

COMPLAINT REQUESTING FAST TRACK PROCESSING AND MOTION FOR EXPEDITED DISCOVERY

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tenaska Clear Creek Wind, LLC)
)
Complainant, Petitioner)
)
v.)
)
Southwest Power Pool, Inc., *et al.*)
)
Respondents.)

Docket No. EL22-____-000

COMPLAINT, PETITION FOR ORDER UNDER FEDERAL POWER ACT SECTION 211A, MOTION FOR EXPEDITED DISCOVERY, AND REQUEST FOR FAST TRACK PROCESSING OF TENASKA CLEAR CREEK WIND, LLC

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**COMPLAINT, PETITION FOR ORDER UNDER FEDERAL POWER ACT SECTION
211A, MOTION FOR EXPEDITED DISCOVERY, AND REQUEST FOR EXPEDITED
CONSIDERATION
OF TENASKA CLEAR CREEK WIND, LLC**

Pursuant to Sections 206, 211A, 306, 307, 308, and 309 of the Federal Power Act (“FPA”) and Rules 206 and 212 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,¹ Tenaska Clear Creek Wind, LLC (“Tenaska Clear Creek”) submits this complaint and petition against Southwest Power Pool, Inc. (“SPP”), the Midcontinent Independent System Operator, Inc. (“MISO”), Associated Electric Cooperative, Inc. (“AECI”), and the Tennessee Valley Authority (“TVA”) (collectively, the “Respondents”) concerning the Respondents’ discriminatory curtailment of Tenaska Clear Creek’s 242-MW wind-powered generator, the Clear Creek Project (“Clear Creek Project” or “Project”). As discussed further below, Tenaska Clear Creek also requests that the Commission issue an order directing the Respondents to produce information relevant to the complaint and petition *within 21 days of the date of filing*.

¹ 16 U.S.C. §§ 824e, 825e, and 825h; 18 C.F.R. §§ 385.206, 385.212 (2021).

Tenaska Clear Creek files this complaint and petition seeking a prompt Commission order directing the Respondents to immediately cease curtailing the Clear Creek Project on a discriminatory basis. As described further below, Tenaska Clear Creek recently has learned that the Respondents have adopted two operating guides (the “Operating Guides”) that result in the Clear Creek Project being curtailed on a discriminatory basis ahead of *all* other generation resources along the SPP-MISO-AECI seam when certain SPP facilities are congested during real-time operations. These Operating Guides were adopted in connection with SPP’s restudies of the Clear Creek Project, which propose to allocate over \$79 million in costs associated with upgrading facilities on the SPP system and that are the subject of a pending complaint proceeding in FERC Docket No. EL21-77.

As described further herein, the Respondents’ use of the Operating Guides to curtail selectively the Clear Creek Project, and only the Clear Creek Project, is inconsistent with the Commission’s open access and comparability requirements, violates applicable tariff requirements, and is inconsistent with the Filed Rate Doctrine. Since Order No. 888, the Commission consistently has required that any procedures used to curtail transmission or interconnection customers to resolve transmission constraints be non-discriminatory and applied to all customers impacting the constraint at issue. Consistent with these requirements, the tariffs of SPP and the other Respondents require that any curtailments be implemented in a non-discriminatory manner. Rather than abide by the requirements of Commission policy and their tariffs, however, the Respondents instead have adopted the non-public and unfiled Operating Guides that allow them to override the tariff-based curtailment procedures and priorities to selectively curtail the Clear Creek Project whenever the facilities identified in SPP’s recent restudies of the Clear Creek Project have been constrained. Tenaska Clear Creek respectfully

requests that the Commission issue an order directing the Respondents immediately to cease the discriminatory curtailment of the Clear Creek Project and to enforce the filed rate by requiring the Respondents to pay refunds for past periods.

Tenaska Clear Creek also requests that the Commission issue an order on an expedited basis directing the Respondents to file the Operating Guides with the Commission. Thus far, SPP and AECI have denied numerous requests by Tenaska Clear Creek for copies of the Operating Guides described herein. To ensure a complete record in this proceeding, Tenaska Clear Creek respectfully requests that the Commission issue an order within 21 days of the date of filing of this compliant and petition directing SPP and the other Respondents to file copies of the Operating Guides in this docket for review by the Commission and the parties. In order to allow the Commission to act on this motion on an expedited basis, Tenaska Clear Creek respectfully requests that the Commission shorten the time period for answers to this motion to 5 days in accordance with Rule 213(d)(1)(i) of the Commission's Rules of Practice and Procedure.²

I. CORRESPONDENCE AND COMMUNICATIONS

All correspondence and communications with Tenaska Clear Creek in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

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² 18 C.F.R. § 385.213(d)(1)(i).

II. THE PARTIES

A. Tenaska Clear Creek (Complainant)

Tenaska Clear Creek Wind, LLC is an affiliate of Tenaska, Inc. and a privately held company organized under the laws of the State of Delaware, with its principal place of business located in Omaha, Nebraska. Tenaska Clear Creek Wind, LLC developed and now owns and operates the Clear Creek Project, a 242 MW wind-powered generator located in Nodaway County, Missouri. Tenaska Clear Creek executed a generator interconnection agreement (“GIA”) with AECI in December 2018, and the Clear Creek Project entered commercial operation on May 4, 2020.

B. The Respondents

SPP is a non-profit corporation incorporated under the laws of the State of Arkansas. SPP is a Commission-approved Regional Transmission Organization (“RTO”) that administers open access transmission service over more than 48,000 miles of transmission lines in eight states, including Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP borders the MISO and AECI balancing authority areas (“BAA”). SPP acts as the Balancing Authority (“BA”) and Reliability Coordinator (“RC”) for the SPP system.

AECI is a rural electric cooperative that is owned by and provides power to six regional generation and transmission cooperatives. These regional generation and transmission cooperatives supply wholesale power to thirty-nine distribution cooperatives in Missouri, three distribution cooperatives in southeast Iowa, and nine distribution cooperatives in northeast Oklahoma, serving approximately 910,000 members. AECI is a BA and provides transmission service over it and its members’ transmission system pursuant to an open access transmission tariff (“OATT”).

Tennessee Valley Authority (“TVA”) is a wholly owned corporate agency and instrumentality of the United States that is organized and exists pursuant to the Tennessee Valley Authority Act. TVA generates and sells energy at wholesale to municipalities and cooperatives in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. TVA owns and operates a transmission system consisting of over 16,000 miles of high voltage transmission lines. TVA acts as the Reliability Coordinator for certain BAs in the Southeast and Midwest, including the AECI BA.

MISO is a non-profit corporation incorporated in Delaware. MISO is a Commission-approved RTO responsible for operating a transmission system spanning 15 U.S. states. MISO acts as the BA and RC for its transmission system.

III. FACTUAL BACKGROUND

A. The Interconnection Dispute

On May 21, 2021, Tenaska Clear Creek filed a complaint against SPP in Docket No. EL21-77-000 challenging SPP’s proposal to assign Tenaska Clear Creek additional network upgrade costs as part of a March 2021 affected system restudy of the Clear Creek Project.³ As described in detail in the complaint, on March 25, 2021, SPP posted an affected system study report proposing to assign the Clear Creek Project approximately \$99 million in network upgrade costs, consisting of approximately \$34 million in network upgrades associated with energy resource interconnection service (“ERIS”) and \$66 million in new costs associated with Network Resource Interconnection Service (“NRIS”).⁴ Table 1 below provides an overview of the upgrades assigned to the Project in the March 2021 restudy.

³ *Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.*, Complaint and Request for Fast Track Processing of Tenaska Clear Creek Wind, LLC, Docket No. ER21-77-000 (filed May 5, 2021) (“2021 Complaint”).

⁴ *Id.* at 15-16.

**Table 1: ERIS and NRIS Upgrades Assigned to the Clear Creek Project
in the March 2021 Restudy**

Upgrade Type	Upgrade	Cost (Million \$)
ERIS	Reconductor Maryville to Creston 161 kV	\$14,900,000
ERIS	Rebuild Maryville to Braddyville 161 kV	\$18,652,900
NRIS	Rebuild Maryville to Midway 161 kV	\$21,500,000
NRIS	Rebuild Midway to Avenue City 161 kV	\$21,500,000
NRIS	Rebuild Avenue City to St. Joseph 161 kV	\$4,900,000
NRIS	Add 2 nd Nashua 345/161 kV Transformer	\$8,500,000
NRIS	Rebuild Nashua to Roanridge 161 kV	\$9,150,000
	ERIS	\$33,552,900
	NRIS	\$65,550,000
	Total	\$99,102,900

In the complaint, Tenaska Clear Creek demonstrated that SPP’s restudy of the Clear Creek Project was inconsistent with Commission precedent defining the permissible bounds of the restudy process, the SPP Tariff, and cost causation principles. Among other things, Tenaska Clear Creek demonstrated that SPP had used the withdrawal of a higher-queued customer on the MISO system—a customer that had no impact on the cost responsibility of the Clear Creek Project—to completely restart the study process for the Clear Creek Project using a new study model and new study assumptions, including incorporating approximately 4.5 gigawatts (“GW”) of higher-queued interconnection customers on the MISO system that SPP claimed had been omitted erroneously from the initial studies of the Clear Creek Project.⁵ Tenaska Clear Creek showed that the incorporation of this higher-queued generation into the study model resulted in overloads in the

⁵ *Id.* at 16-22.

modeling, prior to the addition of the Project, on facilities that SPP was proposing burden Tenaska Clear Creek with upgrading. Tenaska Clear Creek also showed that SPP’s proposal to assign the Project the cost of upgrading facilities that were overloaded prior to the construction of the Clear Creek Project was inconsistent with the requirements of the SPP Tariff and Commission precedent. Additionally, while SPP had attempted to minimize the significance of these overloads by claiming that they were attributable to the cumulative impact of higher-queued interconnection customers that had not met the criteria for cost allocation, Tenaska Clear Creek’s analysis of SPP’s study models indicated that the overloads were attributable to specific generation resources on the MISO and AECI systems.

On December 16, 2021, the Commission issued an order granting in part and denying in part the complaint.⁶ In particular, the Commission denied the complaint to the extent that Tenaska Clear Creek had argued that SPP improperly used the withdrawal of a higher-queued customer to restart the study process for the Clear Creek Project, including adjusting the study model to incorporate the 4.5 GW of “omitted” generation.⁷ However, the Commission found that SPP’s March 2021 restudy of the Clear Creek Project was unduly discriminatory and preferential because SPP had used the 2019 integrated transmission plan (“ITP”) model—rather than the 2017 ITP model used for the initial studies of the Project—despite continuing to study other interconnection customers using the 2017 ITP model.⁸ For that reason, the Commission directed SPP to conduct another restudy of the Clear Creek Project using the 2017 ITP model.⁹

⁶ *Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.*, 177 FERC ¶ 61,200 (2021) (“December 2021 Order”); *reh’g denied*, 178 FERC ¶ 62,087 (2022). Tenaska Clear Creek appealed the December 2021 Order to the U.S. Court of Appeals for the D.C. Circuit in Case No. 22-1059. The appeal is in abeyance pending further Commission orders in Docket No. EL21-77.

⁷ December 2021 Order at P 34.

⁸ *Id.* at P 72.

⁹ *Id.* at PP 78, 113.

Because the Commission had determined that the March 2021 restudy was unduly discriminatory and directed SPP to conduct another study of the Clear Creek Project, the Commission found that it was unclear from the record at that stage whether Tenaska Clear Creek should be responsible for the full costs of the NRIS upgrades and deferred ruling on the issue of base case overloads.¹⁰ The Commission observed, however, that since the “Maryville-Midway facility exceeded its line rating in the base case scenario, which SPP does not contest, it is unclear . . . whether Tenaska should be responsible for the full costs of the NRIS upgrade associated with the Maryville-Midway facility, as the portion of the upgrade needed to address the 6% overload does not appear to represent the Project’s ‘but for’ costs.”¹¹

On March 11, 2022, as revised by SPP on May 13, 2022, SPP submitted a compliance filing containing the results of the restudy directed by the Commission in the December 2021 order.¹² As part of the restudy, SPP has proposed to allocate to the Clear Creek Project cost responsibility for constructing upgrades to mitigate thermal constraints on SPP’s system at a cost of approximately \$79 million. Table 2 below provides an overview of the network upgrades that SPP proposes to assign to the Clear Creek Project as part of the March 2022 restudy.

¹⁰ *Id.* at P 97.

¹¹ *Id.* at P 96.

¹² Southwest Power Pool, Inc., Results of the Restudy of the Tenaska Clear Creek Wind Project in Response to the December 16 Order, Docket No. EL21-77-002 (Mar. 11, 2022); Southwest Power Pool, Inc., Revised Results of the Restudy of the Tenaska Clear Creek Wind Project in Response to the December 16 Order, Docket No. EL21-77-002 (May 13, 2022).

**Table 2: Network Upgrades Allocated to Clear Creek
in the Revised March 2022 Restudy**

Upgrade Type	Upgrade	Cost
ERIS	Reconductor Maryville to Creston 161 kV	\$14,900,000
NRIS	Rebuild Maryville to Midway 161 kV	\$20,287,918
NRIS	Rebuild Midway to Avenue City 161 kV	\$21,168,125
NRIS	Rebuild Avenue City to St. Joseph 161 kV	\$3,942,266
NRIS	Add 2 nd Nashua Transformer	\$8,032,307
NRIS	Rebuild Nashua to Roanridge 161 kV	\$10,950,554
	ERIS	\$14,900,000
	NRIS	\$64,381,170
	Total	\$79,281,170

As Tenaska Clear Creek explained in an April 1, 2022 protest and amended complaint responding to the March 2022 restudy, the result of shifting to the use of the 2017 ITP study model has been to increase the magnitude of the base case overloads.¹³ Specifically, the Maryville-Midway 161 kV Line, the Nashua Transformer, and the Nashua-Roanridge 161 kV Line were overloaded in the base case, with the incremental contribution of the Clear Creek Project comparable to, or less than, the existing base case overload. Additionally, certain upgrades that SPP has proposed to assign to the Clear Creek Project were necessary, not due to the impact of the Clear Creek Project, but as a result of SPP’s addition of the Nashua transformer into the study model. Tenaska Clear Creek also provided evidence demonstrating that SPP’s results have the effect of understating the extent of the pre-existing reliability issues present in the base case prior to the construction of the Clear Creek Project.

¹³ Tenaska Clear Creek, Inc., Protest, Amended Complaint, and Request for Fast Track Processing, Docket No. EL21-77-002 (April 1, 2022) (“April 1 Protest”).

B. Curtailment Of The Clear Creek Project

Due to the significant constraints that exist along the SPP-MISO-AECI seams, transmission providers along the seams invoke NERC's Transmission Loading Relief ("TLR") procedures periodically to curtail interchange contributing to constraints on their systems. As described in the testimony of Mr. Justin Vala provided as Attachment 1 to this complaint, following the posting of the March 2021 restudy of the Clear Creek Project, Tenaska Clear Creek observed significant changes in the frequency and character of curtailments imposed on the Clear Creek Project.

First, the frequency and severity of curtailment increased dramatically.¹⁴ From the date that the project reached commercial operation in May 2020 through March 31, 2021, the Clear Creek Project experienced curtailments equal to approximately 5% of its potential output.¹⁵ Following the posting of the March 2021 study, however, the level of curtailments has more than doubled. For instance, for the remainder of 2021 (April 2021 through December 2021), the Clear Creek Project experienced curtailment equal to approximately 12.1% of its potential output.¹⁶ The level of curtailments has further increased in 2022, with the Clear Creek Project experiencing curtailment between January 2022 through April 2022 of 33.6% of potential output.¹⁷ Based on operations reports received from AECI, the primary cause of the increase in curtailments has been the application of the Operating Guides to curtail production from the Clear Creek Project when

¹⁴ Vala Testimony at 2-3:32-43.

¹⁵ *Id.* at 2:34-36.

¹⁶ *Id.* at 2-3:36-39.

¹⁷ *Id.* at 3:39-41.

flowgates associated with certain facilities that SPP has proposed to require Clear Creek to upgrade are congested.¹⁸

Second, the description provided by AECI for the reason for the curtailments of the Project changed. Prior to the posting of the March 2021 restudy, the operations reports that AECI provided to the Project generally indicated that curtailments of the Clear Creek Project were the result of the application of the TLR procedures, which are used by Reliability Coordinators to manage interchange through coordinated curtailment of resources and transactions contributing to a constraint.¹⁹ For instance, between January 1, 2021 and March 31, 2021, AECI's operations report indicates that over 90% of the curtailment events were the result of the application of TLR procedures.²⁰ Following the posting of the March 2021 study, however, these operations reports stopped referencing the TLR procedures for the vast majority of curtailments. Instead, these operations reports included descriptions indicating that SPP had capped the output of the Clear Creek Project to relieve flows on a particular flowgate (e.g., 25727).²¹ Figure 1 below includes an excerpt of an operations report from January 11, 2022 detailing the reason for curtailments on January 5, 2022 and January 7, 2022. Additional detail regarding the operations reports is provided as an exhibit to Mr. Vala's testimony.


¹⁸ *Id.* at 3-4:59-67.

¹⁹ *Id.* at 3:46-55.

²⁰ *Id.* at 3:51-52.

²¹ *Id.* at 4:64-67.

Figure 1: Excerpt of AECI Operations Report

 Operations Report for events through 1/11/2022				
RE-DISPATCH				
Generation	Description	Implemented	Released	
Clear Creek Wind Farm	1/5/2022 04:18 - SPP RC requested relief on FG 25727 capping Clear Creek wind farm to 180 MWs, 06:45 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 50 MWs, 07:55 - SPP RC partially released the cap on Clear Creek wind farm to 150 MWs, 08:42 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 100 MWs, 10:30 - SPP RC partially released the cap on Clear Creek wind farm to 150 MWs, 11:25 - SPP RC partially released the cap on Clear Creek wind farm to 200 MWs, 14:01 – SPP RC released the cap on Clear Creek allowing full output.	1/5/2022 04:18	1/5/2022 14:01	
Clear Creek Wind Farm	1/7/2022 18:33 - SPP RC requested relief on FG 25727 capping Clear Creek wind farm to 150 MWs, 22:12 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 130 MWs, 23:40 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 80 MWs, 1/8/2022 12:27 – SPP RC released the cap on Clear Creek allowing full output.	1/7/2022 18:33	1/8/2022 12:27	

In light of the increase in curtailments and the change in the descriptions contained in the AECI operations reports, Tenaska Clear Creek contacted both SPP and AECI in an attempt to better understand the nature of the curtailments and the reason for these changes.²² Both SPP and AECI acknowledged that an operating procedure or guide had been established to relieve congestion on the Maryville-Midway Line.²³ However, neither party was willing to provide Tenaska Clear Creek with a copy of the Operating Guide or to describe the contents of the guide in any detail.²⁴ In addition, these parties provided different, and sometimes conflicting, accounts

²² *Id.* at 7:125-126.

²³ *Id.* at 7-8:127-129.

²⁴ *Id.* at 8:130-132.

of the nature and origins of the operating guide. For instance, despite the description of the curtailments provided in AECI's operations reports, SPP repeatedly denied that it was directing AECI and TVA to specifically curtail the Clear Creek Project, and SPP asserted that the Operating Guides had been implemented at the request of AECI and TVA.²⁵ AECI, in contrast, claimed that the operating procedures had been put in place to allow SPP to require the curtailment of the Clear Creek Project when transmission facilities associated with network upgrades identified through the affected system study process are congested.²⁶

On April 7, 2022, after having numerous discussions separately with AECI and SPP, Tenaska Clear Creek, SPP, and AECI participated in a joint conference call to discuss the curtailments of the Clear Creek Project.²⁷ During that meeting, SPP and AECI clarified that SPP, MISO, AECI, and TVA are parties to two Operating Guides related to the Clear Creek Project that result in the Clear Creek Project being curtailed ahead of other projects and outside of the normal curtailment procedures.²⁸ Historically, if there was congestion on the SPP system, SPP would determine whether congestion on a particular line is being driven by generation resources on the SPP system or an adjacent system. If the source of the congestion was on the SPP system, SPP would redispatch the relevant generation resources. If the source was on an external system, in accordance with its tariff, SPP would use the NERC Interchange Distribution Calculator and TLR procedures to calculate the contribution of generation resources on adjacent systems and then request a certain quantity of curtailment from each system to relieve the constraint.²⁹ Historically,

²⁵ *Id.* at 8:137-140.

²⁶ *Id.* at 8:134-137

²⁷ *Id.* at 8:144-145.

²⁸ *Id.* at 9:163-170.

²⁹ *Id.* at 8-9:152-157.

the result of invoking the TLR procedures to address constraints on the Maryville-Midway line has been that SPP has requested curtailment of generation on the MISO and AECI systems, with the majority of relief being requested by generation resources on the MISO system.³⁰

Following the posting of the Clear Creek Project March 2021 restudy, however, the Respondents jointly established the Operating Guides that allow them to override the standard curtailment procedures set out in their tariffs when the facilities identified in the studies of the Clear Creek Project are congested during real-time operations. Specifically, SPP and AECI explained that:

- The Respondents have established one operating guide that allows the Respondents to curtail the Clear Creek Project ahead of any other customers when SPP observes congestion on Flowgates 26604 and 25727, flowgates that are associated with the Maryville-Midway line.
- The other guide, referred to as the Clear Creek Operating Guide, provides for the selective curtailment of the Clear Creek Project if SPP observes congestion on flowgates that are tied to transmission facilities associated with upgrades that SPP has proposed to assign to the Clear Creek Project as part of the interconnection process.
- The Clear Creek Project is the only generation resource that is subject to these Operating Guides.
- When the Operating Guides are applied, the Clear Creek Project will be curtailed down to 0 MW before any other generation resources contributing to the constraint are curtailed.³¹

During the April 7 meeting, Tenaska Clear Creek reiterated its previous requests that SPP and AECI provide it with copies of the Operating Guides so that it may confirm SPP and AECI's verbal representations and better understand the manner in which the Clear Creek Project is being

³⁰ *Id.* at 11:209-212.

³¹ *Id.* at 9:163-170.

curtailed relative to other generation resources. However, SPP and AECI again declined to provide copies of the Operating Guides.³²

IV. EXPEDITED MOTION FOR DISCOVERY AND PRODUCTION OF OPERATING GUIDES

Tenaska Clear Creek repeatedly has requested that SPP and AECI provide copies of the Operating Guides. All these requests have been denied. To provide the Commission with a complete record in this proceeding, Tenaska Clear Creek respectfully requests that the Commission: (1) issue an order within *21 days of the date of filing* directing SPP to file the Operating Guides in the above-captioned docket; and (2) shorten the time period for filing answers to this motion to *five days after the date of filing*. Although discovery prior to the time that a complaint is set for hearing is not typical, the Commission previously has granted similar requests for discovery when doing so is necessary to provide a complete record for the Commission. In fact, when issuing Order No. 602, which revised the Commission's procedures for complaints, the Commission acknowledged that there

will be instances in which information necessary to support a complainant's allegation is not readily available because it is in the hands of the respondent. In these cases, a complainant should file all the information that it has. It should also identify as support for a request for discovery the further information that it needs that is in the hands of the respondent.³³

This is exactly such an instance. Tenaska Clear Creek is filing this complaint based on the sum total of information available to it: operations reports and information that it has obtained through conversations with SPP and AECI staff. However, Tenaska Clear Creek has been unable

³² *Id.* at 10:172-174.

³³ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,760 (1999); *order on reh'g & clarification*, Order No. 602-A, *FERC Statutes and Regulations, Regulations Preambles July 1996–December 2000* ¶ 31,076, *order on reh'g*, Order No. 602-B, 88 FERC ¶61,294 (1999).

to review the Operating Guides, despite numerous requests to do so, and the Operating Guides remain in the hands of the Respondents. In addition, the Respondents have made inconsistent representations regarding the origins and nature of the Operating Guides, the transmission facilities covered by the Operating Guides, and the party responsible for directing the curtailment of the Clear Creek Project. Without the Operating Guides, neither Tenaska Clear Creek nor the Commission can know the exact conditions in which these Operating Guides are applied, the specific roles and responsibilities of each of the Respondents, and the nature of the curtailment protocols. To ensure that Tenaska Clear Creek has access to the information necessary to support this complaint and to ensure that any decision in this proceeding is rendered based on a complete understanding of the facts, Tenaska Clear Creek respectfully requests that the Commission issue an order within 21 days of the date of submission of this motion directing SPP to make a filing in this docket containing the Operating Guides.³⁴

Tenaska Clear Creek believes that the Operating Guides should be submitted in the public record in this docket. As discussed further below, the Commission has found that the procedures used to curtail transmission and interconnection service must be filed under Section 205 of the FPA and has required transmission providers to adopt measures designed to ensure that customers have visibility into the reasons for curtailment of their service. Claims by SPP and certain other Respondents that they should be permitted to curtail the Clear Creek Project using a set of unfiled and non-public Operating Guides are fundamentally inconsistent with these requirements. To the extent that SPP or any of the other Respondents believe that the Operating Guides should be filed on a confidential basis, they should be required to bear the burden of demonstrating that the

³⁴ Tenaska Clear Creek reserves the right to amend its complaint and petition as necessary to reflect the content of the Operating Guides.

Operating Guides qualify for such treatment, specifically identify those portions of the Operating Guides that it believes need to be redacted, submit public and confidential versions of the Operating Guides, and provide participants in this proceeding the ability to access the Operating Guides by executing an agreement that protects any confidential information.

V. COMPLAINT AND SECTION 211A PETITION

A. Respondents' Selective Curtailment Of The Clear Creek Project Is Contrary To Open Access And Violates Tariff Requirements

1. The Operating Guides Are Unduly Discriminatory, Inconsistent With The Open Access And Comparability Requirements Of The OATT, And Violate The Terms Of The Respondents' Tariffs

Non-discriminatory curtailment of transmission and interconnection service is a bedrock requirement of the Commission's open access and comparability policies. In particular, the Commission consistently has found that any curtailments of transmission or interconnection service must be implemented on a non-discriminatory basis and applied pro rata to all transactions that relieve the constraint at issue.³⁵ The requirement that any curtailments be implemented on a non-discriminatory basis is critical to ensuring that transmission owners provide transmission and interconnection customers with service comparable to that provided to itself and its affiliates.

³⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, FERC States. & Regs. ¶ 31,036 at 461-462 (1996) (“We intended to permit curtailments of transactions that substantially relieve a constraint. We intended and continue to believe that curtailment on a pro-rata basis is appropriate for curtailing the transactions that substantially relieve the constraint. In order to allay the concerns of the commenters addressing this issue, we are clarifying the curtailment provision of the tariff to explicitly allow the transmission provider discretion to curtail the services, whether firm or non-firm, that substantially relieve the constraint. Of course, any curtailment must be made on a non-discriminatory basis, including curtailment of the transmission provider's own use of the transmission system.” (footnote omitted)), *order on reh'g*, Order No. 888-A, FERC States. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Group v. Fed. Energy Reg. Comm'n*, 225 F.3d 667 (D.C. Cir. 200), *aff'd sub nom. New York v. Fed. Energy Reg. Comm'n*, 535 U.S. 1 (2002); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, Appendix C, Section 9.7.2.2 (requiring that any interruption or reduction of interconnection service “be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the Transmission System”) (2003).

Consistent with these requirements, each of the Respondents' tariffs requires the respondents to curtail interconnection and transmission service on a non-discriminatory basis. For instance, the terms of each Respondent's OATT authorize it to invoke NERC's TLR procedures when curtailments are necessary to maintain the reliable operation of its system or adjacent systems but unambiguously require that all curtailments "be made on a non-discriminatory basis."³⁶ With respect to interconnection service in particular, the interconnection procedures and pro forma interconnection agreements maintained by the Respondents require any curtailments or reductions in interconnection service to be implemented on an equitable, non-discriminatory basis.³⁷

Even in those circumstances where the Commission has acknowledged that transmission providers have flexibility to design curtailment procedures that deviate from the procedures set out in the applicable OATT, the Commission has emphasized that any alternative procedures must not be unduly discriminatory. That is, any alternative procedures must be "consistent with the requirements for curtailments contained in the applicable OATT."³⁸ Consistent with this requirement, the Commission has found that alternative tariff requirements, policies, and procedures that have the effect of allowing the transmission provider to selectively curtail a single

³⁶ See, e.g., SPP OATT, Section 13.6, Section 14.7, Attachment R; AECI OATT, Section 13.6, Section 14.7 Attachment J.; MISO OATT, Section 13.6, Section 14.7; TVA, Transmission Service Guidelines, FY2021 Edition, Section 13.6, Section 14.7, Attachment K.

³⁷ See, e.g., *id*; SPP OATT, Attachment V, Section 9.7.2.2 (requiring equitable, non-discriminatory curtailment); AECI Interconnection Procedures, Appendix 4, Section 9.7.2.2. (requiring equitable, non-discriminatory curtailment); MISO OATT, Attachment X, Appendix 6, Section 9.7.2 (requiring equitable, non-discriminatory curtailment of interconnection service).

³⁸ *Entergy Services, Inc.*, 133 FERC ¶ 61,202 at P 14 (2010).

customer or group of customers are inconsistent with the FPA's prohibition on undue discrimination and the Commission's open access and comparability requirements.³⁹

Additionally, the Commission repeatedly has emphasized the importance of ensuring that the procedures used to curtail transactions are transparent to customers. As the Commission has explained, public notice of curtailment practices is "necessary to provide transparency and allow customers to determine whether they have been treated in the same manner as other transmission system users, including customers of the transmission provider."⁴⁰

The Respondents' decision to adopt non-public procedures that result in the selective curtailment of a single generation resource ahead of all other customers contributing to a constraint is the antithesis of the open, transparent, and non-discriminatory curtailment required by Commission policy and the requirements of the Respondents' OATTs. In this case, the Respondents have adopted procedures that result in the Clear Creek Project being curtailed ahead of any other interconnection or transmission customers any time that certain facilities along the SPP-AECI-MISO seam experience congestion. Rather than curtailing all generation resources and transmission customers contributing to these constraints on a pro rata and non-discriminatory basis, the Respondents instead have implemented procedures that result in the Clear Creek Project being curtailed ahead of all other customers without regard to their relative priority or impact on

³⁹ *Iberdrola Renewables, Inc. v. Bonneville Power Administration*, 137 FERC ¶ 61,185 (2011) (finding that BPA's Environmental Redispatch Policy resulted in noncomparable and discriminatory transmission service by curtailing renewable generation resources prior to federal hydroelectric and thermal resources); *Entergy Services, Inc.*, 131 FERC ¶ 61,067 at P 53 (2010) ("Another problem with Entergy's curtailment approach in its proposed Local Area Procedures is that different firm point-to-point transmission customers taking service under Entergy's OATT would be subject to the Supplemental TLR Procedures, the Local Area Procedures, or both, and hence curtailed differently. We find such results to be inconsistent with the pro forma OATT, which requires transmission customers with the same priority and the same contractual paths to be curtailed comparably."); *Bonneville Power Administration*, 110 FERC ¶ 61,001 (2005) (finding that service agreement that allowed transmission provider to curtail customer ahead of other customers while upgrades on affected systems were completed was inconsistent with the requirements of the pro form OATT and comparability principles).

⁴⁰ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 at P 1626 (2007).

the constraint at issue. In fact, it is Tenaska Clear Creek's understanding that other transmission and interconnection customers contributing to the constraints on these facilities will not be curtailed at all unless full curtailment of the Clear Creek Project is not effective in resolving the congestion at issue.⁴¹

The Respondents undoubtedly will argue that they have an obligation to protect system reliability. But Tenaska Clear Creek is not arguing that the Respondents should be prohibited from curtailing transmission and interconnection service when necessary to maintain system reliability. However, any curtailments that are directed by the Respondents should occur in accordance with established tariff rules and Commission precedent that provide for non-discriminatory curtailment in accordance with the principles established in Order No. 888 and Order No. 2003. The Respondents cannot create a separate, secret curtailment procedure outside of the established rules and procedures that provide for the discriminatory curtailment of a single interconnection customer ahead of all other customers that are contributing to a constraint.

2. SPP's Restudy Does Not Justify Discriminatory Treatment Of The Clear Creek Project

The Respondents also likely will argue that the Clear Creek Project should be curtailed ahead of other customers because it is uniquely situated: SPP has issued an affected system study assigning the costs of certain upgrades on the SPP system to the Clear Creek Project. Contrary to what the Respondents may argue, however, the existence of an affected system restudy—that Tenaska Clear Creek fundamentally disputes—does not provide a rational basis for selectively curtailing the Clear Creek Project ahead of other customers.

⁴¹ Vala Testimony at 10:183-186.

a. The Respondents Cannot Use Their Curtailment Authority To Discriminate Against An Interconnection Customer Contesting Its Cost Responsibility For Network Upgrades

Ultimately, Respondents' decision to adopt the Operating Guides presumably reflects their collective belief that Tenaska Clear Creek should drop its pending complaint and pay for the upgrades that have been identified through SPP's restudies of the Clear Creek Project. Because Tenaska Clear Creek is challenging SPP's proposal to assign the Project close to \$80 million in costs associated with upgrading facilities along the SPP seam—facilities that were overloaded prior to the construction of the Clear Creek Project—the Respondents apparently believe that they should be permitted to selectively curtail Clear Creek whenever these facilities experience binding congestion during real-time operations.

Such reasoning is fatally flawed and must be rejected. As an initial matter, the Respondents effectively are penalizing the Clear Creek Project for not having yet paid for upgrade costs that have been identified through an interconnection process that *remains ongoing* and subject to dispute. The restudies that SPP has conducted are system impact studies, and SPP currently is in the process of conducting a Facilities Study that will further refine the cost estimates set out in the restudy of the Clear Creek Project. Even after the issuance of the Facilities Study, Tenaska Clear Creek still would need to negotiate Facility Construction Agreements (“FCAs”) with the relevant transmission owners before it would have an affirmative obligation to pay for the upgrades.

Moreover, under the terms of the SPP OATT and Commission policy, the mere issuance of an affected system study (or numerous restudies) does not make the Clear Creek Project responsible for the associated costs. To the contrary, an interconnection customer has the right to dispute SPP's proposal to allocate to a customer costs identified through the study process. Specifically, the interconnection customer can request that SPP file an unexecuted FCA with the Commission to which the interconnection customer may respond and protest, or the

interconnection customer may file a complaint under Section 206 of the FPA. In this case, Tenaska Clear Creek is challenging SPP’s proposal to allocate to the Clear Creek Project 100% of the upgrade costs that have been identified in the restudies. In addition, SPP has not filed any FCAs with the Commission imposing these costs on the Clear Creek Project. Nothing in the applicable tariffs or Commission policy allows a transmission provider—or a reliability coordinator—to circumvent this process by entering into an agreement with adjacent transmission providers and reliability coordinators to curtail selectively the interconnection customer that is disputing its responsibility for upgrade costs. It is improper for the Respondents to use their authority as transmission owners and Reliability Coordinators to discriminate against an interconnection customer that disputes its allocation of network upgrade costs, and such “self-help” is inconsistent with the terms of the Respondents’ Tariffs and open access requirements.

To make matters worse, SPP and the other respondents have continued to selectively curtail the Clear Creek Project even after the Commission found that the March 2021 study was unduly discriminatory and directed SPP to conduct another restudy. Even if the Respondents believed that the issuance of the March 2021 restudy provided a legitimate basis for implementing the Operating Guide (which it does not), the Commission’s determination in the December 2021 order that the March 2021 restudy was unduly discriminatory and unlawful eliminated any objective basis for these Operating Guides. Yet, the Respondents continued, and still continue, to engage in selective curtailment of the Clear Creek Project, presumably based on the results of an invalid study.

b. There Is No Connection Between The Study Results And The Ongoing Curtailment Of The Clear Creek Project

Even if a system impact study provided a valid basis for selectively curtailing an interconnection customer—which it does not—the results of SPP’s restudy of the Clear Creek

Project do not support the use of the Operating Guides employed by the Respondents. Specifically, it is Tenaska Clear Creek's understanding that the Respondents have selectively curtailed the Clear Creek Project whenever the flowgates associated with the Maryville-Midway Line and certain other facilities identified in the restudies of the Clear Creek Project become constrained. In effect, the Respondents are assuming that the Clear Creek Project is responsible for any congestion that occurs on these facilities during real-time operations. The problem with this logic, however, is that SPP's restudy of the Clear Creek Project does not propose to assign Tenaska Clear Creek cost responsibility for the Maryville-Midway Line and other upgrades that have been identified due to overloads *that occur during normal operating conditions*. Instead, the overloads that SPP has cited as the basis for assigning these costs to the Clear Creek Project appear only during specific contingency conditions associated with the loss of a specific adjacent transmission line.

Additionally, while certain of the flowgates reference specific contingencies (e.g., the loss of a particular adjacent transmission line), the flowgates that have been cited as the basis for the vast majority of the curtailments do not align with the contingencies cited as the basis for assigning the costs of upgrading these lines to the Clear Creek Project. For instance, the flowgate that has most frequently been cited as the basis for curtailing the Clear Creek Project—Flowgate 25727—is described by SPP as the Maryville-Midway 161 kV line for the loss of the Maryville-Nodway 161 kV line. In contrast, the contingency cited by SPP as the basis for assigning the Clear Creek Project responsibility for upgrading the Maryville-Midway Line is the loss of the Gentry-Fairport 161 kV line.

In fact, a review of recent operations reports from AECI suggests that the Operating Guides are being applied to curtail the Clear Creek Project on a discriminatory basis when congestion

occurs on facilities that are *no longer assigned to the Clear Creek Project*.⁴² For instance, in April 2022, the operations reports received from AECI state that SPP “requested a cap of Clear Creek Wind for loading on” flowgates associated with the Maryville-Braddyville 161 kV transmission line. Notably, while earlier studies of the Clear Creek Project assigned the Project cost responsibility for upgrading the Maryville-Braddyville transmission line, the March 2022 restudy of the Clear Creek Project determined that the Project should no longer be assigned responsibility for upgrades of the Maryville-Braddyville 161 kV line. In other words, the Operating Guides are being applied to curtail the Clear Creek Project on a discriminatory basis to relieve congestion on facilities that are no longer assigned to the Project.

Moreover, the actions of SPP and the other Respondents are particularly egregious, given that study after study has demonstrated that the facilities that SPP is proposing to assign to the Clear Creek Project are overloaded during real-time operations due to the contribution of flows from specific higher-queued generation resources on the MISO and AECI systems located along the SPP-MISO-AECI seams and near the Clear Creek Project.⁴³ Regardless of the reason that these upgrades were not identified in the studies of these higher-queued projects, it is undeniable that these higher-queued projects contribute to flows on these lines and the overloads identified in the restudies of the Clear Creek Project. In fact, when the TLR procedures have been applied to address congestion on the Maryville-Midway line, it historically has been generation resources on the MISO system that were identified as having the greatest contribution to the constraint. Yet, as a result of the procedures adopted by SPP and the other Respondents, the Clear Creek Project is curtailed ahead of these customers; indeed, it is Tenaska Clear Creek’s understanding that these

⁴² See Attachment A, Exhibit 1.

⁴³ April 1 Protest at 26.

higher-queued MISO and AECI interconnection customers will not see any curtailment when the Operating Guides are being applied until the Clear Creek Project has been fully curtailed down to 0 MW.

B. SPP And MISO's Failure To File The Operating Guides Is Inconsistent With Section 205 Of The FPA And The Filed Rate Doctrine

Section 205 of the FPA requires that public utilities file “schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges.”⁴⁴ Under the Filed Rate Doctrine, a public utility is prohibited from applying a rate, charge, or practice other than those that have been properly filed with the Commission.⁴⁵

Importantly, the Commission has found that the procedures used to determine curtailment priority must be filed with the Commission under Section 205 of the FPA. For instance, when the NERC TLR procedures were initially proposed, the Commission expressly rejected arguments that the TLR procedures were operating procedures that were not subject to the filing and notice requirements of Section 205. The Commission explained that “when changes in operating practices affect, for example, reservation, scheduling, and curtailment provisions of the pro forma tariff, the changes need to be filed.”⁴⁶ The Commission added that the TLR procedures “provide for curtailing parallel flows, a topic not addressed in the pro forma tariff but affecting matters covered by tariff provisions.”⁴⁷ For that reason, the Commission required all transmission providers to incorporate the TLR procedures into their tariffs.

⁴⁴ 16 U.S.C. § 824d(c).

⁴⁵ See *W. Deptford Energy, LLC v. Fed. Energy Regulatory Comm'n*, 766 F.3d 10, 12 (D.C. Cir. 2014) (“utilities are forbidden to charge any rate other than the one on file with the Commission.”).

⁴⁶ *North American Elec. Reliability Council*, 87 FERC ¶ 61,160 (1999).

⁴⁷ *Id.*

This same logic applies here. In this case, SPP and MISO have adopted Operating Guides that effectively allow them to override the curtailment procedures, including the TLR procedures and associated priorities, set out in their tariffs.⁴⁸ Because the Operating Guides address—and are contradictory to—matters that are covered by the SPP and MISO Tariffs, the Operating Guides are required to be filed with the Commission under Section 205 of the FPA. Unless and until the Commission approves the Operating Guides, SPP and MISO have no authority to direct curtailments except in accordance with their existing tariff authority. And, by entering into the secret Operating Guides that allow these parties to selectively curtail a single interconnection customer outside of the normal processes specified in their tariffs, SPP and MISO have violated their tariffs and the Filed Rate Doctrine.

C. The Commission Has Authority To Direct AECI and TVA To Cease Discriminatory Curtailment Of The Clear Creek Project

As explained above, Tenaska Clear Creek has not been permitted to review the Operating Guides, and it, therefore, remains unclear what specific roles and responsibilities each of the Respondents has pursuant to the Operating Guides. However, the operations reports received from AECI state explicitly that Tenaska Clear Creek has been curtailed at the direction of SPP. Respondent SPP (and MISO) is a public utility as defined in Section 201 of the Federal Power Act and, therefore, is subject to the Commission's authority under Section 206 of the FPA. Because SPP has agreed to the Operating Guides and such documents affect the terms and conditions of FERC-jurisdictional transmission service, the Commission has jurisdiction under Section 206 of the FPA to compel the disclosure of, review, and require the cancellation of the Operating Guides.

⁴⁸ Vala Testimony at 10:176-186.

Nevertheless, in a related proceeding, SPP has disavowed responsibility for issuing curtailment orders.⁴⁹ Thus, to the extent necessary, the Commission should use its authority under Section 211A to direct AECI and TVA to cease discriminatory and non-comparable curtailment of the Clear Creek Project. Section 211A allows the Commission to issue an order to require unregulated transmitting utilities, like AECI and TVA, to provide transmission services “on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utilities provides transmission services to itself and that are not unduly discriminatory or preferential.”⁵⁰ As summarized by the Ninth Circuit, “Under § 211A, FERC has the discretion to prevent discrimination in unregulated utilities’ transmission services on a prospective basis.”⁵¹ Further, Section 211A “was designed to foster an open and competitive energy market by promoting access to transmission services on equal terms,” and this is evident, in part, “from the language of the provision, which prevents anticompetitive behavior by utilities that seek to stifle competitors’ generation through control over transmission.”⁵²

AECI and TVA are both “unregulated transmitting utilities” and subject to Section 211A. An “unregulated transmitting utility” is defined as (1) an entity that owns or operates facilities used for the transmission of electric energy in interstate commerce; and (2) an entity described

⁴⁹ Answer of Southwest Power Pool, Inc. at 18, Docket No. EL21-77-002 (April 21, 2022).

⁵⁰ Section 211A states, in part:

(b) Transmission operation services. Subject to section 824k(h) of this title, the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

(2) on terms and conditions (not relating to rates) that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential

⁵¹ *Nw. Requirements Utilities v. FERC*, 798 F.3d 796, 808 (9th Cir. 2015).

⁵² *Id.* (citing *New York v. FERC*, 535 U.S. 1, 10 (2002) (“[M]arket power through control of transmission is the single greatest impediment to competition.”)).

in Section 201(f) of the FPA.⁵³ AECI is an entity described in Section 201(f) of the FPA, and it owns or operates facilities used for the transmission of electric energy in three states, Missouri, Iowa, and Oklahoma.⁵⁴ Similarly, TVA is an instrumentality of the United States that owns or operates facilities used for the transmission of electric energy in interstate commerce; thus, it is an unregulated transmitting utility subject to Section 211A.⁵⁵

The Commission has utilized Section 211A to curb unduly discriminatory behavior by unregulated transmitting utilities in the past. For instance, the Bonneville Power Administration (“BPA”) implemented an environmental redispatch policy to address excess water supply conditions by temporarily substituting federal hydropower, at no cost, for wind power or other generation in BPA’s BAA. During redispatch events, BPA issued dispatch orders to curtail non-federal generation to substitute energy from BPA’s hydro system as a replacement to the curtailed

⁵³ 16 U.S.C. § 824j-1. Section 201(f) of the FPA, 16 U.S.C. § 824(f), states:

(f) United States, State, political subdivision of a State, or agency or instrumentality thereof exempt

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

⁵⁴ See *Sw. Power Pool, Inc.*, 161 FERC ¶ 61,026 (2017) (“SPP and AECI share a seam and cooperate on operational and transmission planning issues pursuant to the SPP-AECI JOA. AECI, a rural electric cooperative that has member cooperatives in Missouri, Iowa, and Oklahoma, is a member of the Southeastern Regional Transmission Planning (SERTP) region as an ‘unregulated transmission utility,’ as that term is defined in the FPA.” (referencing Section 211A of the FPA)).

⁵⁵ TVA also is classified as an “electric utility” by the FPA and is subject to Commission orders under sections 210, 211, 211A, and 212, among others. See also Protest, Answer, and Motion to Intervene of the Tennessee Valley Authority at 2, Docket No. EL21-40-000 (Feb. 22, 2021) (“Under TVA’s (correct) interpretation, section 211A authorizes the Commission to regulate rates, terms and conditions of transmission service that the TVA Board has already decided to provide, but does not authorize the Commission to require TVA to offer expanded transmission service.”).

non-federal generation, meaning that customers of the curtailed wind generators received federal power from BPA instead.⁵⁶

The Commission found that BPA affected “the non-Federal generator’s ability to inject energy at the point of receipt and interrupt[ed] non-Federal customer’s firm point-to-point transmission service, without causing similar interruptions to firm transmission service held by Federal resources.”⁵⁷ The Commission concluded that under the policy, BPA was providing transmission service that is not comparable to the service it provides to itself and which is unduly discriminatory and preferential, therefore justifying the Commission’s exercise of authority under Section 211A.⁵⁸ By diminishing access to BPA’s transmission system for just certain resources, the Commission found it was appropriate to use its “broad” Section 211A authority to “ensure transmission service on a comparable basis for all resources connected to Bonneville’s transmission system.”⁵⁹

This same logic applies here. By curtailing the Clear Creek Project on a discriminatory basis, AECI’s and TVA’s actions have had the effect of limiting the ability of the Project to inject and transmit energy over the transmission grid without causing similar interruptions to other customers that are contributing to the constraints at issue. Under the circumstances, the Commission must exercise its authority under Section 211A to direct AECI and TVA to immediately cease their discriminatory curtailment practices, which are fundamentally inconsistent with open access and comparability requirements.

⁵⁶ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 141 FERC ¶ 61,233, at P 6 (2012).

⁵⁷ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 137 FERC ¶ 61,185, at P 62 (2011).

⁵⁸ *Id.* at PP 63, 78.

⁵⁹ *Iberdrola Renewables, Inc. v. Bonneville Power Admin.*, 141 FERC ¶ 61,233, at P 20. The Commission has previously stated that “(i)nterconnection is an element of transmission service,” and that “the right to inject a new generator’s output into the transmission system is a component of transmission delivery service.” *See id.* at P 59. Thus, the discriminatory curtailment of the Clear Creek Project falls within the ambit of Section 211A.

VI. RELIEF REQUESTED

Tenaska Clear Creek respectfully requests that the Commission issue an order (a) directing the Respondents to immediately terminate the Operating Guides, and (b) finding that any curtailments necessary to address congestion on the network upgrades identified in the restudy of the Clear Creek Project must be done on a non-discriminatory basis in accordance with the procedures and requirements set out in the Respondents' tariffs. The Respondents' decision to selectively curtail the Project is unduly discriminatory and contrary to open access requirements, and therefore improper. Consistent with prior precedent, the Commission should make clear that any procedures used to curtail transmission or interconnection service must be applied on a non-discriminatory basis to all customers affecting the constraints at issue.

The Commission also should direct SPP and MISO to make refunds to Tenaska Clear Creek to enforce the filed rate and restore Tenaska Clear Creek to the position that it would have been in but for the Respondents' discriminatory curtailment practices. Under Section 309 of the FPA, the Commission has broad authority to order monetary relief to remedy a violation of the filed rate.⁶⁰ Pursuant to this authority, the Commission may advance remedies not expressly provided by the FPA, as long as they are consistent with the Act and include the ability "to regard as being done that which should have been done."⁶¹ In circumstances where parties received payments that they should not have received if the tariff was enforced, the Commission has

⁶⁰ See, e.g., *GreenHat Energy, LLC*, 177 FERC ¶ 61,073 at n.679 (2021) (stating that Section 309 of the FPA provides the Commission with the authority to order remedies not expressly set forth in the statute); *Pub. Utils. Comm'n of Cal. v. Fed. Energy Reg. Comm'n*, 462 F.3d 1027, 1048 (9th Cir. 2006) (FERC has "remedial authority to require that entities violating the [FPA] pay restitution for profits gained as a result of a statutory or tariff violation"); *Towns of Concord v. Fed. Energy Reg. Comm'n*, 955 F.2d 67, 73 (D.C. Cir. 1992) (stating that the Commission has authority to order "refunds of amounts improperly collected in excess of the filed rate"); *Ameren Illinois Co.*, 177 FERC ¶ 61,107 at P 34 n.74 (2021) (citing *Consolidated Edison Co. of N.Y., Inc.*, 347 F.3d 964, 972 (D.C. Cir. 2003) (noting that the Commission has a general policy of requiring refunds to remedy violations of the filed rate).

⁶¹ *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017) (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 (D.C. Cir. 1967)); *Xcel Energy Servs., Inc. v. FERC*, 815 F.3d 947, 954-55 (D.C. Cir. 2016) (quoting *N. Natural Gas Co. v. FERC*, 785 F.2d 338, 341 (D.C. Cir. 1986)).

ordered, and courts have upheld, RTOs/ISOs imposing surcharges to effectuate refunds to the parties deprived of such payments.⁶² Granting refunds or other forms of monetary relief when there has been a violation of the filed rate is critically important to ensuring that public utilities comply with the terms of their tariffs and restoring parties to the position that they would have been if the terms of the tariff had been enforced.

In this case, SPP and the other Respondents violated their tariffs and the FPA by entering into the secret Operating Guides that resulted in the Clear Creek Project being selectively curtailed. As in other cases where the Commission has ordered refunds, the balance of the equities support the imposition of surcharges to effectuate the refunds due to Tenaska Clear Creek. First, as described in the testimony of Mr. Vala, Respondents' curtailment of the Clear Creek Project significantly reduced the amount of energy produced by the Project following the posting of SPP's March 2021 restudy. At the same time, the application of the Operating Guides likely benefitted other customers by reducing congestion on SPP facilities and increasing the amount of energy that other interconnection customers, particularly customers on the MISO and AECI system, were able to produce during periods when the Clear Creek Project was being selectively curtailed.

For the foregoing reasons, Tenaska Clear Creek requests that the Commission issue an order directing SPP and MISO to make refunds to restore the Clear Creek Project to the position it would have been in if curtailments had occurred in accordance with applicable tariff requirements (e.g., the TLR procedures). As Mr. Vala explains, Tenaska Clear Creek's calculation

⁶² See, e.g., *Verso Corp. v. FERC*, 898 F.3d 1 (D.C. Cir. 2018) aff'g *Pub. Serv. Comm'n of Wisc. v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,205 (2016) (affirming surcharges on certain parties to effectuate refunds to correct the improper pro rata allocation of system support resource costs); *Black Oak Energy, LLC*, 167 FERC ¶ 61,250 (ordering surcharges to correct over-collection of line loss amounts to effectuate refunds to market participants in PJM and MISO); *Cal. Indep. Sys. Operator Corp.*, 168 FERC ¶ 61,127 (2019) (ordering refunds to market participants in PJM and MISO).

indicates that SPP and the other Respondents' practices resulted in Clear Creek being deprived of revenues in excess of \$9 million.

SPP and MISO undoubtedly will argue that they have no mechanism to fund this refund obligation. As explained above, however, Commission and court precedent support the imposition of surcharges on customers that have over-collected due to a failure to enforce the filed rate. In this case, SPP's and MISO's decision to ignore the tariff-based processes for curtailment had the effect of benefitting customers on the SPP and MISO systems by allowing them to sell energy and ancillary services that they would not have been able to produce if the filed rate had been enforced. Thus, the balance of the equities favors the imposition of surcharges to ensure that Tenaska Clear Creek is made whole to correct the impact of Respondents' illegal curtailment. If the Commission believes that further fact finding is necessary regarding the impact of the Respondents' illegal curtailment practices, then the Commission should set the issue of refunds and surcharges for hearing and settlement.

VII. RULE 206 REQUIREMENTS

The specific information required under Rule 206(b)(1) through (11), 18 C.F.R. § 385.206(b), of the Commission's Rules of Practice is set forth below. The basis for the complaint and the relief requested are set forth above.

A. Request for Fast Track Processing

This Complaint warrants fast track processing under Rules 206(h) and 206(b)(11) of the Commission's Rules of Practice and Procedure. 18 C.F.R. §§ 385.206(b)(1); 385.206(h). As explained above, a prompt ruling in this case is necessary to ensure that Tenaska Clear Creek is no longer curtailed on a discriminatory basis in violation of the Respondents' tariffs, the prohibition on undue discrimination, and open access requirements. Tenaska Clear Creek therefore

respectfully requests a Commission ruling on this complaint no later than 60 days after the submission of this Complaint.

B. Compliance with Rule 206 Requirements

1. *Rule 206(b)(1): Action or Inaction Alleged to Violate Statutory Standards or Regulatory Requirements*

Tenaska Clear Creek alleges that the Respondents' selective and discriminatory curtailment of the Clear Creek Project violates the Respondents' Tariffs, is inconsistent with open access and comparability requirements, and is unjust, unreasonable, and unduly discriminatory in violation of Sections 206, 211A, 306, and 309 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure for the reasons discussed in sections I-V of the foregoing complaint.

2. *Rule 206(b)(2): Legal Bases for Complaint*

The legal bases for Tenaska Clear Creek's complaint are set forth above in sections I-V of the complaint.

3. *Rule 206(b)(3) and 206(b)(4): Issues Presented as They Relate to the Complainant and Quantification of Financial Impact on Complainant*

As described above, Tenaska Clear Creek estimates that the Respondents' discriminatory curtailment of the Clear Creek Project has caused the Clear Creek Project to incur losses in excess of approximately \$9.15 million.

4. *Rule 206(b)(5): Nonfinancial Impacts on Complainant*

As detailed in sections I-V above, the Respondents' unduly discriminatory treatment of Tenaska Clear Creek violates the Respondents' Tariffs, the FPA, and Commission policy. Allowing Respondents' decision to establish a secret and selective curtailment priority that conflicts with the requirements of their tariffs to stand would undermine open access and send a signal to public utilities and unregulated utilities that they are free to enforce curtailment priorities outside of, and in a manner that conflicts with the terms of, their tariffs.

5. *Rule 206(b)(6): Related Proceedings*

Tenaska Clear Creek has filed a complaint in Docket No. EL21-77 challenging SPP's proposed allocation of network upgrade costs to the Clear Creek Project. As discussed above, the Respondents' selective curtailment of the Clear Creek Project appears to be premised on the restudies that Tenaska Clear Creek has challenged as part of the pending complaint proceeding.

6. *Rule 206(b)(7): Specific Relief Requested*

The specific relief requested is set forth in section VI of the foregoing complaint.

7. *Rule 206(b)(8) Documents that Support the Complaint*

Attached are the following exhibits:

Attachment 1, Testimony of Mr. Justin Vala;

Exhibit 1 – Curtailment History;

Exhibit 2 – Monthly Summary of Non-TLR Curtailments by Flowgate;

Exhibit 3 – Value of Discriminatory Curtailment.

8. *Rule 206(b)(9): Dispute Resolution*

Prior to filing, Tenaska Clear Creek has asked SPP and AECI to forgo selective curtailment of the Clear Creek Project. However, these parties have declined to cease their unlawful practices.

9. *Rule 206(b)(10): Form of Notice*

The form of notice required by the Commission's Rule 206(b)(10) is attached as Attachment 2.

10. *Rule 206(c): Service on Respondent*

Pursuant to Rule 206(c), concurrent with its filing with the Commission, Tenaska Clear Creek has served copies of this complaint and petition by email and U.S. mail on the contacts for SPP as listed on the Commission's list of Corporate Officials:

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VIII. CONCLUSION

For the foregoing reasons, Tenaska Clear Creek respectfully requests that the Commission grant the specific relief requested herein and such other and further relief as the Commission may deem appropriate.

Respectfully submitted,

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Dated: May 25, 2022

ATTACHMENT 1

Testimony of Mr. Justin Vala

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

**Tenaska Clear Creek Wind, LLC
Complainant, Petitioner**

v.

**Southwest Power Pool, Inc., *et al.*
Respondents.**

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Docket Nos. EL22-_____

**TESTIMONY OF JUSTIN VALA ON BEHALF OF
TENASKA CLEAR CREEK WIND, LLC**

16 Creek Project” or “Project”), a 242 MW wind facility interconnected with the AECI
17 transmission system, as well as the impact of those curtailments on the Project. Through
18 discussions with SPP and AECI, Tenaska Clear Creek has learned that SPP, AECI, the
19 Midcontinent Independent System Operator (“MISO”), and the Tennessee Valley Authority
20 (“TVA”) have implemented two operating guides (the “Operating Guides”) that result in
21 the Clear Creek Project being curtailed on a selective basis—ahead of any other
22 customers—when certain flowgates on the SPP system are congested. As a result of the
23 application of these Operating Guides, the Clear Creek Project has experienced a much
24 higher level of curtailment than would have occurred if SPP and the other parties to the
25 Operating Guides curtailed customers in accordance with the curtailment procedures that
26 typically are applied by these entities to coordinate curtailment of interchange in accordance
27 with their tariffs.

II. Curtailment of the Clear Creek Project

28 **Q4: Has the Clear Creek Project experienced curtailments?**

29 A4: Yes, the Clear Creek Project has experienced significant curtailments, particularly since the
30 issuance of SPP’s March 2021 affected system restudy of the Project.

31 **Q5: Could you describe the frequency of curtailments?**

32 A5: Yes. When discussing the frequency of curtailments, it is useful to distinguish between the
33 period prior to the issuance of SPP’s March 2021 restudy of the Clear Creek Project and
34 after the issuance of the restudy. Between when the Project commenced commercial
35 operation in May 2020 and the issuance of the March 2021 restudy, the Clear Creek Project
36 experienced curtailments equal to approximately 5% of its production. Following the
37 posting of the March 2021 study, however, curtailments increased dramatically. From April

38 2021 through December 2021, the magnitude of curtailments more than doubled, with a
39 total of approximately 12.1% of Clear Creek’s production curtailed. Curtailments have
40 become significantly worse since the beginning of 2022, with approximately 33.6% of Clear
41 Creek’s production being curtailed up to April 30, 2022. **Exhibit 1** to my testimony is a
42 spreadsheet providing an overview of the volume of curtailments at the Clear Creek Project
43 from May 2020 through April 2022.

44 **Q6: Has the Clear Creek Project received any information regarding the reasons for the**
45 **curtailments that have occurred?**

46 A6: Yes. AECI provides the Clear Creek Project with operational logs that describe the reason
47 for each curtailment imposed on the Project, the underlying constraint that drove the need
48 for curtailment, and the duration of the curtailment. Prior to the posting of the March 2021
49 restudy, the operational logs provided to the Project generally indicated that NERC’s
50 Transmission Loading Relief (“TLR”) procedures had been invoked to resolve congestion
51 on specific flowgates on the SPP system (e.g., more than 90% of curtailments between
52 January 1, 2021 to March 31, 2021 involved application of the TLR procedures). The TLR
53 procedures are used by Reliability Coordinators, such as SPP, MISO, and TVA, to manage
54 interchange through coordinated curtailment of generation resources and transmission
55 customers contributing to a particular constraint. After the posting of the March 2021
56 restudy, however, the explanation provided for curtailments of the Clear Creek Project
57 changed considerably.

58 **Q7: How did the curtailments change after the posting of the March 2021 restudy?**

59 A7: Rather than referencing the TLR procedures, the operational logs received from AECI
60 indicated that the majority of curtailments were occurring as a result of SPP capping the

61 output of the Clear Creek Project in order to resolve curtailments on SPP flowgates (“Non-
 62 TLR Curtailments”). Each of SPP and AECI has indicated that these Non-TLR
 63 Curtailments have been directed in accordance with the requirements of two Operating
 64 Guides that have been adopted by SPP, AECI, MISO, and TVA. Figure 1 below includes
 65 an excerpt of the operational log for the Clear Creek Project showing curtailments on
 66 January 5, 2022, a day on which the output of the Clear Creek Project appears to have been
 67 capped at the direction of SPP in order to address congestion on Flowgate 25727.

Figure 1: Excerpt of AECI Operations Report

RE-DISPATCH			
Generation	Description	Implemented	Released
Clear Creek Wind Farm	1/5/2022 04:18 - SPP RC requested relief on FG 25727 capping Clear Creek wind farm to 180 MWs,		
	06:45 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 50 MWs,		
	07:55 - SPP RC partially released the cap on Clear Creek wind farm to 150 MWs,		
	08:42 - SPP RC requested additional relief on FG 25727 capping Clear Creek wind farm to 100 MWs,	1/5/2022 04:18	1/5/2022 14:01
	10:30 - SPP RC partially released the cap on Clear Creek wind farm to 150 MWs,		
	11:25 - SPP RC partially released the cap on Clear Creek wind farm to 200 MWs,		
	14:01 – SPP RC released the cap on Clear Creek allowing full output.		

68 **Q8: What is Flowgate 25727?**

69 A8: My understanding is that Flowgate 25727 is associated with the 161 kV Maryville –
 70 Midway transmission line—one of the transmission facilities that SPP proposed to require
 71 Tenaska Clear Creek to upgrade as part of the March 2021 restudy as well as an additional

72 restudy performed by SPP in March 2022 at the direction of the Federal Energy Regulatory
 73 Commission (“FERC”).

74 **Q9: Is Flowgate 25727 the only flowgate for which SPP has requested relief specifically**
 75 **from the Clear Creek Project?**

76 A9: No. The vast majority of Non-TLR Curtailments have been associated with Flowgate
 77 25727. However, Tenaska Clear Creek has been subject to Non-TLR Curtailments
 78 associated with other SPP flowgates, which appear to be linked to other transmission
 79 facilities that SPP has proposed to assign to the Clear Creek Project as part of the March
 80 2021 or March 2022 restudies. Table 1 below provides an overview of the relevant
 81 flowgates and the volume of curtailments associated with each flowgate. Additionally, I
 82 am providing as **Exhibit 2** to this testimony a spreadsheet that identifies each Non-TLR
 83 Curtailment, the flowgate identified by SPP, the associated transmission element, and the
 84 description of the reason given for the curtailment.

Table 1: Overview of Non-TLR Curtailments – April 2021 to April 2022¹

Flowgate	Line Path	Volume of Curtailments (MWh)	Percentage of Non-TLR Curtailments
25727	Maryville – Midway 161 kV for the loss of the Maryville – Nodaway 161 kV Line	159,553	90.7%
27571	Maryville – Midway 161 kV for the loss of the Cooper – Fairport – St Joe 345 kV line	8,914	5.1%
TEMP	Maryville – Creston for the loss of the Braddyville– Center–Clarinda 161 kV line	313	0.2%
26013	Maryville – Braddyville 161 kV FLO Maryville – Creston 161 kV line	1,693	1.0%
27045	Maryville – Bradyville 161 kV FLO Maryville – Nodaway 161 kV	1,815	1.0%

¹ From April 1, 2021 through April 30, 2022.

27554	Maryville – Braddyville 161 kV FLO Gentry – Nodaway 161 kV	161	0.1%
26604	Maryville-Midway 161 kV FLO Gentry – Fairport 161 kV	3,491	2.0%

85 **Q10: How do these flowgates relate to the network upgrades identified in the restudies of**
86 **the Clear Creek Project?**

87 A10: Each of the flowgates appears to be related to a facility that SPP has proposed to upgrade
88 as part of the March 2021 or March 2022 restudies of the Clear Creek Project. It is important
89 to note, however, that the contingencies associated with the flowgates are different than the
90 contingencies that were cited as the basis for assigning Tenaska Clear Creek cost
91 responsibility for the upgrades identified in the March 2021 and March 2022 restudies. For
92 instance, while Flowgate 25727 references the Maryville-Midway 161 kV Line—one of the
93 lines identified in the restudies of the Clear Creek Project—the contingency associated with
94 the flowgate is the loss of the Maryville-Nodaway 161 kV Line. In contrast, the
95 contingency cited by SPP as the basis for requiring Tenaska Clear Creek to fund upgrades
96 to the Maryville-Midway 161 kV Line is the loss of the Gentry to Fairport 161 kV Line.

97 In addition, 5 of the 9 flowgates that have been cited as the basis for the Non-TLR
98 Curtailments are associated with the Maryville-Braddyville 161 kV Line. Notably, while
99 SPP proposed to assign Tenaska Clear Creek cost responsibility for upgrading the
100 Maryville-Braddyville Line in its March 2021 restudy, the most recent restudy results
101 posted in March 2022 do not assign the Clear Creek Project cost responsibility for upgrades
102 on the Maryville-Braddyville 161 kV Line. This reflects that when the 2017 Integrated
103 Transmission Plan model is used to evaluate the Clear Creek Project—the model that was
104 used for the initial studies of the Project and the March 2022 restudy—this facility is no
105 longer identified as overloaded.

106 **Q11: Has the Clear Creek Project been curtailed due to congestion on flowgates associated**
107 **with the Maryville-Braddyville Line since SPP posted the March 2022 restudy?**

108 A11: Yes. According to the operational information received from AECI, Tenaska Clear Creek
109 was curtailed in both March and April 2022 at the direction of SPP to resolve congestion
110 on flowgates associated with the Maryville-Braddyville 161 kV Line. In other words, the
111 operational reports received from AECI indicate that, even after determining that the Clear
112 Creek Project no longer should be assigned responsibility for upgrading the Maryville-
113 Braddyville Line, SPP, AECI, MISO, and TVA have continued to curtail the Clear Creek
114 Project outside of the TLR process.

115 **Q12: Do any of the flowgates align with the contingencies identified in the studies of the**
116 **Clear Creek Project?**

117 A12: Yes. Flowgate 26604 is described as the Maryville-Midway Line for the loss of the Gentry
118 Fairport Line, which is the contingency cited in the restudies of the Clear Creek Project.
119 Flowgate 26604 only accounts for approximately 2.0% of the Non-TLR Curtailments that
120 have been experienced by the Clear Creek Project. The remaining 98% of curtailments
121 have been associated with contingencies that are different than those identified in the
122 restudies of the Clear Creek Project.

III. IMPACT OF THE OPERATIONAL GUIDES

123 **Q13: Could you explain how you came to the conclusion that the Non-TLR Curtailments**
124 **described earlier in your testimony are occurring pursuant to the Operating Guides?**

125 A13: After noticing the changes in curtailments described above, Tenaska Clear Creek reached
126 out to both SPP and AECI in an attempt to better understand the nature of the curtailments.
127 During these discussions, both SPP and AECI separately acknowledged the existence of

128 one or more operating guides (or procedures) that they (and their associated Reliability
129 Coordinators) were using to relieve congestion. SPP acts as its own Reliability Coordinator,
130 while TVA is the Reliability Coordinator for AECI. Both SPP and AECI repeatedly
131 declined to provide the guide(s), claiming that they contain information regarding the bulk
132 electric transmission system which cannot be shared under FERC requirements.
133 Based on these discussions, Tenaska Clear Creek understood that SPP and AECI/TVA had
134 adopted separate Operating Guides. AECI indicated that the Operating Guides had been
135 put in place to allow SPP to require the curtailment of the Clear Creek Project when
136 transmission facilities associated with network upgrades identified through the affected
137 system study process are congested. At the same time, despite the contents of the
138 Operations Reports, SPP repeatedly claimed that it was not directing AECI/TVA to
139 specifically curtail the Project and that the Operating Guides had been implemented at the
140 request of AECI and TVA. However, discussions at an April 7, 2022 meeting involving
141 staff of SPP, AECI, and Tenaska Clear Creek confirmed that SPP, AECI, MISO, and TVA
142 each are parties to the Operating Guides.

143 **Q14: Could you please describe that meeting?**

144 A14: Yes. On April 7, 2022, staff from SPP, Tenaska Clear Creek, and AECI met for the first
145 time as a group to discuss the curtailment issue. During that meeting, Yasser Bahbaz,
146 Manager of Reliability Coordination with SPP, provided an extensive description of the
147 nature and origin of the Operating Guides.

148 Mr. Bahbaz started by describing the manner in which SPP handles congestion on its
149 system. Mr. Bahbaz explained that typically SPP would start by determining whether the
150 source of congestion is internal or external. If the source is a generator located on the SPP

151 transmission system, SPP will redispatch generation resources on its system to address the
152 constraint. When the source is external to the SPP system, such as a generator on the MISO
153 or AECI systems, SPP will employ the NERC Interchange Distribution Calculator to
154 determine the quantity of relief needed by systems contributing to the constraint. SPP will
155 then invoke the NERC TLR procedures to request that the external systems contributing to
156 the constraint on the SPP system curtail interconnection and transmission customers as
157 necessary to provide relief.

158 In this case, however, Mr. Bahbaz explained that SPP, AECI, MISO, and TVA created
159 Operating Guides that have the effect of curtailing the Clear Creek Project ahead of other
160 generation resources. The Operating Guides allow SPP to seek and obtain relief from the
161 Clear Creek Project—through TVA and AECI—before the TLR procedures are invoked (if
162 at all).

163 According to Mr. Bahbaz, there are two distinct Operating Guides. One guide specifically
164 addresses the procedure to curtail the Project when SPP observes congestion on Flowgates
165 26604 and 25727 (associated with the 161kV Maryville – Midway line). The other guide
166 is titled the “Clear Creek Operating Guide” and has the effect of specifically curtailing the
167 Project if SPP experiences congestion on flowgates that are associated with other
168 transmission upgrades assigned to the Clear Creek Project as part of the SPP restudies.
169 During the April 7th meeting, both SPP and AECI clarified that the Clear Creek Project is
170 the only generation resource identified in these Operating Guides.

171 **Q15: Did SPP and AECI provide copies of the Operating Guides during that meeting?**

172 A15: No. Tenaska Clear Creek requested to see copies of these guides, including redacted
173 versions or summaries, as necessary. However, SPP and AECI refused to provide copies
174 of these documents.

IV. IMPACT OF THE OPERATING GUIDES

175 **Q16: How has the application of the Operating Guides impacted the Clear Creek Project?**

176 A16: The effect of the Operating Guides has been to dramatically increase the curtailments of the
177 Clear Creek Project relative to the curtailments that would have occurred if the TLR
178 procedures were applied. Use of the TLR procedures to address congestion on SPP's
179 flowgates for the Maryville-Midway line and other paths would have resulted in
180 curtailments being allocated equitably to all projects contributing to the constraint. Instead,
181 through the application of the Operating Guides, SPP effectively has made the Clear Creek
182 Project responsible for resolving congestion without regard to the extent to which other
183 customers may have been responsible for congestion on the flowgates at issue. In fact, it is
184 my understanding that the Operating Guides provide that other customers will not be
185 curtailed unless fully curtailing the Clear Creek Project is not sufficient to resolve the
186 constraint.

187 My calculations indicate that the excess curtailment of the Clear Creek Project due to the
188 application of the Operating Guides has resulted in the Project being required to forego
189 production worth approximately \$9.15 million between April 1, 2021 and April 30, 2022.

190 **Q17: Could you explain how you came to this conclusion?**

191 A17: Yes. The first step to determining the economic impact on the Project of the Non-TLR
192 Curtailments is to determine the quantity of power production that was curtailed at the Clear

193 Creek Project when the Operating Guides were applied. In order to calculate this amount,
194 I confirmed the net potential power production (“Potential Power”) at the Clear Creek
195 Project during periods in which the Project has been curtailed through application of the
196 Operating Guides. The Potential Power of the Project was determined by the Vestas control
197 system located at the Project, which provides an estimate of the production potential of the
198 Project based on prevailing wind conditions and other factors. In practice, the information
199 recorded in the Vestas control system is an accurate estimate of the amount of power that
200 the Project can produce, and closely tracks actual power production. Once I confirmed the
201 Potential Power during these periods, I was able to calculate the gross lost generation
202 (“Gross Lost Generation”) by subtracting the actual power delivered to the Point of
203 Interconnection during these periods from the Potential Power.

204 The next step was to determine how much of this Gross Lost Generation would still have
205 been lost had the TLR procedures been applied. In order to estimate the quantity of
206 curtailments that would have been experienced if the TLR procedures had been applied, I
207 examined historical data regarding the distribution of curtailment relief between the AECI
208 and MISO systems when SPP has invoked the TLR procedures to resolve congestion on
209 Flowgate 25727. Based on a review of TLR data reflecting TLR curtailments between
210 January 1, 2021 through March 31, 2021 to resolve congestion on Flowgate 25727, it
211 appears that when the TLR procedures have been applied to resolve congestion on Flowgate
212 25727, the majority of relief has been requested from the MISO system. More specifically,
213 SPP obtained an average of 69% of the relief from the MISO system during TLR events
214 associated with Flowgate 25727, with the remaining 31% of relief requested from the AECI

215 system. Table 2 provides an overview of the allocation of relief during TLR events related
 216 to Flowgate 25727 between January 1, 2021 to March 31, 2021.

**Table 2: TLR Curtailments to Resolve Congestion on Flowgate 25727 – January 1,
 2021 to March 31, 2021**

Date	Flowgate	Duration (hrs)	Highest TLR Level	AECI NNL Relief (MWh)	MISO Market Relief (MWh)	% AECI Relief	% MISO Relief
1/20/2021	25727	13	5b	47	252	16%	84%
1/25/2021	25727	15	5a	84	283	23%	77%
1/29/2021	25727	18	5a	121	66	65%	35%
2/3/2021	25727	2	5b	12	38	24%	76%
2/20/2021	25727	14	5b	286	324	47%	53%
2/21/2021	25727	7	5a	82	254	24%	76%
2/22/2021	25727	7	5a	146	140	51%	49%
3/2/2021	25727	4	5a	22	166	12%	88%
3/9/2021	25727	3	5b	22	82	21%	79%
3/13/2021	25727	3	5a	12	112	10%	90%
3/17/2021	25727	10	5a	20	496	4%	96%
3/19/2021	25727	9	5b	70	210	25%	75%
3/20/2021	25727	24	5a	265	66	80%	20%
3/21/2021	25727	3	5a	10	40	20%	80%
3/27/2021	25727	8	5a	115	186	38%	62%
3/27/2021	25727	10	5b	112	371	23%	77%
3/29/2021	25727	31	5a	437	523	46%	54%
3/30/2021	25727	15	5b	156	918	15%	85%
3/31/2021	25727	10	5a	88	113	44%	56%
Totals				2107	4640	31%	69%

217 Next, I calculated the quantity of curtailments that would have been allocated to the AECI
 218 system if the TLR procedures—rather than the Operating Guides—had been applied during
 219 the period between March 31, 2021 through April 2022. In practice, if the Operating Guides
 220 had not been applied during this period, the quantity of curtailments that were experienced
 221 by the Clear Creek Project would have been allocated among the MISO and AECI systems,
 222 consistent with the prior periods. Thus, multiplying the Gross Lost Generation during each
 223 event by 31% (i.e., the average amount of relief requested from AECI during TLR events)
 224 reflects the quantity of curtailment that would have been requested from the AECI system
 225 if the TLR procedures had been applied (the “AECI Share”) instead of the Operating
 226 Guides.

227 I then calculated the portion of the AECI Share that would have been allocated to the Clear
 228 Creek Project during each event by Clear Creek’s proportional share of its contribution to
 229 loading on the Maryville – Midway Line relative to other generation resources on the AECI
 230 system with an impact on Flowgate 25727. Table 3 below reflects generation resources on
 231 the AECI system that contribute to loading on the Maryville – Midway Line.

Table 3: AECI Generation Resources

Generator Name	Fuel Type	Owner	COD	Rating (MW)	DFAX on FG 25727	Rating x DFAX	Loading Share
White Cloud (GI-53)	Wind	Enel	12/21/2020	238	37%	88.06	42%
Clear Creek (GI-61)	Wind	Tenaska	5/4/2020	242	37%	89.54	43%
Nodaway	Natural Gas	AECI	6/1/1999	227	37%	Excl.	Excl.
Bluegrass Ridge	Wind	Exelon	11/22/2006	57	37%	21.09	10%
Atching (Cow Branch)	Wind	Exelon	3/3/2008	50.4	20%	10.08	5%

232 Because Clear Creek accounted for 43% of the loading share on Flowgate 25727, I assigned
 233 Clear Creek 43% of the AECI Share during each event in which the Operating Guides were
 234 applied (the “Residual Relief Responsibility”). This reflects the magnitude of the
 235 curtailment that would have applied to the Clear Creek Project during these events if the
 236 TLR procedures had been applied.

237 Thus, for each event, I was able to calculate the incremental impact of the Operating Guides
 238 by subtracting the Residual Relief Responsibility from the Gross Lost Generation. This
 239 amount reflects the incremental curtailment that the Clear Creek Project experienced as a
 240 result of the application of the Operating Guides (“Discriminatory Curtailment Amount”)

241 **Q18: How did you calculate the value of this discriminatory curtailment?**

242 A18: I was able to calculate the value of this curtailment by multiplying the Discriminatory
 243 Curtailment Amount by the price for sales of energy under the power production agreement
 244 between the Clear Creek Project and AECI (\$21.95/MWh). Using that methodology, I
 245 calculated that the Clear Creek Project was denied the opportunity to produce energy worth

246 approximately \$3.34 million due to the Respondents' curtailment practices. I also
247 calculated the after-tax value of production tax credits ("PTC") that were lost as a result of
248 the Operating Guides by multiplying the lost production by the PTC value in 2021 and 2022,
249 which was \$25/MWh and \$26/MWh, respectively. In order to reflect the value of the PTCs
250 on an after-tax basis, I also performed a tax gross-up of the PTC value. Specifically, the
251 lost PTC value was grossed up by dividing by (1-federal tax rate of 29.6% minus the
252 Missouri state tax rate of 3.0%). Collectively, the value of the production lost as a result of
253 the Operating Guides, including the value of the PTCs and a tax gross-up, was
254 approximately \$9.15 million. A breakdown of my calculation is provided as **Exhibit 3** to
255 this testimony.

256 **Q19: Does this conclude your testimony?**

257 A19: Yes.

VERIFICATION OF JUSTIN VALA

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the foregoing testimony is true and correct to the best of my knowledge, information, and belief.

Executed this 24TH day of MAY, 2022



Subscribed and sworn to before me, a Notary Public, on this 24 day of May, 2022.


Notary Public

My Commission Expires: 8/3/2023

SEAL

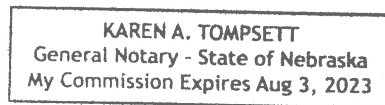


EXHIBIT 1

Curtailment History

Provided separately in Excel format

EXHIBIT 2

Monthly Summary of Non-TLR Curtailments by Flowgate

Provided separately in Excel format

EXHIBIT 3

Value of Discriminatory Curtailment

Provided separately in Excel format

ATTACHMENT 2

Form of Notice

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tenaska Clear Creek Wind, LLC)
)
 Complainant, Petitioner)
)
 v.) Docket No. EL22-____-000
)
 Southwest Power Pool, Inc., *et al.*)
)
 Respondents.)

NOTICE OF COMPLAINT

()

Take notice that on May 25, 2022, Tenaska Clear Creek Wind, LLC filed a formal complaint and petition against the Southwest Power Pool, Inc. (“SPP”) the Midcontinent Independent System Operator, Inc. (“MISO”), Associated Electric Cooperative, Inc., (“AECI”), and the Tennessee Valley Authority (“TVA”) (collective, the “Respondents”) pursuant to Sections 206, Section 211A 306, and 309 of the Federal Power Act (“FPA”) and Rule 206 of the Commission’s Rules of Practice and Procedure, alleging that the Respondents have violated their tariffs and Commission policy by curtailing the Clear Creek Project on a discriminatory basis.

Tenaska Clear Creek Wind, LLC certifies that copies of the complaint and petition were served on the contacts for the Respondents as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is

an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,
Secretary.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon respondents Southwest Power Pool, Inc. Midcontinent Independent System Operator, Inc., Associated Electric Cooperative, Inc., and the Tennessee Valley Authority.

Dated at Washington, DC, this 25th day of May 2022.

/s/ Stephen J. Hug
Stephen J. Hug