

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of the General Investigation of)
Southwest Power Pool, Inc. to Show Cause)
Why the Costs Associated With the Proposed)
Membership of Western Area Power) Docket No. 14-SPPE-563-SHO
Administration - Upper Great Plains Region,)
Basin Electric Power Cooperative, and)
Heartland Consumers Power District are in the)
Public Interest of Kansas Electric Retail)
Customers.)

SHOW CAUSE ORDER; DISCOVERY ORDER; PROTECTIVE ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. Having examined the files, the Commission finds and concludes as follows:

I. Show Cause Order

a. Background

1. On September 19, 2006, the Commission granted the Southwest Power Pool, Inc. ("SPP"), a Certificate of Convenience and Authority, for the limited purpose of managing and coordinating the use of certain transmission facilities.¹ Furthermore, the Commission found that the SPP Regional Transmission Organization ("RTO") and SPP Energy Imbalance Services ("EIS") market are in the public interest and will benefit Kansas retail electricity customers.²

¹ Order Adopting Stipulation and Agreement and Granting Applications, Docket No: 06-SPPE-202-COC, September 19, 2006 ¶E.

² Id. at ¶A.

2. The Commission reserved its authority to require SPP to make filings as required in K.S.A. 66-122 and 66-123.³

3. The Commission also found that it had continuing authority to initiate a general investigation, either on its own motion or as the result of a complaint filing, to review SPP's operations, as it does with any public utility that has been granted a certificate to operate in Kansas.⁴ The Commission specifically noted that it could direct Staff to conduct an investigation to determine whether SPP's certificate should be revoked or to consider whether the Kansas utilities should withdraw from the SPP RTO.⁵ Furthermore, the parties entered into a Stipulation and Agreement, which, in lieu of annual formal investigations by the Commission into SPP's fees and costs, recognized the Commission's authority to initiate an investigation.⁶

4. Finally, the Commission reminded SPP of its obligation as an electric public utility to advise the Commission if an issue, especially one arising outside an SPP committee or working group in which this Commission has an active representative, would result in operation of the SPP RTO and the SPP EIS market to the detriment of Kansas retail electricity customers. K.S.A. 66-101b.⁷

5. On, June 5, 2014, Commission Staff ("Staff") provided a Report and Recommendation ("Attachment A"), attached hereto and incorporated by reference, which details Staff's concerns regarding the proposed membership agreement negotiated by SPP and the Integrated System of Western Area Power Administration – Upper Great Plains Region

³ Id. at ¶B.

⁴ Id. at ¶58.

⁵ Id.

⁶ Stipulation and Agreement, Docket No: 06-SPPE-202-COC, July 14, 2006, ¶14.

⁷ Order Adopting Stipulation and Agreement and Granting Applications, Docket No: 06-SPPE-202-COC, September 19, 2006 ¶70.

(“Western-UGP”); Basin Electric Power Cooperative (“Basin”); and Heartland Consumers Power District (“Heartland”) (collectively the “Integrated System”).

6. Staff raises two main concerns. First, Staff believes SPP has not adequately demonstrated the justness and reasonableness of certain provisions for “Federal Service Exemptions” (FSE), including, but not limited to, exclusion from cost recovery methodologies incorporated in the SPP OATT and approved by the Federal Energy Regulatory Commission (FERC) for regionally funded transmission facilities and exclusions from certain existing provisions and/or requested revisions to SPP Membership Agreement and By-Laws. Second, Staff believes the proposed double rate base rate design for Highway (regionally funded) projects with a division based on a “need date” is discriminatory.

7. Staff stated that it had participated in various working groups at SPP, that the Commission had maintained a presence at the Regional State Committee. Staff efforts to acquire the necessary support for the proposed IS membership in meetings or through informal discussions with SPP staff resulted in limited or insufficient responses to requests for key data needed to determine distribution of benefits.

b. Findings and Conclusions

8. The Commission shares Staff’s concerns regarding the due diligence undertaken by SPP with respect to the proposed FSE and questions whether terms reflected in the membership agreement are unduly preferential. Therefore, the Commission hereby finds that SPP should show cause why the proposed membership agreement offered to the Integrated System is in the public interest of Kansas retail electric ratepayers. The Commission specifically requires SPP to provide evidence that the benefits to Kansas retail electric ratepayers will exceed the increased costs of serving the integrated system.

II. Protective Order

9. K.S.A. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information deemed confidential in Commission proceedings. The Commission finds it appropriate to issue this Protective Order to establish procedures relating to confidential data and information.

10. K.S.A. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated utilities. Under K.S.A. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

11. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.⁸ The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will not be subject to disclosure after review by the Commission.⁹

12. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Staff, except that Staff is not required to sign nondisclosure certificates or view voluminous materials on site and is not required to return or destroy confidential information upon request at the conclusion of a

⁸ K.A.R. 82-1-221a(a)(5).

⁹ See K.S.A. 66-1220a.

proceeding. Outside experts and consultants used by Staff shall have access to information and voluminous materials on the same basis as Staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign nondisclosure certificates as contained in Appendix A.

13. The following definitions shall apply:

Information: “Information” refers to all documents, data, including electronic data, studies and other materials furnished pursuant to requests for information or other modes of discovery, or any other information or documents that are otherwise a part of the Commission record.

Confidential Information: “Confidential information” refers to information which, if disclosed, would likely result in harm to a party’s economic or competitive interests or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. “Confidential information” may include, but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

14. A party designating information as confidential shall make the confidential information available to parties seeking access or discovery under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. Disclosure of confidential information shall be made to attorneys of record and to authorized representatives, including outside experts, who are consulting with parties or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking access to confidential information shall first read this Protective Order and sign a nondisclosure certificate as provided in Appendix A. In cases in which a utility’s rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign nondisclosure certificates in order to receive copies of documents containing the utility’s

own confidential information. The nondisclosure certificate shall contain the signatory's name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The nondisclosure certificate shall be filed in the docket. The party claiming confidentiality shall provide legible copies of the confidential information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the confidential information and make it available to its authorized representatives who have signed and filed nondisclosure certificates. If a response to a discovery request requires the duplication of voluminous material, or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be viewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at the expense of the requesting party. Voluminous material shall include documents or materials comprised of 200 pages or more.

15. A party may designate prefiled testimony and exhibits as confidential pursuant to this Protective Order. The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed. Any party obtaining confidential information may use or refer to such information in prefiled or oral testimony provided that the confidentiality is maintained, unless otherwise ordered by the Commission.

16. If information to be disclosed in response to a data request contains confidential information designated by another party in this docket, the furnishing party shall maintain the confidential status by marking the information as confidential and only provide response to parties that have signed nondisclosure certificates. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential

information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

17. When pleadings, prefiled testimony, or exhibits include confidential information, the parties are to follow these procedures:

a. File seven copies of the complete document, including all confidential information. The cover is to clearly state "CONFIDENTIAL VERSION." Confidential pages shall be stamped "CONFIDENTIAL," and the specific confidential information shall be identified by being underlined.

b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state "PUBLIC VERSION."

c. File one copy of the pages that contain confidential information in a separate envelope marked "CONFIDENTIAL." This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages with the confidential information, the party may file instead one copy of the entire document that is stamped "CONFIDENTIAL."

18. Confidential testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept under seal and copies provided only to persons entitled to access to confidential information. Neither the parties nor their attorneys shall disclose or

provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

19. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff should also be prepared to challenge a confidential designation when Staff believes that the information does not meet the definition of confidential information. When a dispute concerning the confidentiality is brought before the Commission, the Commission will review the matter to determine (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2) whether disclosure is warranted under K.S.A. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

20. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its

destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

III. Discovery Order

21. The Commission finds that formalizing discovery procedures and clarifying the obligations of the parties will help ensure a full and efficient investigation of the issues in this docket. This Discovery Order will govern the conduct of discovery until further order of the Commission. Parties may request modified or additional discovery procedures or may request that the Commission schedule a discovery pre-hearing conference.

22. General procedures. Discovery in Commission proceedings is limited to matters that are “clearly relevant.”¹⁰ After a docket is opened, any party may serve upon any other party written discovery or data requests. These data requests shall identify with reasonable particularity the information or documents sought. Data requests must be designed to elicit material facts within the knowledge of the parties. Data requests that require conclusions of law or answers to hypothetical questions are generally not permitted. Cross-examination through the use of data requests is not appropriate. Copies of data requests shall be served upon all other parties to the proceeding, unless a party requests otherwise. Data requests and responses may be served by facsimile transmittal or electronic mail if agreed to by the parties. Data requests that are sent by a party after 3:00 p.m. shall be deemed to have been received the following business day.

¹⁰ K.A.R. 82-1-234a(a).

23. Data Request Responses. Responses to Staff data requests are due within seven days.¹¹ Responses to all other data requests are due within 10 days, not counting Saturdays, Sundays, or legal holidays. In computing the period of time for responding, the day on which the data request was issued is not counted. Parties may agree to extensions or reductions of time in which to respond or object to a data request. Responses to data requests shall be verified and shall identify the person(s) who actually prepared the response and can answer additional questions relating to the response. Each data request shall be answered separately and preceded by the request to which the answer pertains. Responses shall be clearly identified and, if consisting of several pages, shall be labeled and organized in a manner that makes review of the pages convenient. Parties are under a continuing duty to supplement their discovery responses upon learning that the information disclosed is incomplete or incorrect in any material respect. If a response to a data request requires the duplication of voluminous material or of material that is not easily copied because of its binding or size, a party may require that any party other than Commission Staff review the voluminous material on its own premises. If duplication of voluminous material can be accomplished without undue burden, the voluminous material may be copied at the expense of the requesting party. Voluminous material is defined as documents comprised of 200 pages or more.

24. Objections to Data Requests. If the parties have agreed to electronic service, if a party objects to answering a particular data request, the party shall object in writing to the party

¹¹ Per K.A.R. 82-1-217, the day of the act, event, or default from which the designated period of times begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.”

which issued the data request within five days of the data request.¹² If the parties have not agreed to electronic service, if a party objects to answering a particular data request, the objecting party shall object in writing to the issuing party within five working days after service, plus three days if service is by mail. The written objection shall specifically explain all grounds relied upon for objecting to each data request. Any objections not provided at this time will be considered to be waived. If an objection pertains only to part of a question, that part shall be clearly identified and the responding party shall provide any non-objectionable information covered by the remainder of the data request. Parties shall negotiate in good faith to resolve discovery disputes. If resolution is not possible, the party seeking discovery may file a motion to compel with the Commission. Motions to compel must have the data request and response at issue attached. Motions to compel are required to be served by hand delivery, facsimile, or next-day delivery service. Responses to motions to compel are to be filed within three days after the motion is received, not counting intermediate Sundays, or legal holidays. The Commission may act immediately on motions to compel if necessitated by time constraints or the procedural schedule in the docket.

25. Limitations on Discovery. The Commission may limit discovery to protect a party against unreasonable, cumulative, or duplicative discovery requests; to prevent undue delay in the proceeding; to avoid unnecessary burden, expense, or harassment; or to otherwise maintain the orderly and efficient progress of the proceeding. Upon finding that a party has abused the discovery process, the Commission may deny the right to continue discovery.

26. Sanctions. A motion for sanctions for discovery violations may be filed at any time during the proceeding or may be initiated by the Commission. A motion is to contain

¹² Per K.A.R. 82-1-217, the designated time begins to run the day after service. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation. A legal holiday includes any day designated as a holiday by either the United States Congress or the Kansas Legislature.

sufficient factual allegations to detail the violation and must specify the relief requested. Motions for sanctions are required to be served by hand delivery, facsimile, or next-day delivery service. Responses to motions for sanctions are to be filed within 10 days, not counting Saturdays, Sundays, or legal holidays.

a. The Commission will consider any relevant factors when reviewing a motion for sanctions, including whether discovery has been conducted in bad faith or for an improper purpose such as causing unnecessary delay or needless increase in the cost of the proceeding; whether the discovery process has been abused in seeking or resisting discovery; and whether parties have failed to obey Commission Orders.

b. Sanctions imposed by the Commission may include limiting or disallowing further discovery; holding that designated facts be deemed admitted for purposes of the proceeding; refusing to allow a party to support or oppose a claim or defense or prohibiting the party from introducing designated matters in evidence; disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests; striking pleadings or testimony; staying further proceedings until an order is obeyed; disallowing a party's right to participate in the proceeding; dismissing the application or filing with or without prejudice; requiring the offending party to pay the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and imposing any other sanction or remedy available to the Commission by law.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission orders SPP to Show Cause within 30 days, why the proposed terms and conditions offered to the integrated system is in the public interest of Kansas retail electric ratepayers.

(B) The provisions of this Protective Order and Discovery Order apply to this docket.

(C) The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein.¹³


¹³ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

(D) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: 6-9-2014



Kim Christiansen
Executive Director

ORDER MAILED JUN 09 2014

SF

APPENDIX A

Docket No. 14-SPPE-563-SHO
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS
NONDISCLOSURE CERTIFICATE

I, _____, have been presented a copy of the Protective Order issued in Docket No. 14-SPPE-563-SHO on the ____ day of _____, 2014.

I have requested review of confidential information produced in the above-mentioned docket on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 2014.

Printed name and title

Signature

Party/Employer

Address (City, State and ZIP)

Telephone

Facsimile

ATTACHMENT "A"

Utilities Division
1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3220
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Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Thomas B. DeBaun, Senior Energy Engineer
Jeff McClanahan, Utilities Division Director

DATE: June 5, 2014

DATE SUBMITTED TO LEGAL: 6/5/14

DATE SUBMITTED TO COMMISSIONERS: 6/9/14

SUBJECT: Docket No. 14-SPPE-563-SHO
In the Matter of the General Investigation of Southwest Power Pool, Inc.
to Show Cause Why the Costs Associated With the Proposed Membership
of Western Area Power Administration - Upper Great Plains Region,
Basin Electric Power Cooperative, and Heartland Consumers Power
District Are In the Public Interest of Kansas Electric Retail Customers

EXECUTIVE SUMMARY:

Over the course of approximately the past two years, the Southwest Power Pool (SPP), Western Area Power Administration – Upper Great Plains Region (Western-UGP), Basin Electric Power Cooperative (Basin), and Heartland Consumers Power District (Heartland) have engaged in negotiations related to the potential membership of Western-UGP, Basin, and Heartland in the SPP. Western-UGP, Basin, and Heartland are collectively referred to in materials circulated in the SPP and elsewhere as the Integrated System (IS) due to existing agreement(s) between the three entities. Preliminary information provided by SPP in conjunction with representatives of the IS to existing SPP state regulatory commissioners and their associated staff members regarding the proposed membership, as well as, changes needed in the SPP Open Access Transmission Tariff (SPP OATT), SPP Membership Agreement, and SPP By-Laws, began to appear in late 2013 and in earnest in January 2014. In the ensuing months, additional detail and actual revisions and additions to the OATT, Membership Agreement and By-Laws have been provided as they have developed in the stakeholder process through the various committees in the SPP organizational structure—some as recently as the date of this Report and Recommendation.

The SPP staff and the stakeholder Market Operations and Policy Committee (MOPC) will be presenting as action items for approval, revisions and additions to the aforementioned OATT, Membership Agreement, and By-Laws to the SPP Board of Directors and Membership Committee on Monday, June 9, 2015, during a “special” meeting from 1:00 to 3:00 PM in Little Rock, Arkansas.

Staff believes SPP has provided insufficient data and opportunity (time) for appropriate state regulatory analysis regarding public interest, zonal cost/benefit impacts, retail rate impacts, justness and reasonableness, and potential discriminatory/preferential rate treatment with respect to the addition of new SPP members. Staff believes some of the proposed tariff revisions/additions are potentially detrimental to Kansas retail rate payers and would set undesirable precedents if SPP’s membership continues to grow. Staff supports the opening of a “show cause” docket in this matter.

BACKGROUND:

1) KCC Jurisdiction over SPP

In its Order in Docket No. 06-SPPE-202-COC¹ (06-202 Docket) the Commission found:

This Commission has jurisdiction over (1) SPP's application for a certificate of convenience and authority to manage and coordinate use of certain transmission facilities and (2) the Kansas utilities' request for authority to transfer functional control of certain transmission facilities to SPP pursuant to K.S.A. 66-101, 66-104, 66-131 and 66-136. The Commission adopts the Stipulation and Agreement reached by the parties, (2) grants SPP's application for a certificate of convenience and authority to manage and coordinate use of certain transmission facilities, and (3) grants the Kansas utilities authority to transfer functional control of certain transmission facilities to SPP, as discussed more fully in this Order.²

In the Order in the 06-202 Docket (¶70) the Commission further observed:

...Finally, the Commission reminds SPP and the Kansas utilities of their obligation as electric public utilities to advise this commission if an issue, especially one arising outside an SPP committee or working group in which this Commission has an active representative, would result in operation of the SPP RTO and the SPP EIS market to the detriment of Kansas retail electricity customers. K.S.A. 66-101b.

¹ Docket No. 06-SPPE-202-COC, Commission Order Adopting Stipulation and Agreement and Granting Applications In the Matter of the Application of Southwest Power Pool, Inc. for a Certificate of Convenience and Authority for the Limited Purpose of Managing and Coordinating the Use of Certain Transmission Facilities Located Within the State of Kansas, September 19, 2006.

² *Ibid.* Docket No. 06-SPPE-202-COC, Order, p.2, ¶3.

³ *Ibid.* Order, (B), p.30.

The Certificate of Convenience in the 06-202 Docket was a limited certificate because the Commission found FERC jurisdiction preempted the Commission's authority under certain Kansas Statutes. However, the Commission reserved its authority to require SPP to make filings as required in K.S.A. 66-122 and 66-123, until the need for such filings arose.³

2) Issues Implicated by the Proposed IS Membership in SPP

Federal Service Exemption (FSE)

A proposed "Federal Service Exemption" is intended to overcome inherent fiscal and operational differences between Western-UGP and the existing SPP membership. Western-UGP maintains that it cannot subscribe to certain provisions of the current SPP OATT, By-Laws, or Membership Agreement for reasons enumerated by SPP staff as follows:

Federal Statutes govern the functions and limitations of Western-UGP -

- Federal Reclamation Law, largely contained in the Department of Energy Organization Act of 1977;
- Reclamation Project Act of 1939;
- Flood Control Act of 1944;
- Fort Peck Project Act of 1938; and
- Other Federal law as applicable

Western has advised that consistent with its statutory obligations it cannot agree to:

- Involuntary cost allocation for third-party transmission facilities, which includes SPP's cost allocation share under its tariff; and
- Western's rates are subject to a different standard of review pursuant to the delegation of authority from the Department of Energy to FERC.

Joining SPP is based on the fixed nature of the generation resources committed to the preference customers of Western-UGP as well as the sufficiency of existing transmission Western-UGP built to meet its requirements.

Any Western-UGP power marketing activity beyond federal resources to federal load will be subject to full SPP transmission service charges.⁴

The proposed FSE definition is:

Federal Service Exemption: Western-UGP's exemption from certain charges described in Section 39.3(e) of this Tariff.⁵

⁴ RSC Meeting, April 28, 2014, Agenda Item 5f, Update on Integrated System, Slide 8.

⁵ Special SPP BOD/Members Committee Meeting, June 9, 2015, Background Material, Agenda Item p.556.

The among the FSE additions/revisions to the SPP OATT, new Section 39.3(e) would read as follows:

39.3 (e) Western-UGP Federal Service Exemption The Federal Service Exemption applies to transmission of Federal Power-Western-UGP to the Statutory Load Obligations under this Tariff. Western-UGP was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, Western-UGP markets Federal Power-Western-UGP to meet its Statutory Load Obligations. Western-UGP's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that Western-UGP owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and firm electric service customers is a Western-UGP responsibility under the terms and conditions of marketing criteria and electric service contracts implementing Statutory Load Obligations to market Federal power. This is complementary with the provisions of transmission service under the Tariff. Capacity in transmission facilities provided by Western-UGP under this Tariff is solely for the use of Available Transfer Capability in excess of the capability Western-UGP requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. Western-UGP retains the Available Transfer Capability from its Federal Power-Western-UGP in the UMZ [Upper Missouri Zone] to deliver to its Statutory Load Obligations.

(i) Western-UGP shall be exempt from the Region-wide Charges associated with Western-UGP's delivery of Federal Power-Western-UGP to Statutory Load Obligations internal to the UMZ or external to the Transmission Provider. The Transmission Provider will not assess load served by Western UGP in the Western Interconnection for any Region-wide Charge, associated with transmission facilities in the Eastern Interconnection, to the extent that load that is located in the Western Interconnection is served only by resources in the Western Interconnection.

(ii) Western-UGP shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of this Tariff for deliveries from Federal Power-Western-UGP resources across the UMZ to Western-UGP's Statutory Load Obligations. Western-UGP shall be responsible for providing the Transmission Provider real power losses for the energy delivered from the Federal Power-Western-UGP resources under the Federal Service Exemption across Zone 19 in accordance with Attachment M of this Tariff.

Creation of Two Rate Bases for Socialized (Region-wide) Regional Cost Allocation for New Member Integration

For Basin and Heartland, SPP offers the following structure for recovery of Region-wide project costs based on a "Need-By Date" (alternatively, Bright Line Date):

- Based on previous integration of Nebraska and the offer from the SPC [SPP Strategic Planning Committee] to Entergy.
- Based on SPP determined Need By Date for each facility of SPP and the IS
- No regional cost sharing for facilities “Need By” Date before Integration
- Full regional cost sharing for facilities “Need By” Date after Integration
- Analysis provided on impact based on current NTCs⁶

ANALYSIS:

1) Western-UGP

Staff believes the SPP has not adequately demonstrated the justness and reasonableness of certain provisions for “Federal Service Exemptions” (FSE) including but not limited to exclusion from cost recovery methodologies incorporated in the SPP OATT and approved by the Federal Energy Regulatory Commission (FERC) for regionally funded transmission facilities and exclusions from certain existing provisions and/or requested revisions to SPP Membership Agreement and By-Laws. Rather than providing analysis showing that Western-UGP will receive no benefit from existing or future transmission projects with Region-wide cost recovery, SPP and Western-UGP maintain the complete exemption for Western-UGP from Region-wide cost recovery is justified simply because Western-UGP is not organized in a fashion that allows participation in this critical component of a functioning regional transmission organization.⁷ Western-UGP’s load ratio share (LRS) would be about 3% of the system total after integration. The exemption of that portion of load from various SPP Schedules amounts to a 3% subsidy of those costs by the remaining SPP members.⁸

2) Basin and Heartland

Staff asserts the proposed double rate base rate design for Highway (regionally funded) projects with a division based on a “need date” is discriminatory. Staff further asserts the proposed exclusion from cost recovery methodologies incorporated in the SPP OATT and approved by the FERC for regionally funded transmission facilities in service in the existing SPP Region prior to October 1, 2015 (“membership date”) with subsequent inclusion in the same cost recovery methodology after the proposed membership date has not been thoroughly vetted or ruled upon by FERC.

A bright line for cost recovery for projects with a 40-year service life that provides total exemptions for certain members from generational groups of regionally funded facilities would logically require that there be absolutely no benefits to the parties that are

⁶ RSC April 28, 2014, Agenda Item 5f, Slide 11.

⁷ Staff is unaware of any other Federal entities that are members of an RTO.

⁸ Staff would note that Kansas transmission owners fully transferred functional control of their transmission systems to SPP but can not determine whether UGP will do the same.

exempted from such rates. Staff suspects that it would be impossible to demonstrate “no benefit” to new members from existing regionally funded rate base. Otherwise, a very basic rationale supporting the entire concept of Highway/Byway funding would be moot.

Staff has participated in various working groups at SPP in order to track development of revisions/additions to the necessary SPP documents as they became known and the Commission has maintained a presence at all Regional State Committee meetings and special teleconferences on these matters. Staff efforts to acquire necessary supporting information for the proposed IS membership from SPP staff have resulted in limited or no response to requests for key data needed to determine the actual distribution of benefits that were otherwise presented as undisputable facts.

RECOMMENDATION:

Staff recommends the Commission find that SPP should show cause why the proposed terms and conditions offered to the Integrated System are in the public interest of Kansas retail electric ratepayers. The Commission should specifically require SPP to provide evidence that the benefits to Kansas retail electric ratepayers will exceed the increased costs of serving the integrated system.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JOHN R. WINE, JR. 410 NE 43RD TOPEKA, KS 66617		
SAMUEL FEATHER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
ANDREW FRENCH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
NICHOLAS BROWN, PRESIDENT/CEO SOUTHWEST POWER POOL, INC. 201 WORTHEN DRIVE LITTLE ROCK, AR 72223-4936		
ERIN E. CULLUM, ATTORNEY SOUTHWEST POWER POOL, INC. 201 WORTHEN DR LITTLE ROCK, AR 72223		

ORDER MAILED JUN 09 2014

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.