

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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SOUTHWEST POWER POOL, INC.) **Docket No. ER12-__-000**
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PETITION FOR WAIVER OF TARIFF PROVISIONS

Pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure,¹ Southwest Power Pool, Inc. (“SPP”) petitions the Commission to grant a temporary limited waiver of provisions of Attachment AE to its Open Access Transmission Tariff² to enable SPP to avoid resettling its Energy Imbalance Services Market (“EIS Market”) when it implements planned tariff revisions early next year.

I. DESCRIPTION OF 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 67 members serving more than 6 million households in a 370,000 square-mile area. Its members include 14 investor-owned utilities, 11 municipal systems, 12 generation and transmission cooperatives, 4 state agencies, 7 independent power producers, 10 power marketers, and 8 independent transmission companies. As an RTO, SPP administers open access transmission service over approximately 48,930 miles of transmission lines covering portions of Arkansas, Kansas, Louisiana, Missouri,

¹ 18 C.F.R. § 385.207.

² Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1 (“SPP Tariff”).

Nebraska, New Mexico, Oklahoma, and Texas, across the facilities of the SPP Transmission Owners.³ In addition, since February 1, 2007, SPP has administered the centralized Real-Time EIS Market,⁴ which is governed by Attachment AE of the SPP Tariff.

II. BACKGROUND AND NEED FOR THE WAIVER

Attachment AE of the SPP Tariff sets forth the market rules for SPP's EIS Market, including the charges/credits for the use and provision of Energy Imbalance Service. Section 1.2.2(g) of Attachment AE requires that "[a]ll loads and all Resources, excluding Behind The Meter Generation less than 10 MW, must register" with SPP.⁵ To the extent a generator does not register, SPP may involuntarily register it.⁶ The Commission, however, has held that this involuntary registration "may not compel participation in the Energy Imbalance Market by, or otherwise trigger deviation charges for, QFs exercising their PURPA rights to deliver power to their host utilities."⁷ Therefore, Section 1.2.2(g) states that "[i]n the case of a Qualifying Facility exercising its rights under PURPA to deliver all of its net output to its host utility, such [involuntary] registration will not require the Qualifying Facility to participate in the EIS Market or subject the Qualifying Facility to any charges or payments related to the EIS Market."

³ See *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,084 (1999); *Sw. Power Pool, Inc.*, 86 FERC ¶ 61,090 (1999); *Sw. Power Pool, Inc.*, 82 FERC ¶ 61,267, *order on reh'g*, 85 FERC ¶ 61,031 (1998).

⁴ *Sw. Power Pool, Inc.*, 118 FERC ¶ 61,055 (2007) (accepting SPP's Market Readiness Certification and authorizing a February 1, 2007 start date for the EIS Market).

⁵ SPP Tariff, Attachment AE § 1.2.2(g).

⁶ *Id.*

⁷ *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,314, at P 38 (2008).

The Commission further has held that absent a tariff amendment, SPP does not have the authority “under its Tariff to charge a QF’s host utility under PURPA for any EIS charges owing to generation by the QF.”⁸

As of April 1, 2012, for the first time, several Qualifying Facilities (“QFs”) involuntarily were registered pursuant to Section 1.2.2(g) of Attachment AE⁹ and consequently are exempt from EIS Market charges and credits. Nevertheless, charges and credits under Attachment AE will be associated with the generation of such QFs. To address how to treat these charges/credits, SPP plans to present and vet through its stakeholder process proposed amendments to Attachment AE. These amendments will authorize SPP to assess to the host utility with the purchase obligation under PURPA the EIS Market charges/credits associated with the generation owing to an involuntarily registered QF. SPP plans to request an effective date of April 1, 2012 for these amendments in order to apply the new rules to the charges/credits associated with the generation owing to the QFs involuntarily registered as of April 1, 2012.¹⁰

A short-term temporary tariff waiver of Attachment AE provisions is necessary to enable SPP to implement the planned EIS Market amendments (assuming the Commission accepts them) commencing April 1, 2012, without resettlement of previously assessed EIS Market charges. Absent a waiver, under Attachment AE, the

⁸ *Sw. Power Pool, Inc.*, 139 FERC ¶ 61,235, at P 38 (2012); *see also Sw. Power Pool, Inc.*, 126 FERC ¶ 61,135 (2009).

⁹ *Sw. Power Pool, Inc.*, 139 FERC ¶ 61,235.

¹⁰ Pursuant to section 205 of the Federal Power Act, 18 U.S.C. §824d(d), SPP will request the Commission, to allow for good cause an effective date prior to the filing date so as to enable charges/credits to be assessed as of the date that the QFs were involuntarily registered.

charges/credits owing to the generation of a QF exercising its PURPA rights to sell its output to its host utility would have to be uplifted to the entire EIS Market.¹¹ SPP would have to assess this uplift to the entire market during SPP's development of the planned tariff amendments, during the ensuing stakeholder process, and until the Commission approves the amendments. However, because SPP plans to propose an April 1, 2012 effective date for the amendments, after the Commission accepts them, SPP then would have to resettle the EIS Market back to April 1, 2012. To avoid this market resettlement, SPP requests a temporary waiver of certain sections of Attachment AE effective from April 1, 2012, until the effective date of SPP's planned tariff amendments or until the Commission otherwise acts on SPP's forthcoming tariff filing.

III. WAIVER REQUEST

SPP requests a temporary waiver, with respect to market charges/credits associated with the generation of involuntarily registered QFs, of the SPP Tariff Attachment AE provisions relating to EIS Market charges and credits, including but not limited to Sections: 5.2 (Energy Imbalance Service Charges/Credits); 5.3 (Under-Scheduling Charges); 5.4 (Over-Scheduling Charges); 5.5 (Uninstructed Deviation Charges); 5.6 (Revenue Neutrality); and 7 (Billing).

SPP requests this waiver of its tariff to permit SPP during the term of the waiver: (i) to place into escrow, rather than uplift to all market participants, any payments (i.e., credits) pursuant to Attachment AE associated with the generation owing to any QF exercising its PURPA rights and involuntarily registered pursuant to Attachment AE Section 1.2.2(g); and (ii) to defer uplifting to the EIS Market any Attachment AE charges

¹¹ SPP Tariff, Attachment AE § 5.6.

associated with such QF generation. These are the credits/charges that, through proposed tariff amendments, SPP will seek to assess to the host utility purchasing the QF generation. SPP requests that the waiver be in effect from April 1, 2012, until the effective date of SPP's planned tariff amendments or the date of the Commission's order otherwise acting on the proposed tariff amendments.¹² Commencing on the effective date of SPP's planned tariff amendments or the date of a Commission order rejecting the amendments, SPP will begin treating the Attachment AE charges/credits associated with the QF generation in accordance with the SPP Tariff.

IV. THE WAIVER REQUEST MEETS THE STANDARD FOR GRANTING A WAIVER

The Commission has granted requests for one-time tariff waivers “where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident.”¹³ SPP's waiver request meets these criteria. The waiver would be limited in scope. SPP is seeking a temporary, one-time waiver to be effective for a short period of time. SPP expects to be able to file the planned tariff amendments within the next six months, and the waiver only will be in place until Commission action on that filing. The waiver also will be narrowly applied only to those EIS Market charges and credits associated with the limited number of involuntarily

¹² Consistent with the relief that SPP is seeking, pending Commission action on this waiver request, SPP will not uplift to the market the EIS Market charges/credits associated with the QF generation or assess such charges/credits to the host utility. Any monies associated with these charges/credits will be placed in escrow.

¹³ *Sw. Power Pool, Inc.*, 126 FERC ¶ 61,012, at P 36, *order on reh'g*, 126 FERC ¶ 61,215 (2009); *see also Cal. Indep. Sys. Operator*, 124 FERC ¶ 61,031, at P 19 (2008) (“Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate.”).

registered QFs exercising their PURPA rights to deliver their output to their host utilities.¹⁴

The waiver will benefit market participants and remedy a concrete problem because it will permit SPP to implement forthcoming tariff amendments, planned to be effective April 1, 2012, without having to resettle previous market charges. SPP is in the process of developing these tariff revisions to address a situation that heretofore has not arisen (the involuntary registration of QFs that cannot be subject to Attachment AE charges/credits). SPP plans to request an effective date of April 1, 2012 for the planned tariff revisions, which is the effective date of the recent involuntary registration of certain QFs. Absent a waiver, SPP would be required to resettle the entire EIS Market back to April 1, 2012, after the Commission accepted the tariff revisions, reversing uplifts to the market and replacing the uplift with charges/credits to the host utility purchasing the QF generation. Such resettlements would impact all market participants and disrupt the EIS Market. Simply put, the waiver would benefit market participants by preventing the disruption and uncertainty that would be caused by market resettlements that, absent a waiver, would be necessary once SPP's planned tariff amendments became effective.¹⁵

Furthermore, there will be no undesirable consequences from the waiver. No market participant will be harmed by the temporary waiver. Moreover, otherwise required uplift of charges associated with the involuntarily registered QF generation will be deferred and then eliminated once the planned tariff rules go into effect.

¹⁴ Currently there are twelve QFs involuntarily registered pursuant to Section 1.2.2(g) of Attachment AE for a total of 187.6 MW.

¹⁵ The Commission has granted tariff waiver requests to avoid resettlements and rebillings. *See e.g., PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184 (2011).

V. CONCLUSION

For the reasons set forth above, good cause exists for the Commission to grant a temporary limited one-time waiver of SPP Tariff provisions to permit SPP during the term of the waiver: (i) to place into escrow any payments (i.e., credits) pursuant to Attachment AE associated with the generation of involuntarily registered QFs exercising their PURPA rights; and (ii) to defer uplifting to all market participants in the EIS Market any Attachment AE charges/credits associated with the generation of involuntarily registered QFs. SPP requests that the temporary waiver be in effect from April 1, 2012, until the effective date of SPP's planned tariff amendments or the date of a Commission order rejecting SPP's planned Attachment AE amendment filing.¹⁶

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Respectfully submitted,

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¹⁶ As noted above, SPP anticipates submitting the Attachment AE amendment filing within the next six months at the conclusion of a stakeholder process. In the event SPP and its stakeholders decide for any reason not to make this filing, SPP will notify the Commission and request termination of the waiver.