

172 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER19-2522-002

ORDER ON COMPLIANCE

(Issued July 16, 2020)

1. On April 29, 2020, Southwest Power Pool, Inc. (SPP) submitted revisions to its Governing Documents Tariff in compliance with directives in a Commission order issued on December 19, 2019.¹ As discussed below, we find that SPP's proposed revisions comply with the directives in the December 2019 Order. Accordingly, we accept SPP's filing, effective December 19, 2019.

I. Background

2. In April 2019, the Commission issued an order partially granting a complaint filed by the American Wind Energy Association (AWEA) and The Wind Coalition against SPP, finding that SPP's membership exit fee,² as applied to non-transmission owners, was unjust and unreasonable because it created a barrier to membership, was not needed to maintain SPP's financial solvency or to avoid cost shifts, and was excessive as a means for ensuring the stability of SPP's membership. The Commission directed SPP to eliminate its membership exit fee for non-transmission owners.³ In August 2019, SPP submitted a compliance filing in Docket No. ER19-2522-000 to comply with the Commission's directive in the Complaint Order.

¹ *Sw. Power Pool, Inc.*, 169 FERC ¶ 61,227 (2019) (December 2019 Order).

² SPP's membership exit fee, as it existed at the time of the complaint, was a fee charged to a member that chose to withdraw its membership in SPP and was calculated as the withdrawing member's share of SPP's outstanding long-term financial obligations. SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(iii) (2.0.0); Bylaws, § 8.7.2 (4.0.0) (describing the calculation).

³ *Am. Wind Energy Ass'n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 (2019) (Complaint Order).

3. In the December 2019 Order, the Commission conditionally accepted SPP's compliance filing in Docket No. ER19-2522-000 and directed SPP to submit a further compliance filing to revise its Governing Documents Tariff to ensure that a withdrawing non-transmission-owning member is only exempt from paying a share of SPP's long-term financial obligations, rather than all existing obligations associated with the member's withdrawal.⁴ The Commission also directed SPP to propose revisions to ensure that a withdrawing transmission-owning member's previous year net energy for load includes the load of all load-serving entities connected to the withdrawing transmission owner's system.⁵

II. SPP Filing

4. SPP proposes to revise section 8.7.1 of its Bylaws to remove current subsections (a) through (e), which describe a withdrawing member's existing obligations, and to instead provide that such obligations will be defined in accordance with section 4.3.2 of SPP's Membership Agreement.⁶ SPP states that as a result, the Bylaws will reference the existing obligations contained in the Membership Agreement, rather than duplicating the language in both documents, and that retaining this language in the Membership Agreement is appropriate because that is the contractual arrangement between SPP and each member.⁷

5. In addition, SPP proposes to revise section 8.7.2 of its Bylaws to provide that a withdrawing transmission-owning member's previous year net energy for load includes the load of all load-serving entities connected to the withdrawing transmission-owning member's system. SPP further proposes conforming edits to reference the existing obligations for transmission-owning members contained in proposed sections 4.3.2(b)-(f) of the Membership Agreement.⁸

6. SPP proposes several revisions to section 4.3.2 of its Membership Agreement. Proposed section 4.3.2(a) provides that a withdrawing transmission-owning member shall pay all existing obligations set forth in section 4.3.2(b), while non-transmission-owning members will only be subject to the existing obligations defined in sections 4.3.2(b)(i) through (iii). Proposed sections 4.3.2(b)(i) through (iii) include the member's unpaid

⁴ December 2019 Order, 169 FERC ¶ 61,227 at P 114.

⁵ *Id.* P 115.

⁶ SPP, Governing Documents Tariff, Bylaws, § 8.7.1 (5.1.0).

⁷ Transmittal at 4.

⁸ SPP, Governing Documents Tariff, Bylaws, § 8.7.2 (5.1.0).

annual membership fee,⁹ unpaid dues or other assessments,¹⁰ and “any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable,”¹¹ respectively. Proposed section 4.3.2(b)(iv) provides that a withdrawing transmission-owning member’s existing obligations will additionally include the member’s share of SPP’s long-term debts, including any prepayment premiums or penalties.

7. SPP also proposes to revise section 4.3.2(a) of the Membership Agreement to provide that both transmission-owning and non-transmission-owning members will remain subject to the partial termination, invoicing, and refund procedures set forth in sections 4.3.2(c)-(f) upon withdrawal. SPP also proposes to revise sections 4.3.2(c) and 4.3.2(f) to add the phrase “if applicable” to the obligations contained therein. SPP states that its proposed revision to section 4.3.2(f) clarifies that long-term financial obligations, as defined in section 4.3.2, apply only to transmission-owning members.¹²

III. Notice and Responsive Pleadings

8. Notice of SPP’s filing was published in the *Federal Register*, 85 Fed. Reg. 26,677 (May 5, 2020), with interventions and protests due on or before May 20, 2020. On May 20, 2020, AWEA, Solar Energy Industries Association, Advanced Power Alliance, Sustainable FERC Project, and Solar Council (collectively, Renewable Advocates) and EDF Renewables, Inc., RWE Renewables Americas, LLC, and Savion, LLC (collectively, SPP Generation Market Participants) filed protests.¹³ Savion, LLC also filed a timely motion to intervene. On June 4, 2020, SPP filed an answer to the protests.

⁹ SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(i) (3.1.0).

¹⁰ SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(ii) (3.1.0).

¹¹ SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(iii) (3.1.0).

¹² Transmittal at 7.

¹³ AWEA, Solar Energy Industries Association, Advanced Power Alliance, Sustainable FERC Project, and EDF Renewables, Inc. intervened and were granted party status earlier in this proceeding. *See* December 2019 Order, 169 FERC ¶ 61,227 at P 17.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Savion, LLC's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept SPP's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

11. As discussed below, we find that SPP's proposed revisions comply with the directives in the December 2019 Order. Accordingly, we accept SPP's filing, effective December 19, 2019.¹⁴

1. Renewable Advocates Protest

12. Renewable Advocates state that they generally support SPP's filing, but they request that the Commission direct SPP to make a further clarifying revision to proposed section 4.3.2(b)(iii) in the Membership Agreement.¹⁵ Specifically, Renewable Advocates contend that SPP's proposed language is broadly worded and contains potential ambiguity as to the precise types of costs that are to be borne by withdrawing non-transmission-owning members. Renewable Advocates state that they are unaware of any SPP guidance document, business practice, or other source that provides further detail regarding which costs might be included under proposed section 4.3.2(b)(iii). Renewable Advocates request that the Commission direct SPP to revise proposed section 4.3.2(b)(iii) to read (with proposed revisions in underline/strikeout): "Any costs, expenses or liabilities incurred by SPP to process or effectuate ~~directly due to~~ the Member's withdrawal directly due to the Termination, regardless of when incurred or payable." Renewable Advocates maintain that without this specific clarification, SPP's proposed language increases uncertainty and perpetuates barriers to membership in SPP. In the alternative, Renewable Advocates request that the Commission clarify that it interprets

¹⁴ In the December 2019 Order, the Commission established December 19, 2019 as the effective date for SPP's compliance filing. *Id.* P 116.

¹⁵ Renewable Advocates Protest at 1.

SPP's proposed language to only include direct costs, expenses, or liabilities incurred to process or effectuate a member's termination.¹⁶

2. SPP Generation Market Participants Protest

13. SPP Generation Market Participants state that they are members of Renewable Advocates and support Renewable Advocates' comments and proposed reforms in this proceeding.¹⁷ In addition, SPP Generation Market Participants argue that the existing obligations defined in proposed section 4.3.2(b)(iii) of the Membership Agreement, which apply to all withdrawing members, create uncertainty for non-transmission-owning members because SPP could potentially interpret "liabilities incurred by SPP directly due to the Termination, whenever incurred or payable" to include SPP's long-term debts and pensions historically incurred by SPP to support the market in which the non-transmission-owning member operates.¹⁸ According to SPP Generation Market Participants, this outcome would contravene the Commission's finding that SPP has no need to include such liabilities in the exit fee of a non-transmission-owning member.¹⁹

14. SPP Generation Market Participants further argue that SPP has not supported its proposal to subject all members, rather than transmission-owning members only, to sections 4.3.2(c) and 4.3.2(f) of the Membership Agreement. According to SPP Generation Market Participants, the calculation of a member's net energy for load ratio described in section 4.3.2(c) should only apply to transmission-owning members. SPP Generation Market Participants maintain that despite SPP's proposed "if applicable" qualifier, this provision suggests that a withdrawing non-transmission-owning member may be required to pay a share of SPP's long-term debts, liabilities, and pensions.²⁰ SPP Generation Market Participants contend that proposed section 4.3.2(f), which provides that existing member obligations include "amounts that SPP expects to carry between the date of Member's Notice of Termination and the Member's Termination Date," similarly suggests that a withdrawing non-transmission-owning member may be required to pay a share of SPP's long-term debts, despite SPP's proposed "if applicable" language. SPP Generation Market Participants request that the Commission direct SPP to either revise sections 4.3.2(c) and 4.3.2(f) to provide that these sections only apply to transmission-owning members, or to revise section 4.3.2(a) to remove the references to sections

¹⁶ Renewable Advocates Protest at 4.

¹⁷ SPP Generation Market Participants Protest at 1.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 3-4 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60).

²⁰ *Id.* at 5.

4.3.2(c) and 4.3.2(f). SPP Generation Market Participants state that they prefer the former revision because it will add maximum certainty and enable non-transmission owners to better understand their likely cost exposure if membership were to be terminated in the future.²¹

3. SPP Answer

15. SPP disagrees that proposed section 4.3.2(b)(iii) of the Membership Agreement is ambiguous. SPP contends that the phrase “incurred by SPP directly due to the Termination” makes clear that the exit fee for a non-transmission-owning member must be directly due to its termination. SPP also states that the phrase “regardless of when incurred or payable” is intended to capture costs that SPP may incur directly due to a non-transmission-owning member’s termination within the two-year notice period required by the Membership Agreement. SPP states that it does not disagree with the conclusions reached by commenters that reinforce the Commission’s directive that SPP’s withdrawal obligation applicable to non-transmission-owning members should not include SPP’s long-term financial obligations.²²

16. SPP asserts that the provisions in proposed sections 4.3.2(c)-(f) of the Membership Agreement need to apply to all members because they contain uniform termination processes, timing requirements, and other administrative items. SPP contends that section 4.3.2(c) plainly provides that if a member has no load, its existing obligations due upon partial termination will not include costs attributable to load. Similarly, SPP argues that the phrase “if applicable” in proposed section 4.3.2(f) makes clear that non-transmission-owning members are not responsible for paying a share of SPP’s long-term financial obligations.²³

4. Commission Determination

17. We find that SPP’s proposed revisions comply with the directives in the December 2019 Order. The proposed revisions ensure that a withdrawing non-transmission-owning member is only exempt from paying a share of SPP’s long-term financial obligations, rather than all existing obligations associated with withdrawal.²⁴ Additionally, the proposed revisions ensure that a withdrawing transmission-owning member’s previous

²¹ *Id.* at 5-6.

²² SPP Answer at 4-5.

²³ *Id.* at 6-7.

²⁴ *See* December 2019 Order, 169 FERC ¶ 61,227 at P 114 and *supra* P 6.

year net energy for load includes the load of all load-serving entities connected to the withdrawing transmission owner's system.²⁵

18. We disagree with Renewable Advocates' assertion that proposed section 4.3.2(b)(iii) of SPP's Membership Agreement creates ambiguity as to the costs that will be borne by withdrawing non-transmission-owning members. We find that the proposed phrase "incurred by SPP directly due to the Termination" requires a direct connection between the costs that SPP may recover and the membership termination. It is reasonable for SPP to recover costs it incurs directly due to a member's termination of its membership in SPP.²⁶ Additionally, we note that the language Renewable Advocates take issue with ("[a]ny costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable") is existing language in SPP's Bylaws and Membership Agreement.²⁷ In the Complaint Order and the December 2019 Order, the Commission only required SPP to eliminate its exit fee for non-transmission owners, with "exit fee" meaning a member's share of SPP's long-term financial obligations.²⁸ The Commission did not direct any changes related to other obligations associated with membership withdrawal.²⁹ Accordingly, we decline to direct SPP to further revise its proposal as requested by Renewable Advocates.

19. We disagree with SPP Generation Market Participants' arguments that proposed sections 4.3.2(b)(iii), 4.3.2(c), and 4.3.2(f) of the Membership Agreement could be interpreted to provide that withdrawing non-transmission-owning members are subject to a share of SPP's long-term financial obligations. We find that it would not be reasonable to interpret section 4.3.2(b)(iii) to mean that non-transmission-owning members would be subject to a share of SPP's long-term financial obligations. First, proposed sections 4.3.2(a) and 4.3.2(b)(iv) of the Membership Agreement, as well as section 8.7.2 of SPP's

²⁵ See December 2019 Order, 169 FERC ¶ 61,227 at P 115 and *supra* P 5.

²⁶ December 2019 Order, 169 FERC ¶ 61,227 at P 114 ("Non-transmission owners should still be responsible for other obligations associated with their membership withdrawal, such as unpaid membership fees, dues, assessments, or charges, as well as costs, expenses, or liabilities incurred by SPP directly due to membership termination (excluding costs, expenses, or liabilities related to SPP's long-term financial obligations).").

²⁷ Compare SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(iii) (3.1.0) with SPP, Governing Documents Tariff, Membership Agreement, § 4.3.2(b)(iv) (3.0.0) and SPP, Governing Documents Tariff, Bylaws, § 8.7.1(d) (5.0.0).

²⁸ December 2019 Order, 169 FERC ¶ 61,227 at PP 4, 114.

²⁹ *Id.* P 114.

Bylaws, establish that only transmission owners will pay a portion of SPP's long-term financial obligations.³⁰ In addition, costs related to SPP's long-term financial obligations are not incurred "directly due to" any member's withdrawal and thus cannot be recovered pursuant to proposed section 4.3.2(b)(iii). SPP explains in its answer that the phrase "regardless of when incurred or payable" is intended to refer to costs that SPP may incur directly due to a non-transmission-owning member's termination within the two-year notice period required by the Membership Agreement, rather than costs incurred prior to the notice period.

20. Further, we find that, to the extent proposed section 4.3.2(c) requires departing members to pay a share of SPP's long-term debts in the event of a partial termination, it does not apply to non-transmission-owning members because such members do not have load, as reflected by SPP's proposed "if applicable" language.³¹ We similarly find that SPP's proposed "if applicable" language provides that section 4.3.2(f) does not apply to non-transmission-owning members to the extent it requires departing members to pay a share of SPP's long-term debts. Accordingly, we decline to direct SPP to further revise its proposal as requested by SPP Generation Market Participants.

³⁰ Proposed section 4.3.2(a) of SPP's Membership Agreement provides that a non-transmission-owning member's withdrawal obligations are limited to those defined in sections 4.3.2(b)(i)-(iii), and none of those provisions contain a requirement to pay a share of SPP's long-term financial obligations. Additionally, proposed section 4.3.2(b)(iv), which contains the requirement to pay a share of SPP's long-term financial obligations, applies only to transmission owners. Similarly, proposed section 8.7.2 of SPP's Bylaws, which describes the calculation of a member's share of SPP's long-term financial obligations, explicitly applies to transmission owners only.

³¹ We also note that the Membership Agreement provides that partial termination events, as contemplated in proposed section 4.3.2(c), only apply to transmission-owning members. SPP, Governing Documents Tariff, Membership Agreement, § 4.1 (1.0.0):

A 'Partial Termination' occurs upon a Member's voluntary removal of a portion of its transmission facilities or customers from the SPP Region, including, by way of example and not limitation, sale of a part of the Member's distribution or transmission network or transfer to another service provider of a portion of its retail load.

The Commission orders:

SPP's compliance filing is hereby accepted, effective December 19, 2019, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.