

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

Southwest Power Pool, Inc.

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Docket No. ER09-1050-000

**MOTION FOR LEAVE TO INTERVENE AND COMMENT
OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. §§ 385.211 and 385.214 (2006), the Electric Power Supply Association (EPSA) respectfully files for leave to intervene and comment in the above-captioned proceeding. On April 28, 2009, the Southwest Power Pool (SPP) submitted a filing to the Commission in compliance with Order No. 719.¹ SPP's compliance filing examines the areas identified by Order No. 719 – demand response & scarcity pricing, long-term contracts, market monitoring, and RTO responsiveness – and proposes tariff changes where necessary. In many instances, the SPP filing contends that existing tariff language will suffice without changes to comply with the Commission's directives. EPSA supports most of SPP's filing, noting that the EPSA members that participate in SPP's market and stakeholder process have been generally satisfied with the SPP outcomes. Competitive suppliers are especially encouraged that SPP is more seriously contemplating a congestion management market. However, there are some

¹ *Order No. 719: Wholesale Competition in Regions with Organized Electricity Markets*, 18 CFR Part 35, 125 FERC ¶ 61, 071, Docket Nos. RM07-19-000 and AD07-7-000 (October 17, 2008).

discrete incremental changes that the Commission should order SPP to make to its April 28 compliance filing.

EPSA's comments focus on two areas: SPP's stakeholder process, and SPP's proposed tariff language on tailored requests from states to the Independent Market Monitor (IMM). In each of these cases, EPSA's recommendations involve narrow directed changes to SPP's tariff requirements.

I. MOTION TO INTERVENE & COMMUNICATIONS

EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. EPSA seeks to bring the benefits of competition to all power customers.²

Many of EPSA's members are interconnected with and/or are pursuing interconnection to the grid in SPP, and as such represent a significant portion of the supply capacity in that region. EPSA members have been active participants in SPP's stakeholder processes and EPSA has participated in many of the Commission's proceedings on SPP issues. As a result, EPSA has a direct and substantial interest in the instant proceeding that cannot be adequately represented by any other party, and allowing EPSA to actively participate in this proceeding would be in the public interest. Accordingly, EPSA respectfully requests that the Commission grant this timely motion to intervene.

²The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

All pleadings, correspondence and other communications concerning this proceeding should be directed to:

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II. COMMENTS

A. SPP'S GOVERNANCE

EPSA's members respect RTO/ISO stakeholder processes and view such processes as key places to engage other stakeholders and work to improve the market. Competitive suppliers are generally supportive of SPP's stakeholder process but believe there are some incremental changes that can be made to improve the existing governance. The recommendations proposed here will strengthen the inclusiveness of SPP's governance.

In its compliance filing under the RTO Responsiveness section, SPP addresses the four governance areas from Order No. 719 : (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness. SPP explains how its stakeholder process accommodates and complies with each of the areas. EPSA's comments focus on improving the inclusive integrity of SPP's stakeholder process.

In the interest of demonstrating to the Commission that SPP's stakeholder process is fair and balances diverse interests, the compliance filing highlights its openness and the voluntary nature of participation in its stakeholder process.

EPSA agrees with SPP's assessment that the stakeholder process is easy to join and participate in. Stakeholder engagement in SPP is inclusive, in that participation is open, there are provisions for Board accessibility and regular posting of materials. However, EPSA is concerned about a provision that can remove a stakeholder for absenteeism, and that non-Board level groups only count official group member votes.

SPP's bylaws have a provision that should a committee representative not attend three consecutive meetings the representative will be removed from that group. This three strikes rule is counter to the inclusive structure needed for RTO stakeholder groups and undermines how diverse interests can best be integrated into groups and RTO governance processes.

EPSA assumes that SPP's intent with the bylaw is to encourage participation and, on that basis, is sympathetic to SPP's concern. However, such consequences should not be hardwired into the bylaws. Lack of participation in stakeholder processes already come with consequences, in that if stakeholders don't participate, rules and protocols counter to their interests may be approved and implemented. Therefore, the SPP "three strikes, you're out" bylaw is egregious and unnecessary.

While every committee in every region has a transmission provider that is impacted by that group's decisions, this is not true for competitive suppliers. They can only commit resources based on their business interest, which are more diverse and fluid than that of members of the transmission providers RTO committee. In fact, in many cases competitive suppliers have one person

covering multiple RTOs and their different committees. Consequently, a rule that holds an individual responsible for attendance and possible expulsion is counter to the inclusive governance that is needed for RTO groups; competitive suppliers need governance structures that are flexible and will not exclude any stakeholder from the group. This kind of structure ensures not only inclusiveness but also the diversity of the group. Certainly diversity is best preserved by welcoming policies that will engage all participants, regardless of past attendance or ability to staff multiple meetings.

While EPSA understands that SPP has attempted to provide ways that one can cover their absence either by appointing another representative or using a proxy, these alternatives are not always adequate. Competitive suppliers' participation in SPP is already minimal since SPP is not as developed as other organized markets. Finding another competitive supplier to serve as your representative on a group is not always an option and sending a consultant raises resource issues. Even if a stakeholder finds someone to attend in their place, under the SPP bylaws the proxy cannot be an existing group member. Due to such challenges, competitive suppliers should not be left in the position of meeting the requirements of the mandatory attendance bylaw. Certainly SPP can do away with this exclusionary provision without any disruption to its groups and committees.

EPSA appreciates SPP's efforts to balance the diverse interests of stakeholders by allowing all attendees to participate in committees and groups below the board level, collectively referred to as Organizational Groups.

However, with respect to participation in SPP Organizational Groups, competitive suppliers feel that the voting process can be improved.

Currently Organizational Groups meetings are open to all attendees, promoting the discussion of diverse views in SPP. While the SPP Board is sector weighted to ensure a balance of different sector's views, Organizational Group seats are tied to individuals, rather than a company, or sector. Therefore, SPP groups below the Board recognize participation by individual stakeholders in these groups differently. While all participants in Organizational Groups can attend and listen in, importantly when it comes to decision making, only official group members can cast votes. Noting the above resource challenges and resulting membership issues that competitive suppliers already face in SPP, if only official Organizational Group members can vote, then other meeting participants are excluded from meaningful participation. SPP should allow all participants to be able to vote at Organizational Group meetings to ensure diverse views can not only be voiced, but also recognized in the voting process when decisions are made. This will ensure that diverse interests are adequately balanced in the SPP governance process.

B. STATE ACCESS TO CONFIDENTIAL INFORMATION THROUGH TAILORED REQUESTS FOR INFORMATION FROM THE IMM

Order No. 719 concluded that states within an RTO's footprint may make tailored requests for information from the Independent Market Monitor (IMM).³ In that Order, the Commission laid out a number of guidelines and restrictions to the types of requests states may make. First, the Commission noted that requests

³ Order No. 719, P. 446-458.

from states should not be unduly burdensome to the IMM, stating that “if this limitation were not imposed, the Market Monitoring Unit (MMU) could rapidly become an unpaid consultant for the states, and would be unable to perform its core functions.”⁴ Next, the Commission found that states may only request information from the IMM if the information is not requested to aid state enforcement actions and if appropriate non-disclosure agreements are executed.⁵ According to Order No. 719, that data also must be “appropriately redacted to meet confidentiality concerns.”⁶ Finally, Order No. 719 allows affected market participants the opportunity to contest a request or to provide context to the data that the states have requested.⁷

To that end, SPP has proposed new section 8.4.5 that further addresses tailored requests from state commissions, adopting the limitations on disclosure outlined in Order No. 719. SPP added language that SPP and the MMU are not required to respond to tailored requests that are unduly burdensome or that do not pertain to general market trends. In addition Attachment AF provides adequate access to data by state commissions while preserving SPP and the MMU’s resources, protecting sensitive data, and preserving the Commission’s rules regarding confidentiality in referrals.

The proposed language speaks directly to two of the five requirements set forth in Order No. 719 – that the request is not unduly burdensome for the IMM and that it is not designed to aid state enforcement actions. The section the

⁴ Order No. 719, P. 446.

⁵ Id, P. 448-449.

⁶ Id, P. 450.

⁷ Id, P. 455.

proposed language points to – Attachment AE – lays out the confidentiality rules that a transmission provider or the MMU should use in disclosing information about market participants. Further, the SPP proposal includes requirements for non-disclosure agreements and procedures for market participants to contest a request. However, SPP’s proposal does not speak to allowing market participants to review an information request after it has been processed by the MMU to have the opportunity to provide further contextual information, as Order No. 719 directed. Further, while other sections of the tariff specify information subjectivity to redaction, neither the new proposed tariff language nor the existing referenced tariff language discuss redaction.

Affected market participants should play a large role in responding to tailored requests for information from states. EPSA appreciates that Order No. 719 not only gave market participants the opportunity to contest such a request, but also the opportunity to supplement MMU data with contextual explanation. SPP’s proposal in this area needs to more closely follow the Commission directives. Tariff Sheet 1079 (g) sets forth administrative procedures by which an affected market participant can object to a request, but there is no allowance to provide contextual information. EPSA suggests that SPP look to ISO New England’s tariff language as a model, as it allows market participants full review of an IMM’s answer to such a request in order to either contest or contextualize the information to be sent to the requesting state. Section 3.3(b)(iii) of ISO New England’s Information Policy provides an excellent template for other RTOs seeking to comply with Order No. 719’s directives. ISO New England explains

the importance of “providing a level of negotiation that goes beyond merely permitting a market participant to contest the information.”⁸ As such, Section 3.3(b)(iii) allows

“the Market Participant whose data is the subject of the request to provide input on the terms and conditions under which that data may be released and afford the Market Participant a forum before the Commission should it feel that those protections are not adequate.”⁹

SPP should develop provisions similar to those found in ISO New England’s to allow for a level of participation from affected market participants.

It is equally important that the proposed tariff language include a reference to the redaction of confidential information. Attachment AE, Sections 8.3 specifies that requests for information from the MMU do not allow for redaction or modification. The proposed tariff language needs to acknowledge that all tailored requests from states allow for redaction by market participants.

The Commission should require SPP to propose tariff language including provisions for allowing affected market participants to contextualize tailored requests for information from the MMU and to include a direct reference that all information is subject to redaction of commercially sensitive information.

⁸ *Filing of ISO New England Inc. and New England Power Pool in Response to Order No. 719, Docket No. ER09-1051-000 (April 28, 2009), p. 95.*

⁹ *Ibid.*

III. CONCLUSION

Wherefore, EPSA respectfully requests that the Commission grant its motion for leave to intervene in this proceeding and consider the comments herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "N. Bagot", is written over a horizontal line.

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May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments by via email or postal mail upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., May 26, 2009.

A handwritten signature in black ink, appearing to read "N. Bagot", written in a cursive style.

Nancy Bagot, VP Regulatory Affairs