

109 FERC ¶ 61,010  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. RT04-1-001  
ER04-48-001

ORDER ON REHEARING

(Issued October 1, 2004)

1. By order issued February 10, 2004,<sup>1</sup> the Commission conditionally granted Southwest Power Pool, Inc.'s (SPP) application for recognition as a Regional Transmission Organization (RTO). Pursuant to Order Nos. 2000 and 2000-A,<sup>2</sup> the Commission directed SPP to fulfill several requirements prior to being recognized as an RTO. In this order, we address requests for rehearing of the February 10 Order. As discussed below, we will grant in part, and deny in part, the rehearing requests and direct a further compliance filing.

2. Our action here encourages RTO participation and ensures the establishment of efficient and reliable markets throughout the region, while preventing undue discrimination or preference in the provision of electric transmission services.

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<sup>1</sup> Southwest Power Pool, 106 FERC ¶ 61,110 (2004) (February 10 Order).

<sup>2</sup> Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *affirmed sub nom.* Public Utility District No. 1 of Snohomish County, Washington, *et al.* v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

## **Background**

### **Description of SPP**

3. SPP is an Arkansas non-profit corporation, serving more than four million customers in a 250,000 square mile area, covering all or part of the States of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas.<sup>3</sup> SPP's membership includes 14 investor-owned utilities, six municipal systems, eight generation and transmission cooperatives, three state authorities, one federal power marketing agency, two independent power producers, and 16 power marketers.<sup>4</sup>

4. SPP became a regional reliability council in 1968 and has administered a regional open access transmission service tariff (OATT) for its member Transmission Owners (TOs) since 1998.

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<sup>3</sup> Exhibit No. SPP-1 (Testimony of Nicholas A. Brown) and Attachment C (SPP Regional Map).

<sup>4</sup> *Id.* SPP existing members are: American Electric Power Company-Public Service Company of Oklahoma and Southwestern Electric Power Company; Aquila, Inc. - Missouri Public Service Company, St. Joseph Light & Power Company, and WestPlains Energy; Cleco Power LLC; Entergy Services, Inc.; Exelon Power Team; Kansas City Power & Light Company; Oklahoma Gas and Electric Services; Southwestern Public Service Company; The Empire District Electric Company; Westar Energy-Western Resources, Inc. and Kansas Gas & Electric Company; Arkansas Electric Cooperative Corporation; East Texas Electric Cooperative, Inc.; Kansas Electric Power Cooperative, Inc.; Midwest Energy, Inc.; Northeast Texas Electric Cooperative; Sunflower Electric Power Corporation; Tex-La Cooperative of Texas, Inc.; Western Farmers Electric Cooperative; City of Clarksdale, Mississippi; City of Lafayette, Louisiana; City Power & Light, Independence, Missouri; City Utilities, Springfield, Missouri; Public Service Commission of Yazoo City, Mississippi; The Board of Public Utilities, Kansas City, Kansas; Grand River Dam Authority; Louisiana Energy & Power Authority; Oklahoma Municipal Power Authority; Southwestern Power Administration; Calpine Energy Services, L.P.; InterGen Services, Inc.; Tenaska Power Services Company; Aquila Power - Aquila, Inc.; Cargill-Alliant, LLC; Cinergy Corporation; Constellation Power Source; Coral Power LLC; Duke Energy Trading & Marketing; Dynegy Marketing & Trade; Edison Mission Marketing & Trading, Inc.; El Paso Merchant Energy, L.P.; Mirant Americas Energy Marketing, L.P.; NRG Power Marketing, Inc.; TXU Energy Trading Company; and Williams Energy Marketing & Trading Company.

5. On October 15, 2003, SPP submitted the RTO application at issue in this proceeding. SPP's filing included, among other things, proposed revisions to its Bylaws and Membership Agreement, as well as changes to its OATT.

### **February 10 Order**

6. In the February 10 Order, we recognized that SPP had made significant steps toward satisfying all of the prerequisites for qualification as an RTO under Order Nos. 2000 and 2000-A. However, we found that SPP must make additional tariff, organizational and other changes prior to receiving final RTO authorization. As discussed more fully below, we directed SPP to: (1) implement its independent Board and modify its governance structure; (2) expand the coverage of its tariff to assure that SPP is the sole transmission provider; (3) obtain clear and sufficient authority to exercise day-to-day operational control over the appropriate transmission facilities within its footprint; (4) put in place an independent market monitor to monitor the competitiveness and efficiency of the market; (5) obtain clear and precise authority to independently and solely determine which projects to include in the regional transmission plan, and prioritize those projects; and (6) file with the Commission a seams agreement with the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). We also directed SPP to file, pursuant to section 205 of the Federal Power Act (FPA),<sup>5</sup> its revised Bylaws and revised Membership Agreement, as modified in accordance with the February 10 Order. We further directed SPP to file its operating budget, for informational purposes, within 90 days of the date it obtains operational authority over transmission facilities within its footprint.

### **Requests for Rehearing**

7. The following parties timely filed requests for rehearing of the February 10 Order<sup>6</sup>: TDU Intervenors<sup>7</sup>; State Regulators<sup>8</sup>; Westar Energy, Inc. and Kansas Gas and Electric

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<sup>5</sup> 16 U.S.C. § 824d (2000).

<sup>6</sup> All entities that filed rehearing requests will be referred to collectively as the "parties."

<sup>7</sup> TDU Intervenors include: the Missouri Joint Municipal Electric Utility Commission, the Oklahoma Municipal Power Authority, and the West Texas Municipal Power Agency.

<sup>8</sup> State Regulators include: the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the New Mexico Attorney General. The New

Company (collectively, Westar); East Texas Cooperatives<sup>9</sup>; Kansas Corporation Commission (Kansas Commission); Golden Spread Electric Cooperative, Inc. (Golden Spread); American Electric Power System (AEP West)<sup>10</sup>; Kansas City Power & Light Company (KCPL); Southwestern Public Service Company (Southwestern Public Service); and the Oklahoma Corporation Commission (Oklahoma Commission). The Missouri Public Service Commission (Missouri Commission) filed an untimely rehearing request.

8. Generally, the parties are pleased with the Commission's decision to conditionally grant RTO status to SPP,<sup>11</sup> but they dispute aspects of the February 10 Order. The rehearing arguments are addressed, by issue, below.

### **Procedural Matters**

9. The Missouri Commission filed its request for rehearing one day out of time. Section 313(a) of the FPA<sup>12</sup> requires all requests for rehearing to be filed within 30 days, thus, we are without jurisdiction to consider the Missouri Commission's rehearing request. Nevertheless, the Commission will address the Missouri Commission's arguments, to the extent those arguments are reflected in timely rehearing requests.

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Mexico Attorney General separately filed additional comments in support of its request for rehearing.

<sup>9</sup> East Texas Cooperatives include: East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

<sup>10</sup> AEP West includes: Southwestern Electric Power Company and Public Service Company of Oklahoma, both of which are operating companies of AEP.

<sup>11</sup> *See, e.g.*, TDU Intervenors at 1; Southwestern Public Service at 1; State Regulators at 1. Indeed, Southwestern Public Service states on rehearing that it has decided to pursue participation in SPP as a result of certain conditions the Commission directed in the February 10 Order.

<sup>12</sup> 16 U.S.C. § 8251.

10. Further, on February 27, 2004, Crescent Moon Group<sup>13</sup> filed a motion for late intervention, and, on May 24, 2004, Louisiana Energy and Power Authority and the Municipal Energy Agency of Mississippi (collectively, LEPA) jointly filed a motion to late intervention. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. Crescent Moon Group offers no reason for failing to intervene in a timely manner; LEPA, which is a member of SPP, states that it failed to intervene earlier because of uncertainty regarding whether Entergy might become a participant in SPP. We find that Crescent Moon Group and LEPA have failed to satisfy the higher burden of justifying late intervention, and, accordingly, we will reject their motions.<sup>14</sup>

### **Cost Benefit Analysis Prior to Granting RTO Status**

11. As an initial matter, the New Mexico Attorney General asserts that the Commission may not allow the SPP RTO to proceed into Day 1 without a cost/benefit analysis showing that the RTO will benefit users of SPP's system and result in just and reasonable rates. The New Mexico Attorney General argues that, because the Commission did not require a cost/benefit analysis prior to conditionally granting RTO status to SPP, the Commission violated the FPA.<sup>15</sup>

### **Discussion**

12. We will deny rehearing on this issue. The Commission promulgated Order Nos. 2000 and 2000-A pursuant to our authority under the FPA,<sup>16</sup> and those orders do not require a cost/benefit analysis demonstrating that a specific RTO proposal will result in just and reasonable rates, prior to RTO approval. Rather, as discussed in Order No. 2000,

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<sup>13</sup> Crescent Moon Group consists of: Basin Electric Power Cooperative, Heartland Consumers Power District, Minnkota Power Cooperative, Inc., NorthWestern Energy, Sunflower Electric Power Corporation, and the Upper Great Plains Region of the Western Area Power Administration.

<sup>14</sup> We note that in our order addressing SPP's compliance filing to the February 10 Order, we grant LEPA's motion for intervention, since it is timely with regard to SPP's compliance filing.

<sup>15</sup> New Mexico Attorney General at 3-4.

<sup>16</sup> See Order No. 2000 at 30,993 and 31,039.

the Commission believes that RTOs in general offer numerous benefits that will help ensure just and reasonable rates for jurisdictional services.<sup>17</sup>

13. Moreover, with specific regard to this case, we have accepted SPP's commitment to conduct a cost/benefit analysis prior to implementation of Phases 2 and 3 of its market development plan.<sup>18</sup> We believe that this approach will achieve the same goals as conducting one cost/benefit analysis prior to granting SPP RTO status, by ensuring that the expenditure of funds for each phase will result in particular benefits to customers in SPP's region.

14. In addition, we note that, on March 19, 2004, the Commission held a technical conference (March 19 Outreach Meeting) that addressed issues relevant to SPP's RTO proposal, including whether SPP must perform a cost/benefit analysis prior to achieving RTO status. At the March 19 Outreach Meeting, representatives from several state commissions asserted that SPP facilities within their respective jurisdictions must apply for state approval to join an RTO. The state commissions further indicated that they might require a cost/benefit analysis demonstrating the benefits, or non-detrimental effects, of RTO formation. However, they also indicated that these state reviews could proceed in conjunction with Commission review.<sup>19</sup>

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<sup>17</sup> *See id.* at 30,993 and 31,017.

<sup>18</sup> As detailed in the February 10 Order, SPP's proposed market development plan included three phases: (1) imbalance market and market monitoring, which, in turn, will be introduced in three increments, to be fully implemented in November 2004; (2) financial transmission rights for market-based congestion management, to be implemented in November 2005; and (3) regional ancillary service mechanisms, to be implemented in Fall 2005.

<sup>19</sup> *See* Transcript of March 19 Outreach Meeting in Docket Nos. RT04-1-000, *et al.*, at 140-155.

## **RTO Characteristics**

### **Scope and Configuration**

#### **RTO Membership Withdrawal Provisions**

##### **February 10 Order**

15. In the February 10 Order, the Commission conditionally approved the revised Membership Agreement and directed SPP to file it pursuant to section 205 of the FPA.<sup>20</sup> With regard to the withdrawal provisions, we noted that, under section 4.1.1 of both the then-current and revised Membership Agreement, a TO may withdraw from SPP only upon providing 12 months' notice, pursuant to section 205 of the FPA, and that, "with regard to any withdrawal by a FERC public utility, the withdrawal shall not become effective until FERC has accepted the notice of withdrawal or otherwise allows such withdrawal."<sup>21</sup> We interpreted this provision to mean that no public utility may withdraw without an affirmative finding by the Commission that such a withdrawal is just and reasonable. We further emphasized our support for continued membership in the SPP RTO, which we believe, with the additional conditions imposed by the February 10 Order, will result in a viable functioning RTO.<sup>22</sup>

##### **Requests for Rehearing**

16. On rehearing, some parties argue that, in approving the proposed withdrawal provisions, the Commission did not adequately ensure SPP's continued viability as an RTO. TDU Intervenors assert that TOs should be required to remain in the SPP RTO for at least five years, so that they cannot use the threat of departure to make certain demands.<sup>23</sup> Golden Spread argues that, if a TO's notice of intent to withdraw is contested, the Commission should immediately issue a "show cause" order requiring the TO to demonstrate why any authority previously granted to it to sell generation or ancillary services at market-based rates should not be revoked.<sup>24</sup>

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<sup>20</sup> February 10 Order at P 65-66.

<sup>21</sup> 16 U.S.C. § 824d (2000).

<sup>22</sup> February 10 Order at P 66.

<sup>23</sup> TDU Intervenors maintain that AEP's membership is of greatest concern, to the extent that AEP West's facilities are essential to the connectivity of the rest of SPP.

<sup>24</sup> Golden Spread at 4-5.

17. On the other hand, other parties argue that, by conditionally approving the revised Membership Agreement, including the withdrawal provisions, the Commission exceeded, or could be perceived as exceeding, its jurisdiction. The Kansas Commission and State Regulators argue that the Commission usurped state authority to determine which utilities within their respective boundaries may join an RTO. These state commissions, as well as Southwestern Public Service, AEP West, and KCPL, argue that the withdrawal provisions convert, or can be viewed as converting, current SPP members into involuntary RTO participants, irrespective of whether those members obtained prior state approvals to participate in the RTO.<sup>25</sup> This effect, they argue, is inconsistent with the spirit of Order No. 2000, which promotes voluntary RTO formation, and violates judicial precedent concerning the limits of Commission jurisdiction.<sup>26</sup> The New Mexico Attorney General argues that, while the Commission might have authority to determine whether the entry and exit rights provided by an RTO are just and reasonable, the Commission may not prohibit a utility from leaving an RTO. Notwithstanding the Commission's conditional approval of the revised Membership Agreement and SPP's RTO proposal in general, Southwestern Public Service and AEP West seek Commission clarification that state commissions will be given adequate opportunity to review a utility's RTO membership.

18. State Regulators further argue that, by requiring SPP to modify and file the revised Membership Agreement and Bylaws as a precondition to RTO status, the Commission exceeded its jurisdiction under the FPA.<sup>27</sup> They claim that, while the FPA might express a policy of promoting interconnection, it does not empower the Commission to regulate the terms of individual interconnection agreements.<sup>28</sup>

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<sup>25</sup> Southwestern Public Service further argues that the SPP Board of Directors voted, without member approval, to reconstitute SPP as an RTO.

<sup>26</sup> These parties cite *Atlantic City v. FERC*, 295 F.3d 1 (2002).

<sup>27</sup> State Regulators at P 22. State Regulators contend that the Commission directed SPP to modify the agreement to state that "no public utility may withdraw without an affirmative finding by this Commission and a finding that such a withdrawal is just and reasonable," and that the Commission may not mandate the terms of the Membership Agreement in such a manner.

<sup>28</sup> *See, e.g., City of Huntingburg v. Federal Power Comm'n*, 498 F.2d 778, 784 (D.C. Cir. 1974).

19. Moreover, State Regulators argue that, under section 5.1.b of the revised Membership Agreement, Commission approval for withdrawal is not required.<sup>29</sup> They maintain that any SPP member has an absolute right to withdraw without obtaining Commission authorization, if the Commission modifies the Membership Agreement, as it did in the February 10 Order.<sup>30</sup>

### Discussion

20. We will deny rehearing on our ruling that no public utility may withdraw from SPP membership without Commission approval that such withdrawal is just and reasonable. Although State Regulators argue that, under section 5.1.b of the Membership Agreement, Commission approval for withdrawal is not required, we disagree. We note that no signatories to the Membership Agreement or SPP have sought rehearing contending that section 5.1.b applies to the instant facts. As we pointed out in the February 10 Order, SPP's Membership Agreement and the duties and obligations of its members under that agreement are subject to our jurisdiction, and as such, we can direct SPP and its members to comply with certain requirements.<sup>31</sup>

21. In making our determination in the February 10 Order, we reviewed the Membership Agreement in its entirety. Our decision in the February 10 Order is based on section 4.1.1 which requires TOs to provide notice of withdrawal at least 12 months prior to the intended date of withdrawal and that Commission-approval is required to effectuate such withdrawal.<sup>32</sup> This requirement is not dependent on, qualified by, or

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<sup>29</sup> State Regulators state the Commission's position is inconsistent with the express terms of the Membership Agreement, which allow a member to withdraw in these circumstances without seeking prior approval from the Commission. Section 5.1.b reads as follows:

In the event of any order or decision by FERC or by a court modifying this Agreement of the OATT submitted as part of seeking FERC acceptance or approval, that in the judgment of Member adversely affects it, then Member, at its sole discretion, may withdraw from this Agreement by providing written notice to the President of SPP no later than thirty days after such order or decision without receiving any FERC authorization.

<sup>30</sup> State Regulators at 20-21.

<sup>31</sup> February 10 Order at P 64.

<sup>32</sup> See Exhibit No. SPP-4 (SPP's Revised Membership Agreement).

conditioned by reference to any other section of the Agreement, including section 5.1.b to which the State Regulators refer.

22. We have also reviewed section 5.1 of the Membership Agreement, titled “Regulatory and Other Authorities,” which states that its subsections (5.1.a and 5.1.b) address “a Members rights and obligations in the event regulatory and other approvals or acceptances are not obtained or changes are required” with respect to the initial effectiveness of the agreement. Section 5.1.a provides for Member’s rights in such circumstances by stating, in part, “[i]n the event that FERC disapproves or refuses to accept this Agreement or the changes to the OATT developed together with this Agreement, then this Agreement shall cease to be effective . . . .” Section 5.1.b also addresses certain Member rights at the time prior to the initial effectiveness of the Agreement, by stating, in part, “in the event of any order or decision by FERC or a court modifying this Agreement or the OATT submitted as part of the initial filing seeking FERC acceptance or approval, that in the judgment of Member adversely affects it, then Member . . . may withdraw from this Agreement . . . .” In this case, we have not approved or refused to accept the SPP Membership Agreement; we previously accepted the Membership Agreement as an “initial filing,” effective January 1, 2000. Accordingly, section 5.1 is not applicable to the instant case.<sup>33</sup>

23. Nor have we required any changes to the Agreement pursuant to section 206 of the FPA. Here, the Commission has reviewed a voluntary filing pursuant to section 205 of the FPA, where SPP sought to be designated as an RTO, and the Commission, rather than “issuing an order or decision modifying the Membership Agreement,” issued an order setting forth the requirements with which SPP must comply in order to be considered an RTO. We did not order any modifications, but found that, for SPP to achieve RTO status, it would need to undertake such modifications. We have simply directed SPP to, among other things, file its Membership Agreement, pursuant to section 205 of the FPA, if it chooses to proceed in becoming an RTO. We have not required SPP to revise its current Membership Agreement in order to maintain *status quo* with the Commission.

24. Section 4.1.1 of the Membership Agreement refers to the withdrawal provisions for SPP members. Captioned “Withdrawal for Members,” section 4.1.1 provides guidelines for members to withdraw, specifically with respect to TOs, and states that “withdrawal shall not become effective until FERC has accepted the notice of withdrawal or otherwise allowed such withdrawal.”

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<sup>33</sup> See Southwest Power Pool, Inc., 89 FERC ¶ 61,895 (1999).

25. A fundamental tenet of contract interpretation is that a contract provision should be interpreted, where possible, as consistent with the contract as a whole and that contract must be interpreted as a whole.<sup>34</sup> Our ruling conforms to the generally accepted canons of contract interpretation; which require that: (1) a contract should be interpreted as an integrated whole; (2) provisions of a contract should normally not be interpreted as being in conflict; and (3) a more particular and specific clause of contract should prevail over a more general clause.<sup>35</sup>

26. Here section 4.1.1 refers to the withdrawal provisions for SPP members from SPP membership. Section 5.1.b refers only to specific circumstances that were applicable before the Commission first accepted the Membership Agreement. In light of this fact, there is no merit to arguments that our ruling is inconsistent with the express terms of the Membership Agreement.

27. Further, the Commission did not usurp state authority by interpreting the Membership Agreement it previously accepted in 1999. That agreement set forth the rights and obligations of the parties with respect to FERC-jurisdictional matters generally relating to transmission. No state contended that its terms provided the Commission with authority that was properly held by states, and we accepted it without modification. Section 4.1.1 of the Membership Agreement provides, *inter alia*, that a TO's withdrawal "shall not become effective until FERC has accepted the notice of withdrawal or otherwise allowed such withdrawal . . . ." Further, under section 8.12, members have agreed to be bound to amendments approved by the Board subject to rights to challenge any amendments at FERC and to exercise any withdrawal rights it possesses . . . ." In this proceeding, SPP has asked that we consider its request for RTO status in the context of its jurisdictional Membership Agreement, including proposed revisions thereto. Our

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<sup>34</sup> See generally *Clyburn v. 1411 K St. Ltd. Partnership*, 628 A.2d 1015, 1018 (D.C. 1993); *BWX Elecs., Inc. v. Control Data Corp.*, 289 U.S. App. D.C. 114, 929 F.2d 707, 711 (D.C. Cir. 1991) ("It is a fundamental tenet of contract interpretation that a contract provision should be interpreted, where possible, as consistent with the contract as a whole.").

<sup>35</sup> See, e.g., *Restatement (Second) of Contracts* § 203(a), comment b (1979)(contract should be interpreted as a whole, with no part assumed to be superfluous); *Brinderson-Newberg Joint Venture v. Pacific Erectors, Inc.*, 971 F.2d 272, 278-79 (9th Cir. 1992) (contract should be interpreted to give meaning to each of its provisions); *Hawthorne Land Company v. U.S.*, 309 F.3d 888 (2002); *Cruden v. Bank of New York*, 957 F.2d 961, 976 (2d Cir. 1992) ("The entire contract must be considered, and all parts of it reconciled, if possible, in order to avoid an inconsistency.").

consideration under such facts, of whether we should grant RTO status, relates to matters that are jurisdictional to the Commission and does not intrude upon any authority properly exercised by the states.

28. Furthermore, as we stated in our recent Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements under the Federal Power Act,<sup>36</sup> public utilities making section 205 filings will continue to be required to demonstrate that they meet the principles of Order No. 2000. In undertaking our review of such section 205 filings, the Commission will consider whether all of the elements contained in the filed arrangements meet the principles of Order No. 2000 and are just and reasonable pursuant to section 205 of the FPA. Further, our consideration will extend to matters such as whether, at the outset of an RTO, member entrance and exit rights are just, reasonable and not unduly discriminatory or preferential, as well as whether a specific proposed withdrawal of a participant is consistent with the FPA. Thus, it is essential that the Membership Agreement provide that no jurisdictional transmission owner may exit SPP without a Commission determination that it is just and reasonable for it to do so.

### **Joint and Common Market**

#### **February 10 Order**

29. In the February 10 Order, the Commission found that SPP conditionally satisfied Order No. 2000's scope requirement. We found that, with its present membership, SPP serves a multi-state region of sufficient size to maintain reliability, effectively perform its required functions, and support efficient, non-discriminatory power markets.<sup>37</sup> Nevertheless, to address concerns about the adequacy of SPP's scope, we required SPP to file a seams agreement with the Midwest ISO and participate in the Joint and Common Market with the Midwest ISO and PJM Interconnection, L.L.C. (PJM).<sup>38</sup>

#### **Requests for Rehearing**

30. AEP West states that SPP's participation in a Joint and Common Market with the Midwest ISO and PJM will require full implementation of Phase 2 (including market-based congestion management with financial transmission rights) and Phase 3 (including

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<sup>36</sup> 104 FERC ¶ 61,248 at P 3 (2003).

<sup>37</sup> February 10 Order at P 62.

<sup>38</sup> *Id.* at P 64.

bid-based ancillary services markets) of SPP's market development plan. However, according to AEP West, SPP will proceed with these stages only if a cost/benefit analysis demonstrates positive net benefits. AEP West seeks Commission clarification that SPP's required participation in the Joint and Common Market should not depend upon implementation of Phases 2 and 3 of its market development plan.<sup>39</sup>

31. State Regulators argue that the Commission exceeded its authority in requiring SPP to participate in a Joint and Common Market with the Midwest ISO and PJM. They contend that this requirement is tantamount to ordering SPP utilities into an RTO that includes the Midwest ISO and PJM regions and preempts state review of such matters.<sup>40</sup> They further contend that this requirement effectively commits SPP to adopt market systems and congestion management schemes that are compatible with those of the Midwest ISO and PJM, but which might not be appropriate for consumers in SPP's footprint.<sup>41</sup> Moreover, State Regulators maintain that there is no evidence that such participation would provide any net benefits to the customers of RTO members.<sup>42</sup>

### Discussion

32. We will deny rehearing on issues concerning the Joint and Common Market with the Midwest ISO and PJM. SPP's participation in the Joint and Common Market is necessary to alleviate balkanized transmission control and additional seams costs in the region. In response to AEP West's concerns, we find that implementation of the Joint and Common Market is not dependent upon the implementation of Phases 2 and 3 of SPP's market plan. As discussed herein, a cost/benefit analysis will be performed in Phase 2 to determine whether more market functions and the removal of barriers to entry are beneficial to SPP. If the cost/benefit analysis studies in Phase 2 markets find that

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<sup>39</sup> AEP West at 13-14.

<sup>40</sup> They cite section 202(a) of the FPA as requiring the Commission to "afford each such State commission reasonable opportunity to present its views" and "to receive and consider such views and recommendations." 16 U.S.C. § 824a(a).

<sup>41</sup> For example, they argue that SPP could be required to adopt a Locational Marginal Pricing (LMP) energy market similar to that utilized by PJM, without a showing that LMP is an appropriate method of congestion management in the SPP region.

<sup>42</sup> State Regulators at 2, 17-20.

there are no benefits to customers, SPP will perform in market (*i.e.* the Midwest ISO's Day-2 market) to non-market (*i.e.*, SPP's current status without organized energy markets) posture in the Joint and Common Market.

33. With respect to the State Regulators arguments, we did not preempt state review in directing SPP to participate in the Joint and Common Market. As stated above, there will be a cost-benefit test prior to SPP's decision to proceed to a further phase of market development. We expect the states to be actively involved in this analysis. Further, we emphasize that our orders in this proceeding set forth the standards with which SPP must comply in order to achieve RTO status, but we have not required SPP to become an RTO. SPP is voluntarily seeking RTO status, and as an RTO, SPP must participate in the Joint and Common Market with the Midwest ISO and PJM.<sup>43</sup>

## **Operational Authority**

### **Consolidation of Control Areas**

#### **February 10 Order**

34. In the February 10 Order, the Commission acknowledged concerns regarding SPP's operation of multiple, *i.e.*, 18 control areas. However, rather than ordering immediate consolidation, we directed SPP to study the feasibility of reducing the control areas within its footprint and provide the Commission with the outcome of its study, within one year of the February 10 Order.<sup>44</sup>

#### **Request for Rehearing**

35. On rehearing, TDU Intervenors express concern that the study will be unduly influenced by the SPP TOs that will be affected by consolidation of control areas. Accordingly, TDU Intervenors seek a Commission requirement that the study be conducted by an independent entity that answers directly to the Commission, rather than SPP.

36. In addition, TDU Intervenors state that the Commission should instruct SPP to require control-area operator TOs to abide by the same terms and conditions that affect other customers under the SPP RTO OATT.<sup>45</sup>

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<sup>43</sup> February 10 Order at P 63.

<sup>44</sup> *Id.* at P 81.

<sup>45</sup> TDU Intervenors at 4.

### **Discussion**

37. We will deny rehearing on this issue. We are satisfied that SPP, with its independent Board, has sufficient independence to study the feasibility of reducing the control areas within its footprint.<sup>46</sup> While we recognize that SPP TOs will be affected by consolidation and, thus, should have interest in the study, we expect that SPP's comprehensive study should reflect input from other stakeholders, including TDU Intervenors. Moreover, the study will be filed, subject to notice and comment procedures, and will inform further Commission action in this regard.

38. We agree that TO control area operators should be subject to the same terms and conditions as other customers under SPP's OATT. However, we will not require a specific amendment to SPP's OATT at this time.

### **Short Term Reliability**

#### **February 10 Order**

39. In the February 10 Order, the Commission found that SPP satisfied Order No. 2000 requirements for short-term reliability. We determined that SPP's revised Bylaws, revised Membership Agreement, and OATT confirm that SPP will have exclusive authority for maintaining the short-term reliability of its operating grid. In response to the New Mexico Attorney General's concerns about SPP serving as both the RTO and reliability organization, we stated that we would not require a separation at this time.<sup>47</sup>

#### **Requests for Rehearing**

40. On rehearing, Southwestern Public Service reiterates the New Mexico Attorney General's concerns regarding SPP's function as an RTO and reliability organization. Southwestern Public Service states that it will be difficult for SPP to argue for reliability over market protocols without having independently established standards for guidance.<sup>48</sup>

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<sup>46</sup> We address the matter of SPP's independent Board in our order addressing SPP's compliance filing to the February 10 Order.

<sup>47</sup> February 10 Order at P 89-91.

<sup>48</sup> Southwestern Public Service at 1-2.

## Discussion

41. We will deny rehearing. As stated in the February 10 Order, we will consider issues relevant to SPP performing dual functions as an RTO and reliability organization, but we will not require any separation.<sup>49</sup> We note the recommendation of the U.S.-Canada Power System Outage Task Force Report, which stated, “FERC should not approve the operation of new RTOs or ISOs until they have met minimum functional requirements.”<sup>50</sup> Southwestern Public Service presents no new arguments on rehearing that warrant reversal of the February 10 Order on this issue.

## RTO Functions

### Grandfathered Agreements and Bundled Retail Load

#### February 10 Order

42. In the February 10 Order, we recognized that treatment of grandfathered wholesale agreements (GFAs) and bundled retail load is a difficult issue with wide-ranging implications. We recognized that the issue impacts an RTO’s ability to effectively administer its tariff and operate markets. Accordingly, we encouraged transmission customers with GFAs to convert to direct service under the SPP OATT. However, we did not require such conversion or abrogate any contracts. Rather, consistent with Order No. 2000-A,<sup>51</sup> we required that TOs, on behalf of their entire load, including grandfathered wholesale and bundled retail loads, take service under the non-rate terms and conditions in the SPP OATT as a prerequisite to obtaining RTO status from the Commission.<sup>52</sup> We further required SPP to include in its compliance filing: (1) the magnitude of load that is proposed to be grandfathered wholesale, as well as bundled retail load, and to indicate what percentage of these loads will be to the total load served under SPP’s tariff; and (2) a schedule for converting its GFAs to the SPP OATT, consistent with the guidance provided to the Midwest ISO, to facilitate market operations.<sup>53</sup>

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<sup>49</sup> February 10 Order at P 91.

<sup>50</sup> U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada, Causes and Recommendations at 141 (April 2004).

<sup>51</sup> Order No. 2000-A at 31,375-75.

<sup>52</sup> February 10 Order at P 108.

### Requests for Rehearing

43. On rehearing, State Regulators and KCPL raise jurisdictional concerns with the Commission's directive that bundled retail load be subject to the non-rate terms and conditions of the SPP RTO OATT. State Regulators argue that, in all respects, bundled retail load falls under state jurisdiction. They maintain that the February 10 Order violates the FPA, judicial precedent, and Order No. 2000, all of which, they contend, preserve state authority over retail ratemaking issues, including rates, terms, and conditions. Moreover, according to State Regulators, there has been no factual showing that placing native load under the SPP RTO OATT is necessary to eliminate undue discrimination in the wholesale market. KCPL urges the Commission to address these jurisdictional issues.

44. On the other hand, the Oklahoma Commission applauds the Commission's approach to the treatment of bundled retail load. The Oklahoma Commission contends that the February 10 Order provides a framework for a balanced approach to the formation of the SPP RTO and that, through other policies, the Commission has provided assurance that state authority over bundled retail transmission service is protected.

45. AEP West seeks several adjustments to the Commission's treatment of GFAs. AEP West argues that any incremental costs associated with RTO participation should be borne by customers under the GFAs, not the TOs or their native load customers. AEP West argues that it would be unfair and discriminatory for the Commission to require TOs to bear all administrative costs under the OATT, including costs attributable to loads served under GFAs. In addition, while the Commission required SPP to provide a schedule for converting GFAs to OATT service, AEP West states that long-term GFAs should be converted within a reasonable time frame.

46. East Texas Cooperatives state that the Commission should clarify what it means by "non-rate terms and conditions." They argue that certain tariff provisions could be interpreted as having both rate and non-rate elements. More specifically, East Texas Cooperatives want the energy imbalance market to be considered a non-rate provision in the SPP OATT, to which all load in SPP will be subject. They also seek clarification concerning which rate-related tariff provisions TOs will be exempt from with respect to their grandfathered wholesale and bundled retail loads.

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<sup>53</sup> *Id.* at P 110.

## Discussion

47. With respect to claims that the Commission exceeded its authority, the February 10 Order does not disturb state authority over retail ratemaking matters. The February 10 Order required that the TOs take service under the non-rate terms and conditions of SPP RTO's OATT on behalf of its bundled retail load (and grandfathered wholesale load) to meet the Order No. 2000 requirement that SPP, as an RTO, be the sole provider of transmission service.<sup>54</sup> The February 10 Order encouraged customers with GFAs to convert to direct service under the SPP OATT and required that SPP provide information regarding the magnitude of grandfathered and bundled retail load but preserved the rates, terms and conditions of GFAs. The Commission did not explicitly address the specific rates, terms and conditions of bundled retail service arrangements.

48. With respect to AEP West's arguments, we believe, as provided in Opinion No. 453, and related orders, that all load should be assessed SPP RTO operating costs. With respect to GFAs, AEP West and other TOs may seek recovery of such costs that it is assessed for GFA load, to the extent permitted under the respective GFAs. Moreover, AEP West and other TOs may file with their respective states to seek recovery of SPP RTO operating costs assessed to bundled retail load.

49. Regarding East Texas Cooperative's specific request that the energy imbalance market be considered a non-rate provision, we will not impose that specific requirement at this time. The Commission will consider this issue in the context of its review of SPP's filing to implement its energy imbalance market.<sup>55</sup>

## Compensation for Customer-Owned Transmission Facilities

### February 10 Order

50. In the February 10 Order, the Commission addressed concerns regarding the inclusion of more than one TO's facilities under SPP's control within a single transmission-pricing zone, as well as distribution of revenues by SPP to such TOs. We recognized that SPP's resolution of these issues will take time. We referred parties to

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<sup>54</sup> February 10 Order at P 108.

<sup>55</sup> In this regard, we expect SPP to file its energy imbalance market proposal well in advance of the minimum 60 day notice requirement in order to provide sufficient time for review and consideration. This additional time will help avoid a delay in the imbalance market implementation if changes to its proposal are required.

relevant Commission precedent, including *Wolverine*.<sup>56</sup> We further directed SPP to submit a timetable for resolving such concerns.

### Requests for Rehearing

51. On rehearing, East Texas Cooperatives urge the Commission to adopt a single definition of transmission and an equitable methodology for allocating transmission revenues among multiple TOs located in a single pricing zone. They contend that the Midwest ISO Agreement provides an effective mechanism for allowing multiple owners in a transmission zone to agree upon an equitable distribution of zonal revenues<sup>57</sup> and that a similar mechanism is needed in the SPP OATT or revised Membership Agreement.

### Discussion

52. We will deny East Texas Cooperatives' rehearing request on this issue. We note that East Texas Cooperatives acknowledge that SPP stakeholders are currently in the process of developing a single definition of transmission and an equitable revenue distribution methodology. As we stated in the February 10 Order, resolution of these issues will take time. Therefore, we will not interrupt SPP's process.

53. However, as we note in our order addressing SPP's compliance filing to the February 10 Order, SPP failed to submit a timetable for resolving issues regarding, among other things, inclusion of more than one TO's facilities under SPP's control within a single transmission-pricing zone, as well as distribution of revenues by SPP to such TOs. In that order, we redirect SPP to submit the timetable, including a timeframe for resolving the concerns regarding compensation for customer-owned transmission facilities.

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<sup>56</sup> Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,004 at 61,010 (2002), *reh'g pending*. In that case, we stated that participation of new TOs in RTOs would be accommodated by providing appropriate compensation for their transmission facilities, whether by establishing such entities as separate pricing zones or incorporating such entities into existing pricing zones.

<sup>57</sup> They cite Midwest ISO Agreement, Appendix C, Section III.A.

## **Congestion Management**

### **February 10 Order**

54. In the February 10 Order, the Commission emphasized Order No. 2000's requirement that an RTO ensure the development and operation of market mechanisms to manage transmission congestion.<sup>58</sup> In accordance with Order No. 2000, we accepted SPP's proposed congestion management methodology as a reasonable, Day 1 approach for managing congestion.<sup>59</sup> We further accepted SPP's commitment for phased implementation of its energy imbalance market.<sup>60</sup> We stated that SPP's phased-in congestion management proposal is a work in progress, which we will fully address when the completed proposal is filed under section 205 of the FPA. We strongly urged SPP to resolve issues raised by parties, after the independent Board of Directors is in place. We stated that, if substantial issues remain, we will institute procedures to resolve them.<sup>61</sup>

### **Requests for Rehearing**

55. On rehearing, AEP West seeks Commission clarification that funding and implementation of Phases 2 and 3 of SPP's market development plan must be supported by a positive demonstration of net benefits. AEP West contends that the Arkansas and Missouri Commissions will not allow utilities in their states to recover the costs of any RTO program or participation unless the utilities receive state approvals, after proving the need for and cost-effectiveness of such a program.

56. The New Mexico Attorney General argues that, to the extent the February 10 Order requires market-based rates, the order violates the FPA's requirement that every utility charge a filed rate. The New Mexico Attorney General specifically cites the

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<sup>58</sup> February 10 Order at P 133 (*citing* Order No. 2000 at 31,126).

<sup>59</sup> As detailed in the February 10 Order at P 116, SPP manages congestion using a market mechanism involving generation redispatch. SPP stated that it receives price quotes from generators that can relieve a constraint and chooses a variety of economic alternatives to customers. SPP uses this mechanism, along with a transmission loading relief process and discounting, to encourage counterflows to relieve congestion.

<sup>60</sup> *See* Order No. 2000 at 31,126.

<sup>61</sup> February 10 Order at P 134.

Commission's discussion of SPP's congestion management scheme as apparently directing market-based rates. The New Mexico Attorney General states that market-based rates are neither definite nor capable of being calculated, as the FPA requires.

57. Golden Spread seeks Commission clarification that SPP may not implement market-based congestion management unless and until SPP's market monitor recommends, and the Commission finds, that the SPP region has adequate transmission infrastructure and sufficiently competitive wholesale generation markets.<sup>62</sup> Otherwise, according to Golden Spread, the use of market-based congestion management mechanisms is likely to increase the ability of generators with local market power to exercise that power, to the detriment of load-serving entities, such as Golden Spread. Golden Spread argues that the result of a cost/benefit analysis prior to implementation of market-based congestion management cannot alone justify implementation of such a mechanism.

58. Golden Spread further argues that the Commission unlawfully delegated to the SPP Board of Directors its responsibility to ensure just and reasonable rates, by advising SPP to resolve issues concerning congestion management.

### **Discussion**

59. We clarify that the February 10 Order does not contemplate any development and implementation of Day 2 markets, beyond the energy imbalance market in development as part of Phase 1 of SPP's plan, without the preparation of cost/benefit analysis. In its initial application, SPP stated that it would not pursue market development, beyond its planned Phase 1 energy imbalance market, without first performing cost/benefit analyses, following its establishment of high-level designs for Phase 2 (Financial Transmission Rights (FTRs) for LMP) and Phase 3 (ancillary services), respectively.

60. The February 10 Order made no specific finding with regard to SPP's plan to perform cost/benefit analyses for Phases 2 and 3 of its market development. However, the February 10 Order provided "[w]e will accept SPP's proposed congestion management methodology as a reasonable initial approach to managing congestion. Moreover, we will accept SPP's commitment for phased implementation of its energy imbalance market. SPP's Day 2 congestion management plan will be addressed when the completed proposal is filed under Section 205 of the FPA." In doing so, the February 10 Order also provided that "[c]onsistent with Order No. 2000, once the new independent Board of Directors is in place, we strongly urge SPP to resolve issues raised by intervenors in their Members Committee process." We directed the Independent Market Monitor (IMM) to perform analyses to support SPP's efforts in reviewing costs and

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<sup>62</sup> Golden Spread at 14.

benefits of developing market functions and removing barriers to entry. We also required the IMM to submit a report to the Commission assessing the efficiency of current redispatch procedures in time to be considered when evaluating SPP's Phase 2 market design.

61. We find the New Mexico Attorney General's concerns to be premature. The February 10 Order did not direct market-based rates or address the rates to be charged in bilateral markets for energy, capacity or ancillary services in SPP's footprint. SPP must file tariff revisions to implement its Day-2 market. SPP has not done so. If SPP makes such a filing in the future, then the New Mexico Attorney General may raise its concerns at that time. Further, to the extent SPP adopts them, sellers in SPP-administered markets will, if necessary, require market based rate authorization. To the extent that the New Mexico Attorney General disputes market-based rates in general, we find such arguments to be beyond the scope of this proceeding.

62. We disagree with Golden Spread that the Commission unlawfully delegated responsibility for ensuring just and reasonable rates to the SPP Board of Directors. This Commission will, pursuant to the FPA, review any SPP filing relating to congestion management systems. Regarding Golden Spread's request that SPP not be allowed to implement market-based congestion management until the Commission finds SPP region has adequate transmission and competitive wholesale markets, we will address this further at the time SPP's Phase 2 design is presented and its regional transmission plan is closer to being finalized.

## **Market Monitoring**

### **February 10 Order**

63. In the February 10 Order, we required SPP to have an IMM in place to oversee the reliable operation of the transmission system, as a prerequisite to obtaining RTO status from the Commission. We directed SPP to provide a market monitoring plan no later than 60 days prior to implementing Phase 3 of its energy imbalance market. We stated that this plan should include appropriate market power mitigation measures to address market power problems in the spot markets and a clear set of rules governing market participant conduct, with the consequences for violations clearly spelled out. We also stated that the plan should include the process that the IMM will use if the IMM finds that the markets are not providing appropriate incentives for investment in needed infrastructure. We also directed SPP's market monitoring plan to include periodic reports prepared by the IMM. We directed these reports to incorporate market metrics to provide

a basis for measuring performance of these markets across RTOs and ISOs, and to compare the performance of the market in each RTO or ISO over time. We stated that metrics will also be developed to provide standard performance information on a monthly basis.<sup>63</sup>

### **Requests for Rehearing**

64. On rehearing, TDU Intervenors seek Commission clarification that SPP's market monitoring plan should cover bilateral markets, in addition to spot markets. If the Commission intended to exclude bilateral markets, then they seek rehearing on that issue. TDU Intervenors state that the SPP region especially demands monitoring of bilateral contracts, because, according to TDU intervenors, bilateral contracts are, and will likely remain, the dominant means of energy trading.

65. Golden Spread argues that the Commission erred by failing to give the IMM adequate enforcement power. Specifically, Golden Spread states that the IMM should have the enforcement power to evaluate the sufficiency of the SPP region's infrastructure and the status of the region's wholesale power markets. Golden Spread also emphasizes that protestors should have an opportunity to comment on SPP's proposed market monitoring plan.

66. Golden Spread and TDU Intervenors argue that the Commission's decision to allow SPP to file its market monitoring plan just prior to implementing Phase 3 of its market development plan is problematic. Golden Spread maintains that SPP's timeline has already begun to slip and that SPP may never reach Phase 3, if its cost/benefit analysis shows that the costs outweigh the benefits. Accordingly, Golden Spread envisions a scenario in which SPP has RTO authority but never decides to move past Phase 1 or Phase 2 of its market development plan. On that point, TDU Intervenors seek Commission clarification that its requirement that SPP's market monitoring plan include energy markets applies to the Phase 1 energy imbalance implementation date.

### **Discussion**

67. We reject as premature arguments that SPP's market monitoring plan should include bilateral markets. SPP has not yet filed its market monitoring plan, so we will not address at this time the issue of whether its plan must include bilateral markets. When SPP files its market monitoring plan, it will be noticed and interested parties will be given an opportunity to comment. We note that, while a market monitor's fundamental responsibility is to monitor the RTO-enabled and administered markets, in Order No. 2000, we found that an RTO must periodically assess how behavior in markets operated

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<sup>63</sup> February 10 Order at P 173.

by others (*e.g.*, bilateral power sales markets and power markets operated by unaffiliated power exchanges) affects RTO operations, and conversely, how RTO operations affect the performance of power markets operated by others.<sup>64</sup> Pursuant to Order No. 2000, in carrying out its market monitoring function, SPP must satisfy this standard, or demonstrate that an alternative proposal is consistent with, or superior to, it.<sup>65</sup>

68. We further reject as premature arguments regarding the scope of the IMM's enforcement powers. These arguments can be raised when SPP files its market monitoring plan. However, again we emphasize that the role of SPP's IMM, and its ability to impose sanctions must be consistent with Commission orders on market behavior rules.<sup>66</sup>

69. We will grant rehearing on the issue of when SPP must file its market monitoring plan, and provide clarification as follows. In the February 10 Order, we indicated that SPP must file its market monitoring plan no later than 60 days prior to Phase 3 of its market implementation plan.<sup>67</sup> In fact, our intent was that SPP file its plan no later than 60 days prior to implementing the third increment of Phase 1, which is to include the offer-based energy imbalance market, along with market monitoring and market power mitigation. Accordingly, we will direct SPP to file its market monitoring plan at least 60 days prior to implementing increment 3 of Phase 1 (the energy imbalance market), which we understand is targeted for November 2005. SPP's market monitoring plan will be noticed and interested parties will have an opportunity to comment.

## Planning and Expansion

### February 10 Order

70. In the February 10 Order, the Commission commended SPP for its efforts in updating its transmission planning and expansion process. We noted that SPP is currently reviewing this function, with an eye toward making the process more open and

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<sup>64</sup> Order No. 2000 at 31,146.

<sup>65</sup> *Id.*

<sup>66</sup> See Investigations of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003), *order on rehearing*, 107 FERC ¶ 61,175 (2004). In addition, the Commission expects to issue a forthcoming policy statement regarding the role of market monitors.

<sup>67</sup> February 10 Order at P 173.

participatory, and is evaluating a two-year planning cycle, with the first year's focus on reliability, and the second year's focus on market needs.<sup>68</sup> We also found promising SPP's ongoing efforts to accommodate third-party investment and participation in transmission upgrade projects.<sup>69</sup> To that end, we required SPP to file specified milestones to ensure that it meets its planning cycle.<sup>70</sup>

71. We also found that Attachment O of SPP's OATT<sup>71</sup> failed to provide SPP with the authority to independently oversee the regional transmission plan and solely determine the priority of transmission planning projects that address reliability and economic needs.<sup>72</sup> We stated that TOs may perform studies and evaluate changes to their transmission systems; however, SPP should provide independent oversight of these studies to ensure that any proposed changes will not impede SPP's ability to provide efficient, reliable, and non-discriminatory transmission service. Accordingly, we directed SPP to file changes to Attachment O of its OATT to reflect SPP's authority to plan transmission and to make it consistent with provisions of the revised Membership Agreement, which address SPP's and the TOs' role in the transmission planning process.<sup>73</sup>

72. We further required SPP to develop and file a transmission cost allocation plan by the end of 2004, addressing pricing treatment for the projects identified in SPP's transmission plan. Regarding generator interconnector proposal, we directed SPP to follow compliance procedures in Docket No. RM02-1-000, Standardization of Generator Interconnection Agreements and Procedures.<sup>74</sup> We noted that compliance with those

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<sup>68</sup> *Id.* at P 185.

<sup>69</sup> *Id.* at P 186.

<sup>70</sup> *Id.* at P 187.

<sup>71</sup> Attachment O sets forth SPP's transmission planning and expansion procedures.

<sup>72</sup> February 10 Order at P 188.

<sup>73</sup> *Id.*

<sup>74</sup> *See* Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,846 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), *reh'g pending*.

procedures will be handled in that case, and our acceptance of SPP's proposal here is subject to the outcome of that proceeding.<sup>75</sup>

### **Requests for Rehearing**

73. State Regulators raise jurisdictional concerns regarding the Commission's determination on planning and expansion issues. They maintain that the states have jurisdiction over planning and reliability, and that the Commission exceeded its authority by finding that SPP must solely determine the priority of transmission planning projects that address reliability and economic needs. They argue that the Commission has no legal authority over planning and reliability for bundled retail load.

74. State Regulators further argue that Order No. 2003 requirements should not be imposed on SPP. They contend that the costs of interconnection and transmission upgrades should be paid by the parties causing those costs to be incurred. On that point, Golden Spread further contends that SPP should be prohibited from using participant funding to pay for transmission system upgrades and expansions.

75. Golden Spread also claims that the February 10 Order fails to satisfactorily address transmission planning and expansion issues. Golden Spread states that the Commission's determination on this issue will do nothing to address what Golden Spread considers to be the central problem, *i.e.*, incumbent TOs, who have the right of eminent domain and therefore ability to build, often benefit financially from maintaining congestion, rather than relieving it.<sup>76</sup> Therefore, Golden Spread argues that SPP's Membership Agreement should be revised to explicitly state that SPP must independently perform all necessary facilities studies for the transmission system, and that SPP has the authority to impose substantial sanctions upon any transmission owner that fails to use best efforts to construct or arrange for the construction of any transmission expansion, addition or upgrade approved by the RTO planning process. Similarly, TDU Intervenors argue that TOs must have an enforceable obligation to build, and that SPP should be required to timely alert the Commission of a TO's refusal to build.

76. In addition, TDU Intervenors argue that the Commission's directive that SPP modify its Attachment O to make it consistent with the revised Membership Agreement is inadequate, because, according to TDU Intervenors, section 2.1.5 of that agreement simply refers back to the planning criteria contained in section 1.0 of Attachment O, and

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<sup>75</sup> February 10 Order at P 189.

<sup>76</sup> Golden Spread at 5.

that section allows TOs to develop their own transmission planning criteria.<sup>77</sup> TDU Intervenor further seek Commission clarification that the SPP RTO must be more than a collector and assembler of information.

77. TDU Intervenor also state that planning and expansion must encompass economic as well as reliability upgrades.<sup>78</sup> In addition, TDU Intervenor argue that the Commission should clarify that all entities, whether investor-owned, government-owned, or consumer-owned, must have a clear right to participate as transmission-owning members of the SPP RTO. They further state that the Commission should require SPP to adopt language in its revised Membership Agreement that is consistent with language utilized by the Midwest ISO, which provides that "Third-parties shall be permitted and are encouraged to participate in the financing, construction and ownership of new transmission facilities as specified in the Midwest ISO Plan."<sup>79</sup>

### Discussion

78. We will deny rehearing requests on this issue. SPP's responsibilities as an RTO in developing a regional transmission plan do not infringe on matters within state jurisdiction, such as siting and certification of new transmission facilities. SPP's RTO responsibilities in this area should be exercised in coordination with the participation and input of states, the SPP RSC, and interested parties.

79. In response to TDU Intervenor's concerns, we do not intend that the SPP RTO merely collect and assemble information. As provided in the February 10 Order, SPP has independent responsibility to develop a regional transmission plan, taking into account reliability and economic needs.

80. With respect to Golden Spread's concerns, we believe SPP, under its independent Board, will exercise sufficient oversight over transmission planning and construction activities to assure a cost effective transmission expansion plan that addresses reliability

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<sup>77</sup> TDU Intervenor contend that those criteria state, among other things, that the individual planning criteria of each TO shall be the basis for determining whether a violation of criteria exists and when a need for new facilities should be considered.

<sup>78</sup> They argue that the Commission's directive that SPP plan efficient transmission service is inadequate. *See* February 10 Order at P 181 n.229.

<sup>79</sup> TDU Intervenor cite Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1, First Revised Sheet No. 112.

and economic needs. Moreover, as stated in Order No. 2000,<sup>80</sup> “nothing in th[at] Rule relieves any public utility of its existing obligation under the pro forma transmission tariff to expand or upgrade its transmission system upon request.” We reiterate this principle here.

81. With respect to concerns about TOs’ transmission planning criteria, we will deny rehearing. While section 1.0 of Attachment O allows TOs to develop their own transmission planning criteria, that criteria “shall, at a minimum, conform to SPP Criteria and NERC Planning Standards.”<sup>81</sup> We find that this provision does not infringe upon SPP’s role in the transmission planning process.

## **Other Issues**

### **Regional State Committees**

#### **February 10 Order**

82. In the February Order, the Commission stated that it fully supported the creation of a Regional State Committee (RSC) within the SPP footprint.<sup>82</sup> We stated that a representative RSC will benefit SPP and market participants by instituting a partnership between this Commission and state commissions, through which regional issues can be addressed. However, we found that the SPP’s and Supporting Commission’s<sup>83</sup> proposal concerning RSCs did not adequately address several important issues.

83. We stated that the RSC should have primary responsibility for determining regional proposals and the transition process in the following areas: (1) whether and to what extent participant funding would be used for transmission enhancements; (2) whether license plate or postage stamp rates will be used for the regional access charge; (3) FTR allocation where a locational price methodology is used; and (4) the transition mechanism to be used to assure that existing firm customers receive FTRs equivalent to

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<sup>80</sup> Order No. 2000 at 31,164.

<sup>81</sup> See SPP OATT Fourth Revised Volume No. 1, First Revised Sheet No. 183.

<sup>82</sup> February 10 Order at P 218.

<sup>83</sup> The Supporting Commissions included the Arkansas, Missouri and Oklahoma. Commissions.

the customers' existing firm rights. We stated that, if the RSC reaches a decision on the methodology that should be used, SPP would file this methodology pursuant to section 205 of the FPA, and that SPP can also file its own proposal under section 205.<sup>84</sup>

84. The Commission further stated that the RSC should determine the approach for resource adequacy across the entire region, and that, with respect to transmission planning, the RSC should determine whether transmission upgrades for remote resources will be included in the regional transmission planning process, as well as the role of TOs in proposing transmission upgrades in the regional planning process.<sup>85</sup>

### **Requests for Rehearing**

85. On rehearing, State Regulators argue that state participation in the RSC is voluntary, and that the RSC itself cannot limit or usurp state authority. They assert that the states have jurisdiction over transmission planning, bundled native load customers, and reliability issues. They further assert that, to the extent participating states have approved of an RSC decision on these and other asserted state-jurisdictional issues, neither SPP nor the Commission may override that RSC decision.

86. On rehearing, the Kansas Commission and Golden Spread argue that the Commission unlawfully delegated its responsibilities under the FPA to the RSC, by giving the RSC decision-making authority over whether and to what extent participant funding would be used for transmission enhancements, whether transmission upgrades for remote resources will be included in the regional transmission planning process, and the approach for resource adequacy across the SPP region. The Kansas Commission and Golden Spread argue that the RSC should assume the role of an advisory body to the independent SPP Board of Directors. The Kansas Commission seeks Commission clarification that any RSC initiatives are subject to Commission review and that the RSC is accountable to both SPP and the Commission.

87. To that end, the Kansas Commission further argues that the Commission failed to provide guidance regarding the appropriate relationship between the RSC and SPP Board of Directors, or regarding the preferred voting structure of the RSC. Accordingly, the Kansas Commission argues that the Commission failed to ensure proper independence of the SPP Board of Directors, given that members of the RSC have a strong vested interest in the outcome of SPP's energy markets.

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<sup>84</sup> February 10 Order at P 219.

<sup>85</sup> *Id.* at P 220.

88. In addition, the Kansas Commission argues that the February 10 Order erroneously allows the RSC to compel SPP to make a section 205 filing. The Kansas Commission contends that the RSC should not have the “primary” responsibilities indicated in the February 10 Order and that the Commission should have directed a hearing regarding the RSC’s role.

89. TDU Intervenors argue that the Commission failed to require municipal and cooperative representation on the RSC. They state that the RSC should not be limited to state commissions and that the Commission must ensure that the RSC will represent the interests of all customers in the SPP region.

### **Discussion**

90. We will clarify the issues concerning the RSC. As set forth above, the Commission has addressed issues concerning transmission planning, bundled retail load and reliability in a manner consistent with its jurisdiction. Moreover, we emphasize that, our purpose in approving an RSC is not to usurp state authority, but, rather, to facilitate state consensus on certain regional issues and a partnership between this Commission and state commissions.<sup>86</sup>

91. With regard to arguments that we unlawfully delegated to the RSC our responsibilities under the FPA to determine just and reasonable rates, terms and conditions, we emphasize that, like any proposal filed pursuant to section 205, proposals filed at the behest of the RSC are subject to Commission review and disposition.

92. We further dismiss as moot arguments that the February 10 Order erroneously allows the RSC to compel SPP to make a section 205 filing. We emphasize that SPP voluntarily filed the RTO application at issue in this proceeding. In acting on that application in the February 10 Order, we required SPP to allow the RSC to direct certain section 205 filings. By deciding to proceed with its RTO application, SPP has voluntarily agreed to file with the Commission, pursuant to section 205, certain regional proposals that may be developed by the RSC. Because SPP has so agreed, the February 10 Order language on this issue no longer governs. Accordingly, since the factual predicate upon which these rehearing arguments were based no longer exists, we dismiss these arguments as moot.

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<sup>86</sup> According to SPP’s website, the RSC is comprised of retail regulatory commissioners from agencies in Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas. See [http://www.spp.org/Committee\\_Results.cfm?PassObj=1568](http://www.spp.org/Committee_Results.cfm?PassObj=1568) (visited Aug. 13, 2004).

93. We reject arguments that the RSC is infringing on SPP's own section 205 filing rights. As noted above, SPP agreed to file with the Commission certain regional proposals that may be developed by the RSC. In addition to RSC proposals, SPP may file its own proposals. Moreover, in our order on SPP's compliance filing to the February 10 Order, we accepted proposed language in section 7.2 of SPP's Bylaws, which provides that no RSC proposal "shall prohibit SPP from filing its own related proposal(s) pursuant to [s]ection 205."

94. With regard to arguments that the RSC should be advisory only, we find that no new arguments were raised on rehearing that were not addressed and rejected in the February 10 Order. In any case, we emphasize that the RSC has primary, but not sole, responsibility for determining the proposals indicated in the February 10 Order, to the extent that SPP also can file its own proposals.

95. Finally, while TDU Intervenors argue that the Commission must ensure municipal and cooperative representation on the RSC, we disagree. The RSC is an organization of state regulators with jurisdiction over utilities in their respective states. The RSC is designed to give a voice to the state regulators of the utilities they regulate. In some states, states regulate municipalities and cooperatives. To the extent municipalities and cooperatives are regulated by the state, membership of the municipalities and cooperatives themselves on the RSC conflicts with the goals and composition of the RSC. Further, to the extent municipalities and cooperatives are not regulated by the state, they are nevertheless represented in the SPP stakeholder process. In addition, the requirement requested by TDU Intervenors could result in the unbalanced representation of several municipalities or cooperatives from one state. We believe that state commissions are well-suited to coordinate and represent the interests of their respective states, as a whole, including the interests of the municipalities and cooperatives. Municipalities and cooperatives may also raise their concerns directly with this Commission.

## **Operating Budget**

### **February 10 Order**

96. In the February 10 Order, the Commission directed SPP to file its operating budget, for informational purposes, within 90 days of the date that SPP obtains operational authority over transmission facilities within its footprint.<sup>87</sup>

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<sup>87</sup> *Id.* at P 46 (citing *Ameren Services, et al.*, 103 FERC ¶ 61,178 at P 33 (2003) (*Ameren*), *clarification granted*, 104 FERC ¶ 61,097 (2003), *reh'g denied*, 105 FERC ¶ 61,018 (2003)).

### Requests for Clarification

97. TDU Intervenors request clarification that, consistent with *Ameren*, and in order to ensure accountability, the Commission should require SPP to file its operating budget on an annual basis, in addition to 90 days after it obtains operational authority. In addition, TDU Intervenors request clarification that SPP must, as in *Ameren*, “consult with stakeholders before making its Section 205 filing with the Commission.”<sup>88</sup>

### Discussion

98. We will grant TDU Intervenors rehearing request with regard to SPP’s filing its operating budget. In *Ameren*, the Commission required that the Midwest ISO file its actual and projected annual operating budget on an annual basis for Commission review. In addition, the Commission directed the Midwest ISO to consult with stakeholders prior to filing its annual operating budget. Consistent with *Ameren*, SPP is required to file on annual basis its operating budget, in addition to filing its operating budget within 90 days of the date that it obtains operational authority over transmission facilities with its footprint. SPP is also directed to consult with stakeholders prior to making its informational filing with the Commission.

### Schedule 1 Rate Pancaking

#### February 10 Order

99. In the February 10 Order, the Commission directed SPP to discuss with parties the issue of Schedule 1 rate pancaking and file a report, within one year, regarding its progress in resolving that issue.<sup>89</sup>

### Requests for Rehearing

100. On rehearing, TDU Intervenors contend the February 10 Order implicitly allowed rate pancaking under Schedule 1 to continue.<sup>90</sup> They argue that allowing rate pancaking

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<sup>88</sup> See *Ameren* at P 33. See also 104 FERC ¶ 61,097 at fn.12 (noting that annual budget filings during the transition period should be informational in nature rather than section 205 filings).

<sup>89</sup> February 10 Order at P 156.

<sup>90</sup> Schedule 1 provides for collection of two scheduling charges for transactions that source and sink in separate control areas.

to continue is inconsistent with Commission precedent.<sup>91</sup> They state that SPP should be required to develop and file a postage-stamp scheduling rate, similar to that employed by the Midwest ISO, to replace the pancaked scheduling charges under Schedule 1.

101. TDU Intervenor also request that the Commission require SPP, in its compliance filing, to clarify that its total system load will be used as the denominator for determining the administrative costs component of Schedule 1.<sup>92</sup>

### Discussion

102. We will grant TDU Intervenor's requests for rehearing. In Order No. 2000 the Commission required that an "RTO tariff must not result in transmission customers paying multiple access charges to recover capital costs."<sup>93</sup> The Commission also stated that "it is appropriate to allow RTOs to propose the use of license plate rates for a fixed term of the RTO's choosing."<sup>94</sup> Moreover, in *Southwest Power Pool*,<sup>95</sup> the Commission accepted SPP's use of zonal rates. The Commission stated that by charging a zonal rate, SPP was voluntarily eliminating rate pancaking in order to address state concerns regarding costs shifts. However, the Commission warned SPP that although it was not seeking Independent System Operator (ISO) or RTO approval at that particular time, upon such approval in the future, SPP would be required to comply with any applicable requirements for single-system rates.<sup>96</sup>

103. Consistent with Order No. 2000, we will require that SPP submit, within 90 days of the date of this order, a timetable detailing the timeframe required by SPP to remove pancaking from Schedule 1.

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<sup>91</sup> TDU Intervenor cite *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,111 at P 12-13 (2003).

<sup>92</sup> TDU Intervenor state that another component of Schedule 1 recovers the scheduling costs incurred by the SPP TOs (not SPP itself).

<sup>93</sup> Order No. 2000 at ¶ 31,174.

<sup>94</sup> *Id.* at ¶ 31,177.

<sup>95</sup> *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,889 (1999) (*Southwest Power Pool*).

<sup>96</sup> *Id.*

104. With respect to TDU Intervenors' concern regarding system loads, we agree that all system loads, including grandfathered wholesale and bundled retail loads, must be included in the denominator for deriving a charge for Schedule 1 administrative costs. Therefore, we will require that SPP have in place upon Commission approval as an RTO, a revised Schedule 1 specifying the inclusion of all system loads (*i.e.*, including grandfathered wholesale and bundled retail loads).

### **Granularity of SPP's Transmission Service**

#### **Request for Rehearing**

105. TDU Intervenors maintain that the model used by SPP to sell transmission service is more granular, *i.e.*, more refined, than the one used to implement Transmission Loading Relief (TLR). Because of this granularity difference, TDU Intervenors contend that SPP's transmission service model allows SPP to sell more transmission service than the TLR model results indicate the transmission system can accommodate. This means, according to TDU Intervenors, that SPP sells more transmission service than its TLR model will allow SPP to continue when TLRs are called.<sup>97</sup> TDU Intervenors state that this practice is especially costly to customers under the SPP OATT, who are unable to successfully redispatch their transactions to avoid punitive energy imbalance charges. TDU Intervenors argue that the Commission must require SPP to address these granularity issues.

#### **Discussion**

106. We will deny rehearing. We will examine TDU Intervenors' concern in this regard in our order on SPP's compliance filing to the February 10 Order, in our discussion of available transmission capacity calculations.

#### **"And" Pricing**

#### **February 10 Order**

107. As indicated above, in the February 10 Order, the Commission required SPP to develop and file a transmission cost allocation plan by the end of 2004. We stated that this plan should address pricing treatment for the projects identified in SPP's transmission plan.<sup>98</sup>

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<sup>97</sup> TDU Intervenors at 11-12.

<sup>98</sup> February 10 Order at P 189.

### **Request for Rehearing**

108. TDU Intervenors do not seek rehearing of the Commission's approach here. However, they argue that it is SPP's policy that if a network customer's proposed use of a network resource requires network upgrades on a system other than the zone in which the customer's network load is located, the network customer will be directly assigned the costs of the upgrade in addition to zonal network charges.<sup>99</sup> TDU Intervenors state that the Commission must require SPP to eliminate its "and" pricing policy for network upgrades.

### **Discussion**

109. We will deny rehearing on this issue. We find that TDU Intervenors' argument is inconsistent with what SPP currently has on file with the Commission. Section 2 (Network Upgrades) of Attachment J (Recovery of Costs Associated with New Facilities) under the SPP Tariff provides that during the Transition Period:<sup>100</sup>

The Transmission Customer (s) requesting Transmission Service which requires Network Upgrades shall pay the costs associated with those Network Upgrades to the extent consistent with Commission policy. Such costs shall be specified in a Service Agreement to be filed with the Commission.

110. Moreover, section 2 of Attachment J provides that after the Transition Period: All Network Upgrades constructed for service under this Tariff shall be rolled-in with all other transmission facilities. There shall be no direct assignment of Network Upgrade costs to Transmission Customers. However, the Transmission Provider shall not allow the construction and roll-in of a Network Upgrade when the Transmission Provider finds more economic or efficient alternatives. This roll-in of Network Upgrades costs shall not include the portion of any such Network Upgrades paid for during the Transition Period through direct assignment to Transmission Customer(s).

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<sup>99</sup> TDU Intervenors note that this policy is expressly stated in a November 4, 2003 study proposed by the SPP Queue Improvement Task Force

<sup>100</sup> Transition Period is defined in the SPP Tariff as the period from the Effective Date of this Tariff for the provision of Network Integration Transmission Service (February 1, 2000) to the last day of the fifth year thereafter.

111. We find that no “and” pricing is required by these provisions. Moreover, these provisions appear to be consistent with the Commission’s pricing policy. With regard to TDU Intervenor’s reference to a November 4, 2003 Queue Improvement Task Force proposal, that proposal has yet to be filed with this Commission

## **Independent Transmission Company Agreements**

### **Request for Rehearing**

112. Golden Spread argues that SPP’s proposed Independent Transmission Company (ITC) Agreement<sup>101</sup> has the potential to allow an ITC to interfere with the ability of the SPP to perform its required RTO functions. Golden Spread seeks a Commission requirement that the ITC Agreement be amended to state that, in all cases in which a dispute arises between SPP and the ITC, the SPP’s position shall prevail pending dispute resolution procedures.

### **Discussion**

113. We will deny Golden Spread’s rehearing request on this issue. Golden Spread’s argument regarding ITC Agreements is premature. We did not accept for filing an ITC Agreement in the February 10 Order. We will review ITC Agreements on a case-by-case basis if and when they are filed individually under section 205 of the FPA.

### The Commission orders:

(A) The requests for rehearing are hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Except as provided in ordering paragraph (C) below, SPP is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) SPP is hereby directed to submit, with 90 days of the date of this order, a timetable detailing the timeframe required by SPP to remove pancaking from Schedule 1.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>101</sup> See Exhibit SPP-7 to RTO proposal.