

170 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

American Wind Energy Association
The Wind Coalition

Docket Nos. EL19-11-002

v.

Southwest Power Pool, Inc.
Southwest Power Pool, Inc.

ER19-2522-001
ER19-2523-001

ORDER ON CLARIFICATION AND
REJECTING LATE-FILED REQUEST FOR REHEARING

(Issued March 30, 2020)

1. On February 6, 2020, Public Interest Organizations¹ filed a motion for clarification² of the Commission's order issued in the above-captioned proceeding on December 19, 2019.³ Public Interest Organizations request that the Commission clarify the scope of costs for which non-market participants would be responsible if they were to become members of Southwest Power Pool, Inc. (SPP) and later withdraw from membership. Public Interest Organizations specifically object to what they describe as the Commission's "reinstatement" of a \$50,000 deposit for the costs SPP would incur to

¹ Public Interest Organizations are 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.

² Motion for Clarification of Public Interest Organizations, Docket No. EL19-11-002, et al. (filed Feb. 6, 2020) (Motion).

³ *Am. Wind Energy Ass'n v. Sw. Power Pool, Inc.*, 169 FERC ¶ 61,227 (2019) (December 2019 Order) (denying requests for rehearing concerning eliminating the exit fee for non-transmission owning members of the regional transmission organization, accepting compliance filing, and rejecting section 205 filing).

process a member's withdrawal from SPP.⁴ As discussed below, we deny Public Interest Organization's requested clarification and instead clarify that non-transmission owners seeking to withdraw from SPP are still subject to the withdrawal deposit requirement. We also reject their arguments in opposition to the deposit requirement as a late-filed rehearing request.

2. On February 21, 2020, SPP filed an answer, asking the Commission to reject the Motion as an improper attempt to challenge provisions that were left unchanged by the Commission's previous orders in this proceeding.⁵ SPP contends that the Public Interest Organizations' Motion is a late-filed request for rehearing and a collateral attack⁶ on the order on complaint.⁷ Additionally, SPP requests that, to the extent that Public Interest Organizations desire to change SPP's existing withdrawal deposit provisions, the Commission should encourage them to seek redress first through the SPP stakeholder process.⁸

3. To the extent that the Complaint Order and the December 2019 Order were unclear, we clarify that the Commission did not direct SPP to eliminate its withdrawal deposit requirement for non-transmission owners. In the Complaint Order, the Commission specifically declined to eliminate SPP's withdrawal deposit requirement, finding the claim that other regional transmission organizations and independent system

⁴ Motion at 1. Specifically, Public Interest Organizations state that they seek clarification on whether the Commission: (1) intended the \$50,000 deposit to apply to non-market participants, such as Public Interest Organizations; and (2) if not, whether any deposit should be related to the projected actual costs of such members' withdrawal. *Id.* at 2.

⁵ Answer of SPP, Docket No. EL19-11-002, et al, at 1 (filed Feb. 21, 2020) (SPP Answer).

⁶ *Id.* at 3-5 & n.15.

⁷ *Am. Wind Energy Ass'n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 (2019) (Complaint Order). In the Complaint Order, the Commission partially granted a complaint and found that SPP's membership exit fee, as applied to non-transmission owners, was unjust and unreasonable and directed SPP to eliminate the membership exit fee for non-transmission owners. *Id.* P 2.

⁸ SPP Answer at 5.

operators did not have deposit requirements was insufficient to show that SPP's deposit requirement was a barrier to membership or otherwise unjust and unreasonable.⁹

4. On May 20, 2019, SPP asked the Commission to clarify that in the Complaint Order it did not intend for SPP to eliminate the deposit requirement.¹⁰ In the December 2019 Order, the Commission stated that non-transmission owners should only be exempt from paying a share of SPP's long-term financial obligations, rather than all existing obligations associated with membership withdrawal.¹¹ Although we believe it was sufficiently clear in the Complaint Order that the Commission did not direct SPP to eliminate its deposit requirement,¹² given that the December 2019 Order did not explicitly respond to SPP's requested clarification regarding the deposit requirement, we clarify that the Complaint Order did not direct SPP to eliminate its withdrawal deposit.¹³ Accordingly, we deny Public Interest Organization's requested clarification otherwise.

5. Public Interest Organizations also argue that SPP's withdrawal deposit constitutes a barrier to membership for entities such as the Public Interest Organizations, is unduly discriminatory, and is not just and reasonable.¹⁴ We view these arguments as a statutorily-barred, late-filed request for rehearing of the Commission's determination that SPP's deposit requirement had not been shown to be unjust and unreasonable, and we reject it.¹⁵ Under section 313 of the Federal Power Act, an aggrieved party must file a

⁹ Complaint Order, 167 FERC ¶ 61,033 at P 67.

¹⁰ SPP Request for Rehearing and Clarification, Docket No. EL19-11-001, at 28 (filed May 20, 2019).

¹¹ December 2019 Order, 169 FERC ¶ 61,227 at P 114.

¹² Indeed, SPP's Answer indicates that SPP interprets the December 2019 Order as merely clarifying the Complaint Order's directives and not disturbing that order's express finding that the withdrawal deposit had not been shown to be an unjust and unreasonable barrier to entry. SPP Answer at 3.

¹³ We note that the Commission did not "reinstate" the withdrawal deposit on rehearing because the Commission did not direct SPP to eliminate the deposit in the Complaint Order. See Complaint Order, 167 FERC ¶ 61,033 at P 67.

¹⁴ Motion at 3-4.

¹⁵ We evaluate a pleading based on its substance, rather than its style or form. See, e.g., *Light Power & Gas of N.Y. LLC v. N.Y. Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,216, at P 26 & n.63 (citing *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3

request for rehearing within 30 days after the issuance of a Commission decision.¹⁶ Because the 30-day rehearing deadline is a statutory requirement, it cannot be waived or extended. Public Interest Organizations did not seek rehearing of either the Complaint Order or the December 2019 Order within 30 days of issuance of those orders. Public Interest Organizations' February 6, 2020 request for the Commission to reconsider its findings on SPP's deposit requirement is untimely, and we therefore reject it.

The Commission orders:

(A) The December 2019 Order is hereby clarified, as discussed in the body of this order.

(B) Public Interest Organizations' specific request for clarification is hereby denied, as discussed in the body of this order.

(C) Public Interest Organizations' late-filed rehearing request is rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

(1984) (“Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.”)).

¹⁶ 16 U.S.C. § 825l (2018); 18 C.F.R. § 385.713(b) (2019).