No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN CLEAN POWER ASSOCIATION, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND SOLAR ENERGY INDUSTRIES ASSOCIATION,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

JOINT PETITION FOR REVIEW

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As authorized by Section 313 of the Federal Power Act, 16 U.S.C. § 825l(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, AMERICAN CLEAN POWER ASSOCIATION, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB and SOLAR ENERGY INDUSTRIES ASSOCIATION ("Petitioners") jointly petition the United States Court of Appeals for the District of Columbia Circuit to review and set aside the following orders of the Federal Energy Regulatory Commission ("FERC" or "the Commission"):

1. *Southwest Power Pool, Inc.*, Order Accepting Tariff Revisions Subject to Condition, ER22-379-002. 180 FERC ¶ 61,074 (August 5, 2022) ("August 5th Order," attached hereto as Exhibit A).
2. *Southwest Power Pool, Inc.*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, ER22-379-003. 181 FERC ¶ 62,002 (October 3, 2022) ("October 3rd Notice," attached hereto as Exhibit B).

The jurisdiction and venue of this Court is established by Federal Power Act Section 313(b), 16 U.S.C. § 825*l*(b).

The above-listed Commission orders relate to proposed revisions by the Southwest Power Pool, Inc., ("SPP") to its Tariff pursuant to section 205 of the Federal Power Act ("Act") and part 35 of the Commission's regulations.[1] Specifically, the revisions are to Attachment AA of the SPP Open Access Transmission Tariff to modify the provision on capacity accreditation to state that the accredited capacity of qualified run-of-the-river hydroelectric, wind, and solar resources will be

[1] 18 C.F.R. pt. 35 (2021).

determined based on historical performance in accordance with the SPP Business Practices[2] and the SPP Planning Criteria.[3]

On August 5, 2022, the Commission issued its Order Accepting Tariff Revisions Subject to Condition. On September 2, 2022, Petitioners timely requested rehearing of the Commission's acceptance of the Tariff revisions. Pursuant to the Commission's August 5, 2022, Order, on September 6, 2022, SPP submitted a Compliance Filing.[4] The Commission issued its Notice Denying Rehearing by Operation of Law and Providing for Further Consideration on October 3, 2022.

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Petitioners have provided corporate disclosure statements. In accordance with Rule 15(c) of the Federal Rules of Appellate Procedure, Petitioners have served parties that may have been admitted to participate in the underlying proceedings with a copy of this Joint Petition for Review. As required by Local Rule 15(b), a list of Respondents specifically identifying Respondents' names and addresses is attached. Petitioners have sent copies of the Joint Petition for Review and exhibits via U.S. first-class certified mail, return receipt requested, to

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[2] SPP's Business Practices "are administrative elaboration and clarification of the [Tariff] for the purpose of administering the [Tariff]. They establish a basis for consistent application of [Tariff] provisions." The details of the Business Practices are not in the SPP Tariff. *See* SPP OATT Business Practices at 103, https://www.spp.org/documents/63847/spp%20oatt%20business%20practices%2020210120.pdf.

[3] SPP's Planning Criteria provides "background information, guidelines, business rules, and processes for the operation and administration of the SPP Planning Process." The details of the Planning Criteria are not in the SPP Tariff. *See* SPP Planning Criteria, https://www.spp.org/documents/58638/spp%20planning%20criteria%20v2.4.pdf.

the clerk for service on Respondents as required by Federal Rule of Appellate Procedure 15(c)(3).

DATED: December 2, 2022

Respectfully submitted,

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Counsel for Solar Energy Industries Association

DISCLOSURE STATEMENTS

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Petitioners make the following disclosures:

The American Clean Power Association ("ACP") is a non-profit 501(c)(6) organization incorporated under the laws of the District of Columbia. ACP is a national non-profit trade association representing a range of member companies with a common interest in encouraging the deployment and expansion of wind, solar, energy storage, and electric transmission in the United States, including project developers, project owners and operators, financiers, utilities, marketers, and customers. ACP is a non-profit corporation and, as such, no entity has any ownership interest in it. ACP does not have any outstanding shares or debt securities in the hands of the public nor any parent, subsidiary, or affiliates that have issued shares or debt securities to the public.

Natural Resources Defense Council, Inc. ("NRDC") is a national non-profit corporation with members residing in each of the fifty United States. NRDC is dedicated to safeguarding the Earth: its people, its plants and animals, and the natural systems on which all life depends. Additionally, NRDC works to achieve energy solutions that will lower consumer energy bills, meet federal and state carbon reduction goals, accelerate the use of renewable energy, and ensure that clean energy is affordable and accessible to all. NRDC has no parent companies, subsidiaries, or affiliates and has not issued shares or other securities to the public. No publicly held corporation owns any stock in NRDC.

The Sierra Club, founded in 1892, is a national organization with more than 60 chapters and over three million members and supporters. The Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments. Part of the Sierra Club's current work focuses on environmental and public health problems associated with energy generation. Sierra Club frequently advocates for wholesale market designs and rules that facilitate fair participation by renewable energy resources, demand-side management, and storage. Sierra Club advocates for rules that do not give undue preference to fossil fuel generation in a manner that increases costs to consumers without commensurate benefits. Sierra Club has no parent companies, subsidiaries, or affiliates and has not issued shares or other securities to the public. No publicly held corporation owns any stock in Sierra Club.

SEIA is a tax-exempt trade association pursuant to 26 U.S.C. § 501(c)(6) that represents nearly 1,000 member companies nationwide. SEIA represents the entire solar industry, including installers, project developers, manufacturers, contractors, financiers, and non-profits. SEIA's member companies develop, manufacture, finance, and build solar projects both domestically and abroad. SEIA has no parent corporation and no publicly held company owns 10% or more of its stock. SEIA is a trade association within the meaning of Circuit Rule 26.1(b).

LIST OF RESPONDENTS

As required by Local Rule 15(b), Petitioners provide a list of Respondents below specifically identifying the Respondents' names and addresses where Respondents and/or their counsel may be served with copies of this Joint Petition for Review.

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Robert Solomon
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Counsel for Respondent

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25, the undersigned certifies that, on December 2, 2022, a copy of the Joint Petition for Review and exhibits was served on the following Respondent via U.S. first-class mail.

Federal Energy Regulatory Commission
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Counsel for Respondent

A date-stamped copy will be delivered to Respondent, pursuant to 18 C.F.R. § 385.2012, upon receipt.

In accordance with Federal Rule of Appellate Procedure 15(c)(1) & (2), the undersigned certifies that, on December 2, 2022, a copy of this Joint Petition for Review and exhibits were served by email to the parties on the Federal Energy Regulatory Commission's official service list of parties admitted to participate in dockets ER22-379-002 and ER22-379-003 before the Commission.

Service List for ER22-379-000 Southwest Power Pool, Inc.

Party	Primary Person or Counsel of Record to be Served	Other Contact to be Served
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DATED: December 2, 2022

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Exhibit A

180 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Southwest Power Pool, Inc. Docket No. ER22-379-002

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO CONDITION

(Issued August 5, 2022)

1. On November 10, 2021, as amended on March 14, 2022 and June 8, 2022, Southwest Power Pool, Inc. (SPP) filed, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] proposed revisions to Attachment AA of the SPP Open Access Transmission Tariff (Tariff) to modify the provision on capacity accreditation to state that the accredited capacity of qualified run-of-the-river hydroelectric, wind, and solar resources will be determined based on historical performance in accordance with the SPP Business Practices[3] and the SPP Planning Criteria.[4] For the reasons discussed below, we accept SPP's proposed revisions, subject to the condition that SPP submit a compliance filing to include additional detail in its Tariff on its use of the Effective Load Carrying Capability (ELCC) accreditation methodology.

[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. pt. 35 (2021).

[3] SPP's Business Practices "are administrative elaboration and clarification of the [Tariff] for the purpose of administering the [Tariff]. They establish a basis for consistent application of [Tariff] provisions." The details of the Business Practices are not in the SPP Tariff. *See* SPP OATT Business Practices, https://spp.org/documents/64300/spp%20oatt%20business%20practices%2020220627.pdf.

[4] SPP's Planning Criteria provides "background information, guidelines, business rules, and processes for the operation and administration of the SPP Planning Process." The details of the Planning Criteria are not in the SPP Tariff. *See* SPP Planning Criteria, https://www.spp.org/documents/58638/spp%20planning%20criteria%20v2.4.pdf.

I. Background

A. SPP's Resource Adequacy Requirement

2. While SPP does not administer a centralized capacity auction, it does impose a Resource Adequacy Requirement on all Load Responsible Entities (LRE) within SPP.[5] SPP performs a Loss of Load Expectation (LOLE) analysis every two years to determine the adequate amount of planning reserves needed to maintain a reliability metric of one day (or less) in ten years, as required by Attachment AA of the SPP Tariff, to reliably serve the SPP Balancing Authority Area's forecasted Peak Demand.[6] Once SPP performs this LOLE analysis, SPP requires each LRE to own or procure sufficient capacity to meet its non-coincident peak load plus a Planning Reserve Margin, which is currently 12%.[7] In other words, as discussed in greater detail below, SPP applies the Resource Adequacy Requirement obligations on an LRE-by-LRE basis, and not an aggregate basis. If an LRE fails to demonstrate that it has met its Resource Adequacy Requirement, SPP will enforce a deficiency payment equal to the Cost of New Entry multiplied by the amount of capacity in MW that each LRE is short of its Planning Reserve Margin.[8]

B. SPP's Capacity Accreditation Rules

3. Currently, SPP accredits wind and solar resource capacity through a deterministic method, as described in section 7.1.2 of the SPP Planning Criteria, which calculates the 60th percentile capacity value using the top three percent of monthly peak load hours from three to 10 years' worth of historical data. This deterministic method analyzes the same hours of each historical calendar year regardless of how many wind or solar resources are interconnected to the power system.

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[5] Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the Tariff.

[6] SPP Tariff, attach. AA, § 4.0 (0.0.0).

[7] SPP Tariff, attach. AA (Resource Adequacy) (2.0.0). Attachment AA requires that each LRE in the SPP Balancing Authority Area maintain sufficient capacity and planning reserves to serve its forecasted load, and it specifies all the terms and conditions relevant to the establishment, compliance, and enforcement of this requirement. However, the details regarding operational and performance requirements are located in the SPP Planning Criteria.

[8] SPP Tariff, attach. AA § 14.0 (0.0.0).

II. SPP's Filing

4. SPP proposes to revise section 7.8 of Attachment AA of the Tariff to state that a resource qualified in accordance with sections 7.1, 7.2, 7.4, or 7.7 of Attachment AA has its accredited capacity determined in accordance with the SPP Business Practices as well as the SPP Planning Criteria. Sections 7.1, 7.2, 7.4, and 7.7 of Attachment AA address the qualification of Deliverable Capacity, Firm Capacity, Firm Power, and Behind-The-Meter Generation for purposes of meeting SPP's Resource Adequacy Requirement. SPP states that SPP stakeholders approved the adoption of the ELCC accreditation methodology for wind and solar resources, and just as with other capacity accreditation methodologies, the details of the ELCC methodology are set forth in the same section 7.1 of the SPP Planning Criteria. SPP further states that the SPP stakeholders also approved a new SPP Business Practice that includes details of the process by which SPP staff will study the data provided by resources.[9]

5. Specifically, SPP proposes to modify section 7.8 of Attachment AA of the Tariff as follows:

> 7.8 A resource qualified in accordance with Section 7.1, 7.2, 7.4, or 7.7 of this Attachment AA shall ~~be capable of supplying its accredited capacity, as~~ have its accredited capacity determined in accordance with SPP Planning Criteria and SPP Business Practices~~, for a minimum of four (4) continuous hours. The requirement set forth in Section 7.8 shall not apply to run-of-the-river hydroelectric, wind, or solar resources~~.
>
> 7.8.1 Qualified resources shall be capable of supplying their accredited capacity for a minimum of four (4) continuous hours.
>
> 7.8.2 The requirement set forth in Section 7.8.1 shall not apply to run-of-the-river hydroelectric, wind, or solar resources. Qualified run-of-the-river hydroelectric, wind, or solar resources shall be capable of supplying their accredited capacity based on historical performance in accordance with the SPP Planning Criteria and SPP Business Practices.

III. Notice of Filing and Responsive Pleadings

6. Notice of SPP's filing was published in the *Federal Register*, 86 Fed. Reg. 64,194 (Nov. 17, 2021), with interventions and protests due on or before December 1, 2021. Solar Energy Industries Association, Sunflower Electric Power Corporation, American Electric Power Service Corporation, Natural Resources Defense Council and Sustainable

[9] SPP Transmittal at 3-4.

FERC Project, Advanced Energy Economy, Savion LLC, Sierra Club, Energy Storage Association, American Clean Power Association, Advanced Power Alliance, and Climate+Energy Project filed motions to intervene. Clean Energy Advocates[10] filed a motion to intervene and protest (Clean Energy Advocates First Protest). On December 29, 2021, SPP filed an answer to the protest (SPP First Answer).

7. On February 11, 2022, Commission staff issued a deficiency letter seeking additional information regarding SPP's proposal. SPP filed a response to the deficiency letter (First Deficiency Response) on March 14, 2022. Notice of SPP's First Deficiency Response was published in the *Federal Register*, 87 Fed. Reg. 15,418 (Mar. 18, 2022), with interventions and protests due on or before April 4, 2022. Clean Energy Advocates filed a protest to SPP's First Deficiency Response (Clean Energy Advocates Second Protest). On April 21, 2022, SPP filed an answer (SPP Second Answer) to Clean Energy Advocates Second Protest.

8. Notice of a conference call between Commission staff and SPP, to address factual questions related to the filing, was published in the *Federal Register*, 87 Fed. Reg. 19,675 (Apr. 5, 2022). The conference call was held on April 6, 2022.

9. On May 10, 2022, Commission staff issued a second deficiency letter seeking additional information regarding SPP's proposal. SPP filed a response to the deficiency letter (Second Deficiency Response) on June 8, 2022. Notice of SPP's Second Deficiency Response was published in the *Federal Register*, 87 Fed. Reg. 35,978 (June 14, 2022), with interventions and protests due on or before June 29, 2022. Clean Energy Advocates filed a protest (Clean Energy Advocates Third Protest).

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2021), prohibits an answer to a protest unless otherwise

[10] Clean Energy Advocates is comprised of American Clean Power Association, Advanced Power Alliance, Climate+Energy Project, Advanced Energy Economy, Solar Energy Industries Association, Sustainable FERC Project, Natural Resources Defense Council, Sierra Club, and Savion LLC.

ordered by the decisional authority. We accept SPP's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

12. For the reasons discussed below, we accept SPP's proposed Tariff revisions, effective February 15, 2022, as requested, subject to the condition that SPP submit a compliance filing, within 30 days of the date of this order, providing additional detail in its Tariff.[11]

1. SPP's Filing

a. SPP's Tariff Revisions

13. SPP proposes to modify section 7.8 of Attachment AA of the Tariff as follows:

> 7.8 A resource qualified in accordance with Section 7.1, 7.2, 7.4, or 7.7 of this Attachment AA shall ~~be capable of supplying its accredited capacity, as~~ have its accredited capacity determined in accordance with SPP Planning Criteria and SPP Business Practices~~, for a minimum of four (4) continuous hours. The requirement set forth in Section 7.8 shall not apply to run-of-the-river hydroelectric, wind, or solar resources~~.
>
> 7.8.1 Qualified resources shall be capable of supplying their accredited capacity for a minimum of four (4) continuous hours.
>
> 7.8.2 The requirement set forth in Section 7.8.1 shall not apply to run-of-the-river hydroelectric, wind, or solar resources. Qualified run-of-the-river hydroelectric, wind, or solar resources shall be capable of supplying their accredited capacity based on historical performance in accordance with the SPP Planning Criteria and SPP Business Practices.

b. Responsive Pleadings

14. Clean Energy Advocates assert that SPP's filing violates the rule of reason.[12] Specifically, Clean Energy Advocates state that capacity accreditation in SPP significantly affects rates, terms, and conditions of service and therefore must be filed

[11] The Commission may propose modifications to a utility's FPA Section 205 proposal so long as the proposed modifications do not result in an "entirely different rate design." *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

[12] Clean Energy Advocates First Protest at 4.

with the Commission under the rule of reason. Clean Energy Advocates explain that SPP's proposed capacity accreditation methodology has a clear impact on rates, terms, and conditions of service because it will be used to determine the compliance of each LRE pursuant to its resource adequacy requirement. They note that failure to meet the resource adequacy requirement results in penalties that significantly impact rates, terms, and conditions faced by LREs and entities that transact with them. Therefore, Clean Energy Advocates aver that SPP's documenting the features of the methodology in non-tariff documents violates the rule of reason. Clean Energy Advocates request that the Commission reject the filing without prejudice.[13]

15. Clean Energy Advocates state that the Commission previously required SPP to file tariff language codifying its capacity accreditation methodology in SPP's Order No. 841 compliance proceeding.[14] Clean Energy Advocates explain that the Commission employed the rule of reason in that proceeding, determining that the proposed accreditation methodology at the time had requirements that would significantly affect rates, terms, and conditions of service and should be contained in the tariff.[15]

i. SPP First Answer

16. In its response to Clean Energy Advocates, SPP states that capacity accreditation methodologies do not constitute rates, terms, and conditions of service that affect a resource's eligibility to satisfy an LRE's reserve requirement.[16] SPP explains that such methodologies determine the extent to which a resource can satisfy an LRE's reserve requirement. Additionally, SPP notes that the Commission has recognized that capacity accreditation methodologies are implementation details that are not required to be codified as tariff language.[17] SPP states that the Commission has differentiated between qualification requirements, which must be included in the Tariff, and operational and performance requirements, which are appropriately included in the Planning Criteria. Further, SPP states that the Commission has allowed SPP to keep its accreditation methodologies in the Planning Criteria.[18] For these reasons, SPP states that the

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[13] *Id*. at 3-5.

[14] *Id.* at 8 (citing *Sw. Power Pool, Inc*., 169 FERC ¶ 61,048 (2019)).

[15] *Id*. at 8-9.

[16] SPP First Answer at 4.

[17] *Id*. (citing *Sw. Power Pool, Inc.,* 171 FERC ¶ 61,065, at P 22 (2020); *Midcontinent Indep. Sys. Operator, Inc.,* 173 FERC ¶ 61,139 at PP 68, 104 (2020)).

[18] *Id*. (citing *Sw. Power Pool, Inc.,* 171 FERC ¶ 61,065 at P 22).

Commission should reject Clean Energy Advocates' argument that the filing is unjust and unreasonable.[19]

ii. Clean Energy Advocates Second Protest

17. In response to SPP's First Answer, Clean Energy Advocates claim that SPP describes the significance of accreditation to both rates and reliability, when SPP stated that underestimating "the contribution of variable generation resources to help meet forecast system peaks can result in the acquisition of unnecessary generation capacity and higher system costs. Overestimating the ability of such variable generation resources to help serve forecast system peaks can result in lower levels of system reliability and increased risks of unserved load."[20]

18. Clean Energy Advocates also take issue with SPP's citation to the Commission's order approving changes to MISO's tariff, wherein the Commission concluded that it was sufficient that a tariff section "provides the formula for determining an Intermittent Capacity Resource's 'deliverability-adjusted capacity factor' and 'existing peak performance Capacity Factor' which are in turn used to determine the amount of Unforced Capacity determined to be deliverable."[21] Clean Energy Advocates contrast this with SPP's proposed Tariff provision that does not even specify that a formula may be used.[22]

19. Clean Energy Advocates dispute any distinction SPP draws between provisions defining qualification to sell capacity and those defining the extent of a resource's capacity value. They argue that whether a resource can sell capacity significantly and directly affects rates, but the value of capacity it can sell is not a reasonable distinction, because the Commission's authority over the former could be easily undermined by a methodology that sets the resource's capacity value at zero. Clean Energy Advocates add that how much a resource contributes to an LRE's Resource Adequacy Requirements affects prices and competition in the bilateral wholesale markets for capacity, and state

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[19] *Id*. at 6-7.

[20] Clean Energy Advocates Second Protest at 6 (citing SPP First Answer, attach. 2 at 1).

[21] *Id*. at 9 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 173 FERC ¶ 61,139 at P 104). Clean Energy Advocates add that SPP's proposed Tariff language further confuses matters because despite the grouping of run-of-river hydroelectric resources with wind and solar resources, SPP does not intend to make any changes to accreditation for run-of-river resources (such as implementing an ELCC approach). *Id*. at 10.

[22] *Id*.

that the fact that SPP lacks a centralized capacity market does not mean that rules for capacity accreditation do not affect rates within the Commission's jurisdiction.[23]

20. Noting that SPP provided copies of the relevant ELCC language from its Planning Criteria and Business Practices as attachments to its deficiency response, Clean Energy Advocates conclude that these documents quite clearly show that the details of SPP's intended methodology are "reasonably susceptible of specification." Clean Energy Advocates contend that these documents are not a substitute for adequately detailed Tariff language that provides reasonable notice to market participants of the rate.[24]

21. Clean Energy Advocates also request that the Commission initiate an FPA section 206[25] proceeding to direct SPP to include Energy Storage Resource accreditation in its Tariff and determine whether SPP should apply the ELCC methodology to all resources.[26]

iii. SPP Second Answer

22. SPP disputes Clean Energy Advocates' claims that the proposed Tariff revisions make it impossible to discern that an ELCC method will be used, because the Tariff language points directly to public documents that provide further explanation. SPP further notes the Commission's approval of MISO's reference in its tariff to an ELCC methodology which explained that "specific methodologies are implementation details that need not be contained in the Tariff."[27] SPP concludes by stating that the arguments regarding the substance of the ELCC methodology are beyond the scope of this proceeding.[28]

c. Commission Determination

23. We find that SPP's proposed Tariff revisions, which provide that the accredited capacity of qualified run-of-the-river hydroelectric, wind, and solar resources will be

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[23] *Id.* at 8.

[24] *Id*. at 10.

[25] 16 U.S.C. § 824e.

[26] Clean Energy Advocates Second Protest at 13.

[27] SPP Second Answer at 3-4 (citing *Midcontinent Indep. Sys. Operator, Inc*., 173 FERC ¶ 61,139 at PP 10, 68, 104).

[28] *Id*. at 4.

determined based on historical performance in accordance with the SPP Business Practices and the SPP Planning Criteria, are just and reasonable and not unduly discriminatory or preferential. As SPP notes, it already accredits these resource types based on their historical performance,[29] and the Commission has accepted proposals from other RTOs/ISOs that also accredit intermittent resources based on their historical performance.[30] We continue to find here that, as a general matter, historical performance-based capacity accreditation can reasonably estimate the capacity value of intermittent resources.

24. However, we find that SPP's filing fails to meet the rule of reason and, as discussed below, accept SPP's proposed Tariff revisions subject to condition that SPP include additional details in its Tariff. Decisions regarding whether an item should be placed in an RTO/ISO tariff or in a business practice manual are guided by the rule of reason, under which provisions that "significantly affect rates, terms, and conditions" of service, are readily susceptible of specification, and are not generally understood in a contractual agreement must be included in the tariff, while items better classified as implementation details may be included in the business practice manual.[31] The rule of reason recognizes that there are an "infinitude of practices affecting rates and services"[32] and courts have recognized the Commission's broad discretion to allow utilities to forego filing particular contracts or practices.[33]

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[29] SPP First Deficiency Response at 6; SPP Second Answer at 7.

[30] *See*, e.g., *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056 (2021); *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,102 (2022) (*NYISO*).

[31] *Energy Storage Ass'n v. PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,296, at P 103 (2018); *see also City of Cleveland v. FERC*, 773 F.2d 1368, 1376-77 (D.C. Cir. 1985) (affirming the Commission's decision not to include term in tariff explaining that "only those practices that affect rates and service *significantly*, that are reasonably *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous" must be included in a tariff) (*City of Cleveland*).

[32] *City of Cleveland*, 773 F.2d at 1376.

[33] *PacifiCorp*, 127 FERC ¶ 61,144, at P 9 n.14 (2009) (citing *Pub. Serv. Co. of Colo.*, 67 FERC ¶ 61,371, at 62,267 (1994)); *see also City of Cleveland*, 773 F.2d at 1376 (explaining that courts give the Commission "broad bounds of discretion [] to give concrete application to this amorphous directive"); *Town of Easton v. Delmarva Power & Light Co.*, 24 FERC ¶ 61,251, at 61,531 (1983) ("[A]s we have stated on several occasions 'the determination of what agreements "affect or relate to" electric service within the purview of section 35.2(b) must be judged by the rule of reason.'") (quoting

25. SPP explains that it will adopt an ELCC methodology to accredit wind and solar resources based on historical performance. SPP argues that any arguments regarding the substance of the ELCC methodology are beyond the scope of this proceeding because, according to SPP, the ELCC methodology is an implementation detail that SPP did not propose to include in its Tariff. An initial question, therefore, is whether SPP's ELCC methodology significantly affects rates, terms, and conditions of service. We agree with Clean Energy Advocates that SPP's resource accreditation methodology significantly affects rates. SPP's resource accreditation methodology significantly affects rates because it affects an LRE's ability to satisfy its Resource Adequacy Requirement under the Tariff. Resource accreditation for purposes of the Resource Adequacy Requirement can affect an LRE's net short or net long position relative to its planning requirements, which in turn can be subject to deficiency payments or revenues depending on an LRE's net position.[34]

26. The Commission has accepted tariffs that broadly describe the process and procedures to be used, while allowing certain details and mechanisms to be described outside the tariff. With regard to capacity accreditation filings, the Commission has accepted tariff language that sets forth the process to be used and outlines parameters for calculations and has not required all details to be included in the tariff.[35] For example, NYISO recently proposed tariff language for an ELCC proposal that the Commission found satisfies the rule of reason and provides sufficient notice of how NYISO will

Pac. Gas & Elec. Co., 7 FERC ¶ 61,267, at 61,565 (1979), *aff'd sub nom.*, *Pac. Gas & Elec. Co. v. FERC*, 679 F.2d 262 (D.C. Cir. 1982)).

[34] *See infra* n.79.

[35] On rehearing of a 2018 NYISO ELCC filing, the Commission found that NYISO's proposal was consistent with the rule of reason, despite the fact that it stated that NYISO would use results from probabilistic modeling, without specifying the form of probabilistic modeling. *N.Y. Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,011 (2018), *reh'g denied*, 170 FERC ¶ 61,051, at PP 13-14 (2020). *See also PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,134, at P 159 (2020) (accepting a filing that estimated prices at "liquid trading hubs" without detailing the names, numbers, or any other details about the hubs); *ISO New England Inc.*, 154 FERC ¶ 61,008, at P 31, *reh'g denied*, 155 FERC ¶ 61,145 (2016) (accepting ISO-NE's Installed Capacity Requirement (ICR) values because ISO-NE's tariff contained extensive guidance and parameters for the calculation of ICR and because the tariff explicitly provided flexibility to update assumptions as necessary).

conduct its capacity accreditation process.[36] NYISO's tariff outlines how it will annually determine capacity accreditation values, noting specifically that it will:

> (i) use the Installed Reserve Margin/Locational Minimum Installed Capacity Requirement study model that is approved by the NYSRC for the upcoming Capability Year as a starting database, (ii) be performed at the conditions that reflect the expected NYCA system that meets the resource adequacy criterion, (iii) develop Capacity Accreditation Factors for all Capacity Accreditation Resource Classes that reflect the marginal reliability contributions toward meeting NYSRC resource adequacy requirements...[37]

27. In contrast, SPP's proposal here provides far less detail. SPP's proposed section 7.8 of Attachment AA provides the following:

> 7.8.1 Qualified resources shall be capable of supplying their accredited capacity for a minimum of four continuous hours.
>
> 7.8.2 The requirement set forth in Section 7.8.1 shall not apply to run-of-the-river hydroelectric, wind, or solar resources. Qualified run-of-the-river hydroelectric, wind, or solar resources shall be capable of supplying their accredited capacity based on historical performance in accordance with the SPP Planning Criteria and SPP Business Practices.

28. Unlike NYISO's proposal, which references a base case and change case, and notes specific models and how they will be applied to create capacity accreditation for each resource, SPP simply states that accredited capacity will be calculated based on "historical performance" according to the terms of the SPP Planning Criteria and SPP Business Practices. We believe that SPP's proposed Tariff language fails to provide sufficient notice as to how SPP will conduct its capacity accreditation because the broad term "historical performance" could also describe a variety of capacity methodologies beyond just the ELCC, or different ELCC models. In other words, "historical performance" is not generally understood to mean an ELCC model, let alone the specific ELCC model that SPP will implement.

29. We further find that the initial base case from which resources' reliability contributions would be measured is not clearly defined in SPP's Tariff, unlike in *NYISO*. In *NYISO*, the base case was defined as "the Installed Reserve Margin/Locational Minimum Installed Capacity Requirement study model that is approved by the NYSRC for the upcoming Capability Year . . . at the conditions that reflect the expected

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[36] *NYISO*, 179 FERC ¶ 61,102.

[37] NYISO Services Tariff, § 5.12.14.3 (40.0.0).

[New York Control Area] system that meets the resource adequacy criterion."[38] In contrast, SPP's Tariff language is silent as to how a base case is measured as part of "historical performance."

30. In addition, SPP states that the respective 35% and 20% thresholds for Tier 1 wind and solar resources are not measured in relation to Peak Demand or Net Peak Demand, as those terms are defined in the SPP Tariff. Instead, SPP states that the thresholds for Tier 1 are measured using the individual LRE's actual average seasonal net peak load from the previous three years.[39] In order to provide sufficient notice as to how SPP will calculate its ELCC values, we find that seasonal net peak load must be clearly defined in the Tariff.

31. Thus, we accept SPP's proposal subject to condition that SPP revise its Tariff to include some of the additional detail it has provided through its transmittal letter, deficiency responses, and the noticed conference call. Specifically, we direct SPP to include the following additional detail in its compliance Tariff filing: (1) an explanation of its ELCC methodology,[40] including its tier allocation process and base case and change cases,[41] with a level of detail similar to that provided in *NYISO*;[42] and (2) a definition of seasonal net peak load.[43]

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[38] *NYISO*, 179 FERC ¶ 61,102 at P 110.

[39] SPP Second Deficiency Response at 7.

[40] *See* SPP First Deficiency Response, Attachment 1 at 6 ("[N]et planning capability for wind and solar facilities will be established using Effective Load Carrying Capability (ELCC) methodology.").

[41] *Id.* ("Wind and solar resources will be studied in three tiers based on meeting the requirements [in the SPP Planning Criteria.]"); SPP Second Deficiency Response at 4 (The base case "is defined as a system load supplied by all other resource types in the SPP footprint that are not being evaluated in the instant analysis."); *id*. (explaining that each tier has its own change case and includes resources in that tier and any higher priority tiers).

[42] SPP Second Deficiency Response at 7.

[43] We note that Commission staff issued two deficiency letters and conducted a publicly noticed conference call to obtain enough information for the Commission to rule on SPP's filing. We expect SPP, in its compliance filing, to provide sufficient detail in its tariff, consistent with the directives of this order, to allow the Commission to act in a subsequent order without the need for additional record development.

32. We decline Clean Energy Advocates' request that the Commission initiate an FPA section 206 proceeding to direct SPP to include Energy Storage Resource accreditation in its Tariff or to apply ELCC to all resources. The methodology for accrediting the capacity of Energy Storage Resources is beyond the scope of this proceeding. Further, an RTO/ISO does not necessarily need to extend an ELCC framework to other resources to demonstrate that its filing is just and reasonable.[44]

2. SPP's ELCC Methodology

a. SPP's Explanation

33. SPP explains that it proposes to use a probabilistic analysis to calculate the SPP systemwide capacity value for all wind and solar resources in the SPP footprint. SPP notes that while it proposes to perform an ELCC analysis for its wind and solar resources, it is not proposing to perform an ELCC analysis for run-of-river hydro[45] or energy storage resources.[46] SPP explains that each year on June 1, it will commence the ELCC study process by evaluating the most recent historical weather year. The results from the most recent year will be added to the previously analyzed historical weather years going back to 2012 in order to derive an average accreditation curve. SPP states that the LOLE benchmark metric to be used for the ELCC Accreditation Study will be a 1 day in 10-year threshold for loss of load expectation (0.1 day/year LOLE), and that the ELCC Accreditation Study will consist of analyses using LOLE metrics to determine the capacity provided by the wind and solar resources.[47]

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[44] *See PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,056, at P 70 (2021) (*PJM*) (finding that PJM "need not extend the ELCC framework to Unlimited Resources to demonstrate that its filing is just and reasonable.").

[45] SPP states that is not proposing to perform an ELCC analysis for run-of-river hydro resources due, primarily, to a lack of increase in the penetration of run-of-river resources. SPP clarifies that existing accreditation practices for run-of-river hydro use historical data. *See* SPP First Deficiency Response at 6.

[46] SPP states that is not proposing to perform an ELCC analysis for energy storage resources because SPP does not apply an historical performance test to energy storage resources since energy storage resources are not intermittent resources and are fully dispatchable up to the point that their energy limitations have been met. SPP states that the dispatchable characteristic of storage resources is a key distinguishing factor. *See* SPP First Answer at n.27.

[47] SPP First Deficiency Response at 8-9.

34. SPP proposes that, before the study begins, each resource or portion of a resource will be assigned to a resource priority type (i.e., Tier) by an LRE. SPP proposes to establish three Tiers, wherein Tier 1 and Tier 2 are for resources with firm transmission service, and Tier 3 is for resources without firm transmission service. The three Tier allocation system applies to both wind and solar resources, which will be studied separately. SPP explains that, for wind resources, the distinction between Tier 1 and Tier 2 is that the maximum amount from wind Designated Resources that can be applied to Tier 1 for each LRE is 35% of the LRE's average seasonal net peak load for the previous three years.[48] In other words, the total nameplate generation of Tier 1 consists of the sum of each LRE's wind nameplate generation that is determined by taking the lesser of: (1) the sum of the LRE's firm transmission service amount for each wind resource used to meet its Resource Adequacy Requirement; or (2) 35% of the LRE's average seasonal peak load for the previous three years. Tier 2 consists of the sum of the wind resources with firm transmission service that are in excess of 35% of the LRE's average seasonal peak load for the previous three years. For solar resources, SPP explains that the distinction between Tier 1 and Tier 2 is that the maximum amount from solar Designated Resources that can be applied to Tier 1 for each LRE is 20% of the LRE's average seasonal net peak load for the previous three years. SPP also explains that it is the LRE's responsibility to designate whether a facility with firm transmission service should be studied in Tier 1 or Tier 2.

35. SPP explains its proposed ELCC process as follows, using wind as an example.[49] SPP states that, first, it will develop an LOLE value (0.1 day/year) for the benchmark system. SPP states that the benchmark system is defined as system load supplied by all other resource types in the SPP footprint that are not being evaluated in the instant analysis. Change case A, also referred to as the first change case, will consider Tier 1 wind resources. Change case B will consider Tier 1 and Tier 2 wind resources together. Change case C will consider all wind resources. SPP states that the base case and all subsequent change cases will be analyzed by adding the same amount of "perfect load" in

[48] The term "seasonal net peak load" is not defined in the SPP Tariff. SPP defines Net Peak Demand as the forecasted Peak Demand less the a) projected impacts of a Demand Response Program and b) adjusted to reflect the contract amount of Firm Power with another entity as specified in section 8.2 of this Attachment AA. *See* SPP Tariff, attach. AA, § 2 (1.0.0).

[49] The process for solar is the same, with the exception of the Tier 1 threshold amount being 20% for solar. SPP Second Deficiency Response at 4-6.

every hour of the assessment period until an LOLE threshold of 0.1 days/year is achieved.[50]

36. SPP determines the ELCC amount for each Tier. To determine the ELCC MW amount applied to each Tier, SPP explains that it will assign an incremental average ELCC value to each tier using the average ELCC MW. The difference in average ELCC MW of the base case and change case A is the ELCC MW assigned to Tier 1. The difference in average ELCC MW of change case A and change case B is the ELCC MW assigned to Tier 2. The difference in average ELCC MW of change case B and change case C is the ELCC MW assigned to Tier 3.[51]

37. SPP states that the entire systemwide accredited capacity as calculated in all Tiers will be completely allocated through this process. As noted above, before the study begins, the LRE will assign each resource or portion of a resource to a Tier. As necessary, single facilities that are divided into multiple Tiers will have the associated capacity accredited based on the portion of the facility's MW in each Tier. SPP states that individual resources of the applicable Tier will then receive a pro rata share of the total systemwide accredited capacity compared to the total historical average capacity value of all facilities in the applicable Tier.[52] Once the system-wide accredited capacity value has been determined for each tier through the ELCC Study process specified in the SPP Business Practices, each individual wind or solar resource will be assigned a percentage of the system-wide accredited capacity from its corresponding tier. Once the accredited ELCC MW for each Tier is determined, an individual resource's portion of those ELCC MWs is distributed on a pro-rata basis determined by the average production output from the top three percent load hours for each applicable season of the individual LRE for which the generation is contracted or designated to serve. SPP states that this is appropriate since each LRE has to plan for its individual load and SPP allocates the Resource Adequacy Requirement based on the individual LRE's non-coincident peak. ELCC accreditation for Tier 2 resources will follow the same logic as for Tier 1, as will ELCC accreditation for Tier 3 resources.[53]

38. SPP states that this incremental method ensures that the total system ELCC does not exceed the total ELCC value of the resource type being studied. SPP states that these steps are repeated separately for each season (summer and winter) and for each ELCC resource type (wind and solar). SPP contends that this aggregate methodology, wherein

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[50] *Id.* at 4.

[51] *Id.* at 5.

[52] SPP First Deficiency Response at 10.

[53] *Id.*

Tier 1 is studied first in isolation, and Tier 2 is studied alongside Tier 1, and Tier 3 is studied alongside Tiers 1 and 2, ensures that the accredited capacity can only decline for each sequential Tier as more wind or solar resources come onto SPP's system. SPP contends that the main driver for the proposed three-tiered study and allocation process, for both wind and solar, is that it allows SPP members to have more certainty from a resource planning process. SPP states that the methodology, from a Tier 1 firm perspective, creates a floor on how much capacity value each LRE can reliably plan to acquire from its variable resources. SPP states that the aggregate methodology will limit the impact of one LRE's decisions on other LREs. For example, if one LRE wishes to fulfill its Resource Adequacy Requirement entirely with wind and solar, the methodology of applying the Tier thresholds to each LRE ensures that the LRE will have less of an impact on the resource decisions and planning of other LREs that may be implementing variable resources at different rates than if the Tier thresholds were applied across SPP. SPP also states that, since the floor is based on Tier 1 only, the methodology also encourages firm transmission service, which safeguards the delivery of these resources.[54]

39. Lastly, in SPP's First and Second Deficiency Responses, SPP defines the benchmark system as system load supplied by all other resource types in the SPP footprint that are not being evaluated in the instant analysis. That is, for the wind ELCC study, the benchmark system will include all resources that are not wind (coal, gas, solar, etc.).[55] However, in the SPP Business Practice included in its First Deficiency Response, the benchmark system is defined as load supplied by all conventional generation in the SPP footprint that is not the resource being studied (coal, gas, etc.), and that no other intermittent sources (i.e., solar) will be included in the wind ELCC study.[56]

b. Responsive Pleadings

i. Clean Energy Advocates First Protest

40. Clean Energy Advocates state that SPP's proposed three-Tier system will result in SPP assigning different capacity values for otherwise-identical units (or for the same unit over time) based on what tier the LRE assigns the units to. Clean Energy Advocates state that ELCC values generally decrease as more of a given technology is added, but Tier 1 units reserve the valuable "first megawatts" and are protected from this decrease. On the other hand, Clean Energy Advocates assert that Tier 3 units receive a lower marginal value and bear an exaggerated risk of diminishing returns. Clean Energy Advocates state

[54] *Id*. at 15-17.

[55] *Id.* at 9; SPP Second Deficiency Response at 4.

[56] SPP First Deficiency Response, attach. 2 at 2.

that Tier 2 is in the middle, locking in a less valuable position than Tier 1 but still enjoying more protections than Tier 3.[57]

41. Clean Energy Advocates argue that SPP's proposed Tier mechanism has similar implications to PJM's vintaged approach, which the Commission rejected,[58] in that the risk inherent in ELCC is not evenly distributed. Clean Energy Advocates state that in the First PJM ELCC Order, PJM proposed "vintages," where each individual ELCC would be granted a floor value based on the year it first cleared the capacity market. Clean Energy Advocates state that those units were guaranteed that their ELCC value would not fall below the floor for 13 years, and, if necessary, PJM would reduce the ELCC value of new entrants to compensate for any overvaluation due to the floor. Clean Energy Advocates state that the Commission rejected this approach, finding it "not just and reasonable because it would discount the accredited capacity value of some ELCC Resources below their actual capacity value in order to value other ELCC Resources above their actual capacity value."[59]

42. Clean Energy Advocates also assert that the proposed methodology arbitrarily applies inconsistent measures of capacity values for different technologies.[60] Specifically, Clean Energy Advocates state that the net capability for most generating units in SPP is the net power output with all equipment in service. Clean Energy Advocates explain that the net capability of thermal generating units represents their installed capacity (ICAP) because this capacity generally does not accommodate outages or availability, though there are technology-specific considerations. Clean Energy Advocates note that SPP requires LREs to maintain a 12% reserve margin above their forecasted net peak demand. Clean Energy Advocates state that ELCC incorporates historical outages for determining capacity for intermittent resources, and that those capacity values represent the unforced capacity (UCAP) for those resources. Clean Energy Advocates further assert that an ELCC capacity value is roughly equal to the capacity value of a thermal resource that has been adjusted for outages. Therefore, Clean Energy Advocates argue that intermittent resources whose ELCC values are measured off of a UCAP rating receive a capacity value that is approximately 12% lower than a thermal resource rated in ICAP.[61] Clean Energy Advocates assert that SPP's proposal to

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[57] Clean Energy Advocates First Protest at 15-16.

[58] *Id.* at 16 (citing *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,084 (2021) (First PJM ELCC Order)).

[59] *Id.* (citing First PJM ELCC Order, 175 FERC ¶ 61,084 at P 104).

[60] *Id.* at 14-15.

[61] *Id.* at 15.

measure wind and solar capacity in UCAP is unduly discriminatory given that SPP measures the majority of its capacity in ICAP.

43. Clean Energy Advocates state that SPP's proposal to use separate valuation methodologies will affect the cost of inverter-based resources due to its effect on their required transmission and transmission upgrades.[62] Clean Energy Advocates explain that the level of transmission service needed to qualify for Resource Adequacy Requirements is commensurate with the amount of accredited capacity. However, Clean Energy Advocates explain that transmission service must be procured at nameplate capacity for inverter-based resources, which increases the cost of the accredited capacity value for those resources. Clean Energy Advocates also note that SPP limits cost sharing for transmission service upgrades for wind resources while thermal resources are subject to none of these additional costs. Clean Energy Advocates argue that SPP's proposal devalues inverter-based resources while failing to place similar restrictions on thermal resources, despite the significant limitations of those resources.[63]

ii. SPP First Answer

44. SPP states that its proposal causes no discrimination to inverter-based resources. SPP states that its stakeholders approved and adopted the ELCC accreditation methodology for wind and solar resources in response to increasing penetration levels of those resource types, and that the details of the methodology are the product of thorough, rigorous, and multi-layered stakeholder review, in which all interested parties, including Clean Energy Advocates, had the full opportunity to participate, offer views, and vote on any proposed changes.[64] In addition, SPP states that all arguments regarding the substance of the ELCC methodology are beyond the scope of this proceeding because the ELCC methodology is an implementation detail rather than a capacity accreditation qualification requirement and SPP did not propose to include such detail in its Tariff. SPP states that Clean Energy Advocates' protest effectively concedes that the merits of the ELCC accreditation methodology are not before the Commission in this proceeding.[65]

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[62] *Id.* at 17.

[63] *Id.* at 17-18.

[64] SPP First Answer at 9-10.

[65] *Id.* at 10-11.

iii. First Deficiency Letter and First Deficiency Response

45. On February 11, 2022, Commission staff issued a deficiency letter requesting that SPP provide additional information regarding: (1) the relevant SPP Business Practices and SPP Planning Criteria; (2) the effective date and timeline; (3) the impacts of the proposed change in accreditation methodology; (4) the ELCC calculation, including SPP's proposed three-Tier study and allocation process; and (5) the proposed 35% and 20% Tier 1 caps, as well how energy storage resources are treated.

46. In its response on March 14, 2022, SPP clarifies that it proposes to use the ELCC methodology in time for the 2023 Summer Season, which will involve making accreditation values available by October 1, 2022, with the deadline to provide data for use in the first ELCC study of June 1, 2022.[66] SPP also clarifies that energy storage resources are not included in the scope of this ELCC proposal.

47. SPP states that it is entirely appropriate for resources that are not able to demonstrate firm transmission service (Tier 3 resources), and, therefore, not eligible to serve Net Peak Demand, to have a lower priority in the process for allocating ELCC. SPP also states that each LRE determinates which wind and solar facilities to place in either Tier 1 or Tier 2 using the allocated capacity to meet its Resource Adequacy Requirements. SPP states that, because the LRE has already fulfilled its contractual obligations in either building, acquiring, or contracting for the output of the resource, the LRE is assuming the risk or benefit for the determination of which of its Firm Capacity resources are placed in Tier 1 or Tier 2.[67]

48. SPP explains that the 20% threshold corresponds to roughly 20% of SPP's peak load, a level above which stakeholders noted that the incremental capacity available from solar facilities declined sharply.[68] Therefore, SPP states that the 20% threshold for solar resources was a responsible allocation of solar capacity. SPP states that capping Tier 1 solar resources at 20% allows each LRE to acquire resources to serve at least 20% of peak load with more certainty in the accredited value of its resource. For wind resources, SPP states that 35% of wind nameplate capacity equates to an ELCC accreditation of approximately 21%, and that the majority of stakeholders supported a Tier 1 threshold for wind resources. SPP states that, at the time SPP's ELCC whitepaper was approved, the majority of the LREs had not yet surpassed the 35% of wind resource threshold of

[66] SPP First Deficiency Response at 3.

[67] *Id.* at 19.

[68] *Id.* at 16.

procured firm transmission service compared to their individual LRE's peak demand.[69] SPP also states that setting Tier 1 limits can also act to deter an individual LRE from taking up all of the available ELCC simply by being first in the "queue." SPP states that these limits provide necessary signals to individual LREs that may try to meet their entire Resource Adequacy Requirement using a singular type of resource to the detriment of reliable operation of the SPP system.[70]

49. As for any similarities to PJM, SPP explains that LREs will assign assets to either Tier 1 or Tier 2 annually and can alter the tier designation of new and existing resources every year at their discretion to provide the flexibility needed for future investment decisions. SPP states that it will recalculate the ELCC value for every wind and solar facility annually and no resources (or tiers) will subsidize, based on the date of installation, the capacity value of any other resources, and, therefore, its tiered approach has no meaningful similarities to PJM's past proposal.[71]

iv. Clean Energy Advocates Second Protest

50. Clean Energy Advocates reiterate their argument that SPP's proposal can result in different accreditation for resources that are identical, but for the LRE's decision of which Tier to place them in, resulting in the unduly discriminatory treatment of these resources. Clean Energy Advocates argue that SPP's tier system creates opportunity and incentive for anticompetitive behavior, wherein LREs have the option to give higher resource adequacy values and lower risk to resources they own, or that are owned by preferred suppliers, by placing them in Tier 1. Conversely, Clean Energy Advocates argue that LREs may place the brunt of the risk arising from decreasing resource adequacy values on suppliers by assigning them to Tier 2. Clean Energy Advocates state that this concern extends beyond allocation between ELCC resources, as it does not appear necessary for an LRE to fill its Tier 1 quantity before assigning resources to Tier 2. Clean Energy Advocates state that this means that an LRE with an interest in protecting its legacy resources, perhaps in the context of state integrated resource plan proceedings, can artificially inflate the need for those resources by unnecessarily assigning ELCC resources to Tier 2.[72]

51. Clean Energy Advocates also argue that SPP's proposal to have each LRE have its own cap on the amount of resources it may place in Tier 1, based on the LRE's peak load,

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[69] *Id.* at 17.

[70] *Id*.

[71] *Id.* at 21-22.

[72] Clean Energy Advocates Second Protest at 14-15.

is unjust and unreasonable. Clean Energy Advocates state that this applies even if there is "room" in the Tier over SPP as a whole; i.e., an individual LRE with solar in excess of 20% of its seasonal peak must assign some of that solar to Tier 2 even if SPP as a whole has solar well below 20% of peak load. Clean Energy Advocates state that this will result in LREs with higher proportions of renewable energy resources seeing the resource adequacy value of their investments lowered relative to their peers. Clean Energy Advocates argue that, in turn, may delay or prevent the retirement of redundant legacy resources elsewhere in SPP. Clean Energy Advocates state that even if the Commission finds the tier system as a whole to be just and reasonable, discounting some LREs' resources so that Tier 1 spots can be held empty in reserve for other LREs is not.[73]

52. Clean Energy Advocates argue that SPP's justification for its proposal that an LRE should not be able to rely entirely on ELCC resources, bears more scrutiny. Clean Energy Advocates state that, at SPP's current level of solar deployment, a small LRE could conceivably build enough solar to meet its resource adequacy obligation, and that SPP appears to hold that this would be an undesirable outcome, as that LRE would be leaning on the rest of the system. Clean Energy Advocates disagree, stating that while an LRE that meets its resource obligation entirely through solar would rely on its neighbors at nighttime, that same LRE would also have surplus power to export during sunny days. Rather than a high-solar LRE leaning on other utilities, Clean Energy Advocates argue that this situation exemplifies the mutual interdependence that characterizes resource adequacy in a system with increasing amounts of renewable energy. Clean Energy Advocates state that at the heart of this issue is SPP's approach whereby each LRE has to plan for its individual load. Clean Energy Advocates state that, when resource adequacy was primarily supplied by traditional dispatchable plants, this approach was less problematic. However, Clean Energy Advocates state that, with increasing renewables, blindly following "every LRE for itself" needlessly fragments the region's resource adequacy picture, potentially resulting in inefficient planning and unnecessary procurements. Clean Energy Advocates argue that assuming accurate ELCC calculations, sufficient transmission, and a well-functioning energy exchange market, there is no resource adequacy justification for placing artificial limits on how much of its resource adequacy needs an LRE seeks to meet from ELCC resources.[74]

53. Clean Energy Advocates also state that the percentages at which SPP caps Tier 1 are arbitrary. Clean Energy Advocates state that there is a significant difference in the value associated with a wind or solar resource being placed in Tier 1 versus Tier 2, and that the primary purpose of the cap on Tier 1 resources is to ensure that each LRE gets an opportunity to claim some of the higher capacity value associated with renewable energy

[73] *Id.* at 15-16.

[74] *Id.* at 16-17.

at lower levels of penetration—they have nothing to do with making accurate determinations of resource adequacy value for wind and solar resources. Clean Energy Advocates state that SPP's translation from a systemwide 20% solar threshold to each LRE's portfolio bears no relationship to any inflection point in the average ELCC for solar for a particular LRE, which may have a different daily or seasonal load profile from the system as a whole, or a different generation mix. Clean Energy Advocates state that SPP mixes and matches when a wind or solar resource's ELCC is judged against the SPP system as a whole, or an LRE's individual system, in a way that leads to arbitrary ELCC values. Clean Energy Advocates also state that the threshold for Tier 1 wind resources is even more arbitrary. Clean Energy Advocates states that SPP's explanation for the 35% threshold does not explain why 35% is a reasonable threshold, but instead merely suggests the number was generally agreeable to SPP members.[75]

54. Clean Energy Advocates also argue that SPP's rationale for placing wind and solar resources without firm transmission into Tier 3, that because "the SPP Tariff requires that a generator be designated as a network resource or have point to point transmission service associated with it to serve Net Peak Demand, it is imperative that the accreditation of resources that have firm transmission service not be reduced by resources that cannot be used to serve load," mischaracterizes the role that resources without firm transmission service can play in meeting an LRE's Resource Adequacy Requirements under the Tariff. Clean Energy Advocates state that SPP's Tariff includes different qualifications for the resources needed to meet net peak demand and those that can be used to meet the reserve margin portion of the LRE's Resource Adequacy Requirements. Clean Energy Advocates state that the latter need not have firm transmission service, but instead qualify so long as they are deliverable (as determined in an annual deliverability study). Thus, Clean Energy Advocates state that SPP's rationale for providing lower ELCC values to resources without firm transmission service—that doing so simply tracks requirements in SPP's Tariff—does not hold up. Clean Energy Advocates state that SPP has not established that it is therefore reasonable to deprive these Tier 3 resources of an equitable and accurate allocation of the class ELCC.[76]

v. SPP Second Answer

55. SPP reiterates its assertion that all arguments regarding the substance of the ELCC methodology remain beyond the scope of this proceeding, but also asserts that its proposal causes no undue discrimination to variable energy resources. Regarding the argument that LREs might place their wind or solar resources in a particular Tier with a strategic aim of inflating the need for their legacy resources, SPP states that speculation

[75] *Id.* at 17-18.

[76] *Id.* at 19.

as to what a third-party actor might do is an inappropriate basis for rejecting a process or design, particularly one vetted through a lengthy stakeholder process.[77] SPP also states that an LRE would receive no strategic benefit from placing resources in Tier 2 while leaving open slots in Tier 1. SPP states that an LRE that has already purchased capacity from all available wind and solar facilities may place the resources in the appropriate tiers and will benefit the most by placing its strongest performing resources into Tier 1 rather than placing lower performing facilities in that Tier.[78]

56. In addition, SPP states that nothing in its ELCC methodology or its filing causes any discriminatory treatment towards particular resource types with respect to revenue distribution.[79] SPP states that under its resource adequacy process an LRE will have previously purchased its capacity through SPP's bilateral market construct prior to making any tier decisions. SPP states that it is the LRE that has rights to any potential deficiency revenues that could occur as a result of SPP's resource adequacy process, and that no SPP Tariff requirement or process requires an LRE to distribute deficiency revenues it receives from SPP to any particular resource owner.[80] SPP also states that it does not have the ability to direct what mix of resources an individual LRE employs in its portfolio. However, SPP asserts that, by using a tiered design, its ELCC methodology provides an LRE with more certainty regarding the capacity value that can be obtained for variable resources with firm transmission service, and that this increased planning accuracy makes it easier for an LRE to increase its ratio of variable energy technologies in its portfolio.[81]

57. SPP states that it has accredited wind and solar resources based on their historical performance, which takes into account both the variability/intermittency of wind and solar resources as well as any outages, before the instant filing, such that the disparate

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[77] SPP Second Answer at 5-6.

[78] *Id.* at 6.

[79] As part of SPP's Resource Adequacy Requirement, LREs that fail to obtain sufficient capacity to meet the Resource Adequacy Requirement are considered deficient and subject to a Deficiency Payment based on the amount of MW the LRE is short times a multiple of Cost of New Entry. Deficiency Payments are then distributed to Market Participant(s) for its LRE(s) with excess capacity on a *pro rata* basis. *See* SPP Tariff, attach. AA, § 14 (0.0.0), §§14.1, 14.2, 14.4.

[80] *Id*.

[81] *Id.* at 6-7.

valuation system between intermittent and conventional resources existed prior to its proposal to use ELCC for intermittent resources.[82]

vi. Second Deficiency Letter and Second Deficiency Response

58. On May 2, 2022, Commission staff issued a second deficiency letter requesting that SPP supplement the record to provide clarifications and additional information in the record relating to: (1) a detailed description of the proposed ELCC study process, including a description of each base case and change case scenario, as applicable; (2) peak demand versus net peak demand; and (3) ICAP versus UCAP.

59. SPP responded on June 8, 2022, providing a detailed description of the proposed ELCC study process, including a numerical example calculation that demonstrates how the ELCC study process works, as well as clarity on peak demand versus net peak demand and ICAP versus UCAP.

60. SPP states that the use of ICAP for conventional resources and UCAP for intermittent resources is appropriate and not unduly discriminatory because each methodology is predicated on the specific attributes and the dispatchable operating characteristics of their respective resource.[83] Additionally, SPP states that its stakeholders are considering a UCAP standard for conventional resources, which SPP states will not affect the Tier 1 thresholds for intermittent resources.[84] SPP asserts that delaying the ELCC accreditation for wind and solar resources until conventional resources are similarly accredited poses a reliability issue. Specifically, SPP states that its current accreditation methodology can potentially overestimate the capacity value of wind and solar resources, noting that there was roughly 6,500 MW of wind when the current methodology was implemented in 2014 and that SPP now has over 31,000 MW of installed wind.[85]

vii. Clean Energy Advocates Third Protest

61. Clean Energy Advocates state that SPP proposes to tighten accreditation methods for wind and solar resources while continuing to subsidize the outages and other limitations of conventional resources when it comes to accreditation. Clean Energy

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[82] *Id*. at 7.

[83] SPP Second Deficiency Response at 8-9.

[84] SPP Second Answer at 7-8.

[85] SPP Second Deficiency Response at 9.

Advocates state that outages of conventional resources in SPP are not a de minimis matter and highlight a recent SPP report, which examined the last five years of NERC GADS data on forced outage rates among conventional resources, which found that the summer season average was 7.5% and the winter season average was 11.2%.[86]

62. Clean Energy Advocates aver that, while SPP states that, if it were to treat wind and solar resources on the same terms as conventional resources at this time, SPP's Planning Reserve Margin requirement for each LRE would need to account for the installed capacity value for wind resources, which results in "an increase of the [Planning Reserve Margin] to over 50% for an individual LRE peak load, instead of the current 12%, based on SPP's current nameplate wind resource portfolio,"[87] SPP's response illustrates the unduly preferential treatment conferred upon conventional resources under SPP's current tariff and worsened by its proposal—the outages of conventional resources are planned for by increasing the total amount of capacity acquired, rather than decreasing the total amount of capacity that a thermal resource can offer. Clean Energy Advocates state that, in contrast, wind and solar resources' capacity value is diminished by their outage rates. Clean Energy Advocates state that this discriminatory treatment has a direct bearing on the choices made by LREs when complying with the SPP Resource Adequacy Requirements, and improperly uses a standard that favors the valuation of thermal resources over renewable generation without justification.[88]

63. Clean Energy Advocates also object to SPP's response that SPP does not anticipate that the transition to a UCAP accreditation methodology for conventional resources would have any effect on the 35% and 20% thresholds that SPP proposes for Tier 1 wind and solar designations. According to Clean Energy Advocates, if this were true, it reveals that SPP's ELCC methodology for wind and solar (and likely also for energy storage resources) is based on a flawed methodology that is insensitive to the typical output profiles of other resource types. For example, Clean Energy Advocates state that if conventional resource outages were accurately accounted for—especially outages correlated within a resource class—lower output from thermal resources during very hot weather would increase the ELCC of resources that perform well during those same periods of time, like solar resources. Clean Energy Advocates state that, because SPP asserts that the 20% threshold for Tier 1 solar resources is derived from the ELCC curve, that threshold should change with any material change in the underlying curve.[89]

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[86] Clean Energy Advocates Third Protest at 4.

[87] *Id.* at 5-6 (citing SPP Second Deficiency Response at 8).

[88] *Id.* at 6-7.

[89] *Id.* at 7-8.

64. Regarding SPP's response to the third question, Clean Energy Advocates state that there is no immediate reliability risk associated with waiting to implement ELCC for wind and solar until the resource accreditation approaches for thermal resources can be updated to reflect their outage risks. They state that the fact that ELCC values for wind and solar will decline as the quantity of capacity installed on the system increases, and at some point in the future will fall below their accreditation under the current historical approach, does not make an urgent reliability case for rates that are discriminatory today.[90]

c. Determination

65. Clean Energy Advocates raises various concerns about the reasonableness of SPP's ELCC methodology. We disagree, as discussed below.

66. First, Clean Energy Advocates argue that the percentages at which SPP caps Tier 1 are arbitrary. We disagree. As SPP explains, the 20% Tier 1 threshold for solar resources is based on SPP's assessment that the value of additional solar beyond 10,000 MW is minimal.[91] The 35% Tier 1 threshold for wind resources was developed in a similar manner to the 20% Tier 1 threshold for solar resources and it likewise recognizes the diminishing value of wind resources at higher levels of penetration while addressing consideration of certainty and equity between LREs.[92] Additionally, regardless of the Tier 1 threshold that SPP sets, the mechanics of the three-Tier allocation system ensure that the total ELCC MW accreditation across all three Tiers will be the same, because the total is bound by change case C, which is inclusive of all wind resources. This total ELCC MW amount is a reflection of all of the wind resources' contribution to resource adequacy.

67. Second, Clean Energy Advocates argue that SPP's proposal to have each LRE capped at 20% and 35% for Tier 1 solar and wind resources, respectively, regardless of whether other LREs in SPP have also reached that percentage, needlessly fragments ELCC and potentially results in inefficient planning and unnecessary procurements. We disagree. By capping each LRE's procurement of Tier 1 solar and wind resources at 20% and 35%, respectively, SPP's approach will preserve the incentive for each LRE to use wind and solar resources in a manner that best suits the individual LRE, irrespective of what other LREs have built or acquired. Further, as described above, SPP's resource adequacy construct involves LREs meeting their Resource Adequacy Requirements independently. Allowing each LRE to plan for 20% solar in Tier 1, for purposes of

[90] *Id.* at 11.

[91] SPP First Deficiency Response at 16-17.

[92] SPP Second Deficiency Response at 9.

capacity accreditation and meeting the Resource Adequacy Requirement, is in keeping with SPP's existing resource adequacy construct, because it reflects the capacity value of additional wind and solar resources to each individual LRE, which is solely responsible for satisfying its Resource Adequacy Requirement obligations. Furthermore, this proposal is consistent with other provisions in the SPP Planning Criteria, including that the Planning Reserve Margin for LREs with a certain hydro penetration (75% or greater) is 9.89%, while the Planning Reserve Margin for LREs with less hydro penetration is 12%.[93]

68. Third, Clean Energy Advocates claim that SPP's ELCC methodology is unduly discriminatory because an LRE can treat otherwise identical resources differently by its Tier 1 versus Tier 2 allocation. We disagree. As an initial matter, since LREs own or contract for the resources they place in Tiers, no other parties are materially affected by the LRE's placement of resources into specific Tiers. For this reason, and given that SPP does not operate a centralized capacity market where individual capacity resources bid into a single market and compete with each other to obtain a capacity supply obligation, concerns about the accreditation of individual capacity resources are misplaced. In addition, SPP's requirement that LREs place resources into Tier 1 or Tier 2 prior to SPP's ELCC study process minimizes the potential for unduly discriminatory treatment of otherwise identical resources and incentivizes LREs to place their highest performing resources in Tier 1 and maximize use of Tier 1 before placing resources in Tier 2. Additionally, since tier allocation is conducted annually, the dynamic nature of SPP's proposed tier allocation allows LREs to place individual resources in different tiers each year, which offsets concerns that resources in Tier 2 are disadvantaged because such resources can be – and very well may be if it performs well relative other wind or solar resources – placed in Tier 1 in subsequent years and receive a higher accreditation.

69. Fourth, Clean Energy Advocates argue that SPP's ELCC methodology is similar to PJM's vintage ELCC approach that the previously Commission rejected.[94] However, unlike PJM's proposed application of ELCC that set a floor value for 13 years, SPP's Tier allocation and application of ELCC are conducted for all resources on an annual basis regardless of resource vintage. In addition, under SPP's proposal, resources can be designated between tiers, each year, without regard to any previous year's designation.

70. Fifth, Clean Energy Advocates take issue with SPP's rationale for placing wind and solar resources without firm transmission into Tier 3. Since SPP only requires firm transmission service for the portion of the Resource Adequacy Requirement equal to Net

[93] SPP Planning Criteria at 9, https://www.spp.org/documents/58638/spp%20planning%20criteria%20v2.4.pdf.

[94] First PJM ELCC Order, 175 FERC ¶ 61,084.

Peak Demand, but not the portion reflecting the Planning Reserve Margin, we disagree with Clean Advocates' concern with SPP establishing a lower tier for resources without firm transmission service. Those resources will receive lower potential accreditation than resources with firm transmission service, as they can only be relied upon to address an LRE's Resource Adequacy Requirement obligations associated with its Planning Reserve Margin.[95] We agree with SPP that, because the SPP Tariff requires that a generator be designated as a network resource or have point to point transmission service associated with it to serve Net Peak Demand, accreditation of resources that have firm transmission service should not be reduced by resources that cannot be used to serve Net Peak Demand (i.e., those without firm transmission service).[96]

71. Finally, Clean Energy Advocates argue that SPP's ELCC methodology devalues inverter-based resources while failing to place similar restrictions on thermal resources. SPP, on the other hand, states that the use of ICAP for conventional resources and UCAP for intermittent resources is not unduly discriminatory because each methodology is predicated on the specific attributes and the dispatchable operating characteristics of their respective resource.[97] We agree. The fact that resources with correlated output profiles, like wind and solar, bring declining resource adequacy value to the system as their penetration increases is a consequence of the characteristics of such resources.[98] Further, while Clean Energy Advocates cite to PJM as evidence that the Commission has encouraged other RTOs to consider applying ELCC to thermal resources, they fail to note that the Commission explicitly found that PJM, which uses a rating based on UCAP for Unlimited Resources,[99] "need not extend the ELCC framework to Unlimited Resources to

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[95] *See* SPP Tariff, attach. AA, § 10 (1.0.0), § 10.7.

[96] In 2020, the Commission accepted MISO's proposal to require Intermittent Capacity Resources to procure firm transmission service up to their UCAP rating to ensure deliverability of the output on which MISO relies to serve MISO loads, accounting for deliverability-adjusted capacity factors and historical performance of Intermittent Capacity Resources to help MISO meet its reliability needs. *Midcontinent Indep. Sys. Operator, Inc*., 173 FERC ¶ 61,139 at PP 10-16, 81.

[97] *Id.* at 8-9.

[98] *NYISO*, 179 FERC ¶ 61,102 at P 79; *see PJM*, 176 FERC ¶ 61,056 at P 70.

[99] An Unlimited Resource is a generating unit with "the ability to maintain output at a stated capability continuously on a daily basis without interruption." *See* PJM Manual 21A at 7. PJM accredits unlimited resources "equal to the product of the installed capacity of the Unlimited Resource component and [one minus the EFORd for the Unlimited Resource component]." *See* PJM Manual M21A (May 25, 2022) at 14; PJM OATT, attach. DD, § 6.6 (Offer Requirement for Capacity Resources) (0.0.0).

demonstrate that its filing is just and reasonable."[100] The Commission has not required any RTO/ISO to apply an ELCC framework consistently across all resource types. Additionally, we note that capacity accreditation methodologies vary for different resource types in all RTOs/ISOs, and it is reasonable and theoretically sound to use different capacity accreditation methods to reflect the different operational characteristics and risks of different resource types. Finally, as SPP states, SPP stakeholders are considering a UCAP standard for conventional resources.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted, subject to condition, effective February 15, 2022, as discussed in the body of this order.

(B) 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.

By the Commission. Commissioner Clements is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

[100] *PJM*, 176 FERC ¶ 61,056 at P 70.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc. Docket No. ER22-379-002

(Issued August 5, 2022)

CLEMENTS, Commissioner, *dissenting*:

1. I dissent from today's order accepting Southwest Power Pool, Inc.'s (SPP) proposed tariff revisions to modify capacity accreditation for wind and solar resources, subject to the condition that SPP submit, on compliance, revised tariff records that detail how the modified capacity accreditation will work.

2. My reason for dissenting is simple. In a Federal Power Act section 205 filing, the utility must submit the rate revision for Commission inspection and bears the burden of demonstrating that the revision is just and reasonable and not unduly discriminatory or preferential.[1] Here, SPP has not submitted tariff revisions that comport with the rule of reason and has not even attempted to demonstrate how such tariff revisions—which, again, we don't have before us for inspection—meet these statutory requirements. In the absence of such basic elements, I cannot conclude that SPP's proposal is just and reasonable.

3. SPP's position in this proceeding is that it need not even outline, much less detail, in the tariff the new Effective Load Carrying Capability (ELCC) methodology it intends to use to accredit capacity from wind and solar resources.[2] SPP therefore provided minimal tariff revisions that state only that these resources will be accredited "based on historical performance," in accordance with criteria and practices set forth outside SPP's tariff. The majority finds—and I agree—that SPP's proposed tariff revisions do not comport with the rule of reason.[3] In reaching this conclusion, the majority states that SPP's proposed tariff language "fails to provide sufficient notice as to how SPP will

[1] 16 U.S.C. §§ 824d, 824e; *Northwestern Corporation v. FERC*, 884 F.3d 1176, 1180, (D.C. Cir 2018) ("Section 205 of the Federal Power Act . . . places the burden on the utility to show that its proposed revised rate is just and reasonable"); Kansas Gas & Electric Co. v. FERC, 758 F.2d 713, 719–20 (D.C. Cir. 1985) (utility proposing rate clause that departs from previous status quo bears burden of proof).

[2] SPP First Answer at 3; SPP Second Answer at 3.

[3] *Southwest Power Pool, Inc.*, 180 FERC ¶ 61,074, at P 24 (2022) (Order).

conduct its capacity accreditation[.]"[4] My concern, then, is that if interested parties do not have sufficient notice as to how this new accreditation proposal will work, the Commission similarly does not have sufficient information to conclude that this proposal is just and reasonable.[5] It is a bad idea to buy a house without seeing it in person.[6] It is a bad idea to sign a contract based only on one's understanding of the term sheet. It is a similarly bad idea, per my understanding of our binding precedent (for the rule of reason) and statutory obligations (for the just and reasonable determination), to approve a significant proposal despite its clear deficiencies.

4. The majority may respond that the additional information Commission staff obtained from SPP through two deficiency letters and a noticed conference call provides adequate evidence to understand SPP's proposal. But having concluded that SPP's proposed tariff revisions fail to satisfy the rule of reason, the Commission has before it neither the tariff revisions that will effectuate SPP's proposal nor an affirmative justification from SPP as to how those unseen tariff revisions are just and reasonable. Instead, the majority reaches the merits of SPP's filing based only on a description of how SPP intends to implement the proposal.

5. The new capacity accreditation SPP proposes is a substantial market design change. As today's order finds, "SPP's resource accreditation methodology significantly affects rates because it affects a[] [Load Responsible Entity's] ability to satisfy its Resource Adequacy Requirement under the Tariff" and "can affect a[] [Load Responsible Entity's] net short or net long position relative to its planning requirements, which in turn

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[4] *Id*. P 28. Under the Federal Power Act, "[u]nless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect." 16 U.S.C. § 824d.

[5] While today's order accepts SPP's filing subject to condition, the condition imposed is that SPP submit tariff revisions reflecting what it describes in the record, not that SPP provide additional evidence to demonstrate that the revised rate is just and reasonable. The majority therefore reaches the merits of the rate revision, as confirmed by the order's statement that "[w]e find that SPP's proposed Tariff revisions, which provide that the accredited capacity of qualified run-of-the-river hydroelectric, wind, and solar resources will be determined based on historical performance in accordance with the SPP Business Practices and the SPP Planning Criteria, are just and reasonable and not unduly discriminatory or preferential." Order, 180 FERC ¶ 61,074 at P 23.

[6] Trust me, I did this once.

can be subject to deficiency payments or revenues depending on a[] [Load Responsible Entity's] net position."[7]

6. In addition, the underlying ELCC methodology itself is complex. If anyone needs convincing of this fact, I encourage you to read paragraphs 31 to 37 of today's order, in which the majority summarizes SPP's description of how its ELCC methodology will work. This Commission is no stranger to reviewing complex market design changes, so the complexity of the proposal itself is not problematic. But it does highlight why I believe accepting SPP's deficiency responses as enough should not be acceptable in this instance. I believe the Commission needs to see tariff revisions implementing this proposal that comport with the rule of reason, as well as SPP's affirmative defense of why those revisions—as laid out in the tariff—will result in just and reasonable rates.

7. When PJM Interconnection, L.L.C., filed its most recent ELCC proposal in 2021, the tariff revisions describing the ELCC analysis element alone ran nine pages.[8] That level of detail allows the Commission and interested parties to understand the rate revisions being proposed. This is critical not only for wholesale buyers and sellers of capacity directly affected by resource accreditation approaches, but also for states whose generation and demand-side resource choices are indirectly, but significantly, affected by resource accreditation in RTO regions, including in SPP.

8. I recognize that, in the New York Independent System Operator, Inc., (NYISO) order[9] cited by the majority, the Commission accepted less tariff detail on an ELCC proposal than it did in PJM. I supported that order despite reservations about the limited detail NYISO provided in the tariff. However, NYISO's filing in that proceeding is distinguishable from SPP's here in that the Commission found NYISO's submitted tariff revisions *compliant* with the rule of reason.[10] The Commission therefore had the benefit of both the tariff revisions and NYISO's justification for them in reaching a merits finding on NYISO's ELCC proposal.

9. This case is also a departure from the Commission's practice of requiring compliance filings in rule of reason cases only when the parties have had ample notice of what that compliance filing will actually look like. For example, in *Midcontinent*

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[7] Order, 180 FERC ¶ 61,074 at P 25.

[8] *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, RAA SCHEDULE 9.1, RAA SCHEDULE 9.1 (0.0.0).

[9] *New York Independent System Operator, Inc.*, 179 FERC ¶ 61,102 (2022).

[10] *Id*. PP 105-108.

Independent System Operator, Inc.,[11] under the rule of reason, the Commission ordered that the definition of the term "maintenance margin" should be defined in MISO's tariff rather than in its business practices manual.[12] But in that case, the parties already knew and understood what the maintenance margin was; indeed, MISO's filing had included four pages describing the maintenance margin and its precise calculation.[13] Directing a compliance filing to include the definition of a single term in the tariff—when the parties already know what that definition would say—is a wholly different action than directing a compliance filing for the purpose of putting an entire proposed methodology in a tariff *for the very first time*.[14]

10. In addition to my concerns with the rule of reason, I am concerned that several aspects of SPP's filing are not fully justified. For example, SPP's only justification for capping the amount of wind resources at 35% of an LRE's load is that "the majority of stakeholders supported the idea of a Tier 1 threshold."[15] SPP does not provide any analysis to show that the value of additional wind beyond 35% of an LRE's seasonal net peak load[16] is minimal.

11. Today's majority order disagrees with protestors who rightfully point out that this cap is arbitrary. The order seems to argue that the thresholds are irrelevant because the

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[11] 166 FERC ¶ 61,236 (2019).

[12] *Id*. P 71.

[13] *Id.* P 29 n.60 ("AMP states that MISO's proposed revisions to its Business Practices Manual include over four pages of discussion on the purpose of the maintenance margin and the granularity of its application, including formulas…").

[14] *See also California Independent System Operator Corp.*, 119 FERC ¶ 61,053, P 38 (directing CAISO to make a compliance filing under the rule of reason to substitute a less detailed set of tariff revisions for a more detailed version that was previously filed, so as to provide market participants "with a thorough understanding of how the CAISO will make th[e] calculation" of an entity's unsecured credit limit).

[15] SPP First Deficiency Response at 17.

[16] As noted in the Order, SPP's tariff does not have a definition for "seasonal net peak load." As discussed above, while in some cases, such as when the filing utility has provided a clear definition somewhere in its pleadings, it makes sense for the Commission to allow an applicant to provide a missing definition on compliance. This not one of those cases. SPP has not defined "seasonal net peak load" anywhere in its multitude of filings, leaving the Commission guess at what this important term means. *See* Order at P 34, n.48.

"total ELCC MW accreditation across all three Tiers will be the same."[17] But, as explained earlier in the order, and quoted above, the thresholds are relevant because resource accreditation can affect a Load Responsible Entity's net short or net long position relative to its planning requirements and thus its deficiency payments or revenues depending on its net position.[18] Arbitrarily capping the amount of resources that can be designated as Tier 1 may result in SPP undervaluing and under-accrediting the resources forced into Tier 2. This in turn may result in Load Responsible Entities having to over-procure resources (which increases cost for consumers) or become subject to deficiency payments. I would have preferred to assess SPP's justification for this threshold if we instead rejected SPP's filing without prejudice and invited SPP to re-file with adequate tariff records.

12. Finally, I note one issue raised by protestors that I hope the Commission will pay close attention to going forward. Under this proposal, while SPP will accredit wind and solar resources based on their historical performance, SPP will accredit other generating units based on their installed capacity value (ICAP) that does not account for historical outages.[19] Protestors state that other RTOs/ISOs use unforced capacity (UCAP), rather than ICAP, for conventional resources as a means of partially reflecting forced outages, and that ELCC designs treat ELCC resources like wind and solar at least roughly comparably to resources accredited by UCAP. SPP's continued use of ICAP, they argue, puts ELCC resources' accredited value roughly 12% lower than thermal resources with the same actual resource adequacy value.[20] Protestors contend that such disparate treatment amounts to undue discrimination.[21]

13. SPP responds that applying different methodologies to different technologies with differing performance attributes is not unduly discriminatory, and that different operating characteristics like dispatchability bear on accreditation.[22] I agree that this can be the case, which is why I have voted to approve an ELCC proposal in PJM that applied only to a subset of resource types. The majority, however, goes a step further and agrees with the characterization that "use of ICAP for conventional resources and UCAP for intermittent resources is not unduly discriminatory *because each methodology is*

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[17] Order, 180 FERC ¶ 61,074 at P 66.

[18] *See supra* P 5.

[19] Clean Energy Advocates December 2021 Protest at 14-15.

[20] *Id*.

[21] *Id*. at 15.

[22] SPP Second Deficiency Response at 8.

predicated on the specific attributes and the dispatchable operating characteristics of their respective resource."[23] It is not clear to me how differing resource attributes or dispatchable operating characteristics justify accrediting some resource types based on their past performance while accrediting other types in a manner that completely ignores their past performance. Accreditation methodologies across resource types may justifiably differ, but shouldn't they all reflect realistic expectations of the resource adequacy value each resource brings to the table? To do otherwise risks unequal compensation for equal service and unnecessary costs for load, which must purchase additional capacity to paper over the fiction.

14. SPP's continued use of ICAP accreditation may be beyond the scope of this proceeding, and I am encouraged that SPP is discussing movement to a UCAP accreditation with stakeholders. But if such a revision is not forthcoming, I believe the Commission should consider instituting a Federal Power Act section 206 proceeding to investigate the continued justness and reasonableness of SPP's current ICAP practice.

For these reasons, I respectfully dissent.

_____

Allison Clements
Commissioner

[23] Order, 180 FERC ¶ 61,074 at P 71 (emphasis added).

Exhibit B

181 FERC ¶ 62,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc. Docket No. ER22-379-003

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW AND PROVIDING FOR FURTHER CONSIDERATION

(October 3, 2022)

Rehearing has been timely requested of the Commission's order issued on August 5, 2022, in this proceeding. *Sw. Power Pool, Inc.*, 180 FERC ¶ 61,074 (2022). In the absence of Commission action on a request for rehearing within 30 days from the date it is filed, the request for rehearing may be deemed to have been denied. 16 U.S.C. § 825*l*(a); 18 C.F.R. § 385.713 (2021); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

As provided in 16 U.S.C. § 825*l*(a), the request for rehearing of the above-cited order filed in this proceeding will be addressed in a future order to be issued consistent with the requirements of such section. As also provided in 16 U.S.C. § 825*l*(a), the Commission may modify or set aside its above-cited order, in whole or in part, in such manner as it shall deem proper.

Debbie-Anne A. Reese,
Deputy Secretary.