169 FERC ¶ 61,227
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 v. Southwest Power Pool, Inc.	Docket Nos. EL19-11-001
Southwest Power Pool, Inc.	ER19-2522-000 ER19-2523-000

ORDER ON REHEARING, COMPLIANCE, AND SECTION 205 FILING

(Issued December 19, 2019)

1. On April 18, 2019, the Commission issued an order partially granting a complaint (Complaint) filed by the American Wind Energy Association (AWEA) and The Wind Coalition[1] (Complainants) against Southwest Power Pool, Inc. (SPP), finding that SPP's membership exit fee, as applied to non-transmission owners, is unjust and unreasonable, and directing SPP to eliminate the membership exit fee for non-transmission owners.[2] On May 20, 2019, SPP filed a request for rehearing and clarification of the Complaint Order, and the SPP Load Serving Entities (SPP Load Serving Entities)[3] filed a request for rehearing. On August 1, 2019, in Docket No. ER19-2522-000, SPP submitted a filing to

[1] The Wind Coalition is now known as "Advanced Power Alliance."

[2] *Am. Wind Energy Ass'n and The Wind Coalition v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 (2019) (Complaint Order).

[3] SPP Load Serving Entities include: American Electric Power Service Corporation; Basin Electric Power Cooperative; City Utilities of Springfield, Missouri; Empire District Electric Company; Evergy Companies; Golden Spread Electric Cooperative, Inc.; Grand River Dam Authority; Lincoln Electric System; Mid-Kansas Electric, Inc.; Midwest Energy, Inc.; Nebraska Public Power District; Oklahoma Gas & Electric Company; Omaha Public Power District; Sunflower Electric Power Corporation; Western Farmers Electric Cooperative; and Xcel Energy Services, Inc.

comply with the directives in the Complaint Order. Separately, in Docket No. ER19-2523-000, SPP filed an alternative exit fee proposal pursuant to section 205 of the Federal Power Act (FPA).[4]

2. In this order, we deny rehearing, grant in part and deny in part SPP's requested clarifications, conditionally accept SPP's compliance filing, subject to a further compliance filing, and reject SPP's alternative exit fee proposal without prejudice to SPP making a revised filing with additional support.

I. Background

A. SPP's Exit Fee

3. The Commission first accepted SPP's membership exit fee when it granted SPP's application for Regional Transmission Organization (RTO) status in 2004.[5] Between 2004 and 2006, in a series of orders related to SPP's application for RTO status, the Commission rejected several challenges and proposals related to SPP's exit fee.[6] Until the Complaint Order, SPP's exit fee remained unchanged.

4. SPP's membership exit fee is a fee charged to a member that chooses to withdraw its membership in SPP and is calculated as the withdrawing member's share of SPP's outstanding long-term financial obligations. These long-term financial obligations include loans, leases, pensions, and interest (that have terms in excess of six months), as well as general and administrative overhead for a three-month period.[7] At the time the Complaint was filed in this proceeding, a withdrawing member's share of these long-term obligations was calculated pursuant to a weighted formula: 25 percent based per capita

[4] 16 U.S.C. § 824d (2018).

[5] *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110 (2004).

[6] *See Sw. Power Pool, Inc.*, 110 FERC ¶ 61,138 (2005) (rejecting arguments made on rehearing that end-users should be exempted from the exit fee) (2005 Rehearing Order); *Sw. Power Pool, Inc.*, 113 FERC ¶ 61,014 (2005) (rejecting challenges to SPP's general exit fee structure and SPP's proposal to exempt several classes of members from paying the exit fee) (2005 RTO Order); *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,273 (2006) (rejecting a challenge to the per capita components of SPP's exit fee formula) (2006 Exit Fee Order) (collectively, Exit Fee Orders).

[7] SPP, Governing Documents Tariff, Bylaws, § 8.7 (Financial Obligation of Withdrawing Members); Membership Agreement, § 4.3.2 (Obligations Upon Termination).

on the total number of SPP members, and 75 percent based on the withdrawing member's load share, if any.[8]

B. Complaint

5. On November 5, 2018, pursuant to FPA sections 206, 306, and 309,[9] Complainants filed the Complaint against SPP. Complainants alleged that the membership exit fee provisions in SPP's bylaws and membership agreement, as applied to entities that are not transmission owners or load-serving entities, were unjust, unreasonable, and unduly discriminatory or preferential. Complainants argued that SPP's membership exit fee violated the cost causation principle,[10] created a barrier to membership for independent power producers and other non-transmission owners/load-serving entities, and resulted in a stakeholder process that underrepresented non-transmission owners/load-serving entities. Additionally, Complainants contended that no other RTO or Independent System Operator (ISO) had a membership exit fee for non-transmission owners/load-serving entities.[11] Complainants requested that the Commission direct SPP to exempt non-transmission owners/non-load serving entities from the long-term financial obligations component of the SPP exit fee and require SPP to revise its bylaws and membership agreement contained in its Governing Documents tariff.[12]

C. Complaint Order

6. In the Complaint Order, the Commission found that SPP's membership exit fee, 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

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[8] Specifically, the formula was: $A = 100\,[0.25(1/N) + 0.75(B/C)]$, where A is the withdrawing member's exit fee percentage, N is the total number of SPP members, B is the withdrawing member's previous year net energy for load, and C is the total factor B for all members. SPP, Governing Documents Tariff, Bylaws, § 8.7.2 (Computation of a Member's Existing Obligations).

[9] 16 U.S.C. §§ 824e, 825e, 825h.

[10] The cost causation principle generally requires that, to some degree, costs "be allocated to those who cause the costs to be incurred and reap the resulting benefits." *Nat'l Assoc. of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007).

[11] For additional detail, *see* Complaint Order, 167 FERC ¶ 61,033 at PP 6-13.

[12] *See id.* P 13.

cost shifts, and was excessive as a means for ensuring the stability of SPP's membership and members' financial commitment.[13] However, the Commission noted that "some level of exit fee [for non-transmission owners] that does not act as a barrier to membership and is not excessive could be appropriate."[14] The Commission directed SPP to submit a compliance filing to revise its bylaws and membership agreement to eliminate the exit fee for non-transmission owners.

D. Motion to Stay

7. On May 20, 2019, SPP filed a motion requesting that the Commission stay the effectiveness of the Complaint Order to allow SPP's preexisting exit fee structure to remain in place until the Commission issued an order accepting a replacement exit fee structure. On July 2, 2019, the Commission denied SPP's motion to stay the Complaint Order and established a refund effective date of April 5, 2019 for the proceeding.[15]

E. Rehearing Requests

8. On May 20, 2019, SPP and SPP Load Serving Entities each filed requests for rehearing of the Complaint Order, seeking to continue to apply the exit fee to non-transmission owners, including non-transmission-owning load-serving entities. Additionally, SPP requested clarification that: (1) SPP is not required to rescind portions of the exit fee not challenged in the Complaint or addressed by the Commission; and (2) to the extent not addressed on rehearing, a withdrawal by a load-serving, non-transmission-owning member whose exit causes a reduction in the customer base will not be exempt from exit fee responsibility.[16] Solar Energy Industries Association, SPP Generation Market Participants,[17] and AWEA/Advanced Power Alliance filed motions to answer and answers to rehearing requests.

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[13] *Id.* P 50.

[14] *Id.* P 62.

[15] *Am. Wind Energy Ass'n and The Wind Coalition v. Sw. Power Pool, Inc.*, 168 FERC ¶ 61,006 (2019) (Order on Motion for Stay).

[16] SPP Rehearing Request at 28-29.

[17] SPP Generation Market Participants are EDF Renewables, Inc.; E.ON Climate & Renewables North America, LLC; and Enel Green Power North America, Inc.

F. SPP's Compliance Filing and Alternative FPA Section 205 Filing

9. On August 1, 2019, SPP submitted revisions to its bylaws and membership agreement to comply with the Commission's directives in the Complaint Order. SPP states that the proposed revisions do not address its two requested clarifications in its rehearing request, and SPP requests that, to the extent the Commission considers the compliance filing, it grant the requested clarifications and direct SPP to submit an additional compliance filing to address the issues identified in the clarification requests.[18]

10. Also on August 1, 2019, SPP proposed, pursuant to FPA section 205, alternative revisions to its bylaws and membership agreement, under which all SPP members (including non-transmission owners) would be subject to an exit fee consisting of two components: (1) $100,000 per member; and (2) for load-serving entities, an additional amount based on their net energy for load percentage share of SPP's long-term debts. SPP requests that, if the Commission does not grant its request for rehearing of the Complaint Order, the Commission disregard its compliance filing and instead accept its alternative section 205 filing.[19]

II. Notice of Filings and Responsive Pleadings

11. Notice of SPP's filings in Docket Nos. ER19-2522-000 and ER19-2523-000 were published in the *Federal Register*, 84 Fed. Reg. 38,963 (2019), with interventions and protests due on or before August 22, 2019.

12. Timely motions to intervene were filed in Docket Nos. ER19-2522-000 and ER19-2523-000 by: Advanced Energy Economy; American Electric Power Service Corporation; AWEA and Advanced Power Alliance; Basin Electric Power Cooperative; Cargill Power Markets, LLC; City Utilities of Springfield, Missouri; Climate + Energy Project; EDF Renewables, Inc.; Electricity Consumers Resource Council and Texas Industrial Energy Consumers (ELCON/TIEC); Enel Green Power North America, Inc.; E.ON Climate & Renewables North America, LLC; ITC Great Plains, LLC; Lincoln Electric System; Mid-Kansas Electric Company, Inc.; Nebraska Public Power District; Public Citizen, Inc.; Sierra Club; Sunflower Electric Power Corporation; Solar Energy Industries Association; Sustainable FERC Project and Natural Resources Defense Council; Westar Energy, Inc., Kansas City Power & Light Company, and KCP&L Great Missouri Operations Company; and Xcel Energy Services Inc.

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[18] SPP Transmittal, Docket No. ER19-2522-000 at 6.

[19] SPP Transmittal, Docket No. ER19-2522-000 at 1; SPP Transmittal, Docket No. ER19-2523-000 at 1-2 n.3.

13. The Kansas Corporation Commission filed notices of intervention in Docket Nos. ER19-2522-000 and ER19-2523-000. Oklahoma Gas and Electric Company filed a timely motion to intervene in Docket No. ER19-2523-000 and a motion to intervene out-of-time in Docket No. ER19-2522-000.

14. The following entities filed motions to intervene out-of-time in Docket Nos. ER19-2522-000 and ER19-2523-000: Golden Spread Electric Cooperative; Lafayette Utilities System; Oklahoma Municipal Power Authority; and Omaha Public Power District.

15. Nebraska Public Power District filed a protest to SPP's filing in Docket No. ER19-2522-000 and comments in support of SPP's filing in Docket No. ER19-2523-000. ELCON/TIEC and Public Interest Organizations[20] filed comments in support of SPP's filing in Docket No. ER19-2522-000 and a protest to SPP's filing in Docket No. ER19-2523-000. Renewable Industries[21] filed a protest and request for expedited action in Docket Nos. ER19-2522-000 and ER19-2523-000. SPP Generation Market Participants filed a protest in Docket Nos. ER19-2522-000 and ER19-2523-000. On November 27, 2019, SPP filed a motion to answer and answer to comments and protests in Docket Nos. ER19-2522-000 and ER19-2523-000. On December 11, 2019, Renewable Industries, Natural Resources Defense Council, and Sustainable FERC Project filed a motion to answer and answer to SPP's answer in Docket Nos. ER19-2522-000 and ER19-2523-000.

III. Procedural Matters

16. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure[22] prohibits answers to requests for rehearing. Accordingly, we deny AWEA/Advanced Power Alliance's, SPP Generation Market Participants', and Solar Energy Industries Association's motions and reject their answers.

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[20] 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.

[21] Renewable Industries are: AWEA; Solar Energy Industries Association; Advanced Power Alliance; and Solar Council.

[22] 18 C.F.R. § 385.713(d)(1) (2019).

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[23] the notices of intervention and timely, unopposed motions to intervene in Docket Nos. ER19-2522-000 and ER19-2523-000 serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Golden Spread Electric Cooperative's, Lafayette Utilities System's, Oklahoma Gas and Electric Company's, Oklahoma Municipal Power Authority's, and Omaha Public Power District's late-filed motions to intervene, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[24] prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's answer or the Renewable Industries, Natural Resources Defense Council, and Sustainable FERC Project answer, and will, therefore, reject them.

IV. Rehearing and Clarification Requests

A. Substantial Evidence

1. Rehearing Requests

a. Barrier to Membership

19. SPP and SPP Load Serving Entities contend that the Commission erred in finding that the exit fee is so high that it operates as a "barrier to membership."[25] SPP argues that the barrier-to-membership standard is neither appropriate nor attainable, as it could, by logical extension, eliminate all RTO/ISO exit fees. SPP asserts that any prospective RTO/ISO member might argue that it is being deterred or barred from membership by the prospect of having to assume exit fee responsibility.[26] Although SPP states that certain entities' voluntary decisions not to join SPP "may indeed confirm that SPP's fees operate, on some level, as a disincentive to membership," SPP nevertheless claims that "this alone does not establish that the exit fee acts as an unjust and unreasonable 'barrier' to

[23] 18 C.F.R. § 385.214.

[24] 18 C.F.R. § 213(a)(2).

[25] SPP Rehearing Request at 2 & n.5 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 50); SPP Load Serving Entities Rehearing Request at 2-3.

[26] SPP Rehearing Request at 14.

membership."[27] Further, SPP contends that the Commission improperly conflates barrier-to-membership entry with barrier-to-market entry.[28] SPP and SPP Load Serving Entities assert that membership is not a prerequisite to participating in SPP's Integrated Marketplace and/or taking services under the Tariff.[29] SPP asserts that a broad spectrum of non-members rely on the SPP transmission system to actively participate in the Integrated Marketplace.[30] SPP and SPP Load Serving Entities argue that the Commission's conclusion that the exit fee constitutes a barrier to membership is inappropriate because this reasoning could justify eliminating all RTO/ISO exit fees.

b. <u>Factual Record</u>

20. SPP and SPP Load Serving Entities assert that the Commission's findings are not supported by record evidence.[31] SPP and the SPP Load Serving Entities argue that the Commission gave too much weight to certain parties' allegations that the exit fee prevents them from joining SPP.[32] SPP and SPP Load Serving Entities state that many non-transmission owners are large, well-capitalized companies that cannot credibly maintain that the exit fee "prevents" them from joining SPP,[33] noting Complainants' statement that independent power producers and power marketers have invested and transacted "hundreds of millions of dollars" in SPP. SPP adds that several of the SPP Generation Market Participants have developed significant amounts of generation and actively participate in SPP's markets, and they do not allege inability to assume exit fee responsibility.[34]

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[27] *Id*. at 13.

[28] *Id*. at 3, 15.

[29] *Id*. at 15-16; SPP Load Serving Entities Rehearing Request at 14;

[30] SPP Rehearing Request at 16.

[31] *Id.* at 18; SPP Load Serving Entities Rehearing Request at 2.

[32] SPP Rehearing Request at 18; SPP Load Serving Entities Rehearing Request at 2 (citing Complaint Order, 167 FERC ¶ 61,033 at PP 53-54).

[33] SPP Load Serving Entities Rehearing Request at 2-3 & n.3; SPP Rehearing Request at 19 & n.44 (stating that E.ON and EDF individually or through their parent companies report earnings of hundreds of millions of dollars or more).

[34] SPP Rehearing Request at 19.

21. SPP Load Serving Entities point out that the exit fee amount varies with the amount of debt SPP incurs to run the markets, as well as the number of members in SPP.[35] SPP Load Serving Entities contend that the Commission cited higher fees since 2006 (when the exit fee structure was last challenged) as a changed circumstance supporting elimination of the exit fees as a barrier to membership for non-transmission owners, yet failed to account for evidence that the fees likely will decrease in the future as more members join and SPP's prior debts are paid down. SPP Load Serving Entities assert that the Commission's reasoning is "confused" and that the Commission cites no precedent for the proposition that "the costs have gone up; therefore, you are excluded from paying any of them."[36]

22. SPP Load Serving Entities state that with SPP's 95 current members, a non-transmission owner would only be responsible for 0.26 percent of outstanding SPP debt if it exited.[37] SPP Load Serving Entities assert that most of SPP's debt is attributable to establishing the Integrated Marketplace[38] and to its costs for pensions, leases, debts, and interest on debts, which are costs that no one disputes are legitimate. SPP Load Serving Entities argue that non-transmission owners benefit from their participation in the Integrated Marketplace and that SPP's debt will be paid off in six years, which will substantially reduce the current exit fee.[39] They contend that the Commission gave insufficient weight to this and other record evidence that the preexisting exit fee was just and reasonable.[40]

23. SPP Load Serving Entities also assert that the exit fee is not unduly burdensome because it is a one-time charge assessed only in the relatively rare event that a member leaves SPP, rather than an ongoing sum that must be regularly paid. SPP Load Serving

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[35] SPP Load Serving Entities Rehearing Request at 3, 12.

[36] *Id.* at 12.

[37] *Id.* at 12-13 (citing SPP Load Serving Entities Protest, Docket No. EL19-11-000, at 7 (filed Nov. 30, 2018)).

[38] Since March 2014, SPP has administered the Integrated Marketplace, which is a centralized day-ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management. The terms and conditions of the Integrated Marketplace are found in Attachment AE of the Tariff.

[39] SPP Load Serving Entities Rehearing Request at 12-13.

[40] *Id.* at 13.

Entities state that the exit fee is not a "made-up penalty,"[41] but rather collects the departing member's pro-rata share of SPP's pensions, leases, debts, and interest on debts. They claim that, under the preexisting exit fee, a transmission owner could pay an exit fee over fifty times larger than what a non-transmission owner would pay.[42]

24. Additionally, SPP claims that the Commission took contrary positions in the Complaint Order that cannot be reconciled. SPP argues that, on the one hand, the Commission observed that "some level of exit fee that does not act as a barrier to membership and is not excessive could be appropriate in SPP,"[43] yet in the same sentence it also stated that "no exit fee for non-transmission owners will result in just and reasonable rates."[44] SPP argues that the Commission cannot have it both ways.

25. SPP asserts that the Complaint Order disregards the design of SPP's exit fee structure and accepts as evidence unsubstantiated claims concerning the alleged impact of SPP's exit fees.[45] Further, SPP contends that the preexisting exit fee structure ensures that the financial obligations associated with a member's withdrawal reflect the differences between different member classes. SPP states that, under the preexisting SPP exit fee provisions, load-serving entities, for example, were assigned a greater proportion of the costs recovered through exit fees than non-load-serving entity members. SPP states that transmission owners bear an even larger exit fee burden because they are also responsible for the costs of all transmission facilities allocated to their loads prior to their withdrawal.[46] SPP Load Serving Entities similarly assert that the preexisting exit fee was structured so that SPP members who benefit substantially from the Integrated Marketplace pay their fair share of these costs if they choose to exit SPP.[47]

[41] *Id.* at 11.

[42] *Id.*

[43] *Id*. at 14 & n.32 (citing Complaint Order, 167 FERC ¶ 61,033 at P 62).

[44] *Id.*

[45] SPP Rehearing Request at 17.

[46] *Id*. at 17 & n.40 (citing Membership Agreement § 4.3.3A).

[47] SPP Load Serving Entities Rehearing Request at 3.

c. Voting Rights and Harm

26. SPP asserts that proper analysis of the reasonableness of SPP's exit fees must start with the recognition that SPP membership is voluntary.[48] SPP argues that members know, going in, that they will be required to assume financial burdens in exchange for the privileges of membership; non-members understand that by declining to assume these financial burdens, their participation in SPP stakeholder initiatives will not come with voting rights. SPP states that the Complaint Order ignores this factual distinction between members and non-members.[49]

27. SPP asserts that the Commission disregards the exit fee's purpose, which is to support the financing of SPP's operations in exchange for voting privileges.[50] SPP maintains that there is nothing in the record to support overhauling SPP's fee structure, noting that the roughly 100 current SPP members, including 52 non-transmission-owning members, evidently considered the exit fee/voting rights trade-off reasonable when they voluntarily decided to join SPP.[51]

28. In addition, SPP argues that, by exempting all but one class of market participants (i.e., transmission owners) from SPP's exit fees, the Commission eliminates the quid pro quo that is the basis for obtaining voting rights in SPP.[52] SPP contends that non-transmission owners are now eligible to become members – with full voting and other membership privileges – without having to bear the exit fee obligations assumed by transmission-owning members. SPP contends that there is virtually no discussion in the Complaint Order on why non-transmission owners should be able to obtain membership under terms and conditions that are materially different from those applicable to transmission owners.[53] SPP states that the only harm purportedly remedied by the Complaint Order is the level of participation in SPP's stakeholder process and the perceived need for "a more diverse membership and stakeholder process that takes into

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[48] SPP Rehearing Request at 13.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 15.

[53] *Id.*

account the interests of a wider spectrum of entities."[54] SPP argues that neither justification withstands scrutiny.

29. SPP asserts that the Complaint Order conflicts with the Commission's recent decision in *RTO Insider LLC v. New England Power Pool Participants Committee*.[55] SPP states that "[i]n *RTO Insider*, the Commission found that an RTO's stakeholder structure that excludes public participation in stakeholder meetings passed muster under the Commission's RTO and open access policies."[56] SPP asserts that, in the Complaint Order, the Commission found that SPP's stakeholder process, in which any entity can participate in stakeholder deliberations, regardless of membership status, is insufficient because all members equally bear a portion of the costs of establishing and operating SPP. SPP states that, consistent with *RTO Insider*, the Commission "would have no problem with SPP locking out non-members from its stakeholder process, as long as SPP does not attempt to require all of its members to help backstop its financial obligations."[57]

30. SPP adds that the Commission makes no attempt to document the harm that it attributes to the participation rights of non-members.[58] SPP and SPP Load Serving Entities emphasize that, while non-members cannot vote on SPP policies or in Board of Directors elections, they can attend SPP stakeholder meetings, provide input in the stakeholder process, and participate in discussions before the Board of Directors on an equal basis with SPP members.[59] SPP Load Serving Entities argue that this means non-members can advocate for policies, procedures, and even construction planning, which gives them a direct stake in the long-term obligations SPP incurs.[60]

31. SPP argues that the Commission does not establish or even claim that SPP's exit fee structure has resulted in the development of SPP polices or the appointment of SPP

[54] *Id*. at 15 & n.35 (quoting Complaint Order, 167 FERC ¶ 61,033 at PP 58, 65).

[55] *Id*. at 16 & n.36 (citing *RTO Insider LLC v. New England Power Pool Participants Committee*, 167 FERC ¶ 61,021 (2019) (*RTO Insider*)).

[56] *Id*.

[57] *Id*.

[58] *Id*. at 15.

[59] SPP Load Serving Entities Rehearing Request at 14-15.

[60] *Id*. at 14.

directors adverse to non-transmission owners.[61] SPP contends that, while it may be true that the fee exemption may broaden the spectrum of SPP members, the Commission's directive nevertheless lacks an essential predicate, namely a finding supported by substantial evidence that SPP's current membership lacks diversity and/or operates to the disadvantage of a particular sector of market participants.[62] SPP Load Serving Entities assert that the Commission downplayed evidence that SPP's membership has grown and diversified with the current exit fee in place.[63] SPP Load Serving Entities object to the Commission's finding that the exit fee prevents smaller or new market entrants from becoming SPP members simply because some of these entities said so.[64] SPP Load Serving Entities argue that they are unaware of any other record evidence on the size of SPP members, but several of its members that are not large have assumed the responsibility of SPP membership. SPP Load Serving Entities state there is no basis for assuming that all non-transmission owners are small and lack financial resources and that all transmission owners are large and can easily bear increased financial burdens.[65] SPP Load Serving Entities argue that the Commission discusses smaller entities in an attempt to show that the exit fee is a barrier for those who have not joined SPP but fails to recognize that many small entities are members of SPP. SPP Load Serving Entities argue that the Complaint Order will unfairly saddle these small members with additional responsibility for costs shifted from non-transmission owners.

2. Commission Determination

32. We deny rehearing. As discussed below, we affirm the Commission's finding, based on substantial evidence in the record, that SPP's preexisting membership exit fee, as applied to non-transmission owners, is unjust and unreasonable because it "creates a

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[61] SPP Rehearing Request at 16.

[62] *Id*. at 16-17 & nn.34, 37 (citing *Sithe/Indep. Power Partners, L.P. v. FERC*, 165 F.3d 944, 948 (D.C. Cir. 1999); *Office of Consumers' Counsel*, 783 F.2d 206, 227 (D.C. Cir. 1986); *Pub. Serv. Comm'n of N.Y. v. FERC*, 813 F.2d 448, 465 (D.C. Cir. 1987); *Gen Chem. Corp. v. U.S.*, 817 F.2d 844, 857 (D.C. Cir. 1987)).

[63] SPP Load Serving Entities Rehearing Request at 2, 13 (citing SPP Load Serving Entities Protest at 5, showing increases in membership). SPP Load Serving Entities state that independent power producers have increased from two to 15 in SPP, and they note the addition of "numerous other non-traditional transmission owners." *Id*. at 13.

[64] *Id*.

[65] *Id*. at 13.

barrier to SPP membership for non-transmission owners and because it appears to be excessive based on the record before us."[66]

a. Barrier to Membership

33. We continue to find that SPP's preexisting exit fee is no longer just and reasonable for non-transmission owners because it is so high that it creates a barrier to membership and is excessive as a means for ensuring the stability of SPP's membership and members' financial commitment.[67]

34. SPP and SPP Load Serving Entities misunderstand the role that the Commission's conclusion that the exit fee has created a barrier to membership played in its determination that SPP's preexisting exit fee is no longer just and reasonable. The Commission's finding that the exit fee was a barrier to membership was based on record evidence showing that the magnitude of the exit fee for non-transmission owners has grown substantially since 2006, the current high level of the exit fee, as well as attestations from several parties that the exit fee has prevented them from becoming SPP members.[68] In light of this evidence, the Commission concluded that the exit fee was high enough to create a barrier to membership for non-transmission owners. The Commission also considered whether an exit fee for non-transmission owners was needed to meet the objectives that the Commission has found reasonable in setting an exit fee. These objectives include avoiding cost shifts, maintaining stability in RTO/ISO membership, and ensuring members have a financial commitment in the RTO/ISO.[69] The Commission found that an exit fee for non-transmission owners was not needed to ensure financial solvency or avoid cost shifts, and was excessive as a means of ensuring stability in membership and members' financial commitment.[70] While the Commission acknowledged that "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."[71] Based on both the barrier

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[66] *See* Complaint Order, 167 FERC ¶ 61,033 at P 49.

[67] *See id.* P 51.

[68] *Id.* P 57.

[69] *See id*. P 50.

[70] *See id*. PP 59-62.

[71] *Id.* P 62. *See also* 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26 ("Like application and annual membership fees, withdrawal fees should not be so high as to create a barrier to membership.").

to membership finding and its analysis of whether the exit fee was justified based on the objectives of an exit fee, the Commission concluded that SPP's exit fee for non-transmission owners was unjust and unreasonable.[72] Contrary to SPP and SPP Load Serving Entities' contentions, the Commission's barrier to membership conclusion does not support eliminating all RTO/ISO exit fees, because, as discussed in the Complaint Order, an exit fee for transmission owners is justified on the grounds that it ensures the RTO/ISO is able to meet its financial obligations and avoid cost shifts resulting from a reduction of the customer base paying the administrative fee.[73]

35. Although in the Complaint Order the Commission acknowledged its previous finding that an exit fee can spur prospective members to take membership seriously, helping provide stability and avoiding membership volatility, the Commission has also previously determined that an exit fee "must not be so high that it becomes a barrier to membership."[74] The Commission observed that "there is no specific number at which an exit fee becomes high enough to become a barrier to entry to membership."[75] However, the Commission nevertheless reasonably concluded, based on record evidence, that an exit fee that is, at its lowest record estimate, $621,851, could place a significant burden on smaller entities or new market entrants[76] and is excessive for non-transmission owners.[77] Thus, we disagree with the rehearing requests' arguments that, under the Commission's rationale, any dues or fee amount would present a barrier to membership.[78] Rather, the Commission determined that only an excessive exit fee constitutes such a barrier.

36. Additionally, contrary to SPP's assertion,[79] the Commission explained why the exit fee was excessive and a barrier for non-transmission owners, as well as why it is

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[72] *Id.* P 50.

[73] *Id.* P 60.

[74] *Id*. P 62 (citing 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26) ("Like application and annual membership fees, withdrawal fees should not be so high as to create a barrier to joining SPP").

[75] *Id*. P 53.

[76] *Id*.

[77] *Id*. P 59.

[78] *See, e.g.*, SPP Rehearing Request at 14.

[79] *See id*. at 15.

reasonable for exit fee responsibility to differ between transmission owners and non-transmission owners.[80] The Commission explained that, although transmission owners paid a higher exit fee than non-transmission owners under the preexisting exit fee, the exit fee had increased and become a barrier to membership for non-transmission owners.[81] In addition, the Commission explained how a non-transmission owner's withdrawal from SPP would not have the same impact as a transmission owner's withdrawal because, unlike a transmission owner, a non-transmission owner does not have transmission assets to withdraw and usually does not reduce the customer base paying the administrative fee[82] when it exits.[83]

37. Furthermore, in reaching its determination, the Commission reasoned that it was not necessary to charge non-transmission owners an exit fee to ensure SPP recovers its costs or services its debt or to guarantee that withdrawing members do not increase remaining members' financial obligations. SPP has chosen to recover its costs and service its debt on an ongoing basis through an administrative fee paid by all transmission service customers.[84] To the extent that SPP is concerned that some entities are escaping responsibility for costs incurred on their behalf to administer SPP's markets and services, it could seek to expand the types of entities that pay the administrative fee beyond transmission customers (e.g., by charging an administrative fee or fees to all market

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[80] *See* Complaint Order, 167 FERC ¶ 61,033 at PP 60-61.

[81] *Id*. P 69 (recognizing that, even though entities with load paid a higher amount under the preexisting exit fee, "the exit fee for non-transmission owners can still be high enough . . . to create a barrier to membership for some non-transmission owners even if transmission owners pay a higher exit fee").

[82] SPP assesses a tariff administration fee under Schedule 1-A of its Tariff to all transmission customers based on their usage of the transmission system. The Schedule 1-A administrative fee recovers SPP's annual costs related to administering its Tariff, including all of the administrative costs of running SPP's market and operating its transmission system. SPP Tariff, Schedule 1-A.

[83] Complaint Order, 167 FERC ¶ 61,033 at PP 60-61.

[84] *Id*. P 60.

participants).[85] As explained in the Complaint Order,[86] removing the exit fee for non-transmission owners will not affect SPP's ability to recover its costs and pay its debts, because doing so does not affect the number or composition of entities that currently pay SPP's administrative fees. As the rehearing requests point out, members rarely exit SPP, so the exit fee functions as a backstop to the primary method of recovering costs (i.e., the annual administrative fee).

38. We further disagree with SPP's assertion that the Commission mistakenly equated barrier to membership with barrier to the SPP market.[87] In the Complaint Order, the Commission noted that non-members may participate in SPP's Integrated Marketplace;[88] neither the Complaint nor the Complaint Order addresses barriers to the market.

b. Factual Record

39. We continue to find that the Commission's determination was based on substantial evidence.[89] As the Commission explained in the Complaint Order, several entities stated that the exit fee prevents them or their organizations from becoming SPP members.[90] Further, many of these entities also stated that they are members in other RTOs/ISOs but are not SPP members due to its exit fee.[91] As the Commission explained, "[t]hese

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[85] Indeed, we note that SPP has proposed to unbundle the current Schedule 1-A administrative fee into four separate rates in an FPA section 205 filing that is currently pending before the Commission. *See* SPP's Submission of Tariff Revisions to Unbundle Schedule 1-A Tariff Administration Services to Include Market Services, Docket No. ER20-418-000 (filed Nov. 19, 2019).

[86] Complaint Order, 167 FERC ¶ 61,033 at PP 60-61.

[87] SPP Rehearing Request at 3, 15-17.

[88] Complaint Order, 167 FERC ¶ 61,033 at P 4.

[89] *See Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 365 (D.C. Cir. 2003) (stating that substantial evidence "requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence") (quoting *FPL Energy Me. Hydro LLC v. FERC*, 287 F.3d 1151, 1160 (D.C. Cir. 2002). "Substantial evidence 'is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 54 (D.C. Cir. 2014) (*South Carolina*) (quoting *Murray Energy Corp. v. FERC*, 629 F.3d 231, 235 (D.C. Cir. 2011)).

[90] Complaint Order, 167 FERC ¶ 61,033 at P 54.

[91] *Id*.

comments are evidence that the exit fee is creating a barrier to non-transmission-owning entities becoming members of SPP,"[92] even for entities that could technically afford to pay the exit fee, as the rehearing requests acknowledge.[93] Thus, we affirm, based on the record in this proceeding, that an exit fee of at least approximately $621,851 could place a significant burden on non-transmission owners and other smaller entities or new market entrants.[94] Furthermore, and significantly, the rehearing requests ignore the fact that the Commission's decision did not rely on these comments alone but also on changes in SPP that have transpired since the exit fee was upheld in previous Commission orders.[95] Specifically, the Commission explained how, since the exit fee was last examined, SPP has evolved as an RTO, greatly expanded its services, increased its footprint, and financed its market expansion and services by incurring additional long-term debt.[96] Although the Commission noted that the long-term debt reflected in the exit fee has decreased since it reached its high point at year-end in 2012, the Commission also pointed out that SPP's long-term debt as of year-end 2017 nevertheless remained eight times higher than its long-term debt in 2006, the last time the Commission ruled on exit fees in SPP.[97] Accordingly, the Commission supported its finding that the exit fee is creating a barrier to membership for non-transmission owners based on the following record evidence: (1) the magnitude of the exit fee's increase; (2) the current high level of the exit fee; and (3) the comments from entities in the record stating that the exit fee prevented them from becoming SPP members.[98]

40. Also, contrary to SPP Load Serving Entities' contentions, the Commission considered how the exit fee changes as factors in the exit fee formula, such as the amount of SPP's long-term debt, fluctuate over time.[99] For example, the Commission expressly stated that "the size of a withdrawing member's exit fee is based on the amount of SPP's

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[92] *Id*.

[93] *See* SPP Load Serving Entities Rehearing Request at 2 & n.3; SPP Rehearing Request at 19 & n.44.

[94] *See* Complaint Order, 167 FERC ¶ 61,033 at P 53.

[95] *Id*. PP 55-57.

[96] *Id*. P 56.

[97] *Id*.

[98] *Id*. PP 52-57.

[99] *See id*. PP 56-57 (noting that SPP's long-term debt has decreased since it reached its high point at year-end 2012).

long-term financial obligations at the time of the member's withdrawal."[100] However, the possibility that the exit fee might increase or decrease in the future does not invalidate the Commission's finding that, currently, the exit fee is so high that it is an unjust and unreasonable barrier to non-transmission owner membership. Hence, the Commission appropriately took action to eliminate application of the preexisting exit fee to non-transmission owners.[101] Moreover, in the Complaint Order, the Commission considered and was not persuaded by the argument that the exit fee may decrease as SPP pays down its debt, stating that "[i]t would be speculative to attempt to predict whether and to what extent SPP's financial obligations will decrease or increase in the future and whether SPP's financial obligations might decrease to an extent that the exit fee would no longer be a barrier to membership or excessive."[102]

41. Further, it is irrelevant that no parties have contested the reasonableness of the specific types of costs included in the exit fee,[103] as these costs were not the subject of the Complaint. Rather, the Complaint challenged, and the Commission addressed, the categories of customers that should pay the exit fee. Neither does the fact that the exit fee is not an ongoing sum, but a potential one-time payment, prevent the exit fee from being a barrier to SPP membership. Before joining SPP, potential members still must consider whether they would be able to afford the exit fee, should they choose to leave. Moreover, even if SPP Load Serving Entities are correct that the exit fee has not prevented all smaller non-transmission owners from joining SPP, or prevented SPP from becoming more diverse, the exit fee could still be excessive and a barrier to entry for others.[104]

42. Finally, we emphasize that, while the Commission found that an exit fee of zero for non-transmission owners is just and reasonable, it also found that some level of exit fee that does not act as a barrier to membership and is not excessive could be appropriate

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[100] *See id*. P 57.

[101] 16 U.S.C. § 824e(a) (2018) (providing that whenever the Commission "shall find that any rate" is "unjust [or] unreasonable," then the Commission "shall determine the just and reasonable rate," and impose "the same by order."). *See also FERC v. Elec. Power Suppliers Ass'n,* 136 S. Ct. 760, 773-774 (2014) ("[I]f FERC sees a violation of that standard, it must take remedial action.") (*EPSA*).

[102] Complaint Order, 167 FERC ¶ 61,033 at P 70.

[103] *See* SPP Load Serving Entities Rehearing Request at 12.

[104] *See, e.g.,* Complaint Order, 167 FERC ¶ 61,033 at P 53 & n.125 (citing Public Interest Organizations Comments at 10; Barnett Aff. at ¶ 4 (stating that an exit fee of $700,000 would exceed its annual budget and that it would be irresponsible for it to incur a potential liability of such an amount)).

in SPP.[105] We disagree with SPP's statement that the Commission took contrary positions that cannot be reconciled. The Commission explained that "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," but that "the exit fee must not be so high as to create a barrier to membership."[106] The Commission's statement reflects the axiom that there can be more than one just and reasonable rate.[107] Accordingly, we reiterate that "some level of exit fee that does not act as a barrier to membership and is not excessive" could also be just and reasonable.[108]

c. Voting Rights and Harm

43. On the one hand, the rehearing requests stress the importance of voting rights, asserting that the exit fee is an essential quid pro quo for obtaining voting rights and ensuring members have a financial stake in SPP to guarantee their responsible participation. At the same time, they attempt to downplay the role of voting rights in directing SPP policies. They contend that the fact that entities that could afford to pay the exit fee are nevertheless unwilling to join SPP indicates that voting rights in SPP are simply not that valuable to those entities. We disagree that the choice of some entities not to join SPP suggests that voting rights are unimportant. Members vote for Board Directors and help shape SPP policies.[109] Accordingly, the Commission correctly determined that, when the exit fee had become so high that it prevented non-transmission owners from joining SPP – essentially making voting rights cost prohibitive for non-transmission owners – it had become excessive and a barrier to membership. While an exit fee may serve the function of ensuring that members have a financial stake in SPP, it cannot be so high that it becomes a barrier to membership.[110] And, while an exit fee can serve the function of ensuring financial commitment to an RTO/ISO, it is not necessary

[105] *See* Complaint Order, 167 FERC ¶ 61,033 at P 62.

[106] *See id*.

[107] *See City of Bethany v. FERC*, 727 F.2d 1131, 1136-37 (D.C. Cir. 1984); *see also ISO New England Inc. & New England Power Pool*, 153 FERC ¶ 61,223, at P 90 (2015) ("[I]t is well-established that there can be more than one just and reasonable rate.").

[108] *See* Complaint Order, 167 FERC ¶ 61,033 at P 62.

[109] *Id*. P 58.

[110] 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26.

for an RTO/ISO to have an exit fee for this reason.[111] Indeed, no other RTO/ISO has an exit fee for non-transmission owners. Therefore, we do not consider an exit fee to be an essential quid pro quo for membership. To the extent that SPP desires to apply an exit fee to non-transmission owners to ensure members' financial commitment (or to achieve other appropriate objectives), the exit fee cannot be excessive or a barrier to membership.[112]

44. SPP is also incorrect that the Commission was required to find "that SPP's current membership lacks diversity and/or operates to the disadvantage of any particular sector of market participants"[113] in order to grant the Complaint. As discussed above, the Complaint Order found that the exit fee is excessive and a barrier to membership for non-transmission owners, based on comments, the magnitude of the exit fee increase since the Commission last considered the fee, and the exit fee amount.[114] Furthermore, the Commission found that the exit fee's barrier to membership caused actual harm because non-transmission owners were deprived of the various benefits of SPP membership, including voting rights, the opportunity for increased participation in the SPP stakeholder process, and influence over the direction of SPP initiatives.[115] SPP also argues that the Commission did not claim or establish that SPP's exit fee structure had resulted in the development of SPP policies, or the appointment of Board Directors, that were adverse to non-transmission owners. However, such a finding is not necessary in order to establish that the exit fee has harmed non-transmission owners by acting as a barrier to membership. The Commission has the authority and obligation to prevent foreseeable

[111] Complaint Order, 167 FERC ¶ 61,033 at P 62 ("[W]e do not find that the potential benefits provided by an exit fee for non-transmission owners are necessary to ensure just and reasonable rates in an RTO/ISO.").

[112] *See infra* P 124 (describing features of a reasonable exit fee for non-transmission owners).

[113] *See* SPP Rehearing Request at 13.

[114] *Id*. at 17 & nn.34, 37 (citing *Sithe/Indep. Power Partners, L.P.*, 165 F.3d at 948; *Pub. Serv. Comm'n of N.Y.*, 813 F.2d at 465; *Gen Chem. Corp.*, 817 F.2d at 857).

[115] Complaint Order, 167 FERC ¶ 61,033 at P 58 & n.136.

harm.[116] Additionally, contrary to SPP's contention,[117] the Commission does not have to document the harm attributable to the quality of non-member's rights but rather the harm non-members experience when the exit fee prevents them from engaging in the privileges of full membership.

45. Furthermore, we disagree with SPP's assertion that *RTO Insider* conflicts with the Complaint Order.[118] In *RTO Insider*, the Commission dismissed a complaint seeking to eliminate a New England Power Pool (NEPOOL) policy that prohibited the press and general public from attending and reporting on NEPOOL stakeholder meetings.[119] In the Complaint Order, the Commission did not evaluate non-members' participation in SPP's stakeholder process. Therefore, SPP's effort to find support in *RTO Insider* is misplaced. We also see no conflict between allowing an RTO to exclude the general public and press from stakeholder meetings (*RTO Insider*) and ensuring that an exit fee is not a barrier to membership (Complaint Order).

B. Rational Explanation

1. Rehearing Requests

a. Precedent

46. SPP and SPP Load Serving Entities contend that the Commission failed to adhere to its own precedent or provide a rational explanation for its departure from precedent.[120] SPP asserts that, while the Commission acknowledges that the Complaint Order conflicts with previous Commission rulings, it nevertheless finds that new evidence and circumstantial changes now support accepting arguments that SPP states the Commission

[116] 16 U.S.C. §§ 824d, 825e (2018); *EPSA*, 136 S. Ct. 760, 774 ("FERC has the authority – and, indeed, the duty – to ensure that rules or practices 'affecting wholesale rates' are just and reasonable."); *see also NextEra Energy Resources, LLC v. FERC*, 898 F.3d 14, 23 (D.C. Cir. 2018) ("We defer to the Commission's reasoning when it relies on substantial evidence to make a predictive judgment in an area in which it has expertise, such as in the power markets.") (citing *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 259, 260 (D.C. Cir. 2007)).

[117] *See* SPP Rehearing Request at 13.

[118] *See id*. at 16 n.36.

[119] *RTO Insider v. NEPOOL*, 167 FERC ¶ 61,021 at PP 44-52.

[120] SPP Rehearing Request at 19; SPP Load Serving Entities Rehearing Request at 16.

previously rejected.[121] SPP emphasizes that the Commission previously rejected "barrier" allegations identical to those presented here, noting that the prospect of more members was not grounds for adjusting SPP's fees, which the Commission held must be "high enough to ensure that prospective members are serious and have enough of an interest in the RTO to warrant monetary costs of membership."[122] SPP Load Serving Entities object that the Commission never acknowledges that it is eliminating the exit fee's function of ensuring that a prospective member has a sufficient level of interest in SPP before becoming a member.[123]

47. SPP states that the Commission also cites as new evidence and changed circumstances SPP's expansion of services and the associated issuance of additional long-term debt.[124] SPP insists that, far from justifying a generic, non-transmission owner class exemption from SPP's exit fees, these developments reinforce what the Commission previously determined to be the essential purpose of exit fees—that is, to ensure "stability and avoid volatility in the membership that pay for the costs of the RTO" and to recognize the benefits that an entity derives from RTO membership and the costs that SPP must incur to provide those benefits.[125] SPP argues that the Commission also failed to explain how greater benefits, made possible through SPP's assumption of additional debt, support abandoning the rationale that prompted the Commission to reject exit fee exemptions previously.[126] SPP argues that the Complaint Order is illogical and internally inconsistent because it observes that SPP's debt has grown substantially, while directing changes that reduce the pool of members responsible for paying that debt.[127]

48. SPP contends that no new evidence or changed circumstance can justify exempting non-transmission owners from exit fees under the guise of promoting "a more

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[121] SPP Rehearing Request at 19-20 & n.46 (citing Complaint Order, 167 FERC ¶ 61,033 at P 51).

[122] *Id*. at 20 & n.47 (citing 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26); *see also* SPP Load Serving Entities Rehearing Request at 15 (citing Complaint Order, 167 FERC ¶ 61,033 at P 59).

[123] SPP Load Serving Entities Rehearing Request at 16.

[124] SPP Rehearing Request at 20 & n.49 (citing Complaint Order, 167 FERC ¶ 61,033 at PP 55-57).

[125] *Id*. at 20-21 & n.50 (quoting 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26).

[126] *Id*. at 21 & n.51 (citing *Gen Chem. Corp*., 817 F.2d at 857).

[127] *Id*. at 21 & n.51.

diverse [SPP] membership" and/or a stakeholder process that accounts for the "interests of a wider spectrum of entities."[128] SPP argues that virtually identical diversity-based challenges to SPP's membership were raised in prior proceedings and found to be without merit. The Commission specifically determined that SPP's governance and membership struck a fair balance among widely diverse interests and facilitated "a full-range of viewpoints [to] inform [SPP's] decision making."[129] SPP alleges that the only "new evidence" and/or "changed circumstances" offered with respect to membership diversity showed that SPP has become more diverse, not less.[130] SPP asserts that the Complaint Order fails to acknowledge this evidence.

b. Cost Shifts

49. SPP argues that the Commission failed to reconcile the Complaint Order's elimination of the exit fee with the Commission's earlier cost shift concerns.[131] SPP states that, when it last wrestled with the issue of exit fee exemptions, the Commission held that "withdrawal fees help ensure that cost recovery formerly allocated to and the responsibility of members through the payment of their membership fees is not shifted to the remaining members."[132] SPP states that the Complaint Order nonetheless found the reallocation of up to $32 million of exit fee liabilities to be "appropriate" based on "the difference between the potential effect of a transmission owner's withdrawal and a non-transmission owner's withdrawal on the [SPP] customer base."[133] SPP argues that this difference cannot explain the Commission's shift in position because this difference has always existed. SPP states that, if anything, the discriminatory impact, in terms of the magnitude of cost shifts, has increased since the Commission last considered this issue.[134]

50. SPP argues that the Commission lacks legal or factual support for its conclusion that retaining the exit fee for non-transmission-owning members is not necessary to

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[128] *Id*. at 21 & n.52 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 65).

[129] *Id*. at 21 & n.53 (quoting *Sw. Power Pool, Inc*., 133 FERC ¶ 61,069, at P 44 (2010)).

[130] *Id*. at 22 & n.54 (citing Answer to Complaint at 6-7).

[131] *Id*. at 22 & n.56 (quoting *Sw. Power Pool, Inc*., 108 FERC ¶ 61,003, at P 36 (2004), *order on reh'g*, 2005 Exit Fee Order, 110 FERC ¶ 61,138).

[132] *Id*. at 22 & n.57 (quoting 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26).

[133] *Id*. at 22 & n.58 (citing Complaint Order, 167 FERC ¶ 61,033 at P 68).

[134] *Id*. at 22 & n.59.

"ensure withdrawing members do not leave increased responsibility for SPP's financial obligations on remaining members."[135] SPP states that the basis for this conclusion is unclear and inconsistent with the Commission's previous findings. SPP states that, if non-transmission-owning members are now exempt from exit fees, SPP necessarily will be required to spread the same financial obligations over the remaining transmission-owning members, which increases the cost responsibility of those remaining members and leaves less than half of the SPP membership responsible for backstopping 100 percent of SPP's financial obligations.[136]

51. SPP Load Serving Entities state that exempting non-transmission-owning members from the exit fee results in an undisputed cost shift of \$16–\$32 million.[137] SPP Load Serving Entities explain that SPP structured the current exit fee to proportionately allocate the relative cost responsibility for pensions, leases, debts, and interest on debts, and that the Commission previously accepted this design in various prior proceedings. SPP Load Serving Entities state that the Commission's directive to eliminate the exit fee for non-transmission owners results in allocating 100 percent to transmission owners and zero to non-transmission owners as their respective *pro rata* shares.[138]

52. SPP Load Serving Entities assert that a centralized market like SPP must incur and recover costs for pensions, leases, debts, and interest on debts. SPP Load Serving Entities also assert that, as Complainants acknowledge, non-transmission owners benefit significantly from SPP's services and administration of markets that facilitate non-transmission owners' transactions. SPP Load Serving Entities state that some non-transmission owners, including generators, avail themselves of other non-market services, such as generator interconnection, and that costs for "pensions, leases, debts and interest on debts" are incurred on behalf of the SPP staff who support these non-market services.[139] SPP Load Serving Entities state that, given SPP's costs and the non-transmission owners' use of SPP markets and services, non-transmission owners undoubtedly cause a portion of SPP's costs to operate and administer markets. SPP Load Serving Entities note that non-transmission-owning members can advocate for changes in various non-market processes, such as generator interconnection and integrated transmission planning processes, which causes SPP to incur expenses; thus, SPP Load

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[135] *Id*. at 19-20 & n.60 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60).

[136] *Id*. at 23.

[137] SPP Load Serving Entities Rehearing Request at 19 (citing Complaint Order, 167 FERC ¶ 61,033 at P 68).

[138] *Id*.

[139] *Id*. at 20.

Serving Entities assert, an exit fee helps ensure such participants are properly committed. SPP Load Serving Entities argue that, as participants in SPP markets, non-transmission owners are responsible for their share of these costs associated with providing the market platform.[140] SPP Load Serving Entities state that allowing non-transmission owners to withdraw without any financial liability after persuading SPP to incur new liabilities and obligations ignores the principles of cost causation and will lead to cost shifts among members.[141]

53. Highlighting the Commission's statement that, going forward, SPP may need to collect, through other administrative fees, the costs that non-transmission owners will no longer be paying,[142] SPP Load Serving Entities fault the Commission for failing to direct any related process or condition its grant of the Complaint on addressing these cost shifts. SPP Load Serving Entities argue that the Commission erred by not ordering costs that will no longer be paid by non-transmission owners to be collected in administrative fees.[143] Thus, SPP Load Serving Entities assert that the Commission's directive, which shifts the non-transmission owners' share of debt and other costs wholly to the transmission owners, is improper and lacks record support.

54. SPP Load Serving Entities also contend that reallocating costs to transmission owners is an unlawful cost shift[144] that violates the basic notion of cost causation because it fails to rudimentarily match costs borne by transmission owners with the benefits in a roughly commensurate manner.[145] Noting that one of the purposes of the SPP exit fee is to avoid costs shifts, SPP Load Serving Entities argue that the Commission mistakenly asserts that eliminating the exit fee for non-transmission owners will avoid costs shifts to remaining members.[146] SPP Load Serving Entities state that the Commission admits that there will be a shift in exit fee responsibility and that transmission owners will pay higher exit fees. SPP Load Serving Entities note that the Commission nevertheless finds this appropriate "given the difference between the potential effect of a transmission owner's withdrawal and a non-transmission owner's withdrawal on the customer base that pays

[140] *Id*. at 10-11.

[141] *Id*. at 15.

[142] *Id*. at 20 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60 & n.140).

[143] *Id*. at 24 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60 & n.140).

[144] *Id*. at 21.

[145] *Id*. at 20.

[146] *Id*. at 20 (citing Complaint Order, 167 FERC ¶ 61,033 at PP 59, 64).

SPP's administrative fee."[147] SPP Load Serving Entities assert that this is the wrong standard because the courts have held that the Commission must match any shifting of costs such that the shifted costs are at least roughly commensurate with the estimated benefits.[148] SPP Load Serving Entities argue that completely shifting to transmission owners the exit fee costs previously borne by non-transmission owners does not confer any additional benefits to the transmission owners; rather, SPP Load Serving Entities contend that it is simply a cost shift with no benefits.

55. SPP Load Serving Entities assert that the cost shift created by the elimination of the preexisting exit fee for non-transmission owners gives non-transmission owners preferential treatment and discriminates against transmission owners, in violation of the FPA.[149] SPP Load Serving Entities state that transmission owners and non-transmission owners are similarly situated with respect to causing SPP to incur long-term financial obligations, yet the Commission treats them very differently. SPP Load Serving Entities state that the fact that transmission owners have customers while non-transmission owners allegedly do not is irrelevant when it comes to the costs collected through the exit fee. SPP Load Serving Entities assert that SPP's transmission owners cannot be required to sponsor non-transmission owners, pay their costs, and continue paying them long after the non-transmission owners have left SPP.

c. <u>Governance</u>

56. SPP Load Serving Entities assert that, whereas the Commission previously accepted SPP's exit fee and upheld it despite various challenges,[150] now the Commission has changed SPP's governance without sufficient record support. SPP argues that the Complaint Order affects SPP governance because it is intended to increase the number of non-transmission-owning members. SPP Load Serving Entities assert that the Commission has historically allowed RTOs to tailor their rules and fees based on their respective regional considerations,[151] and SPP chose its exit fee based on extensive stakeholder processes, balancing factors including the number and type of SPP members

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[147] *Id*. at 21 (citing Complaint Order, 167 FERC ¶ 61,033 at P 68).

[148] *Id*. (citing *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 500, 505 (5th Cir. 2016) (internal citations omitted); *South Carolina*, 762 F.3d at 83).

[149] *Id*. at 22 (citing 16 U.S.C. §§ 824d, 824e).

[150] *Id*. at 17 (citing 2005 Exit Fee Order, 110 FERC ¶ 61,138; 2005 RTO Order, 113 FERC ¶ 61,014; 2006 Exit Fee Order, 114 FERC ¶ 61,273).

[151] *Id*. at 17 (citing *N.Y. Indep. Sys. Op., Inc.*, 140 FERC ¶ 61,140, at P 22 (2012)).

and the allocation of administrative fees.[152] SPP Load Serving Entities assert that the Complaint Order disrupts SPP's governance structure without evaluating the consequences. Noting that the Commission expressly refrained from ordering specific revisions to SPP's governing documents because they were not "adequately supported" in the record, SPP Load Serving Entities argue that the Commission should not be allowed to accomplish indirectly what it acknowledges it may not accomplish directly due to lack of record support.[153]

2. Commission Determination

57. We deny rehearing. In the Complaint Order, the Commission justified its departure from precedent; explained why the cost shifts, if any, were reasonable and consistent with cost causation; and showed how its directive to eliminate the exit fee for non-transmission owners did not directly or indirectly change SPP governance. We affirm the Commission's findings in the Complaint Order, as we discuss below.

a. Precedent

58. The Commission may depart from precedent if it rationally explains its decision,[154] drawing a connection between the facts found and the choices made.[155] Here, contrary to SPP and SPP Load Serving Entities' contentions, the Commission explained how circumstances have changed since the exit fee was last upheld, rendering the exit fee no longer just and reasonable for non-transmission owners.[156] While the Commission previously rejected challenges to SPP's exit fee, the Commission did so on the basis that the challengers had not provided sufficient evidence that the exit fee was

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[152] *Id*. (citing *Sw. Power Pool, Inc*., 108 FERC ¶ 61,003 (2004)).

[153] *Id*. at 18 (citations omitted).

[154] *See, e.g.*, *NEPGA v. FERC*, 881 F.3d 202, 201-211 (D.C. Cir. 2018) (citing *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) ("It is textbook administrative law that an agency must provide[ ] a reasoned explanation for departing from precedent or treating similar situations differently.") (internal citation and quotation marks omitted) (alteration in original).

[155] *See Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

[156] *See* Complaint Order, 167 FERC ¶ 61,033 at PP 51-58. *See also NextEra*, 898 F.3d at 22 (holding that the Commission sufficiently distinguished precedent when the Commission weighed the relevant factors anew and explained why circumstances differed from prior proceedings).

excessive or created a barrier to membership.[157] Indeed, when SPP previously attempted to waive certain components of the exit fee for various member groups, the Commission explicitly left open the possibility that SPP could exempt certain member groups from withdrawal fees when it "rejected SPP's [filing] *without prejudice* to SPP filing a fully supported exemption proposal clearly defining the criteria" for the exemption.[158]

59. In contrast to previous occasions when the Commission examined the exit fee, in the instant proceeding there is substantial record evidence, as discussed above, that supports the determination that the exit fee creates a barrier to membership and is excessive for non-transmission owners. SPP originally designed its exit fee when it was a tight power pool with a smaller membership largely composed of vertically-integrated utilities, and when its debts and services were relatively limited. However, as the Commission explained in the Complaint Order, since that time, SPP experienced sweeping changes, including the establishment of the Integrated Marketplace and a significant expansion of its transmission footprint.[159] SPP assumed more long-term financial obligations and now provides a greater variety of RTO services, which have increased both the magnitude and membership-deterring effect of the exit fee.[160]

b. Cost Shifts

60. We continue to find that eliminating the preexisting exit fee for non-transmission-owning SPP members does not cause unduly discriminatory or preferential cost shifts. The principle of cost causation "requires that all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[161] As the Commission found

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[157] *See, e.g.*, 2005 Exit Fee Order, 110 FERC ¶ 61,138 at PP 12-13 (finding that a party seeking rehearing had not provided evidence that the financial obligations about which it complained were excessive or would preclude end-users from joining SPP); 2005 RTO Order, 113 FERC ¶ 61,014 at PP 9, 13, 23 (finding that protestors had not provided evidence that the financial obligations were excessive or would preclude any entity from joining the RTO); 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 26 (rejecting a challenge to the per capita components of the exit fee formula because there was insufficient evidence that the exit fee created a barrier to membership).

[158] 2005 RTO Order, 113 FERC ¶ 61,014 at P 22 (emphasis added).

[159] Complaint Order, 167 FERC ¶ 61,033 at P 55.

[160] *Id*. PP 55-57.

[161] *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C. Cir. 2004).

in the Complaint Order, exempting non-transmission owners from the exit fee does not unfairly shift costs to remaining SPP members because (1) non-transmission owners have less of an impact on the system when they exit than transmission owners do; and (2) SPP can still recover these costs through administrative fees.[162]

61. Cost causation is typically analyzed by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.[163] Here, the key question is whether non-transmission owners and transmission owners are similarly situated in terms of the impacts of their respective withdrawals on the SPP transmission system and customer base. We continue to find that they are not similarly situated.[164] As the Commission explained in the Complaint Order, when a transmission owner withdraws, it takes its transmission facilities and customers with it, decreasing the size of and potential use of the transmission system, and diminishing SPP's ability to recover its costs and service its debts.[165] By contrast, when a non-transmission owner withdraws from an RTO/ISO, it does not have the same impact because it does not have transmission assets to withdraw and generally does not reduce the customer base paying the administrative fee.[166] Therefore, because SPP would not exist without transmission assets, it is reasonable to assess an exit fee to transmission owners,[167] but exempt non-transmission owners, due to the disparate impact that their respective exits have on the transmission system functionally controlled by SPP and its ability to recover costs and service debt.

62. SPP argues that this difference in impact on the customer base has always existed and therefore cannot explain the Commission's shift in position. We agree that this distinction has always existed. However, as the Commission explained in the Complaint Order, the magnitude of the exit fee has increased substantially, and now there is sufficient record evidence indicating that the exit fee has become excessive as a means for achieving its objectives of ensuring stability and financial security; hence, it has

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[162] Complaint Order, 167 FERC ¶ 61,033 at PP 60-61.

[163] *See KN Energy*, 968 F.2d at 1300-01 (citing *Ala. Elec. Coop., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982)).

[164] *See* Complaint Order, 167 FERC ¶ 61,033 at PP 60-61.

[165] *Id*. P 60.

[166] *Id*. P 61.

[167] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 54 & n.23 (2002) (finding a proposal to assess an exit fee on transmission owners reasonable and noting that without an exit fee, costs that were incurred in part to benefit the transmission owner would be shifted to others).

become a barrier to membership for non-transmission owners.[168] Once the exit fee became so high relative to a withdrawing non-transmission owner's impact on the SPP system, this distinction became relevant. When the exit fee amount was lower, it was more reasonable to allocate these costs to all members; but once the exit fee became excessive for non-transmission owners and became demonstrably a barrier to membership for non-transmission owners, it was no longer reasonable to require non-transmission owners to pay the same fee. Notably, the Commission left open the possibility that SPP could, with adequate record support, justify applying a smaller exit fee to non-transmission owners.[169]

63. SPP argues that the Commission did not explain why it is no longer necessary to ensure that withdrawing non-transmission-owning members do not shift increased responsibility for SPP's financial obligations to remaining members.[170] We disagree. The Commission explained that charging an exit fee to non-transmission owners is not necessary for SPP to ensure withdrawing members do not leave increased responsibility for SPP's financial obligations on remaining members because SPP, like other RTOs/ISOs, recovers its costs and services its debt through its administrative fee.[171] Additionally, an exiting non-transmission owner and an exiting transmission owner affect SPP's customer base differently.[172] We reiterate that while transmission owners that choose to withdraw will pay higher exit fees after elimination of the exit fee for non-transmission owners compared with what they would pay currently, we find this appropriate given the difference between the potential effect of a transmission owner's withdrawal and a non-transmission owner's withdrawal on the SPP transmission system and the customer base that pays SPP's administrative fee.[173]

64. We disagree with SPP's premise that the assumption of more debt resulted in greater benefits, and therefore, all SPP members should pay the exit fee. Rather, to the extent debt improved SPP's services and market, all customers and market participants—not just SPP members—benefit from these improvements, and it is appropriate to finance this debt through administrative fees. We also disagree with SPP's contention that it was

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[168] Complaint Order, 167 FERC ¶ 61,033 at P 62.

[169] *Id.*

[170] *See* SPP Rehearing Request at 22-23 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60).

[171] Complaint Order, 167 FERC ¶ 61,033 at P 60 & n.140.

[172] *Id.* P 60 & n.140.

[173] *Id.* P 68.

illogical for the Commission to acknowledge that SPP's debt has grown substantially while reducing the pool of members responsible for that debt. The increase in long-term debt was the key factor in the exit fee becoming an unjust and unreasonable barrier to SPP membership for non-transmission owners. Furthermore, SPP can still recover these costs through its administrative fees, and the Complaint Order did not direct SPP to reduce the size of the pool of customers that pay those charges. The exit fee is simply a backstop means for recovering costs should enough transmission owners leave that SPP is put at risk of not having a large enough customer base to pay its costs or service its debt.[174]

65. Additionally, we disagree with SPP Load Serving Entities' contention that the Commission erred in the Complaint Order by not directing SPP to revise its administrative fees to recover the costs no longer paid by non-transmission owners.[175] This proceeding is limited to the justness and reasonableness of SPP's exit fee as applied to non-transmission owners and the appropriate remedy to redress an unreasonable exit fee. The administrative fee is beyond the scope of this proceeding.

c. Governance

66. We deny rehearing. SPP argues that the Complaint Order affects SPP governance because it is intended to increase the number of non-transmission-owning members. We disagree. The Commission removed a barrier to membership for non-transmission owners, but it did not in any way change the rights and obligations of membership, once membership is attained. While the Commission recognized that eliminating the exit fee for non-transmission owners could yield the potential benefit of an increased and more diverse membership, the Commission did not base its finding that the exit fee is unjust and unreasonable on lack of membership diversity or concerns with SPP's governance structure. Rather, the Commission found that the SPP exit fee was no longer just and reasonable for non-transmission owners because it created a barrier to membership and is excessive, as applied to non-transmission owners, as a means for ensuring the stability of SPP's membership and members' financial commitment.[176]

67. We disagree with SPP Load Serving Entities' assertion that the Complaint Order revised SPP's governing documents without record support or accomplished "indirectly what [the Commission] acknowledges it may not accomplish directly due to lack of

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[174] *Id*. P 60.

[175] SPP Load Serving Entities Rehearing Request at 24 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60 & n.140).

[176] *See* Complaint Order, 167 FERC ¶ 61,033 at P 51.

record support."[177] As we have affirmed, the Commission's finding in the Complaint Order that SPP's preexisting membership exit fee, as applied to non-transmission owners, is unjust and unreasonable because it "creates a barrier to SPP membership for non-transmission owners and because it appears to be excessive based on the record before us"[178] was based on substantial evidence in the record.[179] Moreover, and critically, the Complaint Order did not alter the respective rights and responsibilities of SPP's members and non-member stakeholders, which are the key elements of governance in SPP. Non-member stakeholders may still participate in meetings, submit written comments, and advise the SPP Board of Directors.[180] Only SPP members may vote on SPP initiatives; elect directors to the SPP Board of Directors; participate in task forces, working groups, and closed executive sessions; request dispute resolution; and appeal Board decisions.[181] In sum, while the Complaint Order removed an identified barrier to SPP membership, it did not affect how members function within the existing SPP governance structure.

68. Furthermore, while RTOs may tailor their rules and fees based on their respective regional considerations, those rules and fees must still be just and reasonable and not unduly discriminatory or preferential.[182] While we understand that SPP chose its exit fee based on extensive stakeholder processes,[183] the Commission is obligated to independently determine whether a rate has become unjust, unreasonable or unduly discriminatory or preferential.[184]

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[177] SPP Load Serving Entities Rehearing Request at 18.

[178] *See* Complaint Order, 167 FERC ¶ 61,033 at P 49.

[179] *See supra* PP 31-46 (discussing substantial evidence).

[180] *See* Governing Documents Tariff, Membership Agreement, § 3.5 (Meetings); SPP Answer, Docket No. EL19-11-000, at 16 (filed Nov. 30, 2018).

[181] SPP, Governing Documents Tariff, Bylaws, §§ 3.9, 3.10, 3.13, 4.3, 4.4, 4.6.1, 5.1, 6.1, 6.6; SPP, Governing Documents Tariff, Membership Agreement, § 3.0.

[182] 16 U.S.C. § 824d.

[183] SPP Load Serving Entities Rehearing Request at 17 (citing *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004)).

[184] 16 U.S.C. § 824e.

C. Financial Impact

1. Rehearing Requests

69. SPP and SPP Load Serving Entities assert that the Commission erred in determining that the exit fee exemption for non-transmission owners will not impair SPP's ability to recover costs or service debt because a non-transmission owner's withdrawal does not reduce the customer base paying the SPP administrative fee.[185] SPP argues that the Commission makes no attempt to reconcile its finding with the sworn testimony of SPP's Senior Vice President of Finance and Chief Financial Officer, Mr. Thomas P. Dunn, who warned that granting the Complaint could conflict with SPP's obligations under its debt covenants.[186]

70. SPP states that Mr. Dunn's concerns have materialized. SPP and SPP Load Serving Entities point out that the Complaint Order already prompted issuance of a notice of default on two of SPP's commercial bank credit facilities, and another group of SPP lenders is considering the same.[187] SPP states that, while it is working with its lenders to manage repercussions from the Complaint Order,[188] there is no guarantee that its lenders will accept language replacing the current obligations in SPP's agreements.

71. SPP and SPP Load Serving Entities argue that the Commission's determination to eliminate the exit fee for non-transmission owners was based on the assumption that costs otherwise allocable to non-transmission owners would shift to SPP member transmission owners without impacting the terms of security of SPP's debt instruments, but this assumption has proven to be incorrect. Therefore, they maintain that the Complaint Order lacks factual support and must be overturned.[189]

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[185] SPP Rehearing Request at 24; SPP Load Serving Entities Rehearing Request at 18.

[186] SPP Rehearing Request at 23 & n.63 (citing Dunn Aff. ¶ 6).

[187] *See id*. at 24; SPP Load Serving Entities Rehearing Request at 18-19.

[188] SPP adds that it separately filed a request for stay of the Complaint Order, in an attempt to forestall any further adverse consequences to SPP's relationship with its lenders. We note that the Commission denied the requested stay. *See supra* P 7.

[189] SPP Rehearing Request at 24 & n.64 (collecting cases from n.31; *Gen. Chem. Corp*., 817 F.2d at 846). SPP Load Serving Entities Rehearing Request at 19.

2. Commission Determination

72. We deny rehearing. Contrary to the rehearing requests' assertions, the Commission considered arguments that changes to SPP's exit fee structure could affect SPP's debt covenants and obligations to its lenders.[190] The Commission concluded that the remedy in the Complaint Order would ensure that transmission owners are responsible for their *pro rata* share of SPP's long-term financial obligations upon withdrawal, and therefore, the Commission did not expect any loss in SPP's ability to recover its debt.[191]

73. Furthermore, and significantly, there is no inevitable monetary shortfall here. Rather, SPP should be able to continue to meet its financial obligations and remain solvent after eliminating the exit fee for non-transmission owners.[192] The Complaint Order does not preclude SPP from recovering its full costs or affect its ability to meet its debt-service obligations. First, as the Commission explained, SPP will continue to recover costs through its administrative fees.[193]

74. Second, the Commission directed SPP to revise its exit fee formula so that the continued application of the exit fee to transmission owners will ensure SPP's debt is fully secured.[194] When a transmission owner withdraws from SPP, it will pay its share of the exit fees, and there will be no cost shifts to remaining SPP members from the reduction in customer base.

75. Furthermore, because tariff changes may affect a covenant, representation or promise in the transmission provider's loan, generally loan agreements provide for these contingencies. Even absent such provisions, however, we expect that SPP would be able to reach agreement with its lenders on any changes necessary to reflect the Commission's directives. Moreover, despite SPP's persistent contention that eliminating the exit fee for non-transmission owners will have a deleterious impact on its financing arrangements, SPP has not provided any specific evidence, such as the actual loan agreements, to persuade us that such renegotiation would not be possible.

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[190] *See generally* Complaint Order, 167 FERC ¶ 61,033 at PP 63-64.

[191] *Id*. P 68.

[192] *Id*. PP 63-64.

[193] *Id*. PP 63-64; *see also* SPP Tariff, Schedule 1-A (authorizing SPP to recover the "Transmission Provider's expenses related to administration of this Tariff").

[194] Complaint Order, 167 FERC ¶ 61,003 at P 63 & n.144.

D. Just and Reasonable Replacement Rate

1. Rehearing Requests

76. SPP Load Serving Entities argue that the Commission erred in finding that only an exit fee of zero would eliminate the barrier to membership for non-transmission owners in SPP.[195] SPP Load Serving Entities assert that it is implausible that there is no possible just and reasonable exit fee for non-transmission owners, and they contend that the record does not support a rate of zero. Quoting the Commission's statement that it "do[es] not need to consider at this time whether a smaller exit fee for non-transmission owners would also be just and reasonable," SPP Load Serving Entities assert that this logic is arbitrary and capricious and contrary to FPA section 206.[196] SPP Load Serving Entities state that FPA section 206 mandates a two-step process: (1) the Commission must prove that the existing rates or practices are unjust, unreasonable, unduly discriminatory or preferential; and then (2) the Commission must show that its proposed rate changes are just and reasonable.[197]

77. SPP Load Serving Entities state that, even assuming *arguendo* that the existing exit fee is too high, FPA section 206 requires a separate demonstration that the new rate of zero is just and reasonable.[198] SPP Load Serving Entities contend that, to set the rate at zero, the Commission must explain how any rate between zero and the current fee under the exit fee formula still creates an unjust and unreasonable barrier to membership.[199] SPP Load Serving Entities reiterate that there is no evidence in the record that the SPP exit fee had to be eliminated to remove any alleged barrier to membership. SPP Load Serving Entities state that the Commission fails to satisfy FPA

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[195] SPP Load Serving Entities Rehearing Request at 8 (asserting that the Commission failed to engage in reasoned decision-making when it determined that "*no exit fee for non-transmission owners* will result in just and reasonable rates.") (quoting Complaint Order, 167 FERC ¶ 61,033 at P 62) (emphasis added by SPP Load Serving Entities).

[196] *Id*. at 8-9 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 62).

[197] *Id*. at 9 (citing *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002); *Tenn. Gas Pipeline Co. v. FERC*, 860 F.2d 446, 454 (D.C. Cir. 1988); *Blumenthal v. FERC*, 552 F.3d 875, 885 (D.C. Cir. 2009)).

[198] *Id*. (citing *Emera Maine v. FERC*, 854 F.3d at 23) (citing *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015)).

[199] *Id*. (citing *Pacific Gas and Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004)).

section 206 because the Commission fails to conform to cost causation requirements or otherwise justify the unlawful cost shifts to transmission owners as a result of a zero rate for the non-transmission owners.[200]

2. Commission Determination

78. We deny rehearing. We find that the Commission appropriately adhered to FPA section 206 in the Complaint Order, determining that the existing rate is unjust and unreasonable and directing a just and reasonable replacement rate.[201] Specifically, in addition to finding the exit fee unjust and unreasonable as applied to non-transmission owners, the Commission found that eliminating the exit fee would result in just and reasonable rates by removing the barrier to membership. The Commission thus directed SPP to remove the exit fee for non-transmission owners, as one possible just and reasonable replacement rate.[202] The Commission did not, as the SPP Load Serving Entities contend, determine that the *only* just and reasonable exit fee for non-transmission owners was zero.[203] On the contrary, the Commission specifically left open the possibility that "some level of exit fee [for non-transmission owners] that does not act as a barrier to membership and is not excessive could be appropriate."[204]

79. Additionally, we disagree with SPP Load Serving Entities' contention that, to set the non-transmission owner exit fee at zero, the Commission must explain how any rate between zero and the current fee under the exit fee formula still creates an unjust and unreasonable barrier to membership.[205] The statute requires the Commission to justify its chosen replacement rate, i.e., zero for non-transmission owners, but it does not require consideration of all possible rates between the just and reasonable replacement rate and the unjust and unreasonable preexisting exit fee.[206] And, as the Commission explained in

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[200] *Id*. at 10.

[201] *See, e.g.*, *Emera Maine v. FERC*, 854 F.3d 9, 25 (D.C. Cir. 2014) (discussing the Commission's dual burden under section 206 to (1) show the existing rate is unlawful before (2) imposing a just and reasonable replacement rate); *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 348 (D.C. Cir. 2014) (same).

[202] Complaint Order, 167 FERC ¶ 61,033 at PP 62–63.

[203] *See id*. P 62; *see also supra* P 42 & n.107.

[204] Complaint Order, 167 FERC ¶ 61,033 at P 62.

[205] SPP Load Serving Entities Rehearing Request at 9.

[206] *See FPC v. Conway*, 426 U.S. 271, 278 (1976) ("Statutory reasonableness is an abstract quality" that "allows a substantial spread between what is unreasonable because

the Complaint Order, and again in this order, eliminating the exit fee for non-transmission owners is just and reasonable and not unduly discriminatory or preferential.[207]

E. Withdrawal Impacts on the Customer Base

1. Rehearing Request

80. SPP contends that the Complaint Order reflects erroneous assumptions regarding the respective withdrawal impacts of transmission owners and non-transmission owners. First, SPP asserts that the Commission erroneously assumed that all transmission owners are similarly situated, such that any transmission owner that withdraws from SPP will take with it "interconnected load and generation . . . thereby reducing the customer base that pays the [SPP] administrative fee."[208] SPP explains that some transmission owners do not serve load, and, specifically among its members, various independent transmission companies do not have "inextricable loads."[209] SPP adds that, in the post-Order No. 1000[210] regulatory environment, non-incumbent transmission developers (who, SPP states, are not load-serving entities by definition) can compete to build enhancements to the SPP transmission system without interconnecting directly to any load or generation resource. SPP states that such transmission owners' withdrawal from membership will not reduce the customer base paying the exit fee, but the Commission nevertheless assumes that all transmission owners are similarly situated with respect to the impacts associated with their withdrawal.[211]

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too low and unreasonable because too high"); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968) (stating that the Commission is not required "to adopt as just and reasonable any particular rate level").

[207] *See supra* PP 56-64.

[208] SPP Rehearing Request at 25 & n.65 (citing Complaint Order, 167 FERC ¶ 61,033 at P 60).

[209] *Id*. at 25.

[210] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[211] SPP Rehearing Request at 25-26.

81. SPP further argues that the Commission assumes, without factual basis, that non-transmission-owning load-serving entities that withdraw from SPP "do[] not reduce the customer base paying the . . . administrative fee, and thus the act of [their] withdrawal does not affect [SPP's] ability to ensure that it recovers its costs and services its debt[s]."[212] SPP contends that the Commission compounds its error by speculating that, if such a member were to withdraw, "we do not expect SPP would lose a transmission customer paying the administrative fee because the non-transmission owner would still be dependent on SPP transmission service to serve its load or sell the output from its generators."[213] SPP argues that actual experience belies these findings.

82. SPP states that the impact of non-transmission-owning load-serving entities' exit fee responsibilities does affect SPP's ability to service its debts and to maintain its creditworthiness to lenders. SPP adds that the Commission's rationale ignores the reality that certain non-transmission owners that serve load have, in fact, removed their loads from SPP, and at least one current non-transmission-owning member is in the process of doing so. Specifically, SPP states that Rayburn Country Electric Cooperative (Rayburn), a member of SPP, submitted a letter to SPP on March 12, 2018, informing SPP of its intent to withdraw because it plans to move its remaining load in SPP to the Electric Reliability Council of Texas (ERCOT).[214] SPP states that Rayburn is a non-transmission owner that intends to withdraw from SPP, and its withdrawal will reduce the customer base in SPP, notwithstanding the Commission's assumption that non-transmission owner withdrawals do not create cost shift risks in the same way as transmission owner withdrawals. SPP states that Rayburn will no longer be "dependent on SPP transmission service to serve its load"[215] after its withdrawal is complete. SPP asserts that Rayburn will not be the first non-transmission-owning load-serving entity to terminate its connections with SPP and migrate to ERCOT.[216] SPP asserts that the Rayburn example and others undercut entirely the distinctions the Commission drew and show the error of the Commission's generic ruling that exempts all non-transmission owners from exit fees.

83. SPP argues that such members impact the customer base paying the exit fee and also impact SPP's debt arrangements with lenders, and thus are similarly situated to load-

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[212] *Id.* at 26 & n.69 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 61).

[213] *Id*. at 26 & n.70 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 61 n.141).

[214] *Id*. at 26-27 & n.72 (citation omitted).

[215] *Id*. at 27 & n.73 (quoting Complaint Order, 167 FERC ¶ 61,033 at P 61 n.141).

[216] *Id*. at 28 & n.74 (citing *Pub. Serv. Co. of Colo*., 156 FERC ¶ 61,187 (2016); *Sw. Pub. Serv. Co.,* 150 FERC ¶ 61,128 (2015), *reh'g denied*, 153 FERC ¶ 61,020 (2015)).

serving transmission owners with respect to the effect of their withdrawals on SPP. SPP requests that, to the extent the Commission does not grant rehearing of its decision to eliminate the exit fee for non-transmission owner members, the Commission clarify that a withdrawal by a load-serving, non-transmission-owning member whose exit causes a reduction in the customer base will not be exempt from exit fee responsibility. SPP reiterates its argument that such members do in fact impact the customer base as well as SPP's debt arrangements and are thus similarly situated to load-serving transmission owners. SPP states that it seeks rehearing if the Commission declines to grant this clarification.[217]

2. Commission Determination

84. We deny rehearing.[218] We disagree with SPP's contention that the Complaint Order rests on flawed assumptions. We acknowledge that the distinction between non-transmission owners and transmission owners is not universal; some transmission owners have no load and some non-transmission owners may serve load. Nevertheless, load or no load, transmission owners and non-transmission owners are not similarly situated with respect to the impacts of their withdrawal on SPP. When a transmission owner, including a merchant transmission owner with no load, withdraws from SPP, it may not take customers, but it does withdraw its transmission assets from SPP, which, as discussed above, makes it more difficult for transmission customers to take transmission service and affects SPP's ability to recover costs and service its debt.

85. Moreover, we expect that, in general, an exiting non-transmission owner is unlikely to reduce the customer base paying SPP's administrative fee because, as we explained in the Complaint Order, a non-transmission-owning load-serving entity's load would likely remain dependent on the SPP transmission system,[219] and the non-transmission-owning load-serving entity would therefore continue to use the system and pay the administrative fee that helps service SPP's debt. Exceptions to this situation would be unusual and infrequent (e.g., load that is located on the border of the SPP transmission system and also able to access a neighboring transmission system, or load that no longer exists) because the load-serving entity would have to be located on the periphery of SPP and either already connected to, or close to, other transmission

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[217] SPP Rehearing Request at 29.

[218] SPP's concern regarding withdrawal by a non-transmission-owning load-serving entity whose exit causes a reduction in the customer base is, in substance, a rehearing request rather than a clarification request, and we address it as such.

[219] Complaint Order, 167 FERC ¶ 61,033 at P 61 & n.141.

providers outside of SPP.[220] Indeed, Rayburn is the only example SPP provides where a non-transmission-owning member with load withdrew from SPP.[221] For these reasons, we continue to conclude that, in most cases, non-transmission-owning load-serving entities are not similarly situated to transmission-owning load-serving entities with respect to their impact on SPP upon exit. The fact that there may be scant exceptions to the general rule that withdrawing non-transmission owners do not reduce the customer base paying SPP's administrative fee does not justify requiring all non-transmission owners to continue to pay the preexisting exit fee, which we continue to find, on balance, to be excessive and a barrier to membership for non-transmission owners.

86. Further, we note that non-transmission-owning load-serving entities are transmission-dependent entities, i.e., they cannot continue to serve their loads after withdrawing from RTO membership without either becoming transmission owners or procuring transmission service from neighboring systems where possible. Consequently, their withdrawal from RTO membership, and any associated reduction in the customer base, would likely be the result of a decision made by the transmission owner on whom the load-serving entity is dependent. Under these circumstances, we do not find it necessary or appropriate to apply the preexisting exit fee to non-transmission-owning load-serving entities. Therefore, we deny rehearing.

F. Exit Fee Obligation

1. Clarification Request

87. SPP requests that the Commission clarify that, in ordering SPP to "remove the exit fee," the Commission did not intend to require SPP to rescind portions of the exit fee not challenged by Complainants or addressed by the Commission, including outstanding market and transmission service charge obligations, costs directly attributable to the member's withdrawal, including the associated withdrawal deposit, and annual dues.[222] SPP states that it assumes the Commission merely omitted consideration of these aspects of the exit fee and focused instead on the portions of the exit fee related to SPP's financial obligations and debts. SPP states that, if, however, the Commission does not grant this clarification, then SPP seeks rehearing because there is no basis in law or in the

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[220] In the rare instance when a non-transmission owner may have customers, the customers will continue taking transmission service from SPP, unless the non-transmission owner is located adjacent to another transmission system.

[221] We note that the other examples SPP provides did not involve SPP members. *See* SPP Rehearing Request at 27 & n.74.

[222] *Id*. at 28.

record to excuse departing members from paying costs duly assessed to them while they were members.[223]

2. Commission Determination

88. We grant SPP's requested clarification. The Complaint expressly carved out from this dispute the payment of funds that an exiting SPP member already owes SPP, amounts that are directly related to that member's individual membership and current participation in the SPP market.[224] Specifically, the Complaint listed the five components of the exit fee set forth in section 8.7.1 of SPP's bylaws and expressly stated that Complainants did not challenge the components that cover the member's unpaid annual membership fee, dues, assessments, and other charges.[225] We clarify that the Complaint Order similarly did not address or direct any revision to these components of SPP's exit fee. Additionally, while the Complaint contested "costs, expenses, or liabilities incurred by SPP directly due to the [member's] termination,"[226] the Complaint Order did not discuss these issues. We consider it just and reasonable for non-transmission owners to pay costs directly attributable to their withdrawal. Therefore, SPP need not rescind this portion of the exit fee.

V. Compliance Filing and Alternative FPA Section 205 Filing

A. Compliance Filing

89. SPP states that the proposed revisions in its compliance filing remove the exit fee for all members except transmission owners and modify the exit fee formula to ensure that SPP can continue to secure its debts. Specifically, SPP explains that it has revised section 4.3.2 of its membership agreement to state that the section only applies to members that are transmission owners and to specify that a member that is not a transmission owner is not subject to the obligations set forth in section 4.3.2. SPP also proposes to revise sections 8.7.1 and 8.7.2 of its bylaws to indicate that the sections only apply to the extent section 4.3.2 of the membership agreement is applicable. SPP states

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[223] *Id*. at 29.

[224] *Id*. at 10.

[225] *Id*. at 9 (citing Bylaws § 8.7.1).

[226] *See id*. at 10.

that the revisions ensure that the exit fee formula only considers information applicable to transmission-owning members.[227]

90. SPP requests an effective date of January 1, 2020 for the revisions to its bylaws and membership agreement made on compliance, asserting that this date will provide the Commission with sufficient time to consider and address the issues raised on rehearing and clarification and in the alternative FPA section 205 filing.[228] SPP also requests, to the extent that the Commission grants its requested clarifications of the Complaint Order, that the Commission direct SPP to submit an additional compliance filing. Additionally, SPP states that although it is submitting revisions to comply with the Complaint Order, SPP and its members continue to believe that all members should share responsibility for SPP's costs and debts in exchange for voting privileges. SPP requests that, if the Commission does not grant rehearing of the Complaint Order, that the Commission disregard SPP's compliance filing and instead accept its alternative FPA section 205 exit fee proposal.[229]

B. Alternative FPA Section 205 Filing

91. SPP proposes alternative revisions to its bylaws and membership agreement, under which SPP members would be subject to an exit fee consisting of two components: (1) $100,000 for all members, and (2) for load-serving entities, an additional amount based on their net energy for load percentage share of SPP's long-term debts. SPP states that the proposed exit fee formula would no longer calculate a member's percentage share and instead would calculate the member's actual share of SPP's financial obligations and future interest.[230]

92. SPP asserts that its alternative exit fee proposal balances the barrier to membership concerns that the Commission expressed in the Complaint Order with several of SPP's concerns, including SPP's need to secure its long-term debt, the avoidance of increased cost responsibility imposed on other members, and the establishment of a fee that is high

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[227] SPP Transmittal, Docket No. ER19-2522-000 at 6-7.

[228] *Id*. at 8.

[229] *Id*. at 5-6.

[230] Specifically, the proposed alternative exit fee formula is as follows: A = $100,000 + [(D-($100,000 * E)) * (B/C)], where A is the member's share of SPP's financial obligations and future interest, B is the member's previous year net energy for load, C is the total previous year net energy for load for all members, D is SPP's total financial obligations and future interest as of a member's termination date, and E is the total number of members. SPP Transmittal, Docket No. ER19-2523-000 at 10, 12-13.

enough to provide stability in membership by ensuring that members are serious. SPP contends that retaining the load-based component of the exit fee ensures that SPP's debts continue to be secured. SPP also asserts that the fixed nature of the $100,000 exit fee for members that do not serve load addresses concerns in the Complaint proceeding about the uncertain magnitude of SPP's exit fee. SPP also reiterates that it does not propose to modify current provisions stating that any member that believes the exit fee would be a financial hardship can request that the Commission waive the exit fee on a case-by-case basis.[231]

93. SPP estimates that the exit fee for a non-transmission-owning, non-load-serving entity in 2006 would have been $262,749, or $327,191 adjusted for inflation. SPP states that the proposed, fixed $100,000 exit fee for non-load-serving entities is lower than the exit fee in 2006 for these entities and significantly lower than the estimated $631,915 exit fee under SPP's preexisting exit fee structure. Using data as of March 31, 2019, SPP states that under a $100,000 exit fee, a withdrawing non-load-serving entity's share of SPP's long-term financial obligations would have been 0.041 percent of SPP's $245 million in long-term financial obligations at that time.

94. SPP states that eliminating the exit fee for all non-transmission-owning members shifts the costs of debts SPP has incurred for the benefit of all stakeholders to a subset of members (i.e., transmission owners). SPP argues that transmission owners will become a distinct minority in voting matters, allowing members with no financial obligations to dominate Board of Director elections under SPP's one member, one vote structure. SPP asserts that the proposed $100,000 exit fee will reduce the possibility that stakeholder decisions and Board of Director elections are dominated by entities with no financial stake in SPP's operations and long-term financial obligations.[232]

95. SPP argues that the benefits that come with SPP membership also come with significant costs associated with SPP's long-term financial obligations. SPP contends that, because all members benefit from SPP's transmission and market services, it is appropriate that all members help secure SPP's debts undertaken to establish and maintain those markets.[233]

96. SPP states that its alternative section 205 filing does not waive its arguments on rehearing, and SPP requests that the Commission disregard or allow it to withdraw its filing in the event that the Commission grants rehearing of the Complaint Order. SPP requests an effective date of January 1, 2020 for the alternative section 205 filing and

[231] SPP Transmittal, Docket No. ER19-2523-000 at 10.

[232] *Id*. at 11.

[233] *Id*. at 10, 12.

asserts that this date will provide the Commission with sufficient time to consider and address the issues raised on rehearing and clarification. SPP requests waiver of the Commission's notice requirements[234] to allow SPP's submission of the proposed revisions more than 120 days prior to the requested effective date.[235]

C. Protests/Comments

97. ELCON/TIEC, Renewable Industries, Public Interest Organizations, and SPP Generation Market Participants request that the Commission accept SPP's compliance filing and reject its alternative section 205 filing. ELCON/TIEC supports a December 1, 2019 effective date, SPP Generation Market Participants support an April 5, 2019 effective date, and Renewable Industries support an April 6, 2019 effective date for the compliance filing.

98. SPP Generation Market Participants request that the Commission accept SPP's compliance filing effective April 5, 2019. SPP Generation Market Participants assert that the effective date for the compliance filing should be the refund effective date. They also argue that delaying the effective date until January 1, 2020 would harm entities that want to become members of SPP by keeping the unjust and unreasonable barrier to membership in place for a longer period of time. SPP Generation Market Participants also state that SPP's requested effective date is effectively a request for stay and that there has already been significant delay. Additionally, SPP Generation Market Participants request that the Commission not give deference to the SPP stakeholder process because SPP's membership is imbalanced and dominated by transmission owners.[236]

99. Renewable Industries contend that SPP's requested January 1, 2020 effective date for the compliance filing is, in practical terms, a request for a stay, which the Commission has previously rejected, and which would harm non-transmission-owning stakeholders by prolonging the barrier to membership.[237] Renewable Industries urge the Commission to reject SPP's requested effective date and instead make the compliance

[234] *Id*. at 14 (citing 18 C.F.R. § 35.3 (2019) (Notice requirements)).

[235] *Id*. at 1, 13-14 & n.3.

[236] SPP Generation Market Participants Protest at 3-7.

[237] Renewable Industries Protest at 12-13.

filing effective April 6, 2019, the day after the refund date established in the Order on Motion to Stay.[238]

100. ELCON/TIEC contend that the alternative filing contains an unquantified processing fee that appears to equal or exceed the $50,000 withdrawal deposit for non-load-serving entities.[239] ELCON/TIEC assert that this component and the proposed $100,000 minimum exit fee are both contrary to the Complaint Order's various findings and are without precedent because other RTOs/ISOs limit membership exit obligations for non-transmission owners/non-load-serving entities to actual financial obligations incurred in the market.[240] In addition, ELCON/TIEC argue that the alternative proposal offers no new rationale for why non-transmission owners or non-load-serving entities should be responsible for securing SPP's debt, as evidenced by the uniform nature of the proposed flat fee.[241] ELCON/TIEC further note that SPP's alternative, proposed exit fee would represent nearly 17 years of membership dues (at the current $6,000 per year annual membership fee), and they state that the proposed $100,000 exit fee would prohibit some of ELCON/TIEC's members from becoming SPP members.[242]

101. Renewable Industries assert that the alternative filing is a collateral attack on the Complaint Order and does not present any new evidence or extraordinary circumstances that justifies reopening the Complaint Order.[243] Renewable Industries further assert that, by seeking to relitigate an issue decided in a Commission order, SPP is effectively submitting an untimely rehearing request.[244] Renewable Industries also argue that SPP's alternative filing disregards the directive of the Commission in the Complaint Order and violates long-standing precedent that a compliance filing must adhere to the instruction in a Commission order.[245]

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[238] *Id*. at 2 (citing Order on Motion for Stay, 168 FERC ¶ 61,006 at P 1).

[239] ELCON/TIEC Protest at 3, 8.

[240] *Id*. at 4.

[241] *Id*. at 6.

[242] *Id*. at 7.

[243] Renewable Industries Protest at 2-5.

[244] *Id*. at 5-6.

[245] *Id*. at 6.

102. Renewable Industries assert that SPP is attempting to legitimize the alternative filing by requesting deference to the wishes of SPP's stakeholders.[246] Renewable Industries argue that it should be expected that the existing SPP members would not vote to entirely remove the exit fee, as doing so could ultimately dilute their voting power.[247] Renewable Industries claim that the stakeholder process leading up to SPP's filings was limited, fast-tracked, lacked transparency, and is evidence of precisely the same problems raised in the Complaint.[248]

103. Renewable Industries argue that allowing SPP to recover its long-term obligations through an exit fee, when such costs are already paid by the membership through Schedule 1-A, would be unjust and unreasonable and inconsistent with the principle of cost causation.[249] Renewable Industries emphasize that SPP is already fully recovering its net revenue requirement, including all long-term financial and debt-service obligations, from its customers through Schedule 1-A.[250] Renewable Industries add that the long-term financial obligations for which SPP seeks recovery through the exit fee in the alternative filing are not caused by the joining of an independent entity as a member of SPP, its membership in SPP, or its withdrawal as a member of SPP.[251]

104. Renewable Industries contend that the alternative filing seeks to perpetuate an unjustified barrier to participation in the SPP stakeholder process and does not meaningfully address the concerns raised by the Commission in the Complaint Order.[252] Renewable Industries argue that the alternative filing, if adopted by the Commission, would perpetuate a paradigm where, despite a diverse group of market participants having a substantial and material interest in SPP's rules, only a narrow subset of market participants would guide the development of such rules.[253] Finally, Renewable Industries

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[246] *Id*. at 7.

[247] *Id*. at 10.

[248] *Id*. at 10-11.

[249] *Id*. at 19.

[250] *Id*. at 16 (citing Southwest Power Pool, Inc. 2019 Budget at 15-17, 19-21 (https://www.spp.org/documents/59511/2019%20final%20budget%20for%2012-04-2018%20meeting.pdf)).

[251] *Id*. at 17.

[252] *Id*. 21-22.

[253] *Id*. at 24.

argue that the alternative filing is inconsistent with the purpose of an exit fee, as explained by the Commission in the Complaint Order.[254]

105. Public Interest Organizations contend that any exit fee for non-transmission owners is unjust and unreasonable and that SPP has failed to meet its burden of proof to demonstrate that its proposed alternative exit fee is just and reasonable. Public Interest Organizations argue that the proposed exit fee amount is not cost-based and bears no direct relationship to costs an exiting non-transmission owner actually imposes on SPP. Public Interest Organizations maintain that requiring one organization to subsidize the future operations of another is a cross subsidy that does not comport with the cost causation principle. Additionally, Public Interest Organizations state that the proposed $100,000 exit fee amount is arbitrary and that SPP has not provided a cost-based rationale for why a withdrawing member should pay that amount. Moreover, Public Interest Organizations assert that SPP's corporate structure and debt structure should not determine its governance structure.[255]

106. Public Interest Organizations assert that the proposed $100,000 exit fee would continue to provide a barrier to membership and would have the same discriminatory impact on non-transmission owners, like Public Interest Organizations, as the preexisting exit fee. Public Interest Organizations argue that the exit fee's primary function has been to exclude interested parties from becoming members and that the proposed alternative exit fee would have the same effect. Public Interest Organizations state that reducing the exit fee from $700,000 to $100,000 does not mitigate the risk it would represent on their balance sheets and would continue to prevent them from becoming SPP members. Public Interest Organizations state that there are other options besides onerous fees to ensure a potential member's commitment to the RTO, such as reasonable minimum governance and stakeholder participation requirements, requiring that a member have some connection to SPP, or modest annual fees. Public Interest Organizations further note that as SPP seeks to expand westward – for example, through its proposed offering of balancing services in western states – eliminating these barriers and increasing membership diversity are critical.[256] Moreover, Public Interest Organizations state that the inclusion of a more diverse SPP membership is more likely to lead to just and reasonable stakeholder proposals.

107. SPP Generation Market Participants request that the Commission reject SPP's alternative exit fee proposal on the grounds that Commission precedent requires a public

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[254] *Id*. at 24-26 (citing Complaint Order, 167 FERC ¶ 61,033 at P 59).

[255] Public Interest Organizations Protest at 2, 5-10.

[256] *Id*. at 3, 11-21.

utility to file on compliance only what the Commission directed.[257] SPP Generation Market Participants contend that SPP is seeking to get around the FPA section 206 process that resulted in the Complaint Order and that accepting the alternative filing will introduce uncertainty into the rate-setting process.[258]

108. SPP Generation Market Participants also assert that even a smaller $100,000 exit fee does not change the finding in the Complaint Order that the exit fee will act as a barrier to entry, and that a $100,000 exit fee would only replace one barrier to entry with another. Additionally, SPP Generation Market Participants argue that SPP's ability to service its debt is not in jeopardy, given that SPP was functioning well five months after the Complaint Order was issued, and because SPP will continue to recover its costs through its annual and administrative fees. SPP Generation Market Participants state that SPP has never relied on exit fee funds to make debt payments, which, according to SPP Generation Market Participants, demonstrates why a $100,000 exit fee for non-transmission owners is not needed. Moreover, SPP Generation Market Participants maintain that if non-transmission owners such as independent power producers, power marketers, or public interest organizations withdraw from membership, that will not induce additional withdrawals and will not affect SPP's ability to secure and make payments on debt or maintain stability in membership.[259]

109. SPP Generation Market Participants state that SPP's concern that transmission owners will become a voting minority is a governance issue that SPP can seek to address separately. They further note that transmission owners are a minority in all other RTOs/ISOs and yet those entities have governance structures that function without exit fees for non-transmission owners. Additionally, SPP Generation Market Participants contend that SPP does not explain the cost basis for a $100,000 exit fee, and they argue that, because non-transmission owners do not benefit after withdrawal, a $100,000 exit fee is inconsistent with cost causation.[260]

110. Nebraska Public Power District supports SPP's alternative filing as a positive step toward addressing cost causation that appropriately encourages serious membership.[261]

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[257] SPP Generation Market Participants Protest at 2, 7-8 (citing *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005); *Sierra Pacific Power Co.*, 80 FERC ¶ 61,376, at 62,271 (1997)).

[258] *Id*. at 9.

[259] *Id*. at 10-12.

[260] *Id*. at 13-14.

[261] Nebraska Public Power District Protest at 1.

Nebraska Public Power District opposes SPP's compliance filing, arguing it will shift the costs of debt SPP incurred for the benefit of all stakeholders onto transmission owners.[262]

D. Commission Determination

111. Consistent with our denial of rehearing as discussed above, we conditionally accept SPP's compliance filing, subject to a further compliance filing. Additionally, we reject SPP's alternative FPA section 205 filing, without prejudice to SPP making a revised filing with additional support for why the exit fee amount for non-transmission owners included in that proposal is just and reasonable.

1. Compliance Filing

112. In the Complaint Order, the Commission found that SPP's membership exit fee, as applied to non-transmission owners, was unjust and unreasonable and directed SPP to revise its governing documents to eliminate the exit fee for non-transmission owners.[263] We find that SPP's compliance filing complies with the Complaint Order's directive because it revises SPP's membership agreement to state that a "member that is not a Transmission Owner is not subject to the obligations set forth in . . . Section 4.3.2," and one of the obligations listed in section 4.3.2 is the member's share of SPP's long-term financial obligations (i.e., the exit fee).[264] SPP, in its compliance filing, also proposes to revise its bylaw provisions regarding withdrawing members' financial obligations to state that (1) they apply "to the extent that Section 4.3.2 of the Membership Agreement is applicable to a Member's termination," and (2) the computation of a member's share of SPP's long-term financial obligations only applies to members "that are subject to Section 4.3.2 of the Membership Agreement."[265] Therefore, the revised bylaws and membership agreement apply the exit fee to transmission owners only and do not apply the exit fee to non-transmission owners. As discussed in the Complaint Order, eliminating the exit fee for non-transmission owners will eliminate the barrier to membership created by the exit fee and will result in rates that are just and reasonable.[266]

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[262] *Id*. at 2.

[263] Complaint Order, 167 FERC ¶ 61,033 at PP 49, 63.

[264] Proposed SPP Governing Documents Tariff, Membership Agreement, § 4.3.2 (Obligations of Member Transmission Owner to Pay Current and Existing Obligations).

[265] Proposed SPP Governing Documents Tariff, Bylaws, §§ 8.7.1 (Existing Obligations), 8.7.2 (Computation of a Member's Existing Obligations).

[266] Complaint Order, 167 FERC ¶ 61,033 at P 63.

113. Additionally, the Complaint Order 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."[267] Consistent with this directive, SPP's compliance filing revises the exit fee formula so that non-transmission owners are not included in the total number of SPP members value in the formula.[268] We find that the proposed revisions exclude non-transmission owners from the formula while ensuring that the combined transmission owners' shares of the exit fee equal 100 percent of SPP's long-term financial obligations.

114. However, the proposed revisions in SPP's compliance filing exempt withdrawing non-transmission owners not just from the exit fee, but from all existing obligations upon withdrawal, including: (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. In the Complaint Order, the Commission discussed the exit fee in terms of the member's share of SPP's long-term financial obligations. As clarified above,[269] for purposes of SPP's compliance with the Complaint Order, "exit fee" refers to a member's share of SPP's long-term financial obligations. 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).[270] Accordingly, we direct SPP to submit a further compliance filing, within 60 days of the date of this order, that proposes revised Tariff language to ensure that a withdrawing non-transmission owner is only exempt from paying a share of SPP's long-term financial obligations, rather than all existing obligations associated with membership withdrawal.

115. In addition, the proposed revisions in SPP's compliance filing do not appear to address the Complaint Order's directive that "when considering the value for the withdrawing member's previous year net energy for load ('B' in the exit fee formula),

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[267] *Id*. P 63.

[268] *See id*. at P 63 n.144 ("Additionally, SPP should either remove the per capita component of the exit fee formula or exclude non-transmission owners from the total number of SPP members value ("N" in the exit fee formula).").

[269] *See supra* P 88; *see also supra* P 5.

[270] Some parties suggest that the costs SPP incurs to process a member's departure are potentially large and can serve as a barrier to membership. *See* ELCON/TIEC Protest at 8; Public Interest Organizations Protest at 17. However, consistent with cost causation, we find that it is just and reasonable for withdrawing members to pay reasonable costs incurred by SPP to process or effectuate the member's withdrawal.

SPP should ensure that this value includes the load of load-serving entities connected to the withdrawing transmission owner's system."[271] Accordingly, we direct SPP to include in its further compliance filing proposed revised Tariff language 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.

116. Finally, we note that the Commission did not fix a replacement exit fee structure in the Complaint Order or Order on Motion to Stay pursuant to FPA section 206.[272] Accordingly, we conditionally accept the Tariff revisions in SPP's compliance filing as the replacement rate, subject to the further compliance filing directed above, and make the replacement rate effective as of the date of this order.

2. <u>Alternative Exit Fee Proposal</u>

117. We reject SPP's proposed alternative exit fee because SPP has not adequately demonstrated that it is just and reasonable. Specifically, SPP has not demonstrated why $100,000 is a just and reasonable exit fee level for non-transmission owners that does not act as a barrier to membership and is not excessive as a means of ensuring stability in membership and members' financial commitment. Additionally, SPP has not adequately explained why non-transmission-owning load-serving entities should pay the same exit fee as transmission owners, or why non-transmission-owning load-serving entities should pay significantly different exit fees than other non-transmission owners.

118. In the Complaint Order, the Commission stated that:

> While some level of exit fee that does not act as a barrier to membership and is not excessive could be appropriate in SPP, because we are finding here that no exit fee for non-transmission owners will result in just and reasonable rates, we do not need to consider at this time whether a smaller exit fee for non-transmission owners would also be just and reasonable.[273]

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[271] Complaint Order, 167 FERC ¶ 61,033 at P 63 n.144.

[272] 16 U.S.C. § 824e(a) ("... the Commission shall determine the just and reasonable [rate/rule/practice] to be thereafter observed and in force, and shall fix the same by order.").

[273] Complaint Order, 167 FERC ¶ 61,033 at P 62 (citation omitted).

119. SPP has now proposed, pursuant to FPA section 205, an exit fee for non-transmission owners that is smaller than the exit fee considered in the Complaint Order. Specifically, SPP proposes to charge all withdrawing members a $100,000 exit fee and load-serving entities an additional exit fee component based on their load-ratio share of SPP's long-term financial obligations. The $100,000 exit fee amount would apply to non-transmission owners that are also not load-serving entities, while non-transmission-owning load-serving entities would pay $100,000 plus the load ratio-based component of the exit fee. Under FPA section 205, SPP bears the burden of demonstrating that its proposal is just and reasonable.[274]

120. We find that SPP has not adequately supported its proposal to set the exit fee at $100,000 for non-load-serving entities in light of the Complaint Order's findings regarding exit fees for non-transmission owners in SPP.[275] Although SPP has provided data showing that a $100,000 exit fee for non-load-serving entities is less than what the exit fee would have been for members that were not transmission owners or load-serving entities in 2006,[276] when the Commission found SPP's current exit fee structure just and reasonable,[277] we find that this comparison alone is not sufficient to demonstrate that $100,000 is currently a just and reasonable exit fee amount for non-load-serving entities or non-transmission owners. SPP fails to explain why a $100,000 exit fee would not be a barrier to membership for non-transmission owners or why $100,000 is not excessive as a means to ensure stability in non-transmission owner membership and their financial commitment to SPP.

121. In addition, we find that SPP has failed to demonstrate that its proposal to apply an exit fee of $100,000 plus a load ratio-based component to non-transmission-owning load-serving entities is just and reasonable. In the Complaint Order, the Commission stated that:

> A transmission owner's withdrawal from membership corresponds with its withdrawal from SPP, and . . . reduces

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[274] 16 U.S.C. § 824d(e); *see also Ala. Power Co. v. FERC*, 993 F.2d 1557, 1571 (D.C. Cir. 1998); *Winnfield v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984).

[275] Although SPP's alternative filing proposes to assign exit fee responsibility based on whether the withdrawing member is a load-serving entity, because the Commission's analysis in the Complaint Order was based on whether an entity was a transmission owner, we analyze SPP's alternative proposal based on whether the proposed exit fee for non-transmission owners is just and reasonable.

[276] SPP Transmittal, Docket No. ER19-2523-000 at 9, Dunn Aff. ¶¶ 4-5.

[277] 2006 Exit Fee Order, 114 FERC ¶ 61,273 at P 28.

> the customer base paying SPP's administrative fee and SPP's ability to meet its financial obligations. By contrast, a non-transmission owning load-serving entity's withdrawal from membership does not necessarily result in the withdrawal of its load from SPP, and therefore the act of relinquishing membership itself does not reduce SPP's ability to meet its financial obligations. We find that the financial impact of a non-transmission owning load-serving entity's relinquishing membership is similar to the financial impact of other non-transmission owners withdrawing from SPP membership. As a result, we find 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.[278]

SPP has not demonstrated how the continued application of the load ratio-based component of the exit fee to non-transmission-owning load-serving entities is consistent with the Commission's finding that transmission owners and non-transmission-owning load-serving entities' withdrawals do not have the same financial impact. SPP does not explain in its filing why, in direct conflict with the Commission's findings in the Complaint Order, non-transmission-owning load-serving entities should pay the same exit fee as transmission owners. We note that non-transmission-owning load-serving entities may pay at least as much under SPP's proposal as they do under the exit fee structure found to be unjust and unreasonable for non-transmission-owning load-serving entities in the Complaint Order.[279] We continue to find that a non-transmission-owning load-serving entity's withdrawal from SPP membership does not have the same financial impact as when a transmission owner withdraws from membership, and therefore find that non-transmission-owning load-serving entities should pay a smaller exit fee than transmission owners.

122. We also find that SPP's proposal to apply the load ratio-based exit fee component only to non-transmission-owning load-serving entities, rather than all non-transmission owners, will result in significantly different exit fees for non-transmission-owning load-serving entities and other non-transmission owners, which is unjust and unreasonable and

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[278] Complaint Order, 167 FERC ¶ 61,033 at P 66 (citations omitted).

[279] For example, we estimate that a non-transmission-owning load-serving entity with a 10 load ratio share and no other outstanding obligations as of a October 31, 2018 termination date (when SPP states its debt was $238,790,846 and it had 96 members) would be subject to an equivalent 9.6 share of SPP's long-term debt under the proposed exit fee structure, compared to a 7.76 share under the current exit fee structure.

inconsistent with the Complaint Order's finding that the financial impacts of their respective withdrawals are similar.[280]

123. Further, as we discuss earlier in this order, we find that SPP's proposal to retain the load ratio-based component of the exit fee for non-transmission owners is unnecessary to secure SPP's debts. Although SPP may need to renegotiate some of its credit arrangements in order to ensure that the exit fee is still considered enforceable under those arrangements when narrowed to transmission owners only, we do not expect that removing the load ratio-based exit fee component for non-transmission owners will impair SPP's ability to allocate its costs among its members in a way that ensures complete recovery of its financial obligations.

124. Our rejection of the alternative exit fee proposal is without prejudice to SPP submitting another exit fee proposal that adequately explains why the exit fee amount for non-transmission owners included in that proposal is just and reasonable, not a barrier to membership, and not excessive as a means of ensuring stability in membership and members' financial commitment. Consistent with the discussion above, any future exit fee proposal should ensure that non-transmission owners pay a smaller exit fee than transmission owners, regardless of whether the non-transmission owner is also a load-serving entity, and that non-transmission-owning load-serving entities pay an exit fee similar to that paid by other non-transmission owners.

The Commission orders:

(A) SPP's and SPP Load Serving Entities' rehearing requests in Docket No. EL19-11-001 are hereby denied, as discussed in the body of this order.

(B) SPP's requested clarifications in Docket No. EL19-11-001 are hereby granted in part, and denied in part, as discussed in the body of this order.

(C) SPP's compliance filing in Docket No. ER19-2522-000 is hereby conditionally accepted, effective December 19, 2019, as discussed in the body of this order.

(D) SPP is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of this order.

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[280] Complaint Order, 167 FERC ¶ 61,033 at P 66.

(E) SPP's section 205 filing in Docket No. ER19-2523-000 is hereby rejected without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.