UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.	)	**Docket No. ER22-2968-001**

COMMENTS AND CONTINUED PROTEST OF THE CLEAN ENERGY ADVOCATES

Pursuant to Rules 211 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission),[1] the American Clean Power Association ("ACP"),[2] Advanced Power Alliance ("APA"), the Solar Energy Industries Association ("SEIA"),[3] the Natural Resources Defense Council, and the Sustainable FERC Project (collectively, "Clean Energy Advocates") respond to the Southwest Power Pool, Inc.'s ("SPP") February 14, 2023 response[4] to the Commission's deficiency letter of November 30, 2022.[5] As detailed below, SPP has still failed to meet its burden to demonstrate that the implementation of self-funding is just and reasonable and not unduly discriminatory or preferential. The Clean Energy Advocates once again urge the Commission to reject SPP's proposed rates, terms, and conditions in this proceeding.

SPP's filings in this proceeding, including the Deficiency Response, continue to show that no existing Tariff provision allows for what SPP has proposed – the unilateral ability for SPP Transmission Owners ("TOs") to impose unreasonable rates, terms, and conditions on

---

[1] 18 C.F.R. §§ 385.211, 213 (2022).
[2] The views and opinions expressed in this document do not necessarily reflect the official position of each individual member of ACP.
[3] The comments contained in this filing represent the position of SEIA as a trade organization on behalf of the solar industry, but do not necessarily reflect the views of any particular member with respect to any issue.
[4] *Southwest Power Pool, Inc*., Submission of Response to Request for Additional Information, Docket No. ER22-2968-001 (Feb. 14, 2023) ("Deficiency Response").
[55] *Southwest Power Pool, Inc*., Deficiency Letter, Docket No. ER22-2968-000 (Nov. 30, 2022) ("Deficiency Letter").

interconnection customers. The Clean Energy Advocates have previously demonstrated in their November 23 Answer that SPP's Tariff does not contain an established right for TOs to utilize self-funding.[6] SPP's filings, including the Deficiency Response, fail to meet the statutory burden required of proponents of a rate change under §205 of the Federal Power Act:[7] to affirmatively demonstrate that the proposed rate is just and reasonable and not unduly discriminatory or preferential. Accordingly, and for the reasons detailed below, the Clean Energy Advocates again urge the Commission to reject SPP's proposal.

I. CONTINUED PROTEST

1. SPP's proposal to allow late-stage self-funding is unjust and unreasonable, and provides no meaningful safeguards against undue discrimination and preference.

The Deficiency Response makes clear that, if the Commission were to allow self-funding in SPP, TOs would be able to elect it – and cause a corresponding massive increase in upgrade costs – extraordinarily late in the interconnection process. Specifically, in response to the Commission's Question 15.a, SPP states:

> The Transmission Owner may elect Transmission Owner Initial Funding for the Network Upgrades *during the [Generator Interconnection Agreement] GIA negotiation phase*. However, once Transmission Owner Initial Funding has been elected for one Interconnection Request*, it is assumed* that the Transmission Owner would continue to elect Transmission Owner Initial Funding for all Interconnection Requests to prevent discrimination between interconnection projects.[8]

---

[6] Motion for Leave to Answer and Answer of Clean Energy Advocates, Docket No. ER22-2968, at pp. 2-8 (Nov. 23, 2022) ("Answer").

[7] 16 U.S.C. § 824d(e)("At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility.").

[8] Deficiency Response at p. 14 (emphasis added).

This presents two substantial problems: first, unilateral election of self-funding late in the interconnection process is inherently unjust and unreasonable; second, SPP's proposal contains no safeguards that would actually *prevent* the anticompetitive application of self-funding – despite the U.S. Court of Appeals for the District of Columbia Circuit's recent remand of Commission orders regarding self-funding in MISO on precisely this basis.[9]

A. Allowing Late-Stage Election of Self-Funding is Unjust and Unreasonable

SPP states that a TO could first elect self-funding as late as the GIA negotiation phase. This is inherently unjust and unreasonable, and would essentially render previous upgrade cost estimates – arrived at through three studies spanning several years – meaningless.[10] At the point when interconnection customers are able to negotiate a GIA, they have already moved through the Feasibility Study, System Impact Study, and Facilities Study stages. This is a process which takes several years and requires stringent site control, financial study deposits, and milestones to advance through. SPP's admission means that, if the Commission were to accept SPP's filing, a TO could unilaterally increase upgrade costs by 30-50%[11] at the *conclusion* of the interconnection process. This late, extreme cost increase would render years of work useless, and would waste resources of all parties, as interconnection customers would inevitably withdraw when faced with massive and unforeseeable upgrade cost increases. The Commission

[9] *See Am. Clean Power Assoc. v. FERC,* 54 F.4th 722 (D.C. Cir. 2022) ("*ACP v. FERC*").
[10] To be clear, the Clean Energy Advocates have repeatedly demonstrated (and again urge the Commission to find) that unilateral self-funding at *any* stage is unjust, unreasonable, and unduly discriminatory and preferential. However, SPP's insistence that self-funding can be implemented at the end of the interconnection process presents further problems, beyond those already detailed in Clean Energy Advocates' prior filings in this proceeding.
[11] Protest of the Clean Energy Advocates at p. 13, n. 36 and accompanying text, Docket No. ER22-2968 (Oct. 21, 2022) ("Initial Protest").

accepted SPP's cluster approach and three-phase study process with progressive financial milestones specifically to arrive at a relatively certain pool of interconnection customers at the end of the process. SPP's admission will render the exact opposite result, leading to late-stage withdrawals, restudies, cost shifts and delay. This is not just and reasonable, as it would negate the years of time and effort that have been invested to move SPP's queue to a workable regime.

The Commission has also acknowledged that changes affecting interconnection requests late in the queue process "create special circumstances that require careful considerations, because such reforms can significantly disrupt the activities of customers who may have relied upon the existing process."[12] The Clean Energy Advocates submit that the potential for unilateral self-funding at the conclusion of the interconnection queue process is precisely such a "disruption." Further, the Commission has acknowledged in Order No. 845 and elsewhere that interconnection customers need information to make informed business decisions *as they proceed through the queue* and make commitments.[13] SPP now proposes precisely the opposite. These breaks with Commission interconnection policy provide ample basis to reject SPP's filing.

Next, despite the prospect of dramatic late-stage upgrade cost increases, SPP has not proposed any means of enabling withdrawal from the queue. SPP's Generator Interconnection Procedures appear to allow for penalty-free withdrawal (with the refund of security) after the end of DP2 if 1) total allocated costs increased by 35% or more *between* the end of DP2 and the

---

[12] *Midcontinent Indep. Sys. Operator, Inc.,* 154 FERC ¶ 61,247 at P95 (2016); *see also Midwest Indep. Sys. Operator, Inc.*, 138 FERC ¶ 61,233, P 106 (2012).

[13] *See e.g. Reform of Generator Interconnection Procs. & Agreements,* (Order No. 845), 163 FERC ¶ 61,043 at P239 (2018) ("[W]e note that increasing transparency of network models and assumptions will allow interconnection customers to make informed interconnection decisions, which could potentially help interconnection customers avoid entering the queue with non-viable interconnection requests. Informed interconnection decisions will also allow transmission providers to improve queue management.")

Interconnection Facilities Study, *and* 2), the total allocated cost per MW of requested capacity increased by $15,000 or more, again *between* the end of DP2 and the Interconnection Facilities Study.[14] However, *after* the conclusion of the Facilities Study, the only circumstances for which a penalty-free withdrawal is contemplated appear to be when an "Interconnection Facilities Study is subsequently revised or a new or revised Affected System study is received," such that the cost thresholds from § 8.14(d) are triggered.[15] So far as Clean Energy Advocates are aware, the election of self-funding pricing in the GIA negotiation stage is outside of these circumstances – as it would not constitute a new or revised study, but would instead be a funding election. Even under the most charitable reading, SPP's GIP does *not* clearly specify that a TO's unilateral election of self-funding would constitute a revised Facilities Study or Affected System study; this could prevent generators from withdrawing and receiving back their milestone security, even in the face of a cost increase that could easily trigger those thresholds if it had come through a revised study. The application of self-funding as late as the GIA negotiation phase should receive comparable treatment to a cost increase resulting from study changes, as both circumstances are significant late-stage changes beyond the interconnection customer's control. SPP's failure to provide for such treatment also constitutes a sound basis to reject its proposal, as amended through the Deficiency Response, as unjust and unreasonable.

Finally, the lack of notice is inconsistent with the filed rate doctrine, as well as specific Commission precedent. Rates, terms and conditions cannot be just and reasonable when they are based on an "assumption" of whether they will apply to a customer, or applied at such a late date

[14] SPP GIP at § 8.14(d).
[15] *Id.* at § 8.14(e).

that they effectively negate prior efforts. That is the antithesis of the notice requirement underlying the filed rate doctrine.[16] As proposed, interconnection customers would have no notice as they proceed through the queue whether self-funding pricing would or would not apply. The Commission has required substantially more notice to interconnection customers in MISO, where a self-funding election has a binding cut-off comparable. As the Clean Energy Advocates previously observed,[17] in MISO the TO must make a non-binding self-funding election at Phase I, [18] a binding election at Phase II, [19] and a reaffirmation or reversal of any prior self-funding election at Phase III, for the final System Impact Study. MISO's Phase III GIP also states that: "[A] TO's failure to provide its self-fund election prior to the completion of the final Interconnection System Impact Study shall constitute a waiver of the TO's option to self-fund each Network Upgrade and System Protection Facility identified in the final Interconnection System Impact Study."[20] Because of its failure to require any meaningful notice, SPP's filing remains patently deficient, unjust, and unreasonable, warranting rejection.

B. In light of *ACP v FERC*, SPP's answer regarding "assumptions" of self-funding fails to address legitimate competitive concerns.

SPP's bald assertion that "it is assumed" that TOs would utilize self-funding for all interconnection requests provides no indication of whose "assumption" this is, nor how SPP might actually prevent the discriminatory application of self-funding (or even monitor the exercise of self-funding to ensure that it was not being implemented in a discriminatory fashion).

---

[16] *See e.g. W. Res., Inc. v. FERC*, 72 F.3d 147, 149 (D.C. Cir. 1995) "[A] central purpose of the [filed rate] doctrine is to enable purchasers to 'know in advance the consequences of the purchasing decisions they make…'") (citing *Transwestern Pipeline Co. v. FERC,* 897 F.2d 570, 577 (D.C.Cir.1990)).
[17] Initial Protest at pp. 12-13.
[18] MISO Tariff, Attachment X, GIP, Section 7.3.1.1.
[19] *Id*. Section 7.3.2.1.
[20] *Id*. Section 7.3.3.1.

There are no proposed safeguards other than this passive-voice "assumption" (leaving unclear who would be "assuming" the consistent application of self-funding) to provide guardrails on the use of self-funding. SPP indicates in its response to question 15.b that it will post self-funding elections on its OASIS system. This might conceivably provide, over several years, enough information to yield a § 206 complaint. However, this provision would not deter anticompetitive, discriminatory and preferential application of self-funding in the first place, nor would it restore interconnection customers unaffiliated with a TO to their prior position - because the resolution of a complaint would occur years after any discriminatory conduct came to light. Moreover, the record to date contains no "assessment of the risk of discrimination and an explanation of why individualized proceedings provide generators with sufficient protection against that risk," consistent with *ACP v. FERC*.[21]

Further, it is an unrebutted fact that most of the SPP TOs also own generation.[22] This creates precisely the incentive that the Commission has noted in other contexts could result in undue preference and discrimination, and is the precise basis upon which the DC Circuit remanded the Commission's MISO self-funding orders in *ACP v. FERC*.[23] The record in this

---

[21] 54 F. 4th at 727.

[22] *See e.g.* SPP 2021 State of the Market Report at 45 (2022) ("SPP's market is primarily composed of vertically integrated investor-owned utilities, which tend to be large."), https://www.spp.org/documents/67104/2021%20annual%20state%20of%20the%20market%20report.pdf.

[23] *See ACP v. FERC*, 54 F.4th at 728 ("*Ameren* emphasized that 'if the TOs still owned integrated generation facilities, that would present a competitive motive' to discriminate in favor of their own facilities. *Ameren*, 880 F.3d at 578. And the Petitioner presented evidence to FERC that, contrary to the facts before the *Ameren* court, a majority of TOs in the MISO region own generators. Putting those pieces together, the Petitioner showed that many TOs have an incentive to discriminate between their own generators and would-be competitor generators.
FERC was obligated to respond to that evidence, which the Petitioner said was enough to render unilateral funding 'unjust, unreasonable, unduly discriminatory, or preferential.' 16 U.S.C. § 824e(a). Instead, FERC simply said that the evidence of generation ownership was inadequate to demonstrate discrimination, without explaining why this was so. That was not enough. Petitioner's evidence, coupled with *Ameren's* observation about the potential for discrimination, showed that restoring and extending the unilateral funding option posed a discrimination risk. FERC acted arbitrarily and capriciously by failing to meaningfully respond to Petitioner's arguments.").

docket similarly provides no basis to conclude that vertically integrated TOs would not be able to use self-funding to benefit from preference and thereby harm competitors, and any order approving it would be legally vulnerable. The Commission should reject SPP's filing because it creates a significant risk of undue preference and discrimination, and contains no plausible mechanism to restrict their use.

2. Application of self-funding to the option to build would nullify Commission precedent, and provides a sufficient and independent basis to reject SPP's filing.

In the Deficiency Letter, Commission staff sought information on when a TO would reimburse an interconnection customer that exercises the option to build for the costs under GIA Article 5.2 for the costs of network upgrades.[24] As part of this question, Commission staff cite to MISO's Order No. 845 compliance filing, in which the Commission found MISO's proposed funding arrangement for stand alone network upgrades to be unjust and unreasonable, because the arrangement may have resulted in the TO reimbursing the interconnection customer for the cost of these facilities after the network upgrades were completed.[25] In response to this question, SPP admits that the reimbursement mechanism timing will be consistent with the MISO proposal that the Commission had rejected: the TO will reimburse the interconnection customer when the network upgrade is transferred to the TO in accordance with Article 5.2(9) of the GIA— not later than the Commercial Operation Date of the facilities.[26]

---

[24] Deficiency Letter, Question 17.
[25] Deficiency Letter, Question 17 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,221, at PP 51-53 (2019)).
[26] Deficiency Response at 15; SPP GIA Art. 5.2(9).

The Commission should find this funding arrangement proposal unjust and unreasonable for the same reason it found MISO's funding arrangement proposal unjust and unreasonable: it could allow for the TO to refund costs after construction has been completed.[27] This proposal would enable the TO's avoidance the risks and costs associated with financing and constructing the network upgrades, while retaining the benefits of those projects.[28] The Commission stated that its intent in expanding the option to build in Order No. 845 was to provide "interconnection customers more control and certainty during the design and construction phases of the interconnection process."[29] The expansion would allow the interconnection customers to "efficiently build the transmission provider's interconnection facilities and stand alone network upgrades in a cost-effective manner."[30] Allowing the TO to avoid reimbursing the interconnection customer until *after* construction is complete, coupled with a return on equity for the TO, undermines the purpose of the option to build. An interconnection customer would face higher interconnection costs. Not only would the interconnection customer be responsible for the costs of construction, they would be responsible for the cost of capital for construction.

Further, SPP's funding arrangement with respect to the option to build undercuts the underlying premise of SPP's entire filing. In its initial filing in this proceeding, SPP claimed that without the ability to earn a return on and of the costs of the network upgrades that the interconnection customers pay for, the TOs will be forced to operate "non-profit appendages" to their transmission systems.[31] However, if the TO is not even funding the construction of the

---

[27] *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,221, P 53.
[28] *Midcontinent Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,221, P 53.
[29] Order No. 845 at P 85.
[30] *Id*.
[31] SPP Filing at 9.

network upgrades, and therefore is not incurring any risks of construction or cost of capital, then what "risk" is the TO taking that would merit a return? It appears that SPP is seeking to allow the SPP TOs to earn a profit (i.e., return on equity, or ROE) on someone else's capital investment. In the apt words of Commissioner Christie, this "would be an unearned windfall."[32]

3. The Deficiency Response again shows that self-funding would subject generators to unreasonable uncertainty.

In response to the Commission's Question 6, SPP states:

> The statement that updates to the Network Upgrade Charge will be based on "data from the previous year" indicates that only verifiable actual costs will be used in the calculation of the Network Upgrade Charge. If a Transmission Owner's Attachment H formula rate is based on forward-looking projections, the Transmission Owner will use its Attachment H true-up data, which is verifiable actual data. If a Transmission Owner's Attachment H formula rate is based on historical information, the Transmission Owner will use its prior year historical actual data to update the Network Upgrade Charge. In either case, only actual data will be used.[33]

The Clean Energy Advocates urge the Commission to consider SPP's statement in light of the evidence already in the record that a variable payment over a 20-year term is not just and reasonable.[34] Whether a given TO's rate uses forward-looking projections or historical information, the underlying issue is the same: self-funding would subject interconnection customers to rates that would invariably change year-to-year based upon taxes, debt and equity rates, and ROEs, among other factors. This would not allow for informed business decisions by

---

[32] *Midcontinent Independent System Operator, Inc.*, 181 FERC ¶ 61,218 (2022), Christie Concurrence at P 2. If the concern is covering operating costs, those costs can be addressed through means other than self-funding generally, and SPP's unjust proposal to apply self-funding in the option to build context specifically.
[33] Deficiency Response at 9.
[34] *See* Initial Protest at 16-17.

the interconnection customer, and would potentially harm their creditworthiness due to the inability to carry a fixed outstanding payment obligation on their books.

Without self-funding, generators can fund or finance upgrades with certainty on the repayment amount and term. However, even viewed *separately* from the cost increase associated with TO self-funding (as compared to interconnection customer funding), the potential for *annual change* in the Att. H revenue requirements subjects interconnection customers to unreasonable uncertainty. In practice, this level of uncertainty would only benefit vertically integrated TOs, as fluctuations in annual revenue requirements (and upgrade charges) would essentially be billed to their own customers – a mechanism which is not available for independent generators.

4. Allowing an FSA term to extend beyond a GIA would improperly uncouple the *payment* for network upgrades from the actual *service* provided by those upgrades.

Commission staff questioned what would happen to the 20-year FSA in the event that the GIA expired after the initial 10-year term.[35] SPP stated in its Deficiency Response that the term of the FSA can exceed the term of the GIA, stating that "If the GIA expires after 10 years and is not renewed, the FSA would remain in effect for 20 years."[36] SPP attempts in its Deficiency Response to further justify an FSA term that is longer than the GIA term by arguing that its GIA term is consistent with the *pro forma* default GIA term.[37] SPP then claims that the GIA term is

[35] Deficiency Letter, Question 4.
[36] SPP Response at 8.
[37] SPP Response at 7.

"unrelated to the period over which the TO is permitted to recover and earn a return on investments for network upgrades."[38]

However, the Commission's findings regarding the MISO FSA undermine SPP's interpretation of Order No. 2003. In the MISO FSA Order, the Commission accepted MISO's proposed 20-year default FSA term, on the grounds that the term was *linked* to the "lower end of the average GIA term under which interconnection service is provided."[39] The Commission went on to explain that:

> using the low end of the average GIA term is reasonable because it allows the TO to recover its return on and of capital invested in network upgrades over a time period based on the term over which interconnection service will be provided, while providing the interconnection customer with a shorter period to pay depreciation expenses than the period of recovery based on useful service life generally used in Commission ratemaking. Additionally, tying the default term to the lower end of the average GIA provides the TO with the ability to recover its capital costs prior to the expiration of the initial interconnection service term from the GIA.[40]

The Commission's finding in the MISO FSA order undercuts SPP's claim that the GIA term is "unrelated" to the term over which a TO should be entitled to earn a return on their "investment" in network upgrades in two ways.[41] First, the Commission found that the FSA period allowed the TOs to earn a return "over a time period *based on the term over which interconnection service will be provided*."[42] Implicit in the Commission's finding is the assumption that the

---

[38] SPP Response at 6.
[39] *Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,075, at P 61 (2020).
[40] *Id*.
[41] *See* Initial Protest at 6-8 (Discussing how it is questionable as to whether the SPP TOs should be entitled to a return on the investment in the network upgrades since it is the interconnection customer that bears the costs of those network upgrades).
[42] MISA FSA Order at P 61 (emphasis added).

interconnection customer would be receiving transmission service over the course of the FSA. Second, at the end of that same paragraph in the MISO FSA order, the Commission explicitly found that MISO's basis for the 20-year term in its FSA agreement allows for the recovery of costs "prior to the expiration of the initial interconnection service term from the GIA."[43] Again, this shows that the Commission's finding in the MISO FSA order was premised on the GIA being longer than the FSA.

Even Order No. 2003, which SPP relies on in its Deficiency Response to support the 20-year FSA term, undercuts SPP's argument. SPP argues that the ten-year *pro forma* GIA term established in Order No. 2003 was not supposed to limit a "TO's right to a return of and on the investment required to interconnect the transmission customer."[44] As an initial matter, the right of a TO to earn a return of and on an investment was not a consideration under Order No. 2003. For independent transmission providers, Order No. 2003-A established a network upgrade funding mechanism where the interconnection customer would provide, upfront, the full costs of the network upgrade. The transmission provider would then reimburse the interconnection customer for that investment through transmission credits, over a period no longer than 20 years.[45]

---

[43] *Id*.
[44] Deficiency Response at 8.
[45] *See Standardization of Generator Interconnection Agreements and Procedures* (Order No. 2003-B) at P35, 70 FR 265-02 (2005)(" To address the Interconnection Customer's need for a date certain for reimbursement of its upfront payment, we are specifying what the Transmission Provider must do if it elects not to return to the Interconnection Customer any portion of its upfront payment that remains due at the end of five years. Specifically, in order to provide a definite end date for reimbursement that is not to be exceeded, we are revising pro forma LGIA article 11.4.1 to state that full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.") *See generally Standardization of Generator Interconnection Agreements and Procedures* (Order No. 2003-A) at PP 613-616, 69 FR 15932-01 (2004).

Neither the MISO FSA Order nor Order No. 2003 support SPP's assertion that the term of the FSA – which, again, includes a rate of return for the TO - should be able to *exceed* the GIA based exclusively upon the TO's election. In fact, these orders directly contradict this assertion. They certainly do not support SPP's argument that these orders are "not intended to be a benchmark for limiting a TO's right to a return of and on" the costs of network upgrades.[46] Any ability for a TO to earn a return on non-reimbursed Network Upgrades– even if it were justified, which the Clean Energy Advocates have demonstrated not to be the case – should be tied to the transmission service those facilities are providing. If the GIA expires and the TO is no longer providing that service, then the TO should not be entitled to a return – and the full security provided for in the FSA would ensure that the TO would be refunded any capital expended (albeit without an ROE for the remaining term).[47] However, requiring continuation of an FSA beyond the GIA's lifespan elevates a TO's rate of return on network upgrades above the actual provision of *interconnection* service, and further decouples that rate of return from any actual, perceived, or hypothetical "risk."

5. SPP's answers regarding Affected Systems show that the implications of acceptance would extend beyond the literal Tariff changes.

In Question 2, the Commission directed SPP to provide further information on the application of self-funding to Affected Systems. SPP's answers demonstrate that this proceeding seeks to add substantive changes that go well beyond any mechanism allowed in its current

[46] Deficiency Response at 8.
[47] Alternatively, if transmission service will continue, the TO can roll the investment into its transmission rate base and earn a return.

Tariff. At 2.a, the Commission asked SPP to identify language that allowed an affected TO to elect self-funding, even though such a TO would not be a signatory to the GIA. SPP acknowledges that "There is not language in the Tariff that expressly permits a Transmission Owner other than the Transmission Owner that is a signatory to the GIA (i.e., an "affected transmission owner") to elect the Transmission Owner Initial Funding option for Network Upgrades and/or Transmission Owner's System Protection Facilities necessary to interconnect the interconnection customer."[48] SPP's only effort to justify this admitted departure from its own Tariff is to state that "there are often other Transmission Owners that are not a party to a GIA that are responsible for constructing Network Upgrades."[49] While this may literally be the case, SPP's failure to reflect aspects of self-funding in its Tariff that would substantially affect rates, terms, and conditions of service further demonstrates that the Commission should reject the proposal.

6. The Commission should ensure that any self-funding mechanism provides for mutual termination of security.

In its response to Question 8, SPP indicates that it would move away from the TO's unilateral ability to terminate security under the FSA, and instead would eliminate this discretion entirely. SPP states:

> This provision was intended to be interconnection customer-friendly by permitting Transmission Owners to allow for early termination of the required security in circumstances in which security is determined to be no longer needed…. it has become apparent that it is difficult to specify objective criteria for a determination by a Transmission Owner that security can be terminated early given the multiplicity of forms of credit, payment scenarios, and creditworthiness standards over time. Accordingly, SPP

[48] Deficiency Response at 5.
[49] *Id.*

> is agreeable to striking the phrase "unless Owner determines, in its sole discretion that Security can be terminated by Customer prior to the expiration of this Service Agreement…"[50]

If the Commission does not reject SPP's proposal, the Clean Energy Advocates submit that the Commission should instead allow for early termination of security under the FSA based upon mutual agreement between the TO and the interconnection customer. This should be coupled with disclosure of any early reduction in, or termination of, security; this would allow market participants to evaluate if this cost reduction was being applied consistently. Additionally, interconnection customers should have the ability to prepay annual payments, and receive a commensurate reduction in the FSA security requirement. SPP's proposed compliance change would result in excessive rigidity under the FSA, to the detriment of interconnection customers.

II. Comments

1. If the Commission is inclined to accept SPP's filing, it should require the offered changes on compliance regarding liability and unexecuted agreements.

In response to questions 12, 13, and 14 from Commission staff, SPP indicated that it would accept Commission direction to make certain changes to its proposed FSA. First, SPP proposed to amend Article X.g of the *pro forma* FSA to include the liability provisions found in Article 18 of the *pro forma* GIA, so that both agreements contain the same liability provision.[51] Second, after clarifying that an interconnection customer can request that SPP file an FSA unexecuted, SPP consented to including that clarifying language in a compliance filing.[52] If the Commission declines to reject the filing, the Clean Energy Advocates request that the

[50] Deficiency Response at p. 10.
[51] Deficiency Response at pp. 13-14.
[52] Deficiency Response at p. 14.

Commission direct SPP to make a compliance filing reflecting these proposed changes to its FSA.

III. CONCLUSION

Clean Energy Advocates again request that the Commission reject the SPP Filing, which remains unjust, unreasonable, and unduly discriminatory and preferential for the reasons detailed above and in prior filings. Further, the D.C. Circuit's decision in *ACP v. FERC* in December 2022 should urge both caution and consistency in this proceeding. The Commission should take note that the presence of self-funding for network upgrades in a single region (MISO) has now led to led to *four* multi-year proceedings – including this one - in which TOs have sought self-funding in other regions and contexts.[53] The Commission's orders approving self-funding in MISO, upon which other § 205 and § 206 filings seeking self-funding have relied, is now before the Commission on remand. The Commission should ensure that any decision in this proceeding does not create a new regional outlier by allowing self-funding in SPP, which could result in further litigation – particularly as the Commission reconsiders its orders regarding self-funding in MISO on remand.

[53] *See generally* Dockets No. ER21-1647 and EL21-66 (NYISO); Docket No. ER21-2281 (PJM); Docket No. ER22-477 (MISO HVDC).

Respectfully submitted,

Steve Gaw
Senior Vice President, Infrastructure and Markets
Advanced Power Alliance
3571 Far West Boulevard, #230
Austin, TX 78731
Rsgaw1@gmail.com

Gabe Tabak, Senior Counsel
American Clean Power Association
1501 M St., N.W., Ste. 900
Washington, D.C. 20005
(202) 383-2500
gtabak@cleanpower.org

Christy Walsh, Senior Attorney and Director of Federal Energy Markets
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
202-909-6842
cwalsh@nrdc.org

Ben Norris
Senior Director of Regulatory Affairs and Counsel
Melissa Alfano
Director of Energy Markets and Counsel
Solar Energy Industries Association
1425 K St NW Ste. 1000
Washington, DC 20005
(202) 566-2873
bnorris@seia.org
malfano@seia.org

Kylah McNabb, Consultant
Sustainable FERC Project
1152 15th Street NW, Suite 300
Washington, DC 20005
405-830-7307
kmcnabb@vestastrategicsolutions.com

March 7, 2023

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this pleading has been served this day upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 7th day of March, 2023.

/s/Gabe Tabak
Gabe Tabak, Senior Counsel
American Clean Power Association
1501 M St., N.W., Ste. 900
Washington, D.C. 20005
(202) 383-2500
gtabak@cleanpower.org