

ER19-2523-000.⁸ The Renewable Advocates generally support the Compliance Filing, as it largely complies with the Commission’s directives in the December 2019 Order. However, as described herein, the Renewable Advocates request that the Commission order SPP to make a clarifying revision to Section 4.3.2(b)(iii) of its proposed Membership Agreement.⁹

I. COMMENTS

In the December 2019 Order, the Commission held that “Non-transmission owners should still be responsible for other obligations associated with their membership withdrawal, such as unpaid membership fees, dues, assessments, or charges, as well as costs, expenses, or liabilities incurred by SPP directly due to membership termination (excluding costs, expenses, or liabilities related to SPP’s long-term financial obligations),”¹⁰ (the “Applicable Holding”). Given the Applicable Holding, the Commission then directed SPP to file revisions to its governing documents that would ensure “that a withdrawing non-transmission owner is only exempt from paying a share of SPP’s long-term financial obligations, rather than all existing obligations associated with membership withdrawal.”¹¹

In response to the Commission’s directive, SPP proposes to add a sentence to Section 4.3.2(a) of the Membership Agreement stating that “[a] Non-Transmission Owner Member shall pay all Existing Obligations as defined in Sections 4.3.2(b)(i)-(iii), calculated as of the Termination Date, and is subject to the obligations set forth in Sections 4.3.2(c)-(f).”¹²

⁸ *Am. Wind Energy Ass’n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033, *order on reh’g, compliance, and section 205 filing*, 169 FERC ¶ 61,227 (2019) (“December 2019 Order”), *order on clarification and rejecting late-filed request for rehearing*, 170 FERC ¶ 61,277 (2020).

⁹ Southwest Power Pool, Inc., Membership Agreement, First Revised Volume No. 3 (“Membership Agreement”). References in this filing to “Membership Agreement” refers to the version of SPP’s Membership Agreement currently in effect. “Proposed Membership Agreement” refers to a version reflecting the revisions proposed in the Compliance Filing.

¹⁰ December 2019 Order at P 114.

¹¹ *Id.*

¹² See Proposed Membership Agreement at Section 4.3.2(a).

Moreover, SPP proposes to include “[a]ny costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable,” in a newly proposed Section 4.3.2(b)(iii) of the Membership Agreement that defines “Existing Obligations.”¹³ However, SPP’s proposed language introduces potential and unnecessary ambiguity regarding the precise types of costs that are to be borne by withdrawing non-Transmission Owner Members. SPP’s newly proposed Section 4.3.2(b)(iii) is broadly worded, and could be interpreted in a manner that improperly applies to a wide range of potential costs, expenses and fees that are not appropriate for a withdrawing non-Transmission Owner Member to owe SPP upon withdrawal.

Fortunately, the Commission provided additional direction regarding the types of costs and obligations that withdrawing non-Transmission Owner Members should be responsible for. Specifically, in a footnote immediately following the Applicable Holding, the Commission stated that “consistent with cost causation, we find that it is just and reasonable for withdrawing members to pay reasonable costs *incurred by SPP to process or effectuate the member’s withdrawal.*”¹⁴ Accordingly, the Commission clarified the scope of direct costs that are incurred by SPP that are connected to a Member withdrawing from SPP. Renewable Advocates submit that the Commission’s direction should be coextensive with SPP’s proposed tariff language. However, SPP’s proposed Section 4.3.2(b)(iii), does not specify that the “costs, expenses, and liabilities” incurred by SPP related to a Member’s withdrawal are costs that are “incurred by SPP to process or effectuate the member’s withdrawal.”

Accordingly, the Renewable Advocates request that the Commission instruct SPP to file the following, revisions to its proposed Section 4.3.2(b)(iii) so that it fully complies with the Commission’s directive in the December 2019 Order:

¹³ See *id.* at Section 4.3.2(b)(iii).

¹⁴ See December 2019 Order at P 114, note 270 (emphasis added).

Any costs, expenses or liabilities incurred by SPP to process or effectuate the Member's ~~directly due to the~~ Termination, regardless of when incurred or payable.

Renewable Advocates are unaware of any SPP guidance document, business practice, or other material providing further detail regarding which costs might be included under 4.3.2(b)(iii). Without this specific clarification, SPP's proposed language increases uncertainty, fails to effectuate the Commission's clear instruction to remove barriers to participation in SPP,¹⁵ and may have a chilling effect on potential new members joining SPP.

In the alternative, Renewable Advocates request that the Commission expressly clarify that it interprets SPP's proposed language to only include direct costs, expenses, or liabilities incurred to process or effectuate a Member's Termination.

¹⁵ See e.g. *Am. Wind Energy Ass'n, the Wind Coal. v. Southwest Power Pool*, 167 FERC ¶ 61033 at P58(2019) (“By preventing many non-transmission owning entities from becoming members, the exit fee deprives them of the ability to vote on SPP initiatives and otherwise participate as members in the SPP stakeholder process. Consequently, the barrier to membership is one reason contributing to our finding that SPP's exit fee is unjust and unreasonable as applied to non-transmission owners.”).

II. CONCLUSION

WHEREFORE, for the aforementioned reasons, the Renewable Advocates respectfully request that the Commission accept its comments and order SPP to make the clarifying revisions to Section 4.3.2(b)(iii) Membership Agreement described herein.

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