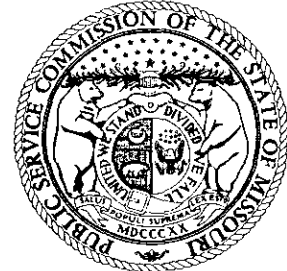


Notice of *Ex Parte* Contact

TO: Data Center
All Parties in Case No. **ER-2008-0093**

FROM: Chairman Jeff Davis

DATE: December 12, 2007



On or about October 11, 2007, I personally called Bill Gipson, CEO of Empire District Electric Company, to discuss Empire Electric Company's request for a waiver with the Southwestern Power Pool and to follow up with Mr. Gipson to determine if they had received any communications with the PSC staff and the staff of the Southwestern Power Administration (SWPA) regarding their determination as to SWPA's valuations of electric losses resulting from operational changes by the Army Corps of Engineers. I did not speak personally with Mr. Gipson, but I received the attached e-mail from Mr. Brad Beecher the following day and we had a short follow-up phone call concerning Empire's request for the waiver. I subsequently received the two attached e-mails from Bary Warren of Empire on this issue.

In addition to these conversations with Empire, I have had several conversations with Mike Proctor of the PSC staff regarding the Empire Electric waiver issue and during the last week of November, I telephoned Bill Gipson to advise him that I thought Mike Proctor and I were being successful in our efforts to lobby my fellow members of the SPP Regional State Committee to recommend a policy change that would ultimately benefit Empire Electric and its ratepayers, but that I would appreciate Empire's continued efforts to educate the SPP Commissioner and Staff Representatives from Arkansas, Oklahoma, Kansas, Texas and New Mexico on the issue. He said that Empire would continue to do so. No other matters were discussed.

PLEASE NOTE THIS ISSUE IS SCHEDULED FOR A VOTE BY THE SPP REGIONAL STATE COMMITTEE ON OR ABOUT JANUARY 28TH. IT WILL BE NECESSARY FOR ME TO ATTEND THAT MEETING IN PERSON OR VIA TELEPHONE, EMPLOYEES OF EMPIRE ELECTRIC AND PSC STAFF MEMBERS WILL ALMOST CERTAINLY BE PRESENT AND I MAY NEED TO DISCUSS THESE ISSUES WITH THEM AT THAT TIME OR IN ANTICIPATION OF THE MEETING.

With regard to the second issue referenced above – that of the SWPA assessment, I had several conversations and exchanged e-mails with the PSC Engineering Staff and Empire Electric regarding this matter prior to the case being opened. I do not recall much about those conversations or whom I had them with because the central theme was that we were all waiting to obtain "flow" data from the Army Corps of Engineers. At this time, I am unable to find copies of those e-mails, but I would hope that the PSC staff would file those e-mail communications in

this case to make the parties aware of the nature of those discussions.

This summary represents the sum total of my knowledge on these issues which, to the best of my knowledge are not issues in this case, but are financial issues related to Empire and, therefore, since case # **ER-2008-0093** is a contested case and the Commission is bound by the same *ex parte* rule as a court of law, I am making notice to the parties of these communications.

As noted previously, there may be a need for me to have subsequent conversations with the PSC Staff and/or Empire Electric regarding both of these issues and I will attempt to provide prior notice to the parties of my intent to have those conversations. If any party to this case wishes to be part of those conversations or wishes to advise this commissioner as to how he might proceed as to avoid the appearance of any inappropriate contact, please file something in this case. If I am unable to notify the parties, I plan to file an *ex-parte* notice in this case as expeditiously as possible.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, I submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

Thank you for your consideration in this matter.

cc: Commissioners
Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel

Davis, Jeff

From: Brad Beecher [BBeecher@empiredistrict.com]
Sent: Friday, October 12, 2007 8:35 AM
To: Davis, Jeff
Subject: Empire SPP Waiver Request for Meridian Way

Mr. Chairman: Bill asked that I give you a call and discuss our SPP waiver position. I just called your office and you were not in.

If you were on the RSC call yesterday, you understand the SPP process is a mess.

SPP has 120 days to act on our request for waiver (12/23). We had asked for a decision by 10/30 so that we would have the waiver decision before we had to commit costs for firm transmission service. Because of the Red Rock cancellation in Oklahoma, the SPP study process is bogged down and probably allows us to support an extension beyond 12/23/07 sometime into Feb 08.

There are many policy issues that have come up as a result of our waiver request. It is my understanding that Dr. Proctor is very involved in the process and is working with Bary Warren from EDE to understand and flesh out any SPP policy issues.

I'll be glad to discuss this at your convenience. I am scheduled in the office except from 8:45 am to 9:45 am.

Brad

Brad Beecher P.E.
VP and COO Electric
Empire District Electric Company
417-625-4260
417-850-7960 (Cell)

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12/11/2007

Davis, Jeff

From: Bary Warren [BWarren@empiredistrict.com]
Sent: Friday, October 12, 2007 4:26 PM
To: John Mills
Cc: Heather Starnes; SPP MOPC (Members Only); SPP BOD - Members Committee (Members Only); SPP Regional State Committee (Members Only); SPP CAWG; Richard McCord
Subject: EDE Requested Response to SPP Letter of October 4, 2007 Regarding EDE Waiver and Transmission Service Request #1222640
Attachments: EDE Response to SPP 10-4-07 Request for Waiver Info - 101207.pdf

John,

On behalf of The Empire District Electric Company and Rick McCord – Director of Supply Management, I am providing the following information.

Please see attached.

I am also copying the below committees, as requested during the RSC call yesterday.

Thank you.

Bary/Empire

cc. CAWG, RSC, MOPC, and BOD exploders

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12/11/2007



October 12, 2007

Mr. John Mills
Manager, Tariff Studies
Southwest Power Pool, Inc.
415 North McKinley Street
#140 Plaza West
Little Rock, Arkansas 72205

Re: Response to SPP October 4, 2007 Request For Information
Empire Waiver Request For OASIS Reservation #1222640
Cloud County/Meridian Way Wind Farm Designated Resource

Dear Mr. Mills,

In reference to your correspondence of October 4, 2007 requesting additional information, The Empire District Electric Company (Empire) is providing the following response.

In our August 23, 2007 request (attached), Empire sets forth the SPP Open Access Transmission Tariff (OATT) provisions, justifications, and circumstances that we believe warrant the granting of the requested waiver. Empire believes that the SPP has sufficient authority to grant Empire's waiver request just as the SPP has done with previous waivers for additional base plan funding.

We want to re-emphasize that Empire's twenty (20) year commitment to the designated resource, the Cloud County/Meridian Way wind farm, significantly exceeds the five (5) year minimum commitment for base plan funding eligibility and will bring added fuel diversity to Empire and the region.

With respect to SPP's authority to grant this waiver as requested, Attachment J of the tariff and the related FERC Order are sufficiently clear and give SPP the authority to grant additional base plan funding in whole or in part for network upgrades.

Empire would also like to clarify that our request for waiver is for "up to" an additional \$16,200,000 (capped) of base plan funding eligibility, allowing for a total of \$18,000,000 (\$1,800,000/MW of accredited capacity or \$180,000/MW of transmission service requested) for the required transmission system upgrades which would be comparable to any fossil fuel designated resource serving load within the footprint. Based upon the SPP's August 30, 2007 posting of SPP-2007-AG1-AFS-4, the allocated Engineering and Construction (E&C) costs associated with Empire's portion of the Meridian Way wind farm are estimated to be approximately \$6.3 Million, but could be changed depending upon the customer service requests that are finalized as part of the SPP 2007-AG1 process.

Each of the waiver requests that have been submitted to date, including this waiver, should not be considered as setting any precedent, as each involves unique factors and circumstances that have to be evaluated on a case by case basis.

Policy Discussion

Empire's waiver has generated much discussion related to SPP's base plan funding policy for designated resources and modeling procedures, zonal MW-Mile allocation impacts, the 125% capacity reserve margin condition, and the overall impact of the Attachment J provisions for wind as a designated resource. If the RSC and SPP believe a general policy change is appropriate, then it may be fitting to proceed with the granting of our waiver and codify such change within the SPP tariff for similar requests in the future.

Empire encourages the SPP staff, CAWG, RSC, MOPC and Board of Directors to 1) finalize its evaluation and discussion, and grant Empire's waiver prior to SPP's deadline (yet to be determined) for confirming the requested transmission service, and 2) pro-actively address policy changes that would be appropriate for future transmission service requests related to wind as designated resources serving load within the SPP region.

Empire had requested that the SPP render its decision on the waiver, with input from the RSC, at its October 30, 2007 Board of Directors meeting – even though the provisions of the SPP tariff allow for up to 120 days (December 23, 2007) for such a decision to be made.

SPP has been delayed in the posting of SPP-2007-AG1-AFS-5 due to the recent events regarding a proposed designated resource in Oklahoma. This event has affected the transmission requests in aggregate study SPP-2006-AG3, and could have an affect on the estimated E&C costs allocated to customers in AG1-AFS-5 and all succeeding service requests. In addition to the event in Oklahoma, there are other key decisions pending regarding another proposed designated resource that impact other SPP members also participating in the SPP-2007-AG1 aggregate study.

These key events are unusual and could be significant that may delay the Aggregate Study results beyond the December 23, 2007 (120 day) waiver decision deadline. Empire could support giving SPP staff, the CAWG, RSC, MOPC, and the SPP Board of Directors additional time beyond December 23, 2007, unless Empire is faced with rendering its decision on whether to commit to transmission service to SPP prior to the Waiver request being finalized. It appears that additional time beyond the 120 day decision period may afford better opportunity for discussions on our Waiver request during the January cycle of meetings, as well as changes in future SPP policy and strategy related to base plan funding for designated resources serving load within the SPP footprint.

We emphasize that our support for an extension is based on our belief that Empire would not be put into a position of having to legally confirm SPP firm transmission service for this designated resource without knowing the outcome of our waiver request – which could substantially affect the applicable base plan funding and direct assignment of transmission upgrade costs identified in SPP-2007-AG1.

John Mills
Southwest Power Pool, Inc.
October 12, 2007
Page 3

The entirety of the facts, justifications, and issues regarding our request has not been set forth in this correspondence, but rather are more fully described in the accompanying letter of August 23, 2007.

We understand the policy issues that our waiver request has raised as well as events that have occurred which are affecting SPP's transmission service request process. However, we respectfully request that our waiver be decided upon as expeditiously as possible and within a time frame that may exceed the December 23, 2007 deadline, but prior to Empire being faced with its commitment decision on the transmission service requested.

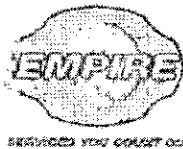
If additional information and/or explanation is needed, please do not hesitate to contact me or Bary Warren.

Again, thank you for your consideration and services.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rick McCord".

Rick McCord
Director, Supply Management



August 23, 2007

Mr. John Mills
Manager, Tariff Studies
Southwest Power Pool, Inc.
415 North McKinley Street
#140 Plaza West
Little Rock, Arkansas 72205

Re: Empire Request For Waiver (#2) Per Attachment J of the SPP OATT
For OASIS Request #1222640 - Cloud County Wind Farm Designated Resource

Dear John,

Pursuant to Section III C 1 (Waiver Process) of Attachment J of the Southwest Power Pool (SPP) Open Access Transmission Tariff, The Empire District Electric Company (Empire) respectfully requests a waiver for up to an additional \$16,200,000 in Base Plan funding related to Engineering and Construction costs of SPP determined direct assignment Network Upgrade facilities associated with Empire's 100 MW of firm transmission service OASIS request.

#1222640(Cloud County -100 MW) SPP-2007-AG1-AFS-3

The transmission service requested is to deliver power from a designated resource, a 100 MW wind farm nearing construction in the proximity of Concordia, Kansas and within the Balancing Authority area of Mid Kansas Electric Company (subsidiary of Sunflower Electric Power Corporation and formally Aquila-West Plains) associated with the requested 100 MW of network integrated transmission service to Empire.

On June 19, 2007, Empire and Cloud County Wind Farm, LLC, a subsidiary of Horizon Wind Energy, entered into a twenty (20) year power purchase agreement. Empire anticipates that the wind farm will be fully operational in late 2008 or early 2009 and begin receiving energy under the terms of the power purchase agreement at that time.

The current results of SPP-2007-AG1-AFS-3 for Empire's Cloud County designated resource indicate the following:

- i) the estimated Engineering and Construction transmission costs, directly assignable to Empire, are projected to be from \$8,000,000 to \$80,000,000, depending on who and what facilities remain in the SPP-2007-AG1-AFS process¹.
- ii) additional/undetermined 3rd party (1st tier non-SPP transmission owning members) required upgrades and,
- iii) potential for additional SPP re-dispatch service costs required of Empire to begin service as requested.

¹ SPP-2007-AG1-AFS-4 is currently being completed and expected to be posted by SPP in late August/early September.

John Mills
Southwest Power Pool, Inc
August 21, 2007
Page 2

Based on Attachment J, III B.3 (a) and (b), Empire's designated resource would be eligible for only \$1,800,000 (10 MW (100 MW x 10% - SPP's default value for dependable capacity of a wind farm - x \$180,000/MW)) of the maximum Safe Harbor Limit amount of \$18,000,000

Empire is requesting a waiver of the application of the "lesser of" provision of the \$180,000/MW Safe Harbor Limit in Attachment J, III B.3 (a) - the planned maximum net dependable capacity applicable to the Transmission Customer. Empire requests that the Safe Harbor Cost Limit be determined using only Attachment J, III B.3. (b) - the requested capacity (meaning the transmission reservation capacity amount (100MW))

Approval to waive the "net dependable capacity provision" would place Empire's Cloud County designated resource on equal footing with other fossil fuel designated resources and transmission only reliability upgrades in terms of regional funding

Pursuant to Attachment J III C. iv - "If a request for a waiver is received by SPP based on other circumstances, such waiver request shall also be considered..." Empire believes that the Cloud County Wind Farm resource, as a designated resource, should be eligible for the full Safe Harbor Limit of \$180,000/MW based on its requested transmission service capacity of 100 MW. It is important to note that SPP models all designated resources - regardless of fuel type (wind, natural gas, hydro, coal, nuclear) - in a similar manner/nameplate - and not solely based on "expected" net dependable capacity

Empire believes that the SPP footprint includes a prominent wind resource sub-region that could be important to the United States power industry. It is important to proactively encourage the development of these wind resources now. The continued reduction/disadvantage in Base Plan Funding for the use of such intermittent resources will only discourage such development

Empire has re-evaluated its position on the eligibility requirements for the Safe Harbor Limit and believes that the Base Plan Funding eligibility should apply to any designated resources

The addition of the 100 MW power purchase agreement with Cloud County Wind Farm, LLC will increase Empire's wind energy capability from wind farm power purchase agreements from 150 MW to 250 MW, thus generating approximately 15% of our annual energy requirements in the year 2009. This resource, like the Empire energy output purchase from the Elk River Wind Farm, is expected to produce a capacity or utilization factor of approximately 40% on an annualized basis. This annualized capacity or utilization factor exceeds most peaking resources within the SPP region and rivals most intermediate natural gas fired combined cycle resources in expected annual capacity utilization factor. The delivery of energy to load is one of the primary purposes of the transmission system, and therefore designated resources with this level of annual capacity or utilization factor should be an additional consideration for Base Plan Funding eligibility

Empire continues to support the condition of 125% capacity resource margin for Base Plan Funding, however through the waiver process, consideration of the significant energy contribution of this type of resource should also be taken into account as a viable circumstance for waiver approval. All load serving entities are required to carry a 12% planning capacity margin and Empire has and will continue to meet and exceed that minimum requirement

Fundamentally, we believe this Waiver raises the issue of strategy and funding.

- Strategy - in terms of the encouragement of the development and use of wind resources as designated resources for existing and prospective SPP members, and
- Funding - in terms of the regionalization of a portion of the transmission costs for wind resources in a manner similar to the way SPP funds transmission upgrades required for reliability (no resources involved), and transmission upgrades required for traditional fossil fuel generation resources.

If SPP models and grants transmission service for designated resources in the same manner regardless of the fuel type - then it seems appropriate for the Safe Harbor Limit to be based on (b) the amount of transmission service requested/granted

Therefore, The Empire District Electric Company respectfully requests the following

- a) SPP staff distribute the Waiver Request to the MOPC and CAWG as soon as possible.
- b) Waiver of Attachment J, III, B 3 (a) and eligibility for the Safe Harbor Limit of up to \$18,000,000 (an additional \$16,200,000) pursuant to (b) - transmission reservation capacity - based on the following circumstances
 - i) the current and future "favorable" circumstances within the SPP region and national outlook for renewable resources,
 - ii) the fact that wind resources in north central Kansas will bring additional fuel diversity to the SPP region and Empire,
 - iii) the cumulative projected Base Plan Funding to Empire for this designated resource (up to \$18,000,000) and the most recent Iatan II and Plum Point resources (projected to be approximately \$12,000,000) would be \$30,000,000 which is less than the \$36,000,000 (200 MW x \$180,000/MW) eligible funding for just the Iatan II, and Plum Point designated resources alone,
 - iv) designated resources are modeled in the same manner by SPP regardless of the fuel source, and
 - v) the Cloud County Wind Farm is expected to have an annualized capacity utilization factor of approximately 40%, which is greater than and/or comparable to peaking/combined cycle natural gas fired units that are typically eligible for the full Safe Harbor Limit funding amount
- c) This Waiver request be reviewed by the CAWG, MOPC, and RSC and decided upon by the SPP Board of Directors no later than the October 30, 2007 SPP Board of Directors meeting in Tulsa, Oklahoma, and
- d) That in the event this Waiver is denied and that similar waivers are approved in the future or tariff modifications/policy changes are made that would have affected this Waiver request, Empire requests that the SPP Board of Directors reconsider Empire's Waiver request

John Mills
Southwest Power Pool, Inc
August 23, 2007
Page 4

Empire appreciates the efforts of SPP staff, the CAWG, RSC, MOPC, and Board of Directors in carefully evaluating and discussing each waiver and the related policies. Empire representatives will be available to discuss this Waiver request at future CAWG, RSC, RTWG, MOPC and BOD meetings.

Thank you in advance for your assistance and timely consideration of this request.

Empire looks forward to SPP staff's recommendation and the Board of Directors' decision, and finalization of the service agreements related to this new and important designated resource for the customers of The Empire District Electric Company and the Southwest Power Pool region.

Sincerely,



Rick McCord
Director, Supply Management

cc Harold Colgin II, Empire Vice President of Energy Supply
Mike Palmer, Empire Vice President of Commercial Operations
Bary Warren, Empire Director of Transmission Policy and Compliance

Davis, Jeff

From: Bary Warren [BWarren@empiredistrict.com]
Sent: Monday, November 19, 2007 2:57 PM
To: John Mills
Cc: Heather Starnes; SPP MOPC (Members Only); SPP BOD - Members Committee (Members Only); SPP Regional State Committee (Members Only); SPP CAWG; Richard McCord
Subject: EDE Response and Clarification to SPP Staff's Recommendation to CAWG re: EDE Waiver and Transmission Service Request #1222640
Attachments: Response to Waiver Recom to CAWG - 111907.pdf

John,

On behalf of The Empire District Electric Company (Empire) and Rick McCord – Director of Supply Management, I am providing the following information in response to SPP Staff's recommendation of October 24, 2007 to the Cost Allocation Working Group regarding Empire's waiver request for additional base plan funding.

Please see attached.

I am also copying the below committees.

Thank you.

Bary/Empire

cc. CAWG, RSC, MOPC, and BOD exploders

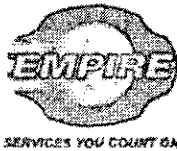
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12/11/2007



November 19, 2007

Mr. John Mills
Manager, Tariff Studies
Southwest Power Pool, Inc.
415 North McKinley Street
#140 Plaza West
Little Rock, Arkansas 72205

Re: Response to SPP Waiver Recommendation to CAWG of October 24, 2007
And Clarification of EDE Waiver Request For OASIS Reservation #1222640
Cloud County/Meridian Way Wind Farm Designated Resource

Dear Mr. Mills,

In reference to SPP staff's recommendation to the Cost Allocation Working Group presented on October 24, 2007, The Empire District Electric Company (Empire) is providing the following response and clarifications.

In our October 12, 2007 response and our initial request for waiver of August 23, 2007 (attached), Empire believes it sufficiently explained the numerous provisions, justifications, and circumstances that SPP staff, CAWG, RSC, MOPC, and BOD should consider in granting of the requested waiver. Empire completely disagrees with the methodology SPP staff used in making its recommendation to the CAWG on October 24 and believes such recommendation does not support the general direction of federal, state, and SPP policy in support of renewable resources. We believe that the SPP has clear and sufficient authority to grant Empire's waiver request just as the SPP has done with previous waivers for additional base plan funding.

However, we realize that our request has generated discussions and raised key issues regarding policy and strategy regarding the future treatment of renewable resources. Such issues and strategy are being currently discussed by the CAWG. The approach that Empire took in making and justifying the "up to amount of \$18 million" in our August 23 request for waiver has created an issue surrounding the legal authority that the SPP Board of Directors has regarding the waiver process.

In order to avoid further debate on whether or not the SPP BOD has the authority to grant Empire's waiver as requested, Empire would like to clarify its waiver request to specifically focus on the basis and circumstances for the granting of this specific waiver. All parties now have the benefit of the latest Aggregate Facilities Study SPP-2007-AG1-AFS-5 posted on November 2, 2007 that indicates a projected allocation of transmission upgrade engineering and construction (E&C) costs to Empire of approximately \$6 million.

Empire requested 100MW of long term firm network transmission service to begin upon commercial operation in November 2008 for Phase I of the 201MW Meridian Way/Cloud County wind farm. The Meridian Way/Cloud County wind farm is located within the service area of Mid-Kansas Electric Company (Sunflower) near Concordia, Kansas. According to the aforementioned Aggregate Facility Study, SPP will not be able to provide the requested service until June 2010.

Empire is not only concerned about SPP staff's denial for Empire to obtain additional Base Plan funding, but is also concerned that long term firm service may not be granted by the SPP based on its i) modeling assumptions and in-service dates of the required upgrades and ii) SPP's requirement that all 3rd party "indeterminate" upgrades and associated costs must be adequately addressed prior to service confirmation. It is probable that Empire may also incur substantial 3rd party costs in order to confirm SPP firm transmission service for this designated resource.

Based on AFS-5, Attachment J, III. B of the SPP OATT, and SPP staff's default value of 10% of nameplate capacity, Empire's Base Plan funded amount of the estimated E&C upgrade costs would be \$1.8 million. (safe harbor limit of \$180,000/MW x 10MW), which would leave approximately \$4 million of upgrades to be addressed in the waiver Empire has requested from SPP.

Therefore, to clarify, Empire formally requests a waiver to obtain base plan funding of all allocated SPP upgrades in excess (projected to be approx. \$4 million) of the \$1.8 million to secure long term firm service for the 100MW designated resource. Hence, the total projected amount of Base Plan funding for this Empire designated resource would be approximately \$6 million. If this resource were a fossil fuel unit, it would be eligible for \$18 million in Base Plan funding.

Empire respectfully requests this waiver to be evaluated on, but not be limited to, the following facts and circumstances, as allowed pursuant to Attachment J, III. C of the SPP OATT.

- 1) Empire's twenty (20) year commitment to this designated resource significantly exceeds the five (5) year minimum commitment for base plan funding eligibility,
- 2) the Meridian Way/Cloud County Wind Farm is expected to have an annualized capacity utilization factor of approximately 40%, which is greater than and/or comparable to peaking/combined cycle natural gas fired units that currently receive Safe Harbor funding and waivers based on "transmission service requested" - not on accredited capacity,
- 3) the cumulative requested Base Plan Funding to Empire for this designated resource (projected to be approx. \$6 million) and the most recent Iatan II (100MW) and Plum Point (100MW) resources (projected to be approx. \$12 million) would be \$18 million, which is significantly (50%) less than the \$36 million (200MW x \$180,000/MW) eligible funding for Iatan II and Plum Point designated resources alone,
- 4) renewable resources provide a hedge for Empire and other load serving entities against escalating fuel costs or fuel cost volatility,
- 5) renewable resources should be treated comparably to traditional fossil fuel resources with respect to base plan funding, especially in light of the fact that SPP models all resources in the same manner in the Aggregate Study transmission service process,
- 6) there is support developing for the increased use of renewable resources and the needed transmission infrastructure investment necessary to integrate and deliver renewable energy to load,
- 7) renewable resources reduce the emission of air pollutants,
- 8) the growing interest in national and state renewable portfolio standards, emission caps, or carbon taxes, give the SPP the opportunity to expressly support the continued development and delivery of renewable energy in the SPP footprint,
- 9) And lastly, the value of fuel diversity for load serving entities and within the region. It was clear in paragraph 57 of FERC Order ER05-652, dated April 22, 2005, that FERC was in full support of fuel diversity as one of an exhaustive list of factors that the SPP BOD could consider in its evaluation of waiver requests. However, upon "Rehearing" in paragraph 19 of FERC Order ER05-652 dated September 8, 2005, FERC reversed its Order *"requiring SPP to remove the fuel diversity provision from the non-exhaustive list of waiver criteria. Upon further consideration, we (FERC) find that SPP did not sufficiently explain how parties paying the costs associated with the proposal benefit from increased fuel diversity. SPP may seek to re-file the fuel diversity waiver provision with this supportive information."* Such an SPP filing has not occurred to date. Empire believes there is now evidence to support such an SPP filing at FERC. Such supporting information can be provided to SPP upon request.

Mr. John Mills
Southwest Power Pool, Inc.
November 19, 2007
Page 3

Each of the waiver requests that have been submitted to date, including this waiver, should not be considered as setting any precedent and compared with previous waiver requests, as each involves unique factors and circumstances that should be evaluated on a case-by-case basis.

We respectfully request SPP staff to re-consider and re-issue a revised recommendation for discussions by the CAWG, RSC, and MOPC leading to the BOD's decision in January.

In addition, as conveyed in our waiver request of August 23, 2007, that in the event this waiver is denied in whole or part, and future tariff modifications/policy changes are made that would have affected the decision on this waiver, Empire requests that the SPP Board of Directors re-consider Empire's waiver at the appropriate time.

If additional information and/or explanation is needed, please do not hesitate to contact me or Bary Warren.

Again, thank you for your consideration and services.

Respectfully submitted,

A handwritten signature in cursive script, reading "Rick McCord". The signature is written in dark ink and is positioned above the printed name and title.

Rick McCord
Director, Supply Management



October 12, 2007

Mr. John Mills
Manager, Tariff Studies
Southwest Power Pool, Inc.
415 North McKinley Street
#140 Plaza West
Little Rock, Arkansas 72205

Re: Response to SPP October 4, 2007 Request For Information
Empire Waiver Request For OASIS Reservation #1222640
Cloud County/Meridian Way Wind Farm Designated Resource

Dear Mr. Mills,

In reference to your correspondence of October 4, 2007 requesting additional information, The Empire District Electric Company (Empire) is providing the following response.

In our August 23, 2007 request (attached), Empire sets forth the SPP Open Access Transmission Tariff (OATT) provisions, justifications, and circumstances that we believe warrant the granting of the requested waiver. Empire believes that the SPP has sufficient authority to grant Empire's waiver request just as the SPP has done with previous waivers for additional base plan funding.

We want to re-emphasize that Empire's twenty (20) year commitment to the designated resource, the Cloud County/Meridian Way wind farm, significantly exceeds the five (5) year minimum commitment for base plan funding eligibility and will bring added fuel diversity to Empire and the region.

With respect to SPP's authority to grant this waiver as requested, Attachment J of the tariff and the related FERC Order are sufficiently clear and give SPP the authority to grant additional base plan funding in whole or in part for network upgrades.

Empire would also like to clarify that our request for waiver is for "up to" an additional \$16,200,000 (capped) of base plan funding eligibility, allowing for a total of \$18,000,000 (\$1,800,000/MW of accredited capacity or \$180,000/MW of transmission service requested) for the required transmission system upgrades which would be comparable to any fossil fuel designated resource serving load within the footprint. Based upon the SPP's August 30, 2007 posting of SPP-2007-AG1-AFS-4, the allocated Engineering and Construction (E&C) costs associated with Empire's portion of the Meridian Way wind farm are estimated to be approximately \$6.3 Million, but could be changed depending upon the customer service requests that are finalized as part of the SPP 2007-AG1 process.

Each of the waiver requests that have been submitted to date, including this waiver, should not be considered as setting any precedent, as each involves unique factors and circumstances that have to be evaluated on a case by case basis.

Policy Discussion

Empire's waiver has generated much discussion related to SPP's base plan funding policy for designated resources and modeling procedures, zonal MW-Mile allocation impacts, the 125% capacity reserve margin condition, and the overall impact of the Attachment J provisions for wind as a designated resource. If the RSC and SPP believe a general policy change is appropriate, then it may be fitting to proceed with the granting of our waiver and codify such change within the SPP tariff for similar requests in the future.

Empire encourages the SPP staff, CAWG, RSC, MOPC and Board of Directors to 1) finalize its evaluation and discussion, and grant Empire's waiver prior to SPP's deadline (yet to be determined) for confirming the requested transmission service, and 2) pro-actively address policy changes that would be appropriate for future transmission service requests related to wind as designated resources serving load within the SPP region.

Empire had requested that the SPP render its decision on the waiver, with input from the RSC, at its October 30, 2007 Board of Directors meeting – even though the provisions of the SPP tariff allow for up to 120 days (December 23, 2007) for such a decision to be made.

SPP has been delayed in the posting of SPP-2007-AG1-AFS-5 due to the recent events regarding a proposed designated resource in Oklahoma. This event has affected the transmission requests in aggregate study SPP-2006-AG3, and could have an affect on the estimated E&C costs allocated to customers in AG1-AFS-5 and all succeeding service requests. In addition to the event in Oklahoma, there are other key decisions pending regarding another proposed designated resource that impact other SPP members also participating in the SPP-2007-AG1 aggregate study.

These key events are unusual and could be significant that may delay the Aggregate Study results beyond the December 23, 2007 (120 day) waiver decision deadline. Empire could support giving SPP staff, the CAWG, RSC, MOPC, and the SPP Board of Directors additional time beyond December 23, 2007, unless Empire is faced with rendering its decision on whether to commit to transmission service to SPP prior to the Waiver request being finalized. It appears that additional time beyond the 120 day decision period may afford better opportunity for discussions on our Waiver request during the January cycle of meetings, as well as changes in future SPP policy and strategy related to base plan funding for designated resources serving load within the SPP footprint.

We emphasize that our support for an extension is based on our belief that Empire would not be put into a position of having to legally confirm SPP firm transmission service for this designated resource without knowing the outcome of our waiver request - which could substantially affect the applicable base plan funding and direct assignment of transmission upgrade costs identified in SPP-2007-AG1.

John Mills
Southwest Power Pool, Inc.
October 12, 2007
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The entirety of the facts, justifications, and issues regarding our request has not been set forth in this correspondence, but rather are more fully described in the accompanying letter of August 23, 2007.

We understand the policy issues that our waiver request has raised as well as events that have occurred which are affecting SPP's transmission service request process. However, we respectfully request that our waiver be decided upon as expeditiously as possible and within a time frame that may exceed the December 23, 2007 deadline, but prior to Empire being faced with its commitment decision on the transmission service requested.

If additional information and/or explanation is needed, please do not hesitate to contact me or Bary Warren.

Again, thank you for your consideration and services.

Respectfully submitted,

A handwritten signature in black ink that reads "Rick McCord". The signature is written in a cursive, slightly slanted style.

Rick McCord
Director, Supply Management



August 23, 2007

Mr. John Mills
Manager, Tariff Studies
Southwest Power Pool, Inc.
415 North McKinley Street
#140 Plaza West
Little Rock, Arkansas 72205

Re: Empire Request For Waiver (#2) Per Attachment J of the SPP OATT
For OASIS Request: #1222640 – Cloud County Wind Farm Designated Resource

Dear John,

Pursuant to Section III C.1 (Waiver Process) of Attachment J of the Southwest Power Pool (SPP) Open Access Transmission Tariff, The Empire District Electric Company (Empire) respectfully requests a waiver for up to an additional \$16,200,000 in Base Plan funding related to Engineering and Construction costs of SPP determined direct assignment Network Upgrade facilities associated with Empire's 100 MW of firm transmission service OASIS request:

#1222640(Cloud County -100 MW): SPP-2007-AG1-AFS-3

The transmission service requested is to deliver power from a designated resource, a 100 MW wind farm nearing construction in the proximity of Concordia, Kansas and within the Balancing Authority area of Mid Kansas Electric Company (subsidiary of Sunflower Electric Power Corporation and formally Aquila-West Plains) associated with the requested 100 MW of network integrated transmission service to Empire.

On June 19, 2007, Empire and Cloud County Wind Farm, LLC, a subsidiary of Horizon Wind Energy, entered into a twenty (20) year power purchase agreement. Empire anticipates that the wind farm will be fully operational in late 2008 or early 2009 and begin receiving energy under the terms of the power purchase agreement at that time.

The current results of SPP-2007-AG1-AFS-3 for Empire's Cloud County designated resource indicate the following:

- i) the estimated Engineering and Construction transmission costs, directly assignable to Empire, are projected to be from \$8,000,000 to \$80,000,000, depending on who and what facilities remain in the SPP-2007-AG1-AFS process¹;
- ii) additional/undetermined 3rd party (1st tier non-SPP transmission owning members) required upgrades and;
- iii) potential for additional SPP re-dispatch service costs required of Empire to begin service as requested.

¹ SPP-2007-AG1-AFS-4 is currently being completed and expected to be posted by SPP in late August/early September

Based on Attachment J, III. B. 3. (a) and (b), Empire's designated resource would be eligible for only \$1,800,000 (10 MW (100 MW x 10% - SPP's default value for dependable capacity of a wind farm - x \$180,000/MW)) of the maximum Safe Harbor Limit amount of \$18,000,000.

Empire is requesting a waiver of the application of the "lesser of" provision of the \$180,000/MW Safe Harbor Limit in Attachment J, III. B. 3. (a) - the planned maximum net dependable capacity applicable to the Transmission Customer. Empire requests that the Safe Harbor Cost Limit be determined using only Attachment J, III.B.3. (b) - the requested capacity (meaning the transmission reservation capacity amount (100MW)).

Approval to waive the "net dependable capacity provision" would place Empire's Cloud County designated resource on equal footing with other fossil fuel designated resources and transmission only reliability upgrades in terms of regional funding.

Pursuant to Attachment J III. C. iv. - "If a request for a waiver is received by SPP based on other circumstances, such waiver request shall also be considered..." Empire believes that the Cloud County Wind Farm resource, as a designated resource, should be eligible for the full Safe Harbor Limit of \$180,000/MW based on its requested transmission service capacity of 100 MW. It is important to note that SPP models all designated resources - regardless of fuel type (wind, natural gas, hydro, coal, nuclear) - in a similar manner/nameplate - and not solely based on "expected" net dependable capacity.

Empire believes that the SPP footprint includes a prominent wind resource sub-region that could be important to the United States power industry. It is important to proactively encourage the development of these wind resources now. The continued reduction/disadvantage in Base Plan Funding for the use of such intermittent resources will only discourage such development.

Empire has re-evaluated its position on the eligibility requirements for the Safe Harbor Limit and believes that the Base Plan Funding eligibility should apply to any designated resources.

The addition of the 100 MW power purchase agreement with Cloud County Wind Farm, LLC will increase Empire's wind energy capability from wind farm power purchase agreements from 150 MW to 250 MW, thus generating approximately 15% of our annual energy requirements in the year 2009. This resource, like the Empire energy output purchase from the Elk River Wind Farm, is expected to produce a capacity or utilization factor of approximately 40% on an annualized basis. This annualized capacity or utilization factor exceeds most peaking resources within the SPP region and rivals most intermediate natural gas fired combined cycle resources in expected annual capacity utilization factor. The delivery of energy to load is one of the primary purposes of the transmission system, and therefore designated resources with this level of annual capacity or utilization factor should be an additional consideration for Base Plan Funding eligibility.

Empire continues to support the condition of 125% capacity resource margin for Base Plan Funding; however through the waiver process, consideration of the significant energy contribution of this type of resource should also be taken into account as a viable circumstance for waiver approval. All load serving entities are required to carry a 12th planning capacity margin and Empire has and will continue to meet and exceed that minimum requirement.

Fundamentally, we believe this Waiver raises the issue of strategy and funding.

- Strategy - in terms of the encouragement of the development and use of wind resources as designated resources for existing and prospective SPP members, and
- Funding - in terms of the regionalization of a portion of the transmission costs for wind resources in a manner similar to the way SPP funds transmission upgrades required for reliability (no resources involved), and transmission upgrades required for traditional fossil fuel generation resources.

If SPP models and grants transmission service for designated resources in the same manner – regardless of the fuel type – then it seems appropriate for the Safe Harbor Limit to be based on (b) the amount of transmission service requested/granted.

Therefore, The Empire District Electric Company respectfully requests the following:

- a) SPP staff distribute the Waiver Request to the MOPC and CAWG as soon as possible;
- b) Waiver of Attachment J, III. B.3 (a) and eligibility for the Safe Harbor Limit of up to \$18,000,000 (an additional \$16,200,000) pursuant to (b) – transmission reservation capacity - based on the following circumstances:
 - i) the current and future “favorable” circumstances within the SPP region and national outlook for renewable resources,
 - ii) the fact that wind resources in north central Kansas will bring additional fuel diversity to the SPP region and Empire,
 - iii) the cumulative projected Base Plan Funding to Empire for this designated resource (up to \$18,000,000) and the most recent Iatan II and Plum Point resources (projected to be approximately \$12,000,000) would be \$30,000,000 which is less than the \$36,000,000 (200 MW x \$180,000/MW) eligible funding for just the Iatan II, and Plum Point designated resources alone,
 - iv) designated resources are modeled in the same manner by SPP regardless of the fuel source, and
 - v) the Cloud County Wind Farm is expected to have an annualized capacity utilization factor of approximately 40%, which is greater than and/or comparable to peaking/combined cycle natural gas fired units that are typically eligible for the full Safe Harbor Limit funding amount.
- c) This Waiver request be reviewed by the CAWG, MOPC, and RSC and decided upon by the SPP Board of Directors no later than the October 30, 2007 SPP Board of Directors meeting in Tulsa, Oklahoma, and
- d) That in the event this Waiver is denied and that similar waivers are approved in the future or tariff modifications/policy changes are made that would have affected this Waiver request, Empire requests that the SPP Board of Directors reconsider Empire's Waiver request.

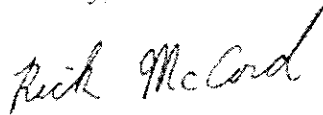
John Mills
Southwest Power Pool, Inc.
August 23, 2007
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Empire appreciates the efforts of SPP staff, the CAWG, RSC, MOPC, and Board of Directors in carefully evaluating and discussing each waiver and the related policies. Empire representatives will be available to discuss this Waiver request at future CAWG, RSC, RTWG, MOPC and BOD meetings.

Thank you in advance for your assistance and timely consideration of this request.

Empire looks forward to SPP staff's recommendation and the Board of Directors' decision, and finalization of the service agreements related to this new and important designated resource for the customers of The Empire District Electric Company and the Southwest Power Pool region.

Sincerely,

A handwritten signature in black ink, reading "Rick McCord". The signature is written in a cursive, flowing style.

Rick McCord
Director, Supply Management

cc. Harold Colgin II, Empire Vice President of Energy Supply
Mike Palmer, Empire Vice President of Commercial Operations
Bary Warren, Empire Director of Transmission Policy and Compliance