UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc. submits tariff filing per 35: Exit Fee Compliance Revisions In Response to Order on Complaint in EL19-11

Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Bylaws and Membership Agreement Revisions to Amend Exit Fee

Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Membership Agreement Revisions to Add Load Serving Entity Definition

Docket Nos. ER19-2522-000 ER19-2523-000 ER19-2524-000

COMMENTS AND PROTEST OF PUBLIC INTEREST ORGANIZATIONS

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission)\(^1\) and the Commission’s August 2, 2019 Combined Notice of Filings, the undersigned Public Interest Organizations (PIOs)\(^2\) submit these comments and protest on the Exit Fee Compliance Revisions In Response to Order on Complaint in EL19-11 (Compliance Filing) and the Bylaws and Membership Agreement Revisions to Amend Exit Fee (Proposed Exit Fee Revisions) filed by Southwest Power Pool (SPP) on August 1, 2019.

Introduction

The PIOS supported the relief sought by the American Wind Energy Association and Advanced Power Alliance (AWEA/APA) in their complaint that initiated Docket No. EL19-11

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\(^1\) 18 C.F.R. §§ 385.211.

(the AWEA/APA Complaint) and were therefore pleased that the Commission, in its April 18, 2019 Order in that docket, directed SPP to eliminate its exit fee provisions for non-transmission owners. The PIOs therefore also support SPP’s Compliance Filing that would implement the Commission’s directives and recommend that the Commission approve it.

For the same reasons the PIOs supported the AWEA/APA Complaint, the PIOs oppose SPP’s Proposed Exit Fee Revisions that would reinstate a new exit fee of at least $100,000. Quite simply, the proposal is flatly contrary to the Commission’s April 18 Order, which stated that “there is not a financial need for SPP to charge an exit fee to non-transmission owning load-serving entities, and therefore the current application of the exit fee to non-transmission owning load-serving entities is unjust and unreasonable.”

Reaffirming that finding should be the end of the Commission’s assessment of SPP’s Proposed Exit Fee Revisions. SPP believes it sees a glimmer of light in the April 18 Order where there is none. SPP’s hope is misplaced; any exit fee is unjust and unreasonable and unduly discriminatory for non-transmission-owning members.

SPP has failed to meet its burden of proof to demonstrate that its proposed $100,000 exit fee is just and reasonable. SPP’s proposal is not cost-based and SPP has not attempted to argue or demonstrate that the proposed minimum fee is needed to recover any specific cost that members impose on it. SPP’s Compliance Filing demonstrates that imposing an exit fee on non-transmission owners is not necessary for SPP to secure its debt or cover its long-term financial obligations.

Accordingly, the proposed $100,000 fee is not just or reasonable. Although lower than SPP’s existing exit fee, it would have the same discriminatory impact on the PIOs as the existing exit fee. These failings are sufficient reasons for the Commission to reject the Proposed Exit Fee Revisions.

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3 Docket No. EL19-11, April 18, 2019 Order, ¶ 66.
Moreover, SPP’s Proposed Exit Fee Revisions are counter to the Commission’s stated intent behind eliminating the exit fee for non-transmission owners because SPP intentionally designed the minimum exit fee to be barrier to membership. Indeed, for entities like the PIOs, a minimum exit fee of $100,000 would be a barrier to membership as insurmountable as the current exit fee. Simply put, if the Commission were to approve SPP’s Proposed Exit Fee Revisions, SPP will never create the “more diverse membership and a stakeholder process that takes into account the interests of a wider spectrum of entities” that the Commission envisioned in its April 19, 2019 Order in Docket No. EL19-11, and its decision-making will continue to risk producing unjust and unreasonable rates and practices affecting rates.

For these reasons, the Commission should reject SPP’s Proposed Exit Fee Revisions and approve SPP’s Compliance Filing.

**Correspondence and Communications**

Correspondence and communications regarding this filing should be directed to the following persons, who should be placed on the Commission’s official service list in this proceeding:

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Comments

I. The PIOs Support SPP’s Compliance Filing and Recommend that the Commission Approve It.

The PIOs filed comments in Docket EL19-11 in support of the AWEA/APA Complaint. In those comments, the PIOs argued that SPP’s existing exit fee was not just and reasonable, was discriminatory, limits the diversity of SPP’s membership, and had the effect of preventing PIOs from joining SPP’s membership. The PIOs were pleased that the Commission largely granted the relief sought in the AWEA/APA Complaint and ordered SPP to eliminate the exit fee for non-transmission owners. SPP’s Compliance Filing proposes tariff revisions that would eliminate the exit fee for non-transmission owners in a manner consistent with the Commission’s directives.

The PIOs concur with the Commission’s finding in its April 18, 2019 Order that “no exit fee for non-transmission owners will result in just and reasonable rates… .” The PIOs further concur with the Commission’s finding that “there is not a financial need for SPP to charge an exit fee to non-transmission owners.” Finally, because the PIOs are excluded from membership in SPP by virtue of SPP’s onerous exist fee, the PIOs emphatically agree with the Commission’s finding that eliminating the exit fee for non-transmission owners “will result in a more diverse membership and a stakeholder process that takes into account the interests of a wider spectrum of entities, including smaller entities and new market entrants that were previously discouraged from membership by the high exit fee.”

For these reasons, PIOs support SPP’s Compliance Filing that would eliminate the exit fee for all non-transmission owners. In accord with the Commission’s findings in its April 18, 2019

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4 April 18, 2019 Order, ¶¶ 63-66.
5 Id. at ¶ 62 (citing id. at ¶¶ 63-64).
6 Id. at ¶ 61.
7 Id. at ¶ 65.
Order, SPP’s Compliance Filing would result in just and reasonable rates, would eliminate a fee for which there is no financial need, and would result in a more diverse membership and a stakeholder process that accounts for a wider spectrum of entities. The PIOs therefore recommend that the Commission accept SPP’s Compliance Filing.

II. The Commission Should Reject SPP’s Proposed $100,000 Exit Fee.

A. SPP’s proposed exit fee is not cost-based and is therefore not just or reasonable.

Section 205 of the Federal Power Act (FPA) requires all rates and charges to be just and reasonable. Under Section 206 of the FPA, if the Commission finds “that any rate, charge or classification, … or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential,” the Commission must determine and fix the “the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force.”

Despite having the burden of proof to demonstrate that its Proposed Exit Fee Revisions result in just and reasonable rates, SPP acknowledges that its $100,000 exit fee bears no direct relationship to the costs that an exiting non-transmission owner member actually imposes on SPP, and it has provided no other rational basis to justify this fee. The proposed exit fee therefore fails to meet the just and reasonable standard with respect to non-transmission owners. The Commission should reject SPP’s proposed minimum exit fee as applied to non-transmission owners.

1. The proposed minimum exit fee is not just and reasonable because a non-transmission owner member exiting SPP does not cause SPP to incur $100,000 in costs.

Inherent in the FPA’s just and reasonable standard is the cost-causation principle – “the

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rates charged for electricity should reflect the costs of providing it.”\textsuperscript{10} The cost-causation principle “manifests a kind of equity” in that it is “a matter of making sure that burden is matched with benefit.”\textsuperscript{11} SPP’s proposed minimum exit fee violates this principle because it does not reflect costs that SPP actually incurs to admit non-transmission owners as members or to provide them with membership rights. The proposed $100,000 minimum fee also does not reflect costs that SPP incurs as a result of a non-transmission owner member ending its membership.

To put it another way, while membership in SPP is undoubtedly a benefit, the burden that SPP’s exit fee imposes on non-transmission owners does not reflect SPP’s actual cost of providing that benefit. Instead, the exit fee acts as a barrier that prevents many non-transmission owners, such as the PIOs, from protecting their interests through membership in SPP. Accordingly, SPP’s proposed minimum exit fee is neither just nor reasonable.

Both AWEA/APA and the PIOs previously argued in Docket No. EL19-11 that SPP’s exit fee effectively requires a withdrawing member to subsidize SPP’s future operations and other SPP members without receiving any future benefit itself.\textsuperscript{12} This same rationale also applies to SPP’s proposed minimum exit fee. Requiring one organization to subsidize the future operations of another organization violates fundamental notions of fairness. It also constitutes a cross subsidy, which, by definition, does not comport with the cost causation principle. Accordingly, the Commission should find that the proposed minimum exit fee is not just and reasonable with respect to non-transmission owners.

\textsuperscript{10} \textit{Old Dominion Elec. Coop. v. FERC}, 898 F.3d 1254, 1255 (D.C. Cir. 2018) (citing \textit{Ala. Elec. Coop., Inc. v. FERC}, 684 F.2d 20, 27 (D.C. Cir. 1982)).

\textsuperscript{11} \textit{BNP Paribas Energy Trading GP v. FERC}, 743 F.3d 264, 268 (D.C. Cir. 2014) (internal citations omitted).

\textsuperscript{12} Docket No. EL19-11, Complaint, pp. 19-20; PIO Comments, pp. 4-5.
As the PIOs also argued in Docket No. EL19-11, requiring a withdrawing member to subsidize SPP’s future operations is particularly unjust and unreasonable with respect to the undersigned PIOs and other similarly-situated organizations.\(^\text{13}\) While it is the PIOs’ understanding that many of SPP’s current members are market participants, the PIOs are not market participants. (This would be equally true of consumer advocates, trade associations, state regulatory authorities, and other state entities.) Accordingly, the nature of the PIO’s interest in membership is distinct from that of most other current non-transmission owners. The PIOs have an interest in ensuring that SPP’s market design and policies are just and reasonable and not unduly burdensome or discriminatory, considering the changing resource mix, customer preferences, public policy requirements, economic drivers, and other matters. PIOs are in a position to provide their unique perspective to SPP’s leadership and participating in its governance process. This interest is consistent with the FERC’s findings in Order Nos. 888 and 2000 that RTO governance benefits from a diversity of stakeholder views.\(^\text{14}\) However, the PIOs’ specific interest in SPP’s governance does not mean the PIOs should be responsible for SPP’s cost of administering the market or its long-term financial obligations.

\(^{13}\) Docket No. EL19-11, PIO Comments, pp. 5-6.

\(^{14}\) See *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (“A governance structure that includes fair representation of all types of users of the system would help ensure that the ISO formulates policies, operates the system, and resolves disputes in a fair and non-discriminatory manner. The ISO’s rules of governance, however, should prevent control, and appearance of control, of decision-making by any class of participants.”); *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), p. 679 (“With regard to the second-tier, the Commission has required that no one constituency in any group or committee be allowed to dominate the recommendation or decision-making process over the objection of the other classes, and that no one class holds veto power over the will of the remaining classes.”).
In short, there is simply no causal relationship between a PIO’s membership (if there were PIO members of SPP) and a $100,000 minimum exit fee. SPP’s proposed minimum exit fee is therefore not just or reasonable with respect to the PIOs.

2. **SPP’s own Compliance Filing demonstrates that its proposed minimum exit fee is not cost-based and is not necessary.**

SPP’s Proposed Exit Fee Revisions filing makes absolutely no attempt to argue that the proposed $100,000 minimum fee is cost-based. Rather, SPP is transparent about the fact that the purpose of the proposed minimum fee is to “reduce the possibility that stakeholder decisions and Board of Director elections will be dominated by entities that have no financial stake in SPP’s operations and long-term financial obligations.”\(^{15}\) In other words, the stated purpose of the proposed exit fee is to serve as a barrier to membership and *not* to collect $100,000 worth of costs that a non-transmission owner imposes on SPP if it ends its membership.

SPP argues that the proposed exit fee represents a withdrawing member’s “share of SPP’s outstanding long-term financial obligations,” but admits that the proposed amount “represents only a small portion of SPP’s overall long-term financial obligations.”\(^{16}\) The proposed $100,000 minimum exit fee cannot be cost-based because the amount is entirely arbitrary. SPP’s affiant Mr. Thomas Dunn’s analysis demonstrates the arbitrary nature of the proposed minimum fee when he asserts that the proposed $100,000 fee represents 0.041 percent of SPP’s total financial obligations.\(^ {17}\) Nowhere in its filing does SPP provide a cost-based rational for why a withdrawing member should pay exactly 0.041 percent of SPP’s financial obligations, as opposed to some other amount.

\(^{15}\) Proposed Exit Fee Revisions, pp. 10, 11 (italics in original).

\(^{16}\) *Id.* at p. 11.

\(^{17}\) *Id.* at Attachment A, ¶ 6.
Indeed, SPP cannot justify a minimum exit fee of any amount for non-transmission owners because *SPP does not need non-transmission owners to pay an exit fee at all in order to secure its long-term financial obligations*. In its April 18, 2019 Order, the Commission found that “charging an exit fee to non-transmission owners is not necessary for SPP to be able to ensure it recovers its costs or services its debt.”\(^{18}\) Accordingly, the Commission directed SPP to “revise its exit fee formula to ensure that the continued application of the exit fee to transmission owners ensures SPP’s debt is fully secured.”\(^{19}\) SPP’s Compliance Filing implements this directive. SPP specifically states that the revised exit fee provisions it proposes in the Compliance Filing will ensure that SPP’s debt is secured in the absence of an exit fee for non-transmission owners.\(^{20}\)

Nevertheless, SPP now proposes that non-transmission owners pay a $100,000 exit fee and attempts to justify its proposal in part on the alleged importance of all withdrawing members paying a “share of SPP’s outstanding long-term financial obligations.”\(^{21}\) Having had no success on rehearing in Docket EL19-11, SPP’s Proposed Exit Fee Revisions attempt to convince the Commission yet again that non-transmission owning members should pay an exit fee to help cover its long-term costs. The Commission should not allow SPP to second-guess its previous finding that SPP does not need to charge non-transmission owners an exit fee.

Moreover, even if SPP could demonstrate that there is a need for withdrawing members to contribute to SPP’s long-term financial obligations, SPP’s proposed minimum exit fee would still not be just and reasonable. The structure of SPP’s long-term financial obligations and SPP’s

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\(^{18}\) April 18 Order, ¶ 60.

\(^{19}\) *Id.* at ¶ 63.

\(^{20}\) SPP Compliance Filing, p. 6 (“The revisions submitted herein remove the exit fee for all SPP members except TOs, in strict compliance with the April 2019 Order, and modify the formula to ensure that SPP can continue to secure its debts.”)

\(^{21}\) Proposed Exit Fee Revisions, p. 11.
corporate structure itself are the result of choices that SPP has made. SPP should not be permitted
to allow its corporate structure and its debt structures to determine its governance structure. If SPP
needs to change its corporate structure or the structure of its long-term financial obligations in
order to eliminate the barrier to membership that the exit fee imposes (and, as just discussed, it is
not clear that it does), then so be it.

SPP has not and cannot demonstrate a causal relationship between its proposed $100,000
minimum exit fee and any costs that a non-transmission owning member imposes on SPP when it
ceases being a member. Accordingly, SPP’s proposed exit fee is not cost-based and is therefore
not just and reasonable.

3. **Like its previous exit fee, SPP’s proposed minimum exit fee is discriminatory and
unreasonable.**

As the PIOs argued in Docket No. EL19-11, much has changed since SPP applied to
become an RTO in 2004.22 In *Southwest Power Pool*, the Commission rejected a petition on
rehearing brought by a coalition of industrial customers challenging SPP’s exit fee.23 The
Commission found that, because SPP’s Membership Agreement had been on file since at least the
year 2000, the burden was on the customer coalition “to properly seek and support revisions not
sought by SPP.”24 Because the coalition had “not provided any evidence that the financial
obligations about which it complains are excessive or will preclude end-users from joining SPP,”
the Commission denied the petition.25 Notably, this denial was based on a lack of evidence at the
time about the burden the exit fee imposed.

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22 PIO Comments, Docket No. EL19-11, pp. 6-7.
23 110 FERC ¶ 61,138 at P 12.
24 *Id.*
25 *Id.*
In its April 18, 2019 Order in Docket No. EL19-11, the Commission identified good reasons to depart from its prior approval of SPP’s exit fee in *Southwest Power Pool*. The Commission found that “while there may be some benefit to an exit fee being high enough to ensure the seriousness of prospective members and to provide stability in membership, the exit fee must not be so high as to create a barrier to membership” and found that SPP’s exit fee met the threshold of imposing a barrier to membership.\(^{26}\) Importantly, the Commission found that the exit fee “could place a significant burden on smaller entities or new market entrants that are not transmission owners, as evidenced by the record” of Docket No. EL19-11.\(^{27}\) We will explain in more detail below why SPP’s proposed exit fee of at least $100,000 would likewise impose a barrier to membership. However, the Commission does not need to engage in a lengthy analysis to find that *any* exit fee that is larger than a nominal amount would impose a significant burden on smaller entities such as the PIOs as compared to larger entities such as transmission owners and other well-established market participants. Accordingly, the Commission should find that SPP’s proposed minimum exit fee would have an unreasonable discriminatory impact on smaller entities such as the PIOs.

As the PIOs argued in Docket No. EL19-11, many entities, including both the PIOs and members of the Complainants, are directly affected by SPP’s market design and policies and therefore have a substantial interest in the outcomes of SPP’s governance functions.\(^{28}\) This interest alone should be sufficient to allow such entities to participate in SPP with full membership rights. There is simply no justification for imposing an additional financial obligation, in the form of an exit fee, upon these types of entities as a *quid pro quo* for giving them a seat at the governance

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\(^{26}\) April 18, 2019 Order, ¶¶ 52-58, 62.

\(^{27}\) *Id.* at ¶ 53.

\(^{28}\) PIO Comments, Docket No. EL19-11, p. 8.
Regardless of the original rationale for requiring members to be exposed to the financial risk of paying the exit fee if they ever seek to end their membership, it is now clear that, in practice, the exit fee’s primary function has been to exclude interested parties from becoming members. SPP’s new proposed minimum exit fee will have precisely the same effect.

B. SPP’s proposed minimum exit fee would continue to limit member diversity and prevent PIOs from joining SPP, contrary to the intent of the Commission’s April 18, 2019 Order

SPP considers itself to be a “relationship-driven organization” with “member-driven processes.” The PIOs cannot protect their interests in the functioning of SPP’s market or effectively influence SPP’s decision-making process without membership and voting rights. SPP’s tariff, which includes rates, practices affecting rates, and other policies and compliance obligations, directly impact and influence the resource mix and the energy and environmental impacts thereof in SPP’s footprint. PIOs’ inability to become voting members of SPP significantly impedes their ability to pursue their missions in SPP. Allowing PIOs to join SPP would benefit SPP by increasing member perspectives and diversity and increasing the likelihood of producing just and reasonable rates.

Removing the exit fee would significantly increase the likelihood that PIOs would join SPP as members. In contrast, the proposed exit fee is an absolute bar to membership.

29 Southwest Power Pool, Governing Documents Tariff, First Revised Volume No. 4, Bylaws Preamble.
30 Attachment A, Affidavit of Dorothy Barnett, ¶ 3; Attachment B, Affidavit of Jennifer Gardner, ¶ 3.
31 Attachment A at ¶ 5; Attachment B at ¶ 5.
32 Attachment A at ¶ 7; Attachment B at ¶ 7.
1. **PIO membership is necessary for SPP’s decision-making to reflect diverse interests.**

As the PIOs discussed in our in comments in Docket No. EL19-11, membership in SPP has its privileges.33 Non-members may not elect Directors of the SPP Board, may not vote on SPP initiatives, may not initiate a Revision Request (necessary for proposing tariff changes), may not serve on committees or task forces, and may not participate in closed or executive sessions.34 Because they do not have the privileges of membership, the PIOs are unable to effectively present to SPP’s senior staff and leadership their views on SPP’s policies on market design, transmission, and interconnection, and to represent their interests in the SPP decision-making process.35

Upon information and belief, it is the PIOs’ understanding that there are no members of SPP that are not-for-profit environmental advocacy organizations like the PIOs. This result is inconsistent with one of the fundamental principles underlying the Commission’s Order No. 2000 requiring that an RTO have an independent decision-making process that is not dominated by any one constituency.36 Removing the exit fee for non-transmission owners, as the Commission ordered, would remove the most significant barrier to the PIOs joining SPP and allow SPP to diversify its membership.

Moreover, the PIOs’ current ability to attend open meetings and voice their opinions at such meetings is inadequate. As SPP’s own Bylaws make evident throughout, membership rights

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33 PIO Comments, Docket No. EL19-11, pp. 11-14.
34 Attachment A at ¶ 3.
35 Order 719-A requires, “The business practices and procedures must ensure that any customer or other stakeholder affected by the operation of the RTO or ISO, or its representative, is permitted to communicate its views to the RTO’s or ISO’s board of directors.” *Wholesale Competition in Regions with Organized Electricity Markets*, FERC Stats. & Regs. ¶ 31,292 (2009). While technically the PIOs may communicate their views to SPP’s Board of Directors by attending meetings, such communications are less effective and impactful given the PIOs’ lack of membership status.
especially voting rights – are important. Presumably SPP would not have erected such a significant barrier to voting rights, in the form of its exit fee, if SPP itself did not consider voting to be a crucial part of the organization’s decision-making process. The exit fee creates an absolute barrier to the right to vote and prevents PIOs from participating in the SPP governance process.

Finally, not only is the lack of diversity and the dominance of transmission owners and load-serving entities in SPP contrary to Order No. 2000, it is also to the detriment of SPP’s governance. SPP’s membership does not currently have any voices offering views representing the energy and environmental interests of PIOs, uncolored by commercial or other interests. SPP and its members would benefit from the PIOs becoming members.

Unlike in SPP, PIOs participate in stakeholder proceedings in other FERC-jurisdictional regional transmission organizations, and in other forums (e.g., WestConnect, SERTP), where they advocate for removing wholesale market barriers to clean energy resources to improve competition and ensure just and reasonable rates and the avoidance of undue discrimination and preference. For example, PIOs use their knowledge of state and federal clean energy policies to help RTOs and planning regions fulfil their obligations to consider the effect of these policies on RTO and planning region planning rules. Also, since the PIOs do not advocate for any specific commercial interests, the PIOs can provide insights on market barriers that limit competition and affect multiple technologies and therefore affect customers and consumers in the aggregate, but which may not affect any single market participant significantly enough to warrant an investment of a market participant’s time. PIOs seek to remove market barriers not solely to encourage the development of clean energy resources, but also to enhance competition in a way that improves the affordability of electric service and as such, advance proposals that represent a balance of consumer and supplier interests.
For these reasons, expanding SPP’s membership would allow new members to provide perspectives and insights that are currently absent from the existing membership.

2. **Contrary to SPP’s suggestions, the Commission did not signal a willingness to entertain a new exit fee in Docket No. EL19-11.**

To justify its Proposed Exit Fee Revisions, SPP relies heavily on one phrase in the Commission’s April 18, 2019 Order in Docket No. EL19-11: “While some level of exit fee *that does not act as a barrier to membership and is not excessive* could be appropriate in SPP….”37 Presumably SPP believes that, because its proposed $100,000 minimum exit fee is lower than the $700,000 to $1 million estimates of its prior exit fee, its minimum exit fee proposal does not act as a barrier to membership, is not excessive, and is consistent with the Commission’s findings in Docket No. EL19-11. SPP is mistaken.

First, as discussed above, SPP’s proposed fee most certainly does act as a barrier to membership, given that SPP’s explicit rationale for the fee is to “ensure that SPP membership is taken seriously and remains stable” and that its stakeholder process and Board of Director Elections will not be dominated by entities that do not have a financial stake in SPP.38 Second, SPP’s proposed minimum exit fee is excessive enough that, like the current exit fee, it will completely prevent the PIOs from joining SPP as members if it is approved. SPP’s exorbitant exit fee is the primary factor that, up to now, has prevented the PIOs from joining SPP. SPP’s current exit fee disproportionately impacts smaller organizations, such as the PIOs, because it represents a much higher percentage of their annual operating budgets. For example, one of the

37 Proposed Exit Fee Revisions, p. 6 (quoting April 18, 2019 Order, Docket No. EL19-11, ¶ 62) (emphasis added).
38 *Id.* at p. 11.
undersigned PIOs, Climate + Energy Project (CEP), decided not to pursue membership status in SPP because SPP’s exit fee would actually exceed CEP’s annual budget.\(^{39}\)

If the Commission approves SPP’s proposed minimum exit fee, nothing will change. Most environmental advocacy organizations like the PIOs receive their funding from donors who want to support the respective missions of the PIOs, and most contributors would justifiably object to use of their contributions to subsidize SPP’s future operations through the payment of an exit fee. As stewards of limited donor dollars, the PIOs would each consider it irresponsible to incur the risk of paying SPP’s proposed $100,000 minimum exit fee by becoming members.\(^{40}\) Even if a PIO never planned to end its membership in SPP, a PIO would still be exposed to the risk of paying the exit fee if it became a member.\(^{41}\) This potential liability would need to be disclosed to potential contributors and could jeopardize the PIO’s ability to raise funds in the future.\(^{42}\)

Simply put, none of the PIOs will be able to become members of SPP if the Commission approves SPP’s Proposed Exit Fee Revisions. By contrast, approving SPP’s Compliance Filing would remove the most significant barrier to the PIOs becoming members in SPP.

3. **SPP’s proposed $100,000 exit fee is contrary to the Commission’s stated intent in directing SPP to eliminate the exit fee.**

In proposing a new exit fee of at least $100,000 for all members, SPP ignores the Commission’s primary reasons for ordering SPP to eliminate the exit fee for non-transmission owners. First, the Commission found that entities interested in joining SPP will consider both affordability of the exit fee as well as the risk that it represents on their balance sheets.\(^{43}\) As

\(^{39}\) Attachment A at ¶ 4; Attachment B at ¶ 4.
\(^{40}\) Attachment A at ¶ 7; Attachment B at ¶ 7.
\(^{41}\) *Id.*
\(^{42}\) *Id.*
\(^{43}\) April 18, 2019 Order, ¶¶ 52-54.
discussed above, for a PIO the current exit fee would represent an unacceptable risk even the PIO had no intention of ever withdrawing from SPP. Setting the exit fee at $100,000 rather than approximately $700,000 does not meaningfully mitigate that risk. Further, a $100,000 exit fee is also not affordable to a PIO because, as discussed above, most PIOs’ supporting foundations and donors would find paying the fee to be an unacceptable use of their donated funds.

Not only is a $100,000 exit fee not affordable, it is important to remember that under SPP’s proposal $100,000 is the lowest exit fee a withdrawing member would pay. Withdrawing members would also be responsible for any costs SPP incurs to process the member’s departure, including “costs associated with modifying systems and databases, staff time, legal costs, and all costs of completing other tasks necessary to process the Member’s Termination.”44 SPP does not provide an estimate of these processing costs, but its $50,000 “Withdrawal Deposit” requirement for non-load serving entities is indicative of the order of magnitude of such costs.45 A total exit fee on the order of $150,000 (i.e., SPP’s proposed minimum exit fee plus withdrawal deposit) is, of course, even less affordable than a $100,000 exit fee for public interest organizations and many other entities.

Second, the Commission found, “[t]he exit fee acting as a barrier to membership creates actual harm because becoming an SPP member provides an entity with the opportunity for increased participation in the SPP stakeholder process and influence over the direction of SPP initiatives.”46 The PIOs appreciate that the Commission recognizes the harm that they are suffering by being unable to participate in and influence SPP’s decision-making processes to protect their interests. Unfortunately, SPP’s Proposed Exit Fee Revisions do not acknowledge the

44 Proposed Exit Fee Revisions, Attachment B, Section 4.3.2(d).
45 Id. at Section 4.2.1(b).
46 Id. at ¶ 58.
Commission’s finding of actual harm and do not make any proposals to address or mitigate this harm. Rather, SPP’s proposed minimum exit fee would perpetuate this harm by continuing to exclude the PIOs from membership.

Third, as discussed above, the Commission found that eliminating the exit fee for non-transmission owners would not affect SPP’s ability to meet its financial obligations. SPP ignores this finding and attempts to justify its proposed minimum exit fee in part on its misguided belief in the importance of members sharing in SPP’s financial obligations.

Finally, when the Commission announced its remedy – eliminating the exit fee for non-transmission owners – it stated, “[w]e expect this will result in a more diverse membership and a stakeholder process that takes into account the interests of a wider spectrum of entities, including smaller entities and new market entrants that were previously discouraged from membership by the high exit fee.” Here again, the PIOs appreciate that the Commission intended its remedy to result in a more diverse membership that would account for the interests of a wider spectrum of entities than are currently represented in SPP’s membership. Unfortunately, SPP’s Proposed Exit Fee Revisions completely disregard the Commission’s expectations and manifest an intent on the part of SPP to achieve the opposite result. The Proposed Exit Fee Revisions do not mention the concept of diversity of membership, nor do they consider how SPP will include smaller entities and new market entrants in its stakeholder processes. Instead, the Proposed Exit Fee Revisions focus on SPP’s concern that SPP membership is taken seriously and that existing members do not get outvoted by new members that might join the absence of an exit fee for non-transmission

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47 Id. at 64.
48 Proposed Exit Fee Revisions, p. 10.
49 April 18, 2019 Order, ¶ 65.
owners. SPP clearly does not share the Commission’s vision for a more diverse membership or a more inclusive stakeholder process and its proposed $100,000 exit fee is designed to frustrate the Commission’s intent.

4. **A more diverse SPP membership is more likely to result in just and reasonable SPP tariff proposals.**

   As the Commission found in Order No. 719, a more diverse membership, fairly representing all stakeholder interests, is more likely to increase competition and thereby produce just and reasonable rates and the avoidance of undue discrimination. More diverse members, representing more supply options, new technologies, demand response, energy efficiency, and other attributes of more efficient markets, planning, operations, and reliability, will “exert[] downward pressure on costs, and shift[] risk away from consumers.”

   Meeting Order 719’s inclusiveness requirements takes primacy over SPP’s desires for financial security and a committed membership. Burdening non-TO members with SPP’s financial obligations creates a significant barrier to meaningful stakeholder participation; this mechanism is so unusual that no other RTO imposes an exit fee barrier on its membership. SPP also believes that exit and other fees are necessary to ensure that members have “skin in the game.” If by that SPP means that members must actively participate in governance and have other connections to SPP’s activities, non-discriminatory options besides onerous fees are available. For example, SPP could establish reasonable minimum governance and stakeholder participation requirements, require that members have some nexus to SPP (e.g., a presence in the footprint), or pay modest annual fees.

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50 Proposed Exit Fee Revisions, p. 10-11.


52 *Id.*
A diverse membership also benefits the Commission’s review of tariffs. Given that the Commission has a limited ability to modify Section 205 tariff filings, proposed tariff revisions that are the product of a more diverse membership are more likely to be viewed as supporting competition and therefore more likely to be just and reasonable. Conversely, and all else being equal, Section 205 tariff filings that are the product of a homogenous membership are less likely to be just and reasonable. The Commission is more likely to reject such filings, adding months to years of delay to achieving just and reasonable rates.

C. **Eliminating barriers to membership has become even more important as SPP seeks to expand westward.**

As the Commission is aware, SPP has announced plans to begin offering balancing services to utilities in western states through its proposed Western Energy Imbalance Service market (WEIS). According to SPP’s press release on its plans, SPP intends to “administer the WEIS on a contract basis, meaning utilities do not have to be a member of the SPP regional transmission organization (RTO) to participate.” The PIOs do not seek to comment on SPP’s design of its WEIS proposal in this docket, but it is worth noting that, by not inviting western utilities to become members, SPP’s ambitions to expand its services westward are characterized by less stakeholder input and transparency, rather than more.

To the extent SPP’s efforts to offer balancing services in the west are indicative of a long-term intent on the part of SPP to expand its RTO into western states, it is crucial that SPP begins opening its membership to more diverse stakeholders. Many of the undersigned PIOs are active in

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55 *Id.*
western states and firmly believe that an ISO/RTO that imposes high barriers to membership and relies on closed-door decision-making processes with limited stakeholder input would not succeed in the west.

**Conclusion and Recommendations**

For all these reasons, the PIOs respectfully recommend and request that the Commission reject SPP’s Proposed Exit Fee Revisions and approve SPP’s Compliance Filing.

Respectfully submitted on behalf of the undersigned Public Interest Organizations,

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Certificate of Service

I hereby certify that on this 22nd day of August, 2019, I served a copy of the foregoing via electronic mail on the service list established in this proceeding.

\[s/ Scott F. Dunbar\]
Scott F. Dunbar
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc. submits tariff filing per 35: Exit Fee Compliance Revisions In Response to Order on Complaint in EL19-11

Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Bylaws and Membership Agreement Revisions to Amend Exit Fee

Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Membership Agreement Revisions to Add Load Serving Entity Definition

Docket Nos. ER19-2522-000 ER19-2523-000 ER19-2524-000

Affidavit of Dorothy Barnett

Dorothy Barnett, being first duly sworn upon oath, deposes, and states as follows:

1. My name is Dorothy Barnett. I am the Executive Director of Climate + Energy Project (CEP). My business address is 123 West 8th, Lawrence, Kansas, 66044.

2. CEP is a public interest organization. CEP’s mission is to dramatically reduce greenhouse gas emissions in America’s Heartland through the ambitious deployment of energy efficiency and renewable energy, in policy and practice.

3. CEP has, in the past, engaged with Southwest Power Pool (SPP), through the Heartland Alliance for Regional Transmission (HART), a program of CEP. HART was an alliance of local and regional organizations and individuals that provided objective information, ongoing conversation, and regional outreach regarding energy generation and transmission. HART members focused on ways to expand transmission in support of wind energy expansion. HART
members, coordinated by CEP staff, attended SPP Regional State Committee, Strategic Planning Committee, Market and Operations Policy Committee, and integrated transmission planning meetings along with public annual meetings. However, neither CEP nor any of the HART members are members of SPP. Because CEP and members of HART are not members of SPP, they may not attend any meetings that are held in executive session, may not elect board members, may not serve on committees or task forces, and may not vote on SPP initiatives. CEP’s and HART members’ lack of membership rights significantly inhibits their ability to effectively influence decision-making at SPP. The HART alliance later dissolved in large part because of CEP’s and HART members’ inability to become members of SPP.

4. The primary reason that CEP and HART members did not become members of SPP is SPP’s exit fee. Prior to the Federal Energy Regulatory Commission’s (Commission) April 18, 2019 Order in Docket No. EL19-11-000, CEP understands that SPP estimates exit fees were between approximately $700,000 and $1 million but that the exact amount could not be known when a member joins SPP. Any amount within this range exceeds CEP’s annual budget.

5. I understand that on August 1, 2019, SPP made a compliance filing with the Commission in response to the Commission’s April 18, 2019 Order that would eliminate the exit fee for non-transmission owners that become members of SPP. Since CEP is not a transmission owner, it is my understanding that CEP would not be subject to an exit fee if it were to become a member of SPP. CEP therefore supports SPP’s compliance filing that would eliminate the exit fee for non-transmission owners. If the Commission accepts SPP’s compliance filing, I anticipate that either CEP or another regional alliance led by CEP such as HART would likely join SPP as a member (assuming that CEP or the regional alliance could obtain an exemption from SPP’s current annual fee as a legitimate public interest organization).
6. I understand that on August 1, 2019, SPP also made an alternative proposed revision to its exit fee provisions that would result in a minimum exit fee of $100,000 for all SPP members, including non-transmission owners. I also understand that SPP recommends that the Commission accept this alternative proposed revision and reject its August 1, 2019 compliance filing.

7. An exit fee of $100,000 would be approximately one-quarter of CEP’s annual budget. CEP would consider paying such a large exit fee to be an irresponsible use of the funds that are entrusted to it by foundations and donors. Even if CEP had no intention or expectation of ending its membership once they had joined, CEP’s supporting foundations and donors would still consider it irresponsible to incur the potential liability that the exit fee would represent. This liability would need to be disclosed and would endanger both CEP’s ability to raise future funds and the organization’s financial viability. Accordingly, CEP would be unable to join SPP if the Commission were to approve SPP’s proposal for a minimum $100,000 exit fee.

8. CEP believes that it cannot effectively pursue its mission at SPP without membership status, including voting rights.

Dorothy Barnett

Subscribed and sworn to before me this 21 day of August, 2019.

Notary Public
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc. submits tariff filing per 35: Exit Fee Compliance Revisions In Response to Order on Complaint in EL19-11

Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Bylaws and Membership Agreement Revisions to Amend Exit Fee

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Docket Nos. ER19-2522-000 ER19-2523-000 ER19-2524-000

Affidavit of Jennifer Gardner

Jennifer Gardner, being first duly sworn upon oath, deposes, and states as follows:

1. My name is Jennifer Gardner. I am a Senior Staff Attorney with the Clean Energy Program at Western Resource Advocates (WRA). My business address is 307 West 200 South, Suite 2000, Salt Lake City, Utah, 84101.

2. WRA is a public interest organization. WRA’s mission is to protect the Interior West’s land, air and water. To accomplish this mission, WRA’s Clean Energy Program promotes the deployment of renewables and other clean energy technologies in order to decarbonize the western electric grid and combat climate change.

3. WRA has, in the past, engaged with the Southwest Power Pool (SPP) as a stakeholder. At the time, the Mountain West Transmission Group – a coalition of utilities located in Colorado and Wyoming – was actively considering joining SPP’s Regional Transmission
Organization (RTO). Through this effort, WRA attended or otherwise participated (via phone or webinar) in meetings of SPP’s Regional State Committee, Members Committee, Market and Operations Policy Committee, and Governance Review Committee. More recently, SPP has announced plans to begin offering balancing services in early 2021 to western utilities through its proposed Western Energy Imbalance Service (WEIS). This latest proposal would enable western utilities to take advantage of certain SPP market services without fully committing to SPP’s RTO. WRA and other western public interest organizations would like to meaningfully engage at SPP as the market design and governance changes necessary to accommodate WEIS are discussed and finalized. Additionally, WRA has an organizational interest in promoting the development and deployment of clean, affordable, and resilient energy technologies, and believes that engaging in SPP to promote this interest would lead to just and reasonable rates within SPP. In order to meaningfully engage in SPP and protect its interests, WRA must be a member of SPP. However, WRA is not a member of SPP and has never been a member of SPP. As a result, WRA is prohibited from any meaningful engagement because WRA is not permitted to attend any meetings that are held in executive session, cannot participate in the election of board members, is not eligible to serve on committees, work groups, or task forces, and may not vote on SPP initiatives— including tariff changes. Indeed, WRA’s lack of membership rights significantly inhibits its ability to effectively influence all levels of decision-making at SPP.

4. The primary reason that WRA has not become a member of SPP is SPP’s exit fee. Prior to the Federal Energy Regulatory Commission’s (Commission) April 18, 2019 Order in Docket No. EL19-11-000, WRA understands that SPP estimates exit fees were between approximately $700,000 and $1 million, but that the exact amount could not be known when a member joins SPP. Given WRA’s annual budget, WRA could not afford such a large exit fee.
5. I understand that on August 1, 2019, SPP made a compliance filing with the Commission in response to the Commission’s April 18, 2019 Order that would eliminate the exit fee for non-transmission owners that become members of SPP. Since WRA is not a transmission owner, it is my understanding that WRA would not be subject to an exit fee if it were to become a member of SPP. WRA therefore supports SPP’s compliance filing that would eliminate the exit fee for non-transmission owners. If the Commission accepts SPP’s compliance filing, I anticipate that WRA (and likely other western public interest organizations) would consider joining SPP as a member (assuming that WRA could obtain an exemption from SPP’s current annual fee as a legitimate public interest organization).

6. I understand that on August 1, 2019, SPP also made an alternative proposed revision to its exit fee provisions that would result in a minimum exit fee of $100,000 for all SPP members, including non-transmission owners. I also understand that SPP recommends that the Commission accept this alternative proposed revision and reject its August 1, 2019 compliance filing.

7. An exit fee of $100,000 would represent a substantial portion of WRA’s annual budget. WRA would consider paying such a large exit fee to be an irresponsible use of the funds that are entrusted to it by foundations and donors. Even if WRA had no intention or expectation of ending its membership once it had joined, WRA’s supporting foundations and donors would still consider it irresponsible to incur the potential liability that the exit fee would represent. This liability would need to be disclosed and would seriously hinder WRA’s ability to raise future funds and further, would threaten the organization’s long-term financial viability. Accordingly, WRA would still be unable to join SPP as a member if the Commission were to approve SPP’s proposal for a minimum $100,000 exit fee.
8. In conclusion, WRA believes that it cannot effectively pursue its mission at SPP without membership status, including voting rights.

Jennifet Gardner

Subscribed and sworn to before me this 22nd day of August, 2019.

Penelope C. Anderson
Notary Public
State of Colorado
Notary ID 19994035339
My Commission Expires Dec 21, 2019