

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

Southwest Power Pool, Inc.

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**Docket Nos. RT04-1-000
ER04-48-000**

COMMENTS OF THE ELECTRICITY CONSUMERS RESOURCE COUNCIL

The Electricity Consumers Resource Council (ELCON) hereby submits comments on SPP's May 3, 2004 compliance filing in response to the Commission's February 10, 2004 order conditionally granting SPP RTO status.

BACKGROUND

SPP filed a request for approval of RTO status on October 15, 2003. Along with an independent Board of Directors, SPP's RTO filing included the creation of a new Members Committee to serve in an advisory-only capacity to the Board and to facilitate continued stakeholder involvement in SPP's deliberative process without compromising the Board's independence. As initially proposed, the Members Committee was to be composed of fourteen former stakeholder Directors. Seven representatives were to be elected by Transmission-Owning Members, at least two of which would be representatives of non-investor owned utilities. The other seven would be elected by Transmission-Using Members, of which two would be representatives of municipal members, two of cooperative members, and three representatives of marketer and/or independent power producer and/or other Members. SPP claimed that all stakeholder sectors would be represented and no sector would hold a majority stake in the Members Committee.

However, as ELCON pointed out in its comments of November 21, 2003, the problem is not simply that all stakeholder sectors be represented, but that there be a balance of representation between the demand side and the supply side. SPP's proposal contained no explicit requirement that End Users be represented on the Members Committee, and the Members Committee as proposed would have been decidedly supply-oriented, which is be contrary to the aims FERC put forth in the July 31, 2002 SMD NOPR.

FERC apparently agreed with ELCON's concerns about the proposed structure of SPP's Members Committee and therefore, as one of the conditions for approval of SPP's request for RTO status, FERC required SPP to "provide for balanced stakeholder representation on the Members Committee":

38. Second, we require that SPP provide for balanced stakeholder representation on the Members Committee. In Order No. 2000, the Commission determined that:

Where there are stakeholder committees that advise or share authority with a non-stakeholder board, it is important that there be balanced representation on the stakeholder committees so no one class dominates its recommendations or its decisions.

39. Under SPP's proposal, the Members Committee will be comprised of just two sectors, TOs and TUs. Of these sectors, up to five of the seven representatives in the TO sector can be investor-owned utilities. In contrast, the TU sector will include two representatives of municipal members (including municipal joint action agencies), two of cooperative members, and three of marketers or independent power producers.

106 FERC ¶61,110 (2004) at P 38 (footnotes omitted).

COMMENTS

1. SPP's Filing Does Not Comply With The Requirements Of FERC's RTO Order

A. Balanced Representation Is Still Lacking On The Members Committee

On May 3, 2004, SPP made a filing which purports to comply with all the terms and conditions of FERC's February 10, 2004 order. In this filing, among other things, the provisions of SPP's bylaws dealing with composition of the Members Committee were revised:

“The Members Committee shall consist of up to 16 persons. Four representatives shall be investor-owned utilities Members; four representatives shall be cooperatives Members; two representatives shall be municipals Members (including municipal joint action agencies); three representatives shall be independent power producers/marketers Members; one representative shall be a state/federal power agencies Member; and two representatives shall be retail/alternative power/public interest Members.”

SPP Bylaws §5.1.1.1. With the revision, two more bodies are potentially added to the mix¹, but the imbalance between the supply-side and demand side representatives is not rectified.

More to the point, the SPP stakeholder process still bears no resemblance to the stakeholder participation model the Commission advanced in the SMD NOPR or has approved in existing RTOs. In the SMD NOPR, the Commission had suggested a solution to the problem of stakeholder committees dominated by supply-side interests by proposing the creation of a six-class stakeholder committee structure: (1) generators and marketers, (2) transmission owners (including vertically integrated utilities), (3) transmission-dependent utilities (TDUs), (4) public interest groups, (5) alternative energy providers (*e.g.*, distributed generation, demand response technologies, renewable energy), and (6) end-users and retail energy providers (*i.e.*, LSEs that do

¹ The filing is not entirely clear on precisely how many Members will sit on the Members Committee. The by-laws describe sixteen representatives, however, at the same time provide that “up to 16” persons will sit on the Committee. It is not clear which, if any, of the 16 are optional.

not own transmission or distribution assets). See SMD NOPR, 67 Fed. Reg. 55,452 (Aug. 29, 2002), FERC Stats. & Regs. ¶32,563 at P 561 (2002).

While many of FERC's suggested stakeholder groups appear in the description of the composition of SPP's Members Committee, the number of representatives allotted to each group is skewed in favor of the supply-oriented members. Moreover, unlike in other FERC-approved RTOs, end users are excluded from representation on the Members Committee.² As ELCON stated previously in its comments in this docket, "public utilities" – in its broadest sense – cannot and do not represent the interests of large or small end-use customers who ultimately pay for the costs to build and operate the grid. Nor do "retail providers" or "public interest" representatives. It is especially important that large industrial users be represented on RTO stakeholder or member committees given the primacy of the demand response market participating load issue.

B. Requirements For Participation By End Users In The Members Committee Are Onerous And Contrary To FERC's Policy

ELCON is very disturbed by the onerous requirements imposed on any end user to become a Member of SPP and to participate in the SPP Members Committee. Under section 8 of the Bylaws, it appears that an end user, like a participating transmission owner, would be liable for a pro rata share of the RTO's operating costs and debt. According to the revised by-laws, in addition to the annual membership fee, members will be assessed on a monthly basis "all costs not otherwise collected" which will "include but not be limited to all operating costs,

² In the PJM Members Committee, the MISO Advisory Committee, and the proposed SeTrans Stakeholder Advisory Committee, end use customers are, appropriately, given seats. See, e.g., 101 FERC P61,008 (2002) at ¶29 (SeTrans); 84 FERC P61,231 (1998) (MISO). See also "Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.," §8 Members Committee, available at <http://www.pjm.com/documents/agreements.html>; "Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator," Article Two, section VI.A. "Advisory Committee," available at <http://www.midwestiso.org>.

financing costs, debt repayment, and capital expenditures associated with the performance of SPP's functions as assigned by the Board of Directors." §§8.2, 8.4. Moreover, if a member wished to withdraw from SPP, it will again be assessed a pro-rata share of costs and expenses. §8.7. Terms such as these would more appropriately be placed found in an agreement among "Participating Owners" consisting of the jurisdictional and non-jurisdictional entities sponsoring the RTO filing and the entities obligated to finance the RTO. Indeed, the model used by most ISOs and RTOs has been for Participating Owners or Transmission Owners to bind themselves to such terms and conditions in a transmission owners' agreement, and for a separate stakeholder committee to be created whose members need not be so bound, but whose input is essential to a fair and balanced participation in the RTO. Such requirements should not be imposed on end-user members of the RTO as they are contrary to the notion of balanced stakeholder participation, and would discourage end users from joining the Members Committee because they end up paying twice -- once in the form of dues and other fees, and again in rates.

CONCLUSION

SPP's proposal still does not comply with FERC's Order of February 10, 2004. Before being approved as an RTO, SPP should be sent back once again to revise the bylaws so that they comport with FERC policy on balanced stakeholder representation.

DESCRIPTION OF ELCON

ELCON is an association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure an adequate, reliable, and efficient electricity supply for all users at competitive rates. ELCON

member companies produce a wide range of products from virtually every segment of the manufacturing community. The member companies of ELCON consume approximately five percent of all electricity in the United States.

NOTICES AND COMMUNICATIONS

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Dated: May 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were today mailed to parties on the service lists of these proceedings by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 24th day of May, 2004.

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