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Little Rock, AR 72201

July 27, 2004

VIA FAX AND FEDERAL EXPRESS

Chairman Patrick Wood, III
Commissioner Nora M. Brownell
Commissioner Joseph T. Kelliher
Commissioner Suedeen G. Kelly
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Southwest Power Pool, Inc.
Docket Nos. RT04-1-002 and ER04-48-002

Dear Chairman Wood and Commissioners Brownell, Kelly and Kelliher:

As the duly-elected members of the Board of Directors of the Southwest Power Pool Regional State Committee, we are writing you in response to the Concurring Opinion of Commissioners Kelly and Kelliher issued July 2, 2004 in Docket Nos. RT04-1-002 and ER04-48-002.

Citing two appellate decisions¹, the Concurring Opinion states: "The Commission will take these court decisions into account in determining the role of the RSC in the order on rehearing of the February 10 Order."

The SPP and the RSC have broken new ground in the political and economic relationships among RTOs, transmission owners, states and FERC. While the arrangement is unique, it raises no legal questions of the type catching the Court's attention in *U.S. Telecomm* (federal agency subdelegating to the states) and *Cal. Indep. Sys. Operator* (FERC directing the governance of a public utility). We explain further below.

¹ *U.S. Telecomm Ass'n v. Federal Communications Comm'n*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004); and *Cal. Indep. Sys. Operator Corp. v. Federal Energy Regulatory Comm'n*, No. 02-1287, 2004 U.S. App. LEXIS 12226, at *9-*10 (D.C. Cir. June 22, 2004).

The RSC-SPP Relationship

Section 7.2 of the SPP Bylaws, entitled "Regional State Committee," provides:

An RSC, to be comprised of one designated commissioner from each state regulatory commission having jurisdiction over an SPP Member, shall be established to provide both direction and input on all matters pertinent to the participation of the Members in SPP. This direction and input shall be provided within the context of SPP's organizational group meetings as well as Board of Directors meetings. The SPP Staff will assist the RSC in its collective responsibilities and requests by providing information and analysis. SPP will fund the costs of the RSC pursuant to an annual budget developed by the RSC and submitted to SPP as part of its budgeting process, which budget must ultimately be approved by the Board of Directors.

The RSC has primary responsibility for determining regional proposals and the transition process in the following areas:

- a. whether and to what extent participant funding will be used for transmission enhancements;*
- b. whether license plate or postage stamp rates will be used for the regional access charge;*
- c. FTR allocation, where a locational price methodology is used; and*
- d. the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to the customers' existing firm rights.*

The RSC will also determine the approach for resource adequacy across the entire region. In addition, with respect to transmission planning, the RSC will determine whether transmission upgrades for remote resources will be included in the regional transmission planning process and the role of transmission owners in proposing transmission upgrades in the regional planning process. As the RSC reaches decisions on the methodology that will be used to address any of these issues, SPP will file this methodology pursuant to Section 205 of the Federal Power Act. However, nothing in this section prohibits SPP from filing its own related proposal(s) pursuant to Section 205 of the Federal Power Act.

This unique arrangement is attributable to several factors. First, SPP was determined to develop its RTO proposal in conjunction with the affected state regulators from the very inception of their decision to file for RTO status. Second and relatedly, we had the distinct advantage of determining how to constitute our RSC at precisely the same time as the new SPP bylaws, tariffs, membership agreement, and RTO application were being developed. Third, we had the advantage of working from the blueprint provided by FERC in its "White Paper", which was issued during the same timeframe as the SPP decision to reconstitute itself as an RTO.

Absence of Subdelegation or FERC Invasion of Public Utility Governance

Section 7.2 causes no subdelegation. Subdelegation questions arise when the federal agency has delegated its decisionmaking to another entity, such as a state commission. Delegation occurs when the federal agency has committed to adopt as its own decision the decision of the delegatee. That situation does not exist here. Here, FERC retains complete authority to determine whether the filing made by the SPP satisfies the FPA. The SPP-RSC arrangement addresses only the process by which a proposal is filed with FERC; the arrangement does not affect, or even address, what FERC does with the proposal once it is filed. There is no subdelegation issue. Nor is there anything suggesting that FERC will direct the internal governance of the SPP.

The innovation here is that within the issue categories listed in Section 7.2, SPP has committed to file at FERC any methodology decided by the RSC (along with any filing the SPP wishes to make itself). SPP has agreed to this modification of its filing rights under the FPA to assure that RSC positions receive the Commission's official attention. The Commission of course retains its full authority to dispose of these filings. There is no subdelegation and no FERC involvement in SPP governance.

We hope the foregoing explanation eliminates any misunderstanding that may have caused the citation to the inapposite opinions in *U.S. Telecomm.* and *Calif. Indep. Sys. Operator*.

Moving to Make Markets Work

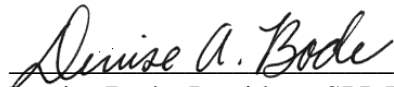
We wish to express our appreciation for that portion of the July 2 Order on Compliance Filing recognizing the important directional role that the Regional State Committee is playing and will continue to play on key issues like transmission cost allocation, rate design, and economic analysis of future market development. We at the RSC will continue to work hard to demonstrate to all stakeholders and market participants, as well as to our own state constituencies, that we are committed to the thoughtful and prudent development of a more robust wholesale generation market and incremental transmission capacity, as is appropriate and cost-beneficial to our region. If we are successful in achieving those objectives, in collaboration with the SPP RTO, its members and stakeholders, and the FERC, the results should benefit each of our individual states' economies as well as provide benefits for individual ratepayers in terms of generation diversity, enhanced reliability, and potential net reduction in generation cost.

We believe we have found a lawful mechanism to be able to provide the strong state leadership role and "regional regulatory" supervision that an RTO will require, if we are all going to be successful in developing a mechanism to achieve the cooperative federalism that is envisioned by the Federal Power Act. We also believe that, once demonstrated to others, our particular RSC structure and role will become the model that others will want to adopt, as many state regulators and stakeholders across the country search for a way to reach the ever-elusive "common ground" on regional transmission issues. We believe that the RSC is the single-most likely tool to be able to effectively, and efficiently, bridge the regulatory divide that currently exists between the FERC and

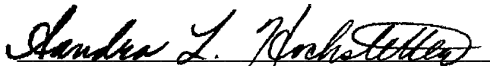
the states on electric transmission issues.

Accordingly, if we do not collectively do all that we can to ensure the success of the RSC structure that is adopted by each region, we will only perpetuate and exacerbate the level of uncertainty that has been asserted by some as the strongest impediment to solving the current problems in the electricity industry. We are confident that you share our resolve in remedying that uncertainty, and we look forward to working with you in the future in the cooperative manner outlined in the SPP RTO and SPP RSC corporate formation documents.

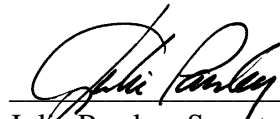
Sincerely,



Denise Bode, President, SPP Regional State Committee
Chairman, Oklahoma Corporation Commission



Sandra Hochstetter, Vice-President, SPP Regional State Committee
Chairman, Arkansas Public Service Commission



Julie Parsley, Secretary, SPP Regional State Committee
Commissioner, Public Utility Commission of Texas



Steve Gaw, Member, SPP Regional State Committee
Chairman, Missouri Public Service Commission

/s/ _____

David King, Member, SPP Regional State Committee
Commissioner, New Mexico Public Regulation Commission

cc: Ms. Magalie R. Salas, Secretary of the Commission
Official Service List