

165 FERC ¶ 61,220  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Southwest Power Pool, Inc.

Docket No. ER19-97-000

ORDER DENYING WAIVER REQUEST AND DISMISSING FILING

(Issued December 10, 2018)

1. On October 11, 2018, pursuant to section 205 of the Federal Power Act<sup>1</sup> and Parts 35, 39, and 388 of the Commission's regulations,<sup>2</sup> Southwest Power Pool, Inc. (SPP) filed an explanation of its allocation of costs associated with a monetary penalty for alleged violations of Reliability Standards approved by the North American Electric Reliability Corporation (NERC).

2. SPP states that to the extent the Commission deems sections 388.112 or 388.113 of the Commission's regulations to apply to this filing, SPP requests waiver of the requirement to include a protective agreement and waiver of the regulations authorizing release of the confidential version of this filing to entities executing a form of nondisclosure agreement.<sup>3</sup> SPP states that good cause exists to grant such requests for waiver because disclosure of the information contained in its filing could jeopardize the security of the Bulk-Power System operated by SPP. We deny SPP's request for waivers and dismiss SPP's filing as deficient, as discussed further below.

**I. Notice of Filing and Responsive Pleadings**

3. Notice of SPP's filing was published in the *Federal Register*, 83 Fed. Reg. 52,826 (2018), with interventions and protests due on or before November 1, 2018. Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and Westar Energy, Inc.; Oklahoma Gas and Electric Company; and Western Farmers Electric

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pts. 35, 39, 388 (2018).

<sup>3</sup> SPP Transmittal at n.1 (citing 18 C.F.R. §§ 388.112(b)(2), 388.113(d)).

Cooperative filed motions to intervene. West Texas Municipal Power Agency (West Texas) filed a motion to intervene and comments.

4. West Texas states that, although it is not protesting SPP's filing or waiver request in this instance, if the Commission grants any of SPP's requested waivers and approves SPP's proposed cost allocation, the Commission should strictly and expressly limit such findings to this case. West Texas contends that it would be impossible for ratepayers to determine whether the allocation of the penalty is just, reasonable, and not unduly discriminatory if they have no access to the information describing what SPP has done and is proposing in a particular case. Accordingly, West Texas concludes that information about penalties and the allocation of the penalty costs must be made available to interested parties, even if subject to a non-disclosure agreement.<sup>4</sup>

## **II. Discussion**

### **A. Procedural Matters**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **B. Commission Determination**

6. We deny SPP's requests for waiver of sections 388.112 and 388.113 of the Commission's regulations. Section 388.112 specifies that any person submitting a document to the Commission may request privileged treatment for some or all of the information contained in a particular document that it claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act,<sup>5</sup> and that should be withheld from public disclosure. In particular, section 388.112(b)(2) sets forth procedures for filing and obtaining access to material that is filed as privileged in any proceeding to which a right to intervention exists and specifies that if a person files material as privileged in such proceeding, that person must include a proposed form of protective agreement with the filing, or identify a protective agreement that has already been filed in the proceeding that applies to the filed material.<sup>6</sup> Similarly, section 388.113 governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) submitted to or generated by the Commission. Section 388.113(d)(1)(iii) provides for the person filing material as

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<sup>4</sup> West Texas Comments at 3-5.

<sup>5</sup> 5 U.S.C. § 552 (2012).

<sup>6</sup> 18 C.F.R. § 388.112(b)(2).

CEII in a proceeding to which a right to intervention exists to include a proposed form of protective agreement.<sup>7</sup>

7. These regulations recognize that intervenors in a Commission proceeding to which a right of intervention exists, such as the instant proceeding, may need access to information that the applicant believes should be withheld from disclosure to the general public in order to participate effectively in the proceeding. Therefore, the Commission's regulations provide for any person who is a participant in a proceeding or has filed a motion to intervene or notice of intervention to make a written request to the filer for a copy of the complete, non-public version of the document. The request must include an executed copy of the protective agreement and a statement of the person's right to party or participant status or a copy of their motion to intervene or notice of intervention.<sup>8</sup>

8. SPP has not demonstrated that good cause exists for the Commission to grant its requested waivers. SPP has neither adequately supported its concerns nor justified the adverse effect that its waiver request would have on participants in this proceeding who would be willing to sign a protective agreement in order to review SPP's filing and evaluate SPP's proposed allocation of costs. Accordingly, any request from SPP for confidential treatment must be made pursuant to and comply with sections 388.112 and/or 388.113 of the Commission's regulations.

9. Furthermore, we find that without a proposed form of protective agreement, SPP's filing is deficient, and we hereby dismiss the filing without prejudice.

The Commission orders:

SPP's requests for waiver are hereby denied and its filing is dismissed as deficient without prejudice, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>7</sup> 18 C.F.R. § 388.113(d)(1)(iii).

<sup>8</sup> 18 C.F.R. § 388.112(b)(2)(iii).