UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Sierra Club; Natural Resources Defense Council, Inc.; and Sustainable FERC Project,	)	**Docket No. EL24-96-000**
v.	)	
Southwest Power Pool, Inc.	)	

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1] Sierra Club, Natural Resources Defense Council, and the Sustainable FERC Project (collectively, "Complainants") move for leave to reply and reply to SPP's May 13, 2024 Answer,[2] in the above-captioned docket.

Complainants here seek to correct several misstatements of fact and law contained in SPP's Answer, and to stand by their challenge to SPP's existing Tariff provisions[3] and planning criteria protocols[4] governing SPP's accreditation rules for

[1] 18 C.F.R. §§ 385.212-213 (2023).
[2] Answer of Southwest Power Pool, Inc., Docket No. EL24-96-000 (filed May 13, 2024) ("SPP Answer").
[3] SPP, Open Access Transmission Tariff, Sixth Revised Volume No. 1 ("SPP OATT"), Attachment AA § 7.8.
[4] SPP, SPP Planning Criteria Revision 4.2 § 7.1 (June 7, 2023) ("SPP Planning Criteria") (attached in Exhibit B). SPP recently revised its planning criteria as part of proposed tariff revisions to its accreditation methodologies, *see* SPP, SPP Planning Criteria Revision 4.3 § 7.1 (Nov. 6, 2023), which are currently pending before the Commission in Docket No. ER24-1317. Because Revision 4.2 reflects SPP's existing accreditation methodologies (which are currently in place and will remain so should the Commission reject SPP's filing), Complainants cite to Revision 4.2 throughout this Reply.

both thermal and renewable resources.[5] Nothing in SPP's Answer changes the reality that SPP's existing accreditation methodologies are outdated and unlawful.

I. MOTION FOR LEAVE TO REPLY TO SPP'S ANSWER

The Commission's Rules prohibit parties from submitting replies to answers unless specifically authorized,[6] but the Commission may waive this prohibition for good cause, and has done so when the filing aids in the Commission's decision-making process.[7] Because there is no provision for parties to file replies to answers, there is also no time limit when any such proposed replies must be filed.[8] Thus, the Commission may consider the timeliness of a proposed answer as part of its determination whether good cause exists to permit that reply into the case record.

Here, there is good cause for the Commission to allow Complainants' proposed Reply: the Reply is narrowly tailored to SPP's specific arguments in the Answer; it corrects errors of fact and of omission made by SPP for the benefit of the Commission; it promotes an efficient resolution of the issues; and it is timely because it is within the window of the Commission's consideration of SPP's filing. Complainants' Reply will help the Commission's understanding of Complainants' concerns regarding SPP's existing accreditation methodologies. Thus, the Commission should grant Complainants' request to submit the following reply.

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[5] *See generally*, Complaint of Sierra Club, Natural Resources Defense Council, Inc., and Sustainable FERC Project, Docket No. EL24-96 (filed March 29, 2024) ("Complaint").
[6] 18 C.F.R. § 385.213(a)(2) (2023).
[7] 18 C.F.R. § 385.101(e) (2023); *see, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 178 FERC ¶ 61,249, P 16 (2022).
[8] 18 C.F.R. § 385.213(a)(2) (2023).

II. REPLY TO SPP'S ANSWER

As an initial matter, SPP's Answer misleadingly portrays the Complaint as an attempt to undermine SPP's Section 205 filing to implement its Proposed Methodologies.[9] SPP's contention misses the purpose of the Complaint, which (1) is expressly based on the premise that the Commission should reject SPP's Proposed Methodologies in the Section 205 as unjust, unreasonable, and unduly discriminatory; and (2) explains that SPP's repeated failure to produce a just and reasonable capacity accreditation proposal requires more direction from the Commission than is available within the confines of a Section 205 filing.[10] In other words, Complainants seek to provide the Commission with additional remedial tools to avoid returning to the unlawful status quo and instead advance resolution of these critical issues.

Perhaps due to SPP's misunderstanding of the Complaint, SPP spends much of its Answer defending its Proposed Methodologies in Docket ER24-1317. In doing so, SPP also contends that Complainants were required to and did not show that the Proposed Methodologies are unlawful.[11] But it is SPP's burden to justify the Proposed Methodologies in its Section 205 filing, and the Commission need not

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[9] *See, e.g.*, SPP Answer at 9.

[10] *See, e.g.*, Complaint at 8 ("If FERC merely rejects SPP's newly proposed tariff revisions without clear guidance on an acceptable rate, it will force SPP to back to the 'drawing board' yet again, wasting precious time in another attempt to develop a lawful proposal."); *id.* at 43 ("Complainants' filing is intended to ensure that the Commission has all available tools to direct SPP to adopt methodologies that accredit all resources based on their actual reliability contributions and do not unduly discriminate among different resource classes.").

[11] SPP Answer at 14–18.

revisit the Proposed Methodologies a second time in resolving this Complaint. If the Commission accepts the Proposed Methodologies in the Section 205 proceeding, then it need not address the Complaint at all.[12] Conversely, if the Commission rejects the Proposed Methodologies, then they remain irrelevant to determining whether SPP's Existing Methodologies are lawful. The Commission can therefore ignore SPP's recycled defense of its Proposed Methodologies, which Complainants have rebutted in the Section 205 proceeding.[13]

When it comes to the arguments actually relevant to the Complaint, as discussed in the sections below, SPP's Answer offers only a brief and unconvincing response on the merits, coupled with procedural arguments that cannot apply to this case; none of these arguments offer a convincing rationale for continued use of its existing unjust, unreasonable, and unduly discriminatory capacity accreditation methodologies.

A. SPP's Answer Fails to Meaningfully Respond to the Merits of the Complaint

There is no reasonable excuse for the continued use of SPP's existing thermal methodology; indeed, SPP's halfhearted defense is evinced by the structure of its Answer, which devotes far more space to defending its separate Section 205

[12] *See infra* at Section II (b).

[13] *See* SPP Answer at 15–17 (arguing that Commission has previously accepted EFORd methodologies and that SPP's lack of a capacity market supports the proposal); Mot. for Leave to Answer and Answer of SPP, Inc., Docket No. ER24-1317 (filed Apr. 19, 2024) at 8–10 (similar); Pub. Interest Orgs.' Mot. for Leave to Reply and Reply to SPP's Answer to Comments and Protests, Docket No. ER24-1317 (filed May 10, 2024) (hereinafter, "PIO May 10 Reply") at 3–6 (rebutting the same arguments).

proposal than defending its plainly unjust and unreasonable existing methodologies.

Complainants have challenged SPP existing methodologies in three specific ways.[14] First, the existing thermal methodology is unjust and unreasonable because it fails to accurately reflect the capacity value of those resources.[15] Second, the existing thermal methodology is unduly discriminatory because it fails to provide comparable treatment of similarly situated resources.[16] And third, the existing thermal and renewable methodologies violate the Commission's Rule of Reason.[17] SPP's Answer should be disregarded because it fails to persuasively respond to any of these arguments.

i. SPP Does Not Respond to the Complaint with Particularity

As the Commission is well-aware, SPP must "[a]dmit or deny, *specifically and in detail, each material allegation* of the pleading answered . . . ,"[18] and "must include documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts and affidavits."[19] SPP has done neither here. For example, SPP's Answer broadly "denies the allegations throughout the Complaint that provisions in SPP's Tariff are unjust, unreasonable, unduly discriminatory, or otherwise unlawful."[20] But beyond

[14] Complaint at 18–42.
[15] *Id*. at 18–32.
[16] *Id*. at 32–36.
[17] *Id*. at 39–41.
[18] 18 CFR § 385.213 (c)(2)(i).
[19] 18 CFR § 385.213 (c)(4).
[20] SPP Answer at Attachment 1.

this boilerplate statement, SPP wholly fails to grapple with Complainants' arguments and allegations regarding the merits of the existing thermal methodology. Moreover, SPP also fails to provide *any* "documents" in support of its denial, much less supporting materials contesting the conclusions of Complainants' expert.[21] Considering that the specific facts alleged in the Complaint are all uncontested, they "may be deemed admitted" by the Commission.[22] On this record, the Commission is left with no choice but to find SPP's existing thermal methodology is not just and reasonable.

ii. SPP does not Specifically Contest that the Existing Methodologies Overstate Thermal Resources' Value

SPP does not meaningfully respond to the argument that the existing thermal methodology is unjust and unreasonable. The *entirety* of SPP's response to this argument is a single, vague, and unsupported sentence that states: "Complainants do not provide any evidence demonstrating that the existing methodologies have led to unjust or unreasonable rates to customers in the SPP Region."[23] SPP cites no authorities, sworn testimony, or any other support for this claim.

SPP's cursory response does not challenge Complainants' core factual allegations that the existing thermal methodology inaccurately overstates thermal resource capacity values because the methodology does not account for any

[21] *See* Complaint at Exhibit A: Affidavit of Dr. Michael Milligan, Ph.D.
[22] 18 CFR § 385.213 (e)(1).
[23] SPP Answer at 22.

generator forced outage rates.[24] More specifically, among other things, SPP's response does not contest that forced outages regularly occur in SPP's footprint,[25] that its existing methodology does not account for these outages,[26] and that the failure to account for these events resulted in thermal resources' contribution being overstated by "18% to 57%" during the three most recent resource adequacy events, while wind resources' contributions were understated by up to 250%.[27] Moreover, SPP does not contest that correlated outages among thermal units occur regularly in its footprint,[28] that its existing methodology does not account for thermal correlated outages,[29] and that correlated outages can result in overstating "the capacity value of [thermal] resources by 2.7% to over 20% in winter and 4.6% to over 10% in summer."[30] Considering that the core function of capacity accreditation is to accurately reflect the capacity value of those resources, the fact that SPP's existing methodology has demonstrated itself to be so woefully inaccurate renders the tariff provisions unjust and unreasonable.

iii. SPP Provides no Justification for the Existing Methodologies' Differential Treatment of Renewable and Thermal Resources

SPP also fails to rebut the Complaint's demonstration that SPP's existing tariff provisions are unduly discriminatory. SPP's response suggests that "SPP's

[24] Complaint at 18–32.
[25] *See, e.g.*, *id*. at 20–22.
[26] *See, e.g.*, *id*. at 18.
[27] *Id*. at 20.
[28] *See, e.g.*, *id*. at 26–31.
[29] *Id*. at 24.
[30] *Id*. at 25.

existing and proposed methodologies differ for conventional and intermittent resources because these two resource types fundamentally function differently, and are thus not similarly situated resources for resource accreditation purposes."[31] However, these arguments are unavailing for several reasons.

First, it appears that SPP confused its justification for its *newly proposed* Section 205 proposal, for a defense to its *existing* methodologies. For example, SPP alleges that because "variable energy resources diminish as penetration increases in a way that the contributions of conventional resources do not," this somehow "justif[ies] different treatment for these differently-situated resource types."[32] However, this statement does not – in any way – relate to SPP's existing methodologies. Neither the existing thermal methodology nor the existing renewable methodology account for diminishing capacity values as resource penetration increases. Indeed, that is precisely what the newly proposed renewable methodology alleges to accomplish. Therefore, this statement does not justify the existing methodologies' consideration of forced outages for renewable resources and lack thereof for thermal resources.

Next, SPP vaguely asserts that "SPP's existing methodologies provide different analyses for different resource types based on their operating characteristics. . . ."[33] But SPP does not attempt to explain what differing "operating characteristics" justify accounting for forced outages for one resource class but not

[31] SPP Answer at 22.
[32] *Id*. at 23.
[33] *Id*. at 24.

for another, particularly when it is well-understood that forced and correlated outages occur across both resource classes. Regarding capacity accreditation in SPP, there is no question that both renewables and thermal resources are eligible to, and can operationally provide, accredited capacity in SPP's market. As such, there is no "specific attribute of solar and wind resources that warrants reducing their accreditation for unit-specific non-performance events while entirely declining to do so for other resources, given that unit specific non-performance events occur across all resource types."[34]

In short, SPP provides no specific defense for the existing methodologies being unduly discriminatory beyond generic unsupported statements.

iv. SPP does not Identify Where in its Tariff the Existing Methodologies Are Described Because They Are Not Contained in the Tariff

The only argument that SPP makes to assert that its existing methodologies comply with the Rule of Reason is that in a separate proceeding from six years ago the Commission found that Attachment AA of the SPP Tariff set forth all the relevant terms and conditions relating to resource adequacy.[35] However, no party questioned whether the specific provisions detailing SPP's existing capacity accreditation methodologies were properly contained in the tariff in that case, and as a result the Commission did not address that issue.[36] Moreover, in any event the

[34] *Sw. Power Pool, Inc.*, 182 FERC ¶ 61,100 at P 7 (2023) (Clements, *concurring*).
[35] SPP Answer at 24–25 (citing *Sw. Power Pool, Inc.*, 164 FERC ¶ 61,092 (2018)).
[36] *See generally Sw. Power Pool, Inc.*, 164 FERC ¶ 61,092 (2018).

Commission is free to revisit past findings with respect to a specific Rule of Reason inquiry.[37]

SPP provides no specific response to Complainants' allegations that the entirety of the existing methodologies lies outside of SPP's Commission jurisdictional tariff. SPP does not even attempt to identify any specific, or even general, place in its tariff where the existing methodologies can be found. Instead, SPP "admits," as it must, "that components of its accreditation methodologies reside in the SPP planning criteria."[38] Complainants have identified exactly where in SPP's Planning Criteria the methodologies are codified.[39] The Commission must therefore find that the existing methodologies violate the Commission's Rule of Reason.

B. The Pending Capacity Accreditation Proposal in Docket No. ER24-1317 Does Not Moot the Complaint

SPP also seeks to take an end run around the Complaint by contending that "Commission precedent generally supports dismissing the Complaint as moot in light of the February 23 Filing."[40] This contention is simply wrong. The fact that there is a pending proceeding before the Commission does not insulate existing tariff revisions from Commission review. Not even SPP's citations support its argument here: they are all predicated on the Commission either *first* or

[37] *See* Complaint at 40 (citing *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,050 at P 41 (2011)).
[38] SPP Answer at Attachment 1, *see also, id.* at 6 ("Details regarding operational and performance requirements are in the SPP Planning Criteria").
[39] *See* Complaint at 39–41.
[40] SPP Answer at 11.

simultaneously finding that a Section 205 filing is just and reasonable before dispensing with the related Section 206 Complaint as moot.[41] And as noted in *Indianapolis Power & Light*, the mere fact that there is an existing proceeding at the Commission that may generically address issues raised in a Section 206 Complaint at some point in the future, does not render a Complaint moot.[42]

To be clear, Complainants agree with SPP's suggestion that if the Commission accepts SPP's Proposed Methodologies, the Commission need not address the Complaint.[43] But this would require the Commission approving SPP's fatally flawed proposed accreditation methodologies; and as explained in Complainants' March 29 protest and May 10 proposed reply in Docket No. ER24-1317, the Commission should reject SPP's proposed methodologies as unjust,

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[41] This fact is acknowledged by SPP itself where SPP states, "[t]he Commission can simply reject the Complaint here *upon acceptance* of the February 23 Filing as just and reasonable. . . ." SPP Answer at 13 (emphasis added).

[42] *Indianapolis Power & Light Co.*, 158 FERC ¶ 61,107 at P 71 (2017) ("We recognize that this issue is currently being addressed generically in the Storage NOPR proceeding, which proposes to require the RTOs/ISOs to revise their tariffs to establish a participation model consisting of market rules that, recognizing the physical and operational characteristics of electric storage resources, accommodate their participation in all capacity, energy, and ancillary services markets in which they are technically capable of participating. Thus, any final rule in the Storage NOPR proceeding may address Indianapolis Power's concerns regarding the market participation limitations placed on its Battery Facility in MISO. However, the Commission has not made any final determinations in the Storage NOPR proceeding, whereas Indianapolis Power has met its burden under section 206 to show that the MISO Tariff is unjust, unreasonable, and unduly discriminatory or preferential. Therefore, we find that it is appropriate for MISO to remedy its unjust and unreasonable Tariff to provide Indianapolis Power with relief. In the event that MISO's Tariff revisions conflict with the required Tariff revisions in any final rule resulting from the Storage NOPR, MISO may be required to adjust its Tariff to align with the Commission's determinations in that final rule.").

[43] *See* SPP Answer 9–14.

unreasonable, and unduly discriminatory.[44] Thus, the Commission may dismiss the Complaint as moot if, and only if, the Commission accepts SPP's proposal in docket ER24-1317 in such a way that fully addresses all the concerns raised in the Complaint.

C. SPP's Section 205 Proposal Remains Unjust, Unreasonable, and Unduly Discriminatory

SPP rehashes the same arguments, many verbatim, that it proposed in Docket ER24-1317 in defense of its Section 205 filing.[45] Primarily, SPP contends that because it has proposed a methodology that "adopts an industry-adopted and Commission-accepted" methodology that its proposal is "just and reasonable.[46] SPP also argues that its Section 205 filing is appropriate because "SPP does not run a centralized capacity market or otherwise centrally procure capacity resources to fulfill resource adequacy requirements."[47] Considering that SPP offers nothing new in this proceeding in defense of its Section 205 filing, Complainants incorporate by reference our responses to these same flawed arguments in that proceeding.[48]

D. Complainants Need Not Offer Any Remedies, Much Less One that "Provides Proper Stakeholder Deference"

SPP contends that Complainants' "[r]equested [r]emedies [f]ail to [p]rovide [p]roper [s]takeholder [d]eference or [c]onsider the Commission's Acceptance of

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[44] *See generally* Protest of Pub. Interest Orgs. to SPP's Proposed Accreditation Methodologies for Thermal and Renewable Generators (Mar. 29, 2024), Docket No. ER24-1317; PIO May 10 Reply.
[45] SPP Answer at 14–18.
[46] *Id*. at 15.
[47] *Id*. at 15–16.
[48] *See* PIO May 10 Reply at 2–11.

SPP's Proposed Methodologies."[49] There are several problems with this argument. First, Complainants are not required to offer any replacement rate in a Section 206 filing, let alone one that "provides proper stakeholder deference."[50] However, in order to assist the Commission in crafting a just and reasonable remedy, Complainants offered a series of guiding principles,[51] as well as several examples of potentially viable replacement rates.[52]

Second, the standard by which Section 205 filings are judged is not modified by the degree of support a Section 205 filing gains in its underlying stakeholder proceeding. While SPP implores the Commission to "defer" to the outcome of SPP's stakeholder process with regard to its Section 205 filing,[53] the Commission "nevertheless must address each filing on its merits and be able to find the proposal just and reasonable."[54]

According deference to SPP stakeholders on the regulation of electric market capacity accreditation would be contrary to the Federal Power Act because the determination of what is just and reasonable cannot be properly delegated to the electric utilities regulated under that Act.[55] The only judicial case cited by SPP in

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[49] SPP Answer at 18.
[50] *See FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014).
[51] *See* Complaint at 44–47.
[52] *Id*. at 47–52.
[53] *See* SPP Answer at 19.
[54] *New York Indep. Sys. Operator, Inc. New York Indep. Sys. Operator, Inc.*, 104 FERC ¶ 61,311, at P 29 (2003).
[55] *See New England Power Pool & Iso New England, Inc. Maine Pub. Utilities Comm'n, et al.*, 105 FERC ¶ 61,300, at P 5 (2003) ("Deference to regional choice, moreover, can not substitute for our responsibility under the Federal Power Act to determine whether this cost allocation proposal is just and reasonable.").

support of its position, *Public Service Commission of Wisconsin v. FERC*,[56] was based on a finding that the Commission independently determined that the proposal was just and reasonable.[57] In other words, the Court found that the Commission's decision was not based on deference to stakeholders. The allegation that SPP stakeholders support the Section 205 proposal simply does not save SPP from the fact that its submission is unjust, unreasonable, and unduly discriminatory.

Nor does this conclusion change because SPP's stakeholders include numerous representatives of state regulatory commissions. SPP suggests in its Answer that the Commission should tread lightly because resource adequacy issues lie at "the confluence of state-federal jurisdiction"[58]; but there is no conflict here with any state's confluent authority over resource adequacy, because the Commission is examining a proposal *from SPP*. SPP operates entirely within the jurisdiction of the Commission, and therefore as an extension of federal jurisdiction over rates and services;[59] it cannot suddenly claim state jurisdictional authorities (and any Commission deference that would follow) simply by securing the approval of state regulators for its proposed policies. The case SPP cited illustrates the circumstances in which this confluence of state and federal jurisdiction creates complications: in that case, the concern (which was dismissed) was that the

[56] *Public Service Commission of Wisconsin v. FERC*, 545 F.3d 1058 at 1062–63 (D.C. Cir. 2008).
[57] *Id.*
[58] SPP Answer at 3.
[59] 16 U.S. Code § 796(27).

California Independent System Operator might improperly inject resource adequacy determinations into the California Utility Commission's consideration of rate matters.[60] Even putting aside that the state jurisdictional concerns were dismissed, nothing even approaching those concerns arises here, because there is no state process that SPP is alleging would be improperly impinged.

III. CONCLUSION

For the reasons stated above, Complainants continue to request that the Commission **GRANT** the remedies outlined in the Complaint.

Dated: May 17, 2024.

/s/ Aaron Stemplewicz
Aaron Stemplewicz
Senior Attorney, Clean Energy Program
Earthjustice
1617 John F. Kennedy Blvd., Suite 2020
Philadelphia, PA 19103
Tel: (215) 717-4524
astemplewicz@earthjustice.org

/s/ Alexander Tom
Alexander Tom
Associate Attorney, Clean Energy Program
Earthjustice
50 California St., Suite 500
San Francisco, CA 94111
Tel: (415) 217-2111
atom@earthjustice.org

/s/ Gregory E. Wannier
Gregory E. Wannier
Senior Attorney, Environmental Law Program
Sierra Club
2101 Webster St., Ste. 1300

[60] *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, PP 1108–1114 (2006).

Oakland, CA 94612
415-977-5646
Greg.wannier@sierraclub.org

/s/ Natalie McIntire
Natalie McIntire
Senior Advocate
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
312-847-6824
nmcintire@nrdc.org

/s/ John Moore
John Moore
Director
Sustainable FERC Project
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
312-651-7927
Moore.fercproject@gmail.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this filing has been served this day upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: May 17, 2024.

/s/ Aaron Stemplewicz
Aaron Stemplewicz
Senior Attorney, Clean Energy Program
Earthjustice
1617 John F. Kennedy Blvd., Suite 2020
Philadelphia, PA 19103
Tel: (215) 717-4524
astemplewicz@earthjustice.org