

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

American Wind Energy Association	)	Docket Nos. EL19-11-001
The Wind Coalition	)	
	)	
v.	)	
	)	
Southwest Power Pool, Inc.	)	
	)	
Southwest Power Pool, Inc. submits tariff	)	ER19-2522-000
filing per 35: Exit Fee Compliance Revisions	)	
In Response to Order on Complaint in	)	
EL19-11	)	
	)	
Southwest Power Pool, Inc. submits tariff	)	ER19-2523-000
filing per 35.13(a)(2)(iii): Bylaws and	)	
Membership Agreement Revisions to Amend	)	
Exit Fee	)	

**MOTION FOR CLARIFICATION OF PUBLIC INTEREST ORGANIZATIONS**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),<sup>1</sup> the undersigned Public Interest Organizations (PIOs)<sup>2</sup> respectfully file this Motion for Clarification (Motion) of the Commission’s Order on Rehearing, Compliance, and Section 205 Filing issued in the above-named dockets on December 19, 2019 (Order on Rehearing). PIOs request that the Commission clarify the scope of costs for which PIOs and other non-market participants would be responsible if they were to become members of the Southwest Power Pool (SPP) and then later withdraw from membership. In its Order on Rehearing, the Commission reinstated SPP’s imposition of a \$50,000 charge (SPP refers to as a “deposit”) for

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<sup>1</sup> 18 C.F.R. §§ 385.212.

<sup>2</sup> Alliance for Affordable Energy, Clean Grid Alliance, Climate + Energy Project, Natural Resources Defense Council, Sierra Club, Southern Renewable Energy Association, Sustainable FERC Project, and Western Resource Advocates.

the future costs SPP would incur to process a member's withdrawal from SPP. However, that charge likely far exceeds the actual costs SPP would incur to process the withdrawal of members such as PIOs. While PIOs agree that cost causation principles require payment of "reasonable" costs for SPP to process a member's withdrawal,<sup>3</sup> a \$50,000 deposit charge constitutes a barrier to membership for entities like PIOs. For that reason, we request that the Commission clarify: (i) whether it intended the \$50,000 deposit it reinstated to apply to non-market participant entities and others in PIOs' position, and (ii) if not, whether any deposit (if one is necessary) should instead be causally related to the projected actual costs of the withdrawal of such members.

### **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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#### **I. A \$50,000 Deposit Charge for Withdrawal Processing Costs Is Discriminatory and Not a Just and Reasonable Rate.**

In its Order on Rehearing, the Commission stated that SPP must only eliminate the part of the exit fee associated with "a member's share of SPP's long-term financial obligations" for non-transmission owners. The Commission authorized SPP to reinstate several of its exit fee provisions

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<sup>3</sup> Order on Rehearing, n. 270.

for non-transmission owners: “(1) unpaid membership fees; (2) unpaid dues, assessments, or other charges; and (3) costs, expenses, or liabilities incurred by SPP directly due to membership termination.”<sup>4</sup> With respect to the third of these provisions – withdrawal processing costs – the Commission found that it is “just and reasonable for non-transmission owners to pay costs directly attributable to their withdrawal.”<sup>5</sup>

SPP currently charges a \$50,000 deposit to its non-load-serving entity members to cover expected withdrawal processing costs.<sup>6</sup> This charge likely far exceeds the actual costs SPP would incur to process the exit of non-transmission-owning, non-load serving members, especially non-market participant members like PIOs. It amounts to a de facto membership fee that constitutes a barrier to membership for the PIOs. For that reason, we seek clarification from the Commission regarding SPP’s \$50,000 withdrawal deposit requirement as applied to such members.

In the Comments and Protest of Public Interest Organizations, PIOs explained why SPP’s proposal to impose an exit fee of at least \$100,000 would be a barrier to membership for not-for-profit advocacy organizations such as the PIOs.<sup>7</sup> The PIOs also pointed out 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.”<sup>8</sup> Just as SPP’s proposed \$100,000 exit fee would have imposed a barrier to membership as insurmountable as its prior exit fee, SPP’s withdrawal deposit would prevent many

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<sup>4</sup> Order on Rehearing, P 114.

<sup>5</sup> Order on Rehearing, P 88 (quoting SPP’s Bylaws § 8.7.1, brackets in original); see also *id.* at n. 270.

<sup>6</sup> Membership Agreement, § 4.2.1(b) (Withdrawal Deposit).

<sup>7</sup> Comments and Protest of Public Interest Organizations, Docket Nos. ER19-2522 and ER19-2523, at 12–19.

<sup>8</sup> *Id.* at 11.

if not all the PIOs from joining SPP. Furthermore, it simply does not make sense to require withdrawing members to post a \$50,000 deposit if, as the PIOs believe, that deposit far exceeds the actual withdrawal processing costs SPP will incur for members that do not participate in the market. In short, a one-size-fits-all \$50,000 charge is both unduly discriminatory and not a just and reasonable rate.

Lending weight to our request, SPP's Membership Agreement suggests that the \$50,000 charge was based on the likely higher withdrawal processing costs for transmission owners and other load serving entities than for PIOs and other non-market participant entities. SPP's Membership Agreement states:

*In the event of a Termination or Partial Termination by a Member, the Member shall pay to SPP all costs SPP incurs to remove the Member's facilities and/or load from SPP markets and operations. Such costs will be determined by SPP and shall include but not be limited to 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. SPP will apply the Member's withdrawal deposit, as specified in Section 4.2.1(b), to such costs, and any costs exceeding the withdrawal deposit shall be included in the invoice to the Member as discussed in Section 4.3.2(e) of this Agreement.*<sup>9</sup>

None of the PIOs own transmission, serve load, or participate in SPP markets and operations. Accordingly, there will be no need to "remove the Member's facilities and/or load from SPP markets and operations" by "modifying systems and databases" and incurring legal costs and other expenses.<sup>10</sup> Rather, the PIOs expect that the cost to process the withdrawal of a non-market participant member that participates only in SPP's governance and stakeholder activities would be minimal. Assuming that to be correct, non-market participant members should not be required to post a large, \$50,000 deposit to cover these low costs.

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<sup>9</sup> SPP Membership Agreement, § 4.3.2(d) (emphasis added).

<sup>10</sup> Membership Agreement, § 4.3.2(d).

**Conclusion**

For the foregoing reasons, we request that the Commission clarify: (i) whether it intended the \$50,000 deposit it reinstated to apply to non-market participants and others in PIOs' position, and (ii) if not, whether any deposit (if one is necessary) should instead be causally related to the projected actual costs of the withdrawal of such members.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that on this 6th day of February, 2020, I served a copy of the foregoing via electronic mail on the service list established in this proceeding.

*s/ Scott F. Dunbar*  
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