

October 15, 2010

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Southwest Power Pool, Inc., Docket No. ER11-_____ -000*
Submission of Tariff Revisions to Eliminate Market Monitor Data
Retention Auditing Requirement

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Regulations of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. Part 35, Southwest Power Pool, Inc. (“SPP”), as authorized by its Board of Directors, submits revisions to its Open Access Transmission Tariff¹ to modify the duties of its independent Market Monitor (“MMU”) to eliminate a requirement that the MMU audit SPP Market Participant compliance with data retention policies. SPP requests an effective date of December 14, 2010 for the revisions proposed in this filing.

I. BACKGROUND

A. SPP

SPP is a Commission-approved Regional Transmission Organization (“RTO”). It is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 60 Members in nine states serving more than 6 million households in a 370,000 square-mile area. Its Members include 14 investor-owned utilities, 9 municipal systems, 12 generation and transmission cooperatives, 4 state agencies, 7 independent power producers, 10 power marketers, and 4 independent transmission companies.

¹ Southwest Power Pool, FERC Electric Tariff, Sixth Revised Volume No. 1 (“Tariff”). SPP’s eTariff baseline, Sixth Revised Volume No. 1, is pending before the Commission in Docket No. ER10-1960-000.

As an RTO, SPP is a transmission provider currently administering Transmission Service over 50,575 miles of transmission lines covering portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP has been administering a centralized Energy Imbalance Service (“EIS”) Market since February 1, 2007. In various orders, the Commission approved the Tariff language for the EIS Market and ultimately certified SPP’s EIS Market for implementation on February 1, 2007.²

B. Stakeholder Process

The revisions proposed in this filing were developed and approved through the SPP stakeholder process. Specifically, the proposed revisions were approved unanimously by the SPP Regional Tariff Working Group on March 24, 2010 and unanimously by the SPP Markets and Operations Policy Committee during its April 13-14, 2010 meeting. On April 27, 2010, the SPP Members Committee voted unanimously in favor of and the SPP Board of Directors approved the proposed revisions. While SPP recognizes that stakeholder approval does not by itself cause a filing to be just and reasonable, SPP requests that the Commission extend appropriate deference to the wishes of its stakeholders, consistent with Commission precedent.³

II. DESCRIPTION OF AND JUSTIFICATION FOR FILING

SPP’s Market Monitoring Plan, as set forth in Attachment AG of the SPP Tariff, requires the MMU to, “from time to time, audit Market Participants to ensure compliance

² See *Sw. Power Pool, Inc.*, 118 FERC ¶ 61,055 (2007).

³ The Commission has previously recognized that provisions approved through the stakeholder processes of RTOs and ISOs are due deference. See *Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 33 (2009) (noting that the Commission “accord[s] an appropriate degree of deference to RTO stakeholder processes”); *New Eng. Power Pool*, 105 FERC ¶ 61,300, at P 34 (2003), *reh’g denied*, 109 FERC ¶ 61,252 (2004) (Commission approval of transmission cost allocation proposal based upon an extensive and thorough stakeholder process); *Policy Statement Regarding Regional Transmission Groups*, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 30,976, at 30,872 (1993) (the Commission will afford an appropriate degree of deference to the stakeholder approval process). The Commission’s deference to RTO stakeholder processes has been upheld by the courts. See *Pub. Serv. Comm’n of Wis. v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008) (noting that the Commission often gives weight to RTO proposals that reflect the position of the majority of the RTO’s stakeholders) (*quoting Am. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 172, *reh’g denied*, 125 FERC ¶ 61,341 (2008)).

with data retention requirements established in [the Market Monitoring] Plan.”⁴ Given that this provision is no longer required to ensure that the MMU has adequate access to data and given that auditing market participants for compliance with a data retention policy is not a core market monitoring function as defined by the Commission in Order No. 719,⁵ SPP proposes to delete the data retention auditing and certification provisions from Section 8.4 of Attachment AG.

The data retention compliance auditing requirement was adopted in SPP’s EIS market implementation filing on January 4, 2006.⁶ The MMU has since determined that most of the data covered by the data retention requirement is being provided by SPP to the MMU. The SPP internal data storage and retention procedures meet or exceed industry standards. As a result, the MMU would not generally request such data from Market Participants.

⁴ SPP Tariff at Attachment AG § 8.4.

⁵ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, III FERC Stats. & Regs., Regs. Preambles ¶ 31,281, at P 354 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh’g*, Order No. 719-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

The Commission identified the core market monitoring functions as: (1) evaluating existing and proposed market rules, tariff provisions, and market design elements, and recommending proposed rule and tariff changes not only to the RTO or ISO, but also to the Commission’s Office of Energy Market Regulation staff and to other interested entities such as state commissions and market participants; (2) reviewing and reporting on the performance of the wholesale markets to the RTO or ISO, the Commission, and other interested entities such as state commissions and market participants; and (3) identifying and notifying the Commission’s Office of Enforcement staff of instances in which a market participant’s behavior, or that of the RTO or ISO, may require investigation, including suspected tariff violations, suspected violations of Commission-approved rules and regulations, suspected market manipulation, and inappropriate dispatch that creates substantial concerns regarding unnecessary market inefficiencies. *Id.*

⁶ *See* Submission of Tariff Revisions to Incorporate Energy Imbalance Market and Market Monitoring Procedures of Southwest Power Pool, Inc., Docket No. ER06-451-000, at Exhibit I, Original Sheet No. 691B (Jan. 4, 2006) (“EIS Market Filing”).

The Market Participant data retention requirement⁷ remains in effect, and the MMU has the right to request data of interest, in particular any data not currently retained in SPP data systems, if needed. Therefore, auditing Market Participant compliance with data retention requirements is not a value added exercise for the MMU to perform, the costs and resources involved in performing such audits is significant, and auditing efforts detract from the other core duties of the MMU. Likewise, responding to and complying with audit requests requires a significant resource commitment by Market Participants, with no concomitant benefit to Market Participants, SPP, the MMU, or the EIS Market. Moreover, SPP is not aware of any similar auditing requirement included in the market monitoring plan of any other RTO or Independent System Operator (“ISO”) and, in reviewing SPP’s data access, collection, and retention provisions proposed in the EIS Market Filing, the Commission did not address, much less require, SPP to include the audit and certification provisions adopted in Section 8.4.⁸ Accordingly, SPP submits that the audit and certification provisions of Section 8.4 of Attachment AG are no longer necessary, and removal of Section 8.4 of Attachment AG is therefore just and reasonable and should be accepted by the Commission.

III. ADDITIONAL INFORMATION

A. Information Required by the Commission’s Regulations

1. Documents submitted with this filing:

In addition to this transmittal letter, SPP is submitting in electronic format clean and redlined versions of the proposed revisions, as well as a service list attached to this filing as Exhibit No. 1.

⁷ See SPP Tariff, Attachment AG § 8.3. While SPP is proposing to eliminate the requirement that the MMU audit Market Participant compliance with data retention requirements, SPP is not proposing to modify the data retention requirements included in its Tariff or the requirement that Market Participants comply with such requirements. While most, if not all data can be provided by SPP, the Market Monitor may, in the future, need to request data from a Market Participant.

⁸ See *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,289, at PP 147-52 (2006) (discussing SPP’s proposed EIS Market data access, collection, and retention provisions).

2. Effective Date:

SPP requests that the Commission accept the proposed revisions to the SPP Tariff effective December 14, 2010, 2010, 60 days after filing.

3. Service:

SPP has served a copy of this filing on all its Members and Customers and affected state commissions. A complete copy of this filing will be posted on the SPP web site, www.spp.org.

4. Requisite Agreements:

The proposed revisions to the SPP Tariff do not require any agreements.

5. Estimate of transactions and revenues:

Not applicable.

6. Basis of rates:

The basis for the proposed Tariff revisions is explained above.

7. Comparison to rates for similar services:

Not applicable.

8. Specifically assignable facilities installed or modified:

There are none.

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B. Communications

Correspondence and communications with respect to this filing should be sent to, and SPP requests the Secretary to include on the official service list, the following:

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IV. CONCLUSION

For all of the foregoing reasons, SPP respectfully requests that the Commission accept the Tariff revisions proposed herein as just and reasonable, effective as discussed above. SPP further requests a waiver of any additional Commission regulations that the Commission may deem applicable.

Respectfully submitted,

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Director, Utility Division
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Santa Fe, New Mexico 87504-1269

Arkansas Public Service Commission

Director Electric Utilities
P.O. Box 400, 1000 Center Street
Little Rock, Arkansas 72203-0400

Kansas Corporation Commission

Executive Director
1500 SW Arrowhead Road
Topeka, Kansas 66604

Louisiana Public Service Commission

Attn: Secretary
P.O. Box 91154
Baton Rouge, Louisiana 70821-9154

Missouri Public Service Commission

Utility Regulatory Manager
Governor Office Bldg.
200 Madison Street
Jefferson City, MO 65101

Oklahoma Corporation Commission

Strategic Liaison
2101 Lincoln Blvd., Room 311B
Oklahoma City, OK 73152

Texas Public Utility Commission

Director of General Law
1701 N. Congress, 7th Floor
Austin, TX 78701

**ATTACHMENT AG
MARKET MONITORING PLAN**

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8. Data Access, Collection and Retention

The Market Monitor shall regularly collect and maintain Data and Information necessary for monitoring SPP's Markets and Services and implementing mitigation protocols.

8.1 Confidentiality

SPP and Market Participants may designate Data and Information as Confidential Information consistent with the terms of SPP's Membership Agreement and Section 8 of Attachment AE. If the designation of Confidential Information appears to be unreasonable, the Market Monitor may challenge such designation of Confidential Information consistent with Section 8 of Attachment AE.

The Market Monitor shall provide Confidential Information to Interested Government Agencies consistent with the terms of Section 8.4 of Attachment AE.

8.2 Access to SPP Data and Information

The Market Monitor shall have access to all Data and Information gathered or generated by SPP in the course of its operations. This Data and Information shall include, but not be limited to, that listed in Section 4 of this Plan. All Data and Information listed in Section 4 of this Plan shall be retained by SPP for a minimum period of three years.

8.3 Access to Market Participant Data and Information

Market Participants shall retain all Data and Information listed below, and in Section 4 of this Plan as applicable, that is in the custody and control of Market Participants, for a minimum of three years and will promptly provide any such Data and Information to the Market Monitor upon request.

Market Participants shall be capable of providing the Data and Information to the Market Monitor, upon request, in the Market Participant's native format along with a description of the native data format used. If necessary, due to proprietary format restrictions, the Market Participant shall be capable of providing the data to the Market Monitor in a non-proprietary format, such as CSV or XML format along with a description of the data format used. Any such request will be accompanied by an explanation of the need for such Data and Information. Market Participants may designate such Data and Information as Confidential

Information, but such Data and Information may not be redacted or modified in any manner prior to delivery to the Market Monitor by the Market Participant.

Data and Information to be retained by Market Participants and provided to the Market Monitor upon request:

- (a) All Data and Information relating to the costs of operating a generating unit, including but not limited to, heat rates, start-up fuel requirements, fuel purchase costs, environmental costs, and operating and maintenance expenses;
- (b) All Data and Information regarding opportunity costs of a generating unit, including but not limited to, regulatory, environmental, technical, or other restrictions that limit the run-time or other generating unit operating characteristics;
- (c) All Data and Information relating to the operating status of a generating facility, including generator logs showing the generating status of a specified unit, including information relating to a forced outage, planned outage or derating of a generating unit;
- (d) All Data and Information relating to the operating status of a transmission facility, a contingency, or other operating consideration, including forced outages, planned outages or derating of a transmission system component;
- (e) All Data and Information relating to transmission system planning, including studies, reports, plans, models, analyses, and filings with FERC or any state regulatory commission;
- (f) All Data and Information relating to the ability of a Market Participant or its Affiliate to determine the pricing or output level of generating capacity owned by another entity, including but not limited to any document setting forth the terms or conditions of such ability.
- (g) All Data and Information used in the course of business operations in arriving at a decision by a Reserve Sharing Group member to call an Operating Reserve Contingency and to request assistance.

If any additional Data and Information not listed above or in Section 4 of this Plan is required from Market Participants by the Market Monitor for the purpose of fulfilling its responsibilities, the Market Monitor may request such Data and Information from Market Participants. Such Data and Information shall be provided in a timely manner by Market Participants. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgement of the obligation of the Market Monitor to maintain the confidentiality of the data. If a Market Participant receiving a request for Data and Information not listed above or in Section 4 of this Plan believes that production of the requested Data and Information would impose a substantial burden or expense, or would require the party to produce information that is not relevant to achieving the purposes or objectives of this Plan, the Market Participant receiving the request shall promptly so notify the Market Monitor. The Market Monitor shall review the request with the receiving Market Participant to determine whether, without unduly compromising the objectives of this Plan, the request can be narrowed or otherwise modified to reduce the burden or expense of compliance, and if so shall so modify the request. No party that is the subject of a data request shall be required to produce any summaries, analyses or reports of the data that do not exist at the time of the data request.

If the Market Monitor determines that the requested Data and Information has not or will not be provided in a timely manner, the Market Monitor may utilize (a) the dispute resolution procedures under this Tariff or under the SPP Bylaws as applicable or (b) a filing with the appropriate regulatory or enforcement agency to compel the production of the requested information.

8.4 Data Created by Market Monitor

Any data created by the Market Monitor, including any reconfiguration of Data and Information obtained from SPP or Market Participants, will remain within the Market Monitor's exclusive control. Such data may be shared with SPP and Market Participants at the Market Monitor's sole discretion and on a non-

discriminatory basis, subject to the confidentiality provisions specified in this Attachment AG and Section 8 of Attachment AE.

**ATTACHMENT AG
MARKET MONITORING PLAN**

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Information, but such Data and Information may not be redacted or modified in any manner prior to delivery to the Market Monitor by the Market Participant.

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- (b) All Data and Information regarding opportunity costs of a generating unit, including but not limited to, regulatory, environmental, technical, or other restrictions that limit the run-time or other generating unit operating characteristics;
- (c) All Data and Information relating to the operating status of a generating facility, including generator logs showing the generating status of a specified unit, including information relating to a forced outage, planned outage or derating of a generating unit;
- (d) All Data and Information relating to the operating status of a transmission facility, a contingency, or other operating consideration, including forced outages, planned outages or derating of a transmission system component;
- (e) All Data and Information relating to transmission system planning, including studies, reports, plans, models, analyses, and filings with FERC or any state regulatory commission;
- (f) All Data and Information relating to the ability of a Market Participant or its Affiliate to determine the pricing or output level of generating capacity owned by another entity, including but not limited to any document setting forth the terms or conditions of such ability.
- (g) All Data and Information used in the course of business operations in arriving at a decision by a Reserve Sharing Group member to call an Operating Reserve Contingency and to request assistance.

If any additional Data and Information not listed above or in Section 4 of this Plan is required from Market Participants by the Market Monitor for the purpose of fulfilling its responsibilities, the Market Monitor may request such Data and Information from Market Participants. Such Data and Information shall be provided in a timely manner by Market Participants. Any such request shall be accompanied by an explanation of the need for such data or other information, a specification of the form or format in which the data is to be produced, and an acknowledgement of the obligation of the Market Monitor to maintain the confidentiality of the data. If a Market Participant receiving a request for Data and Information not listed above or in Section 4 of this Plan believes that production of the requested Data and Information would impose a substantial burden or expense, or would require the party to produce information that is not relevant to achieving the purposes or objectives of this Plan, the Market Participant receiving the request shall promptly so notify the Market Monitor. The Market Monitor shall review the request with the receiving Market Participant to determine whether, without unduly compromising the objectives of this Plan, the request can be narrowed or otherwise modified to reduce the burden or expense of compliance, and if so shall so modify the request. No party that is the subject of a data request shall be required to produce any summaries, analyses or reports of the data that do not exist at the time of the data request.

If the Market Monitor determines that the requested Data and Information has not or will not be provided in a timely manner, the Market Monitor may utilize (a) the dispute resolution procedures under this Tariff or under the SPP Bylaws as applicable or (b) a filing with the appropriate regulatory or enforcement agency to compel the production of the requested information.

8.4 — Certification and Auditing

~~The Market Monitor shall, from time to time, audit Market Participants to ensure compliance with the data retention requirements established in this Plan. Market Participants shall cooperate with the Market Monitor in such audits. The Market~~

~~Monitor will annually destroy, and certify such destruction to the Board of Directors, information in its possession which is no longer reasonably necessary.~~

8.54 Data Created by Market Monitor

Any data created by the Market Monitor, including any reconfiguration of Data and Information obtained from SPP or Market Participants, will remain within the Market Monitor's exclusive control. Such data may be shared with SPP and Market Participants at the Market Monitor's sole discretion and on a non-discriminatory basis, subject to the confidentiality provisions specified in this Attachment AG and Section 8 of Attachment AE.