⁶

23. NPPD asserts that Complainants fail to support their position that SPP's Tariff is unjust and unreasonable because it requires that Complainants either obtain SPP transmission service during periods when they are using the SPP transmission system or be subject to unreserved use penalties. Moreover, NPPD argues that SPP is not treating GFAs in an unduly discriminatory manner compared to its own point-to-point

⁴⁴ *Id.* at 22.

⁴⁵ NPPD Answer at 4.

⁴⁶ *Id.* at 5-6.

transmission service offerings. NPPD explains that SPP allows both GFAs and SPP point-to-point services to be used to support market-supplied power under two conditions: (1) these services can only be used up to the capacity set forth in such agreements; and (2) these services are subject to day-ahead scheduling requirements in the Tariff. NPPD asserts that Complainants ignore the fact that the capacity of their GFAs and point-to-point arrangements represents only a small percentage of their load. Likewise, NPPD points out that Complainants have the means to avoid unreserved use penalties and the risk of exceeding day-ahead reservations: Complainants can subscribe to NITS.⁴⁷

24. NPPD argues that there is no basis for approving TRR102M. NPPD further asserts that there is no basis for Complainants' suggestion that several transmission owners, including NPPD, opposed TRR102M because they stood to receive "any penalty based revenue."⁴⁸ NPPD states that its goal in the stakeholder process was to ensure a level playing field for all market participants under the SPP Tariff. According to NPPD, as written, TRR102M would allow GFAs and point-to-point transmission service reservations for market-supplied energy to be assigned to Complainants after the fact without day-ahead reservations. NPPD argues that this would achieve the opposite result of a level playing field. NPPD contends that absent such after-the-fact flexibility, Complainants still have the option to make day-ahead reservations and face the risk of unreserved use penalties whenever their use of the SPP transmission system exceeds their reservations. Again, NPPD points out that Complainants can avoid this risk by subscribing to NITS.

25. NPPD notes that Complainants acknowledged that they do not want to take NITS service because "[t]he actual incremental cost will be significantly higher due to the increases in the NITS [annual transmission revenue requirement] associated with SPP system upgrades."⁴⁹ Yet, NPPD asserts, these entities rely on the robust SPP transmission system to receive lower cost energy from the Integrated Marketplace and to make energy deliveries to the market from their generation resources. NPPD questions whether Complainants' NITS cost-benefit analysis included the risk of unreserved use and the benefits of the Integrated Marketplace.⁵⁰

⁴⁷ *Id.* at 7.

⁴⁸ *Id.*

⁴⁹ *Id.* at 8 (citing Complaint at 49).

⁵⁰ *Id.*

C. Complainants' Answer

26. Complainants assert that SPP failed to provide unambiguous notice of rate changes in its Integrated Marketplace filing, which they argue is critical to the evaluation of the justness and reasonableness of SPP's proposal.⁵¹ Further, Complainants disagree with SPP's assertion that the issues raised in the complaint were considered and rejected by the Commission. Complainants identify as an example the Commission's determination that non-participating load would be required "either to register in the Integrated Marketplace in its own capacity, thereby undertaking the obligation for all market-related charges, or to transfer to another balancing authority (by way of pseudo-tie or some similar mechanism)."⁵² Complainants contend that the Commission's statement was intended as assurance to NPPD that it would not be responsible for any costs related to embedded loads that did not participate in the Integrated Marketplace. Complainants explain that, as a practical matter, their only viable choice was to participate in the market. However, they insist that neither NPPD's concerns, nor the Commission's response in the September 2013 Order, support the assertion that the Commission approved the Tariff interpretation that is the subject of the complaint.⁵³

27. Complainants contend that, contrary to SPP's arguments, the Integrated Marketplace filing did not notify Complainants that they must have reserved transmission purchased from SPP to cover the possibility that SPP would ramp down or fail to dispatch Complainants' own generation. Complainants assert that the Tariff clearly recognizes that transmission service provided under their GFAs and transmission facilities that they own may constitute "sufficient transmission arrangements" as required by Article I, section 3 of the SPP Tariff.⁵⁴ Complainants assert that the only reasonable interpretation of the Tariff is that, when an entity has met the baseline requirements of maintaining sufficient transmission arrangements to deliver power from its resources to its load, whether in the form of SPP provided point-to-point service, GFAs, owned transmission, or any combination thereof, it also has met the transmission-related requirements of the Integrated Marketplace. Moreover, Complainants argue that because SPP represented that the Integrated Marketplace would bring cost savings to market participants, it should now be estopped from asserting that it was imposing an

⁵¹ Complainants offer an example of what they claim, at a minimum, SPP should have provided in its transmittal letter to provide full disclosure of the impact of certain Tariff revisions on Complainants. Complainants Answer at 3.

⁵² *Id.* at 4 (quoting September 2013 Order, 144 FERC ¶ 61,224 at P 234).

⁵³ *Id.* at 5.

⁵⁴ *Id.*

incremental transmission purchase obligation that would cause economic dispatch determinations that result in increased costs.⁵⁵

28. Complainants disagree with SPP's analysis that because the Integrated Marketplace Tariff does not provide for after the fact short-term transmission service, as provided in the EIS Market, the Tariff imposes supplemental transmission purchase obligations. Complainants assert that the elimination of after the fact short-term transmission service makes the Integrated Marketplace Tariff unjust and unreasonable, because it requires them to surrender dispatch control of generation to SPP.⁵⁶ According to Complainants, the absence of information in the Integrated Marketplace filing concerning triggers for unreserved use penalties demonstrates that section 205 notice requirements were not met. Further, Complainants explain that SPP's assertions that the Integrated Marketplace would treat GFAs comparably to other firm transmission arrangements "informed and supports" their view that once they fulfilled their responsibility to have sufficient transmission arrangements in place to serve their load, and they submitted their generation to the dispatch control of SPP, Complainants would have fulfilled their responsibilities to SPP.⁵⁷ Complainants assert that they have only followed SPP's dispatch instructions, and that to impose unreserved use charges would not serve the purposes of such charges.

29. Additionally, Complainants disagree with SPP's assertion that they could minimize their exposure to unreserved use penalties by lowering their resource offers. According to Complainants, this approach would shift to Complainants the burden of counteracting SPP's defective dispatch algorithm. Moreover, Complainants assert that even if the Tariff requires the purchase of additional transmission service from SPP, SPP should modify its dispatch algorithms to take into account Complainants' transmission costs when their generation is ramped down or not dispatched due to market energy being cheaper.⁵⁸

30. In response to NPPD's answer, Complainants reassert that they have sufficient transmission resources to serve their entire load, and that these resources also support the operation of the Integrated Marketplace. Complainants reiterate that SPP and NPPD use Complainants' transmission facilities for free, but when energy is supplied from the market, SPP considers their transmission facilities insufficient to meet load obligations.⁵⁹

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 6-7.

⁵⁷ *Id.* at 7-8.

⁵⁸ *Id.* at 8-9.

⁵⁹ *Id.* at 10.

Complainants also reiterate that subscribing to NITS is not an economical choice. They also note that their long-term GFAs impose ongoing payment obligations that may remain even if they took NITS. Finally, Complainants argue once again that the Tariff does not require that they take NITS.⁶⁰

IV. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), 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) (2014), the Commission will grant Xcel Energy Services, Westar Energy, Inc., Sunflower Electric Power Corp., and Mid-Kansas Electric Company's late-filed motions to intervene given their 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) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Complainants' answer, because it has provided information that assisted us in our decision-making process.

B. Commission Determination

33. We find that SPP's interpretation of its Tariff is consistent with the Tariff language, and that Complainants have not shown that either SPP's interpretation, or the language itself, violates the FPA. Therefore, as discussed below, we deny the complaint.

34. Complainants decided to register their generation and load in the Integrated Marketplace, while also electing not to take NITS or to make other sufficient transmission service arrangements under the SPP Tariff. Instead, Complainants rely upon a combination of transmission rights for their required service that include their own transmission facilities, GFAs, and point-to-point transmission service. These decisions created a gap in energy delivery from market-sourced generation interconnected to the SPP transmission system to the point of interconnection with Complainants' transmission systems. When Complainants choose to offer their generation resources on an economic basis (i.e., not self-scheduled) in SPP's Integrated Marketplace, Complainants relinquish to SPP the authority to commit, de-commit, ramp-up, or ramp-down their generation, based on the results of the co-optimization process that minimizes the cost of dispatching energy to meet system needs. These functions are

⁶⁰ *Id.* at 10-11.

consistent with the fundamentals of a Day-2 market. When this process determines that it is more economical to serve Complainants' load with market-sourced generation,⁶¹ this energy must first be delivered over the SPP transmission system before being delivered over Complainants' transmission systems. SPP's Tariff requires that market participants have "sufficient transmission arrangements for the delivery of all services including Ancillary Services."⁶² Thus, under the Tariff, Complainants must cover this gap in delivery. If Complainants do not secure sufficient transmission service arrangements, they will be subject to the unreserved use penalty provisions contained in section 14.5 of the Tariff. These penalty provisions are consistent with the policy established in Order No. 890.⁶³

35. Complainants have not shown that their specific sources of transmission rights can function in the Integrated Marketplace to meet their transmission needs, as required by the Tariff. Complainants' behind-the-meter transmission facilities cannot be used to address the gap in delivery associated with market-sourced generation because these transmission facilities are not part of the SPP system. With regard to Complainants' GFAs, Complainants have not provided enough information about the terms and conditions of the transmission service arrangements under their GFAs to demonstrate that they are flexible enough to provide for delivery of power from generation sources other than the resources specified in the GFAs. Thus, based on the record before us, we cannot determine that these agreements would provide transmission service of regional scope and flexibility necessary for delivery of market-sourced generation. Even if Complainants' GFAs provide transmission service that could be used for delivery of market-sourced generation, these GFAs comprise only a small portion of the transmission rights Complainants claim to possess, making reliance on GFAs an incomplete means to address gaps in delivery of market-sourced generation. Thus, we cannot find that SPP is unduly discriminating against Complainants' GFAs in favor of its own services by treating these agreements as inadequate to support Complainants' transmission service arrangements.

⁶¹ In the reverse situation, Complainants suggest that it is unfair that they receive no compensation from SPP for use of their transmission facilities when SPP calls upon their behind-the-meter generation to serve load in the Integrated Marketplace. However, this lack of compensation is also attributable to a choice made by Complainants—namely, not to cede control of their transmission facilities to SPP, which would provide a mechanism for compensation for the transmission facilities that they would contribute to the SPP transmission system.

⁶² SPP Tariff, section 3.

⁶³ We note that the unreserved use penalty provisions in SPP's Tariff pre-date the Integrated Marketplace.

36. Complainants state that, under the EIS Market, SPP provided after-the-fact transmission service to address the delivery gap for which it charged an imbalance transmission service to market participants not taking NITS under schedule 4 of the EIS Market Tariff. Complainants assert that the Integrated Marketplace Tariff is unjust and unreasonable because it does not provide a similar mechanism. We disagree. The EIS Market and the Integrated Marketplace are fundamentally different markets with different scopes and operational characteristics. The EIS Market was a real-time imbalance market that lacked a centralized unit commitment process. In contrast, the Integrated Marketplace is a Day-2 market in which resources are committed and dispatched using centralized, security-constrained economic unit commitment and dispatch. The Integrated Marketplace provides services beyond imbalance service, and as a result, the structure and operating characteristics of the Day-2 market create more circumstances in which market participants will require transmission service to deliver their purchases from the market. As a result, to ensure deliverability to load in the Integrated Marketplace, SPP proposed the transmission service requirement in section 3 of the Tariff that the Commission found to be just and reasonable. We also note that Order Nos. 888⁶⁴ and 890 did not require Regional Transmission Organizations and Independent System Operators to provide after-the-fact transmission service.

37. Complainants allege that, in the Integrated Marketplace proceeding, they were not given unambiguous notice of Tariff provisions that would apply to their participation in the market. We disagree. As required by the Commission's regulations,⁶⁵ SPP's initial Integrated Marketplace filing, with amendments, provided line-by-line strike-out and clean versions of the proposed revisions to SPP's Tariff that reflected those changes necessary for SPP to implement its proposal. It was clear that SPP was proposing modifications to schedule 4 and section 3 in its Tariff to eliminate the provision of after-the-fact transmission service for market purchases and to clarify that customers must reserve sufficient transmission service for their use of the SPP transmission system.⁶⁶

⁶⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶⁵ 18 C.F.R. §§ 35.1, 35.13 (2014).

⁶⁶ Specifically, the language in schedule 4 (Energy Imbalance Service) relating to the Imbalance Transmission Service Charge, as applied to market participants not utilizing NITS, was struck out in SPP's February 29, 2012 Integrated Marketplace filing.
(continued...)

Complainants also claim that SPP failed to provide sufficient notice and discussion in its transmittal letter and testimony regarding the impact of proposed revisions on customers in their situation. However, it was not necessary for SPP to provide, in its transmittal and testimony, detailed discussion on every proposed revision associated with a Day-2 market proposal and the impacts of each revision on a variety of customer circumstances.

38. We note that there are other options available to Complainants that would avoid the need to assess unreserved use penalties under the Tariff, but which they have not elected to exercise. For example, Complainants may elect to: (1) self-schedule their generation to serve their load, making any necessary transmission service reservations, rather than making their generation resources dispatchable by SPP; (2) turn over their transmission assets to SPP control and register for NITS; or (3) use certain combinations of these options. There is nothing in this record to demonstrate why the Tariff, as applied to Complainants, is unjust and unreasonable.⁶⁷

39. Finally, it is our understanding that stakeholder initiatives may be underway to address short-term reservations. The Commission encourages parties to work together to resolve issues of controversy. Therefore, this order is in no way intended to prejudge any such initiatives or any Tariff revisions that may be brought to the Commission in a future filing. Should SPP propose new Tariff revisions, we will consider that proposal at that time.

40. For the reasons outlined above, we deny Complainants' complaint against SPP.

SPP also proposed the addition of the following language within section 3 of its Tariff, which appeared in redline in the February 29, 2012 filing: "A Transmission Customer with load not served under Network Integration Transmission Service must have sufficient transmission service arrangements for the delivery of all services including Ancillary Services."

⁶⁷ See *Sacramento Mun. Util. Dist.*, 474 F.3d. 797, 802 (D.C. Cir. 2007) ("The fact that CAISO's tariff may be imperfect for SMUD's needs gives us no authority to overturn FERC's perfectly rational decision that SMUD must . . . operate under the same tariff and incur the same risks as other California utilities.").

The Commission orders:

Complainants' complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.