UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Wind Energy Association, *et al.*,	)	
	)	
	)	
Complainants,	)	
	)	Docket No. EL18-___-000
	)	
v.	)	
	)	
	)	
Southwest Power Pool, Inc.,	)	
	)	
Respondent.	)	

COMPLAINT
TO REVISE THE MEMBERSHIP EXIT FEES
IN THE SOUTHWEST POWER POOL, INC.

Pursuant to Sections 206, 306, and 309 of the Federal Power Act ("FPA")[1] and Section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[2] the American Wind Energy Association ("AWEA") and the Wind Coalition (collectively, "Complainants") hereby file this Complaint requesting that the Commission find sections of the "Financial Obligations of Withdrawing Members" (hereinafter "exit fees") in Southwest Power Pool, Inc.'s ("SPP") Bylaws and Membership Agreement, as applied to Independent Power Producer ("IPPs") and other similarly situated non-transmission owners ("non-TOs") and non-load-serving entities ("non-LSEs"), are unlawful, unjust and unreasonable, and unduly discriminatory. Therefore, Complainants respectfully request that the Commission direct SPP to cease and desist from imposing those sections of

[1] 16 U.S.C. §§ 824e, 825e, and 825h (2015).
[2] 18 C.F.R § 385.206 (2016).

the exit fee on IPPs, as well as other non-TOs and non-LSEs, and order SPP to revise Section 8.7 of the SPP Bylaws and Sections 4.2.1 of the SPP Membership Agreement, as provided in **Attachment 2** hereto, effective as of the date of the submission of this Complaint to the Commission.

I. SUMMARY OF NEED FOR RELIEF

This Complaint establishes that SPP's unique exit fees, as imposed on IPPs, as well as other similarly situated non-TOs and non- LSEs, are unlawful, unjust and unreasonable, and unduly discriminatory for the following reasons:

- SPP's exit fee violates cost causation principles and results in rates that are not just and reasonable; and
- SPP's exit fee is a practice that directly affects jurisdictional rates, increasing the chance that rates are unduly discriminatory and preferential.

II. EXECUTIVE SUMMARY

Membership in SPP is a meaningful designation. Among other things, only members can elect Directors of the SPP Board, only members can serve on committees and working groups, only members can vote on SPP initiatives, and only members (and other limited groups) can initiate "revision requests" required within the SPP stakeholder process to make changes to the SPP open access transmission tariff ("Tariff"), business practice manuals, SPP membership agreement, or SPP Bylaws. Further, only members are often allowed to participate in closed or executive session discussions. Non-member stakeholders hold none of these fundamental rights.

While many non-members participate in SPP stakeholder processes to the extent they are allowed, and often provide comments on SPP initiatives, such participation is not the same as having membership rights. Simply put, without the ability to vote on SPP matters or provide leadership on SPP Committees, non-members typically are unable to influence policy in a direction that considers or reflects their interests. In recognition of the important place members have in SPP's structure, the preamble to SPP's Bylaws and Membership Agreement points out that SPP is a "member-driven" organization.[3] In short, membership and the rights that it entails are critical.

Under SPP's Bylaws and Membership Agreement, if a member wants or needs to end its membership in SPP for any reason, a fee is calculated based upon SPP's fixed, ongoing, immediate, and long-term costs, such as its loans, leases, and pensions at the time of withdrawal.[4] SPP's exit fee is almost entirely intended to cover SPP's existing and future obligations, which are unrelated to the exiting member. Specifically, it requires an exiting member to: (1) subsidize future members' means to do business in SPP; (2) pay for costs for which they will receive no further benefit once they withdraw; and (3) pay for costs that are not caused by them. As such, the exit fee clearly violates cost causation principles.

Based on communications with SPP personnel, it is our understanding that the exit fee, which would be charged to any non-TO/non-LSE that sought to terminate its membership (regardless of its size, investments, or assets in SPP), could range from $700,000 to $1 million.[5] However, the exact exit fee amount is not known prior to termination; as such, it is impossible

[3] Southwest Power Pool, *Bylaws* at pg. 7 (First Revised Volume No. 4, 2017), *available at* https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf [hereinafter, "SPP Bylaws"].

[4] SPP Bylaws at Section 8.7; Southwest Power Pool, *Membership Agreement,* Section 4.3 (effective Nov. 10, 2014), *available at* https://www.spp.org/documents/13272/current%20bylaws%20and%20membership%20agreement%20tariff.pdf [hereinafter, "SPP Membership Agreement"].

[5] *See also* Southwest Power Pool, Inc., Corporate Governance Committee Meeting at Attachment 12 (Feb. 25, 2016), *available at* https://www.spp.org/documents/36436/cgc%20materials%2020160225%20np.pdf (identifying $822,008 exit fee for Trans-Elect which owns no transmission and serves no load within SPP).

for a potential member to gauge its exit fee at the time the party considers becoming an SPP member.

Not only is SPP's exit fee exorbitant, it is unique among all other Commission-approved independent system operators ("ISOs") and regional transmission organizations ("RTOs") in this nation (collectively, "RTOs/ISOs"). No other organized market imposes general RTO/ISO costs on non-TO/non-LSE members through membership fees, let alone imposing them through a member-specific exit fee. In fact, when a TO/non-LSE is withdrawing its membership, all other RTOs/ISOs only consider the withdrawing member's open positions in the marketplace.

In light of the unduly excessive exit fees and the fact that they are not causally related to the actions of a departing member in SPP's marketplace, it should come as no surprise that the exit fee has served as a barrier for IPPs, and other non-TOs/non-LSEs, to becoming members of SPP. IPPs, and many other developers of new or emerging technologies, seeking to become members are often newer market participants in SPP and often represent new business models that are entirely differently situated than incumbent TOs. Among other things, these companies are often smaller entities. More importantly, regardless of these differences, upon withdrawal from membership they should not be expected to financially carry the risk and liability for costs that they are not responsible for causing in the SPP market (*e.g.*, costs to cover SPP's future administration and existing obligations unrelated to the exiting member).

As a result, although the SPP Bylaws put an emphasis on having a diverse membership,[6] SPP membership has, in reality, a distinct under-representation of non-TOs/non-LSEs relative to

[6] SPP Bylaws at 7 ("The values and principles upon which SPP is incorporated and formed include: … independence through diversity of Organizational Group membership[.]").

other RTOs/ISOs. This is the case even though these non-TOs/non-LSEs engage in the SPP marketplace as market participants at the same or similar levels as found in other RTOs/ISOs—however, in other RTOs/ISOs they typically do so as voting members. It seems an inescapable conclusion that the small number of non-TO/non-LSE members in SPP is directly correlated to SPP's unique and onerous membership exit fees. Indeed, it is our understanding that the exit fee has inhibited many of AWEA's members pursuing membership in SPP.

This has resulted in SPP's voting being dominated by two classes of RTO market participants–TOs and LSEs–which do not necessarily have the same technical, operational, or economic motivations and needs as non-TOs/non-LSEs. This begs the question of whether the exit fee causes SPP's governance structure to be inconsistent with the Order No. 2000 principles, which state that an RTO must have a decision-making process that is independent of control (in both reality and perception) by any market participant or class of participants.[7]

If barriers to membership are not removed, it will discourage the full panoply of market participant classes (IPPs, power marketers, energy storage, demand response, consumer advocate and environmental) from having a reasonable opportunity to develop, vote on, and determine SPP's policies (*i.e.*, rates, terms, and conditions of service). In fact, an RTO's governance structure is less likely to produce just and reasonable outcomes if it does not accurately reflect its market participant classes because they do not have an opportunity to develop and vote on policy. Conversely, it seems intuitive that if these barriers are removed, the number of voting members in SPP will increase and be more reflective of the full interests of market participants (namely, greater representation of non-TOs/non-LSEs as voting members in SPP) and, in turn, the potential for the SPP decision-making process to produce just and reasonable rates and

[7] *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 (1999) (hereinafter "Order No. 2000").

policies will be greatly improved. As such, the exit fee, as currently structured, not only violates cost causation principles but also directly affects jurisdictional rates, increasing the probability that rates are unduly discriminatory and preferential.

For the above reasons and others elaborated herein, we request that the Commission direct SPP to cease and desist from imposing the relevant sections of SPP's exit fees on non-TOs/non-LSEs. Specifically, this Complaint asks the Commission to order SPP to revise section 8.7 of the SPP Bylaws and sections 4.2 and 4.3 of the SPP Membership Agreement as provided in **Attachment 2** hereto.[8]

III. CORRESPONDENCE AND COMMUNICATIONS

The Complainants respectfully request that all correspondence and communications regarding this Complaint be addressed to the following persons and those persons should be placed on the Commission's official service list in this proceeding:

Gene Grace Senior Counsel Lauren Bachtel Associate Counsel American Wind Energy Association Suite 900 1501 M Street, NW Washington, DC 20005 (202) 383-2500 (202) 383-2505 ggrace@awea.org	Steve Gaw Attorney/Consultant The Wind Coalition 610 Brazos Street, Suite 210 Austin, Texas 78701 (573) 645-0777 rsgaw1@gmail.com Natalie McIntire Consultant to AWEA (401) 461-6842 natalie.mcintire@gmail.com

[8] If IPPs, and potentially other non-TOs/non-LSEs, are removed from the obligation to pay a portion of SPP's "Existing Obligations," we are mindful this could cause an increase in the exit fees charged to TOs or LSEs if any ever decide to leave. However, we do not take a position here whether or not TOs/LSEs should ultimately bear such costs. In addition, we take no position here on whether the fees objected to herein, should be assessed through administrative costs in SPP.

IV. DESCRIPTION OF COMPLAINANTS AND RESPONDENT

A. Complainants

1. AWEA

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers, and their advocates.

2. The Wind Coalition

The Wind Coalition is a trade organization representing wind developers, generator owners, wind turbine and component parts manufacturers, and public interest organizations interested in wind energy development in the SPP and Electric Reliability Council of Texas ("ERCOT") regions of the United States.

B. Respondent

1. SPP

SPP oversees the bulk electric grid and wholesale power market in the central United States on behalf of a diverse group of utilities and transmission companies in all or parts of 14 states.

V. FACTS SUPPORTING THE COMPLAINT

A. Overview of Member Rights in SPP

The Preamble to SPP's Bylaws emphasizes the primacy of membership by stating:

> The values and principles upon which SPP is incorporated and formed include: a relationship-based organization; *member-driven processes; independence through diversity* of Organizational Group membership; recognition that reliability and economic/equity issues are inseparable; and, deliberate evolutionary, as opposed

> to revolutionary, implementation of new concepts. These values and principles should guide those serving this organization. The Board of Directors will endeavor to ensure equity to all Members while also assuring the continuous adaptation to controlling conditions within these stated values and principles.[9]

SPP's Bylaws were revised to address these principles and identify numerous ways in which members have a voice and ability to shape SPP policy. For instance, Section 4.3 of SPP's Bylaws list a member's means and right to elect Directors and provides, in pertinent part:

- "[A] director shall be elected at the meeting *of Members* to a three-year term . . ."
- "[T]he Corporate Governance Committee shall commence the process to nominate . . . the directors to be elected. . . Corporate Secretary shall prepare the ballot . . . and shall deliver same *to Members* . . . prior to the meeting of Members."
- "At the meeting of Members, any additional nominee or nominees may be added to the ballot if a motion is made and seconded *by Members*."[10]

Section 4.4 provides, "*The membership* may remove a director with cause by vote. . . ."[11] Section 4.6.1 requires the Board of Directors meetings to include the Members Committee and provides "The Chair shall grant any *member's request* to address the Board of Directors."[12]

Members also have the right to serve and vote on official Committees, Organizational Groups, and Task Forces, which is where all policy and tariff revisions in SPP are developed. The Committees also report directly to the Board. Further, members may appeal decisions of Organizational Groups to the Board of Directors and request dispute resolution. We discuss a few of these Committees in section E below.

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[9] SPP Bylaws at 7 (emphasis added).
[10] SPP Bylaws Section 4.3 (emphasis added).
[11] SPP Bylaws Section 4.4 (emphasis added).
[12] SPP Bylaws Section 4.6.1 (emphasis added).

B. Comparison of RTO Membership Exit Fee Provisions

1. SPP Exit Fee Provisions

Section 8.7.1 of SPP's Bylaws list the financial obligations of withdrawing members. There are five categories of components used to determine a member's exit fee:[13]

- "member's unpaid annual membership fee."
- "member's unpaid dues, assessments, and other amounts charged under Section 3.8 of the Membership Agreement [pertaining to Tariff charges], section 8.4 of the Bylaws [pertaining to severability], or otherwise under the Bylaws, plus the member's share of costs SPP customarily includes in such dues, assessments or other charges, but which as of the Termination Date SPP had not included in such dues, assessments or other charges."
- "member's share [[14]] . . . of the entire principal amounts of all SPP Financial Obligations outstanding as of the Termination Date. "Financial Obligations" are all long-term (in excess of six (6) months) financial obligations of SPP, including but not limited to the following:
    - ➢ debts under all mortgages, loans, loan agreements, borrowings, promissory notes, bonds, and credit lines, under which SPP is obligated, including principal and interest;
    - ➢ all payment obligations under equipment leases, financing leases, capital leases, real estate and office space leases, consulting contracts, and contracts for outsourced services;
    - ➢ any unfunded liabilities of any SPP employee pension funds, whether or not liquidated or demanded; and
    - ➢ the general and administrative overhead of SPP for a period of three (3) months."[15]

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[13] Section 4.3.2 of SPP's Membership Agreement lists the same categories of components for determining a withdrawing member's financial obligation.

[14] The "member's share" mentioned in Section 8.7.1 is derived from a formula outlined in Section 8.7.2 of the Bylaws. The formula includes multiple factors: the total number of members, the member's previous year Net Energy for Load, and the previous year Net Energy for Load for all members. The exact formula is described as follows: $A = 100\,[0.25(1/N) + 0.75(B/C)]$

Where: A = Member's share (expressed as a percentage)
N = Total number of Members
B = The Member's previous year Net Energy for Load
C = Total of factor B for all Members

[15] SPP Bylaws Section 8.7.1.

- "Any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable, and including without limitation prepayment premiums or penalties arising under SPP Financial Obligations."

- Member's share of "all interest that will become due for payment with respect to all interest bearing Financial Obligations after the Termination Date and until the maturity of all Financial Obligations in accordance with their respective terms ("Future Interest")."

Complainants do not take issue with the first two enumerated obligations,[16] which require payment of funds already owed by an exiting member. Those costs are directly related to membership and current participation in the SPP market. However, we do challenge the necessity and reasonableness of the requirement to pay the fees associated with the other obligations, which, as described below, are not caused by a party's membership status.

In addition, section 4.2.1(a) of SPP's Membership Agreement provides, in pertinent part: "Notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President no less than twenty-four (24) months prior to such date."[17] Finally, section 4.2.1(b) requires the withdrawing member that is a non-LSE to provide a $50,000 deposit at the time the Notice of intent to withdraw is submitted.[18]

As discussed further herein, we challenge the necessity and reasonableness of these provisions. No other RTOs require such an unreasonable fee, and as stated immediately below, all other RTOs only require a 30-90 day notice, if advanced notice is required at all.

[16] We do believe, however, that only costs from Section 3.8 in second bullet should apply to non-TOs/non-LSEs. Costs under section 8.4 are monthly charges based on eligible load not taking Network Integration Transmission Service or Point-To-Point Transmission Service under the SPP OATT. Non-TOs/non-LSEs do not have such load.
[17] SPP Membership Agreement Section 4.2.1.
[18] *Id.*

2. Non-SPP RTO/ISO Provisions on Exiting Members

Unlike SPP, all other RTOs/ISOs have no membership exit fee. Further, obligations for non-TOs/non-LSEs upon withdrawal of membership are limited, if any exist at all, to financial obligations an entity has incurred in the market. This is summarized in Table 1 below:

Table 1: *Non-TO/Non-LSE Notice Requirements and Financial Obligations of Exiting Members*

RTOs/ISOs	**Non-TO/Non-LSE Membership Exit Fee**
MISO	No fees; 30 days' notice; responsible for financial obligations in market[19]
PJM	No fees; 90 days' advance notice[20]
NYISO	No fees; no advance notice; responsible for financial obligations in market[21]
ISO-NE	No fees; no advance notice[22]
CAISO	No fees; no advance notice[23]

C. Comparison of Membership Classes among RTOs

Nearly all RTOs/ISOs post a list of members, by class, on their website. The distribution of non-TO/non-LSE voting members to total voting members in MISO, PJM, and ISO-NE in comparison to SPP is shown in Table 2 below:[24]

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[19] *See* Article 5, Section II.B of the MISO Transmission Owner Agreement.

[20] *See* Section 18.18.211.6 and Schedule 1, Section 1.4.6 of the PJM Operating Agreement; *see also* PJM, *Withdraw*, http://www.pjm.com/about-pjm/member-services/existing-members/withdraw.aspx (last visited October 3, 2018).

[21] *See* Article 17.033 of NYISO Membership Agreement.

[22] New England Power Pool, Second Restated NEPOOL Agreement, Section 16.1(a) (membership in ISO-NE typically entails membership in NEPOOL, but is not required. The governing documents of ISO-NE do not provide any specific provisions on fees or notice of termination of membership). ISO-NE has no provision governing membership termination. We confirmed via telephone with ISO-NE staff that it has no exit fee or advance notice requirement.

[23] California ISO, Amended and Restated Transmission Control Agreement, Section 3.3.1, *available at* https://www.caiso.com/Documents/TransmissionControlAgreement.pdf (providing that TO members are required to give two year written notice, but makes no mention of any prior notice requirement of non-TO exiting members). CAISO has no provision governing membership termination—no exit fee or advance notice requirement.

[24] Similar information was not readily available for CAISO and NYISO.

Table 2: *RTO/ISO Distribution of Voting Members*

RTO	Non-TOs/Non-LSE Voting Members	Total Voting Members	Non-TO/Non-LSE Voting Members as Percentage of Total Voting Members
MISO[25]	131	184	71%
PJM[26]	470	534	82%
ISO-NE[27]	348	439	79%
SPP	21	95	22%

The data show that the vast majority of voting members in MISO, PJM, and ISO-NE are non-TOs/non-LSEs (71-82%).

In comparison, the composition of the voting membership in SPP is the exact opposite; non-TOs/non-LSEs, or their affiliates, make-up just 22% of the membership, leaving a super-majority of 78% of the members that are TOs/LSEs. During the formation of SPP as an RTO, the Commission was instrumental in ensuring that SPP stakeholder committees would have balanced representation and broad participation. However, as SPP has grown, the representation has, as demonstrated in Table 2 above, become dominated by a few classes and, thus, is no longer balanced.

D. The Vast Majority of Entities Doing Business in SPP are not SPP Members

There are numerous entities that own assets in and are transacting business within SPP that are not members. A simple review of SPP's Electric Quarterly Report ("EQR") for Q2 of

[25] *See* MISO, *MISO Members*, https://www.misoenergy.org/stakeholder-engagement/members/.StakeholderCenter/Members/Pages/MembershipList.aspx.
[26] *See* PJM, *Member List*, http://www.pjm.com/about-pjm/member-services/member-list.aspx.
[27] *See* ISO, *Customer Directors*, https://www.iso-ne.com/participate/participant-asset-listings/directory.

2018 lists numerous entities doing business in SPP that are not members.[28] Many other generation owners, energy storage owners, and power marketers sell electric products within SPP and report those transactions in their own EQRs, and also are not members. Indeed, the Wind Coalition alone has 34 members that are generation developers/owners, power marketers, or environmental/consumer-focused entities. Most of these do business in and have invested heavily in the SPP market; however, only a handful have become SPP members. Nearly all of these entities are voting members in other RTOs. It seems a more than reasonable conclusion that these entities are, in large part, not members of SPP because of SPP's onerous and unreasonable membership exit fees.

E. Markets and Operations Policy Committee

Section 3.9.1 of SPP's Bylaws provides: "Members shall be assigned to one of two membership sectors for the sole purpose of voting on matters before the Markets and Operations Policy Committee"[29] ("MOPC"). The MOPC, per Section 6.1, "is responsible, through its designated Organizational Groups, for developing and recommending policies and procedures related to the technical operation" of SPP.[30] Significant rules and opportunities pertaining to generation interconnection, transmission, Integrated Marketplace operations, and products come from the MOPC and the work groups thereunder. The rules about how SPP markets function are

[28] Some of these include Rainbow Energy Marketing, ConAgra Trade Group, Electric Clearinghouse, NorAm Energy Services, The Energy Authority, Powerex Corp., Energy Transfer Group, TXU Energy Trading, Talen Energy Marketing, Axia Energy, TransAlta Energy Marketing, Occidental Power Services, EDF Trading, Chermac Energy Corp., J. Aron & Company, GDF Suez Energy Marketing, ConocoPhillips Company, Citigroup Energy, ETC Endure Energy, Barclays Bank PLC, Macquarie Energy, RES Americas Development, Twin Eagle Resource Management, Infinity Wind Holdings, Google Energy, Royal Bank of Canada, Apex Clean Energy, Invenergy Energy Marketing, Merrill Lynch Commodities, Avangrid Renewables, Brookfield Energy Marketing, Castleton Power Trading, Guzman Energy – *just to name a few*.

[29] SPP Bylaws Section 3.9.1.

[30] SPP Bylaws Section 6.1.

determined by the MOPC and its work groups. Today, there are approximately sixteen work groups under MOPC and many more task forces. Some notable work groups are:

- Regional Tariff Work Group that is responsible for developing all the SPP Tariff language that is submitted to the Commission for acceptance under the FPA;

- Market Work Group that develops rules for the market and transmission congestion and financial hedges;

- Economic Studies Work Group that develops the rules for economic and policy related transmission planning and makes decisions about the modeling and study of new transmission;

- Transmission Work Group that works on reliability planning and generation interconnection issues and develops the rules for both;[31]

- Operations and Reliability Work Group that develops many of the rules governing the operation of the SPP system, as well as reliability requirements for the operations of generation and electric storage;

- Supply Adequacy Work Group that is responsible for developing policy for the resource adequacy of the region and determining the amount of credit given to different types of generation; and

- Seams Steering Committee that not only deals with seams policy issues, including interregional transmission matters, impacting exports and imports between SPP and adjacent RTOs, but also automatically, along with other seams adjacent transmission members, populates the Order 1000 group known as the IPSAC, which recommends approval or rejection of interregional projects.

As noted, SPP regards itself as a "member driven organization."[32] This makes the position of the members, as reflected in their votes within each work group, committee, and task

[31] For example, last year SPP filed Tariff revisions to implement a new Integrated Transmission Plan protocol. In that filing, SPP points to the importance and influence of having a vote on Task Forces and Working Groups: "The ITP Manual Task Force, Transmission Working Group ("TWG") and Economic Studies Working Group ("ESWG") are developing the necessary changes to the ITP Manual to accomplish [the recommendations of the Transmission Planning Improvement Task Force]." Those changes are "standardization of the study scope, the process for the development of common planning models, the process for reviewing persistent operational issues, and the timing of data submissions and reviews." These are the issues that are at the heart of SPP's transmission planning. The vast majority of non-TOs/non-LSEs that do business within SPP are <u>not</u> voting on the decisions that will be made. *See Southwest Power Pool, Inc.*, Submission of Tariff Revisions to SPP's Integrated Transmission Planning Process, Docket No. ER17-2027-000, Jun. 30, 2017, at 7.

[32] Southwest Power Pool, *The SPP Stakeholder Process*, https://spp.org/about-us/stakeholder-process/ (last visited Oct. 3, 2018).

force, important to the outcome of the Board's evaluation. Votes of the various committees, work groups, and task forces are recorded and reported to the MOPC. Based upon those votes, the MOPC makes a recommendation to the Board. Barring a disagreement among members, it is rare for the Board to deviate from the position recommended by the MOPC.

This makes voting rights vitally important. As noted, Section 3.9.1 of SPP's Bylaws provides that "Members shall be assigned to one of two membership sectors for the sole purpose of voting on matters before the [MOPC]."[33] However, only SPP members may serve on and, if selected, chair the work groups and committees. Further, only members can vote at the MOPC. Although non-members may participate in the discussions at MOPC and groups thereunder, they cannot vote and the positions of non-members are generally *not* reported to the Board. Given the distinct lack of non-TO/non-LSE members in SPP, in practice, this has meant that the policy decisions coming out of the MOPC, and which are largely adopted by the Board, have been overwhelmingly dominated by TOs and LSEs.

1. Strategic Planning Committee

Another influential Committee is the Strategic Planning Committee ("SPC"). Section 6.2 of SPP's Bylaws provides that the SPC "is responsible for the development and recommendation of strategic direction" for SPP.[34] The SPC makes decisions that impact the longer-term decisions of SPP. For example, at times the SPC has been responsible for identifying priority transmission needs. Also, the SPC was the body within SPP that drafted comments to address EPA's Clean Power Plan. These are just two examples of the many strategic policy issues that come from the SPC.

[33] SPP Bylaws Section 3.9.1.
[34] SPP Bylaws Section 6.2.

As with all Committees in SPP, membership is required to serve on the SPC. Given the distinct lack of non-TO/non-LSE members in SPP, in practice, this has meant that the policy decisions coming out of the SPC have been dominated by TOs and LSEs. Indeed, when the SPC process for addressing the EPA's Clean Power Plan was nearing a close, only members were allowed to participate in the positions taken in comments and reported, which was dominated by TOs and LSEs.

2. Members Committee

Members also serve and have a vote on the Members Committee, the core function of which, per Section 5.1 of the SPP Bylaws, is to "work with the Board of Directors to manage and direct the general business of SPP."[35] The Members Committee is tasked with providing "input to the Board of Directors, including but not limited to a straw vote . . . *on all actions pending before the Board*."[36] This Committee has had a significant impact on extremely important policy decisions in the past, such as the approval of major transmission expansion, developing positions for SPP on the Clean Power Plan and other environmental matters to be filed with Federal agencies, operational rules and requirements for inverter-based generation, and expansion of the SPP region. Importantly, the Members Committee has at times met in closed sessions where only SPP members and staff are allowed to attend. This has shut-out comments (and voting) for a significant portion of non-TO/non-LSEs that do business within SPP.[37]

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[35] SPP Bylaws Section 5.1.

[36] *Id.* (emphasis added).

[37] By way of example, without feedback from the vast majority of participants in SPP's markets (*i.e.*, non-TOs/non-LSEs that are not members), the SPP Board of Directors approved the creation of and made appointments to the current Holistic Integrated Tariff Team (HITT) with the goal of taking a holistic look at and providing high-level recommendations on the many issues challenging the SPP region. In the way of another example, without feedback from these non-members, SPP's Board of Directors approved discussions pertaining to the integration of Mountain West as RTO members. The Board approved a set of policies defining the terms and conditions of the Mountain West membership in SPP. The Board also directed the organization's staff and stakeholders to draft amendments to SPP's Tariff, bylaws, and membership agreement in support of those policies. All of this was done without any

3. Other Committees

SPP's Bylaws provide for many other official Committees and Organizational Groups thereunder, such as the Finance Committee, Human Resources Committee, Oversight Committee, and Corporate Governance Committee.[38] Again, only members have the right to serve, chair, and of course, vote on all of these powerful Committees and Groups. It is the Corporate Governance Committee that is responsible for nominating the chairs of all SPP's Organizational Groups, candidates for the Board of Directors, and representatives for other committees. The Finance Committee makes decisions and recommendations on budgetary matters. Indeed, Section 3.10 of SPP's Bylaws provides,

> Should any member . . . disagree on an action taken or recommended by any Organizational Groups, nominating candidates for Group, such member(s) may, in writing, appeal and submit an alternate recommendation to the Board of Directors,[39] and nominating representatives for other committees[40] among other responsibilities, prior to the meeting at which consideration of the action by the Board of Directors is scheduled.[41]

Lack of membership clearly limits a stakeholder's ability to participate in and influence all the decisions in SPP.

VI. COMPLAINT: SPP'S MEMBERSHIP EXIT FEES ARE UNJUST AND UNREASONABLE AND UNDULY DISCRIMINATORY AS APPLIED TO NON-TOs/NON-LSEs.

Pursuant to Section 206 of the FPA, if "any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential," the Commission must "determine the just and reasonable rate, charge,

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input or opportunity for input from the vast majority of participants in SPP's markets (*i.e.*, non-TOs/non-LSEs that are not members) who are significantly impacted by such a change.

[38] SPP Bylaws Section 3.3.1 Appointment.

[39] *Id.*

[40] SPP Bylaws Section 5.1.2 Term and Election, Section 6.2 Strategic Planning Committee, Section 6.3 Human Resources Committee, Section 6.5 Finance Committee.

[41] SPP Bylaws Section 3.10.

classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order."[42] As described in detail below, portions of the SPP membership exit fee violate Section 206 of the FPA: (1) the fee violates cost causation principles and will result in rates that are not just and reasonable because there is no causal relationship between a non-TO/non-LSE's termination of its membership and the vast majority of the exit fee charged; and (2) the exit fee is a practice that directly affects jurisdictional rates and results in such rates that are unduly discriminatory and preferential by creating a barrier to membership and voting rights, leading to an under-representation of non-TOs/non-LSEs as voting members and, ultimately, skewing voting practices which result in unduly discriminatory and preferential rates.

A. SPP's Exit Fee Violates Cost Causation Principle and Results in Rates that are Not Just and Reasonable.

SPP's required exit fees do not follow the Commission's cost causation principles, which provide that "all approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them."[43] As such, costs must "be allocated to those who cause the costs to be incurred and reap the resulting benefits."[44]

Courts have found that cost causation principles apply when determining what is "just and reasonable" in regard to the Commission's approval of RTO/ISO actions.[45] This means that the Commission can only condone tariff provisions in which the required obligations of those paying reflect the costs that they contributed to causing (*i.e.*, the "burden is matched with

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[42] 16 U.S.C. § 824e(a).
[43] *KN Energy Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (This cost-causation principle "add[s] flesh to [the] bare statutory bones" of the just-and-reasonable-rate requirement).
[44] *NARUC v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007).
[45] *See KN Energy Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (applying the cost-causation principles to determine whether the rates are just and reasonable); *see also Old Dominion Elec. Coop. v. FERC,* 2018 U.S. App. LEXIS 21527 (D.C. Cir. 2018) (same); *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (same); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004) (same).

benefit").[46] In order to determine if that is indeed the case, the Commission must "evaluate compliance [with the cost causation principle] by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."[47]

SPP's exit fee structure clearly assesses costs to non-TOs/non-LSEs even though they have neither contributed to causing those costs nor has their status as a member of SPP resulted in those costs. Under SPP's membership structure, exiting members are required to pay a portion of all long-term (in excess of six months) financial obligations of SPP. Specifically, per section 8.7.1 of SPP's Bylaws, and detailed above in Section V(B)(1) of this Complaint, these include: debts of SPP, whether held through mortgages, loans, loan agreements, borrowings, promissory notes, bonds, or credit lines; payments on equipment leases, financing leases, capital leases, real estate and office space, consulting contracts, and other contracts for services; SPP employee pension funds' unfunded liabilities; and SPP's overhead for three months.[48] Exiting members are also required to pay a share of the interest that will become due on payment of any of the above.[49]

These existing and future SPP obligations have no causal link to a non-TO/non-LSE's status while it was a member of SPP or thereafter. These costs are continuing expenses of SPP and are based upon ongoing obligations that the SPP Board of Directors has approved to ensure

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[46] *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268, 408 U.S. App. D.C. 333 (D.C. Cir. 2014); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368-69, 362 U.S. App. D.C. 314 (D.C. Cir. 2004) ("*MISO TOs*"); *see also El Paso Electric Company v. FERC*, No. 14-60822, 13 (5th Cir. 2016) (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009)) ("utilities and FERC should not approve rates for transmission or electric services that do not 'reflect to some degree the costs actually caused by' the person or entity paying them.").

[47] *MISO TOs*, 373 F.3d 1at 1368.

[48] SPP Bylaws Section 8.7.1.

[49] *Id.* To be clear, we do not dispute the requirement that exiting non-TO/non-LSE members pay any outstanding membership fees and any unpaid dues or other assessments as a result of their exit from membership that are causally connected to their exit from membership. Obligations, such as unpaid membership dues, are clearly causally connected to membership.

the viability of the activities of SPP, such as running the market, acting as a reliability coordinator, and operating and planning the transmission system.

SPP's long-term financial obligations are unquestionably not caused by the joining of an entity as a member of SPP, its membership, or its withdrawal. Indeed, because those obligations are incurred in order for the RTO to serve its *customers* in the SPP market, SPP will continue to bear those obligations long after the member is gone. Even if a withdrawing member subsequently decides to remain as a market participant in SPP, it is not causing SPP to incur any different ongoing costs or "obligations."

One of the clearest examples of the flaw in SPP's exit fee approach can be illustrated with the use of two hypothetical market participants in SPP—both of which, for the purpose of this exercise, are generator owners.[50] Let us assume that these generator owners have the same profiles except that one is a member of SPP and one is just a market participant. If either of these entities stopped doing business in SPP, the financial impact on SPP would be the same regardless of whether or not the entity is a member. That is because the impact, if any, to SPP is related to the loss of the entity as a participant in the market, not whether or not there was change in their status as a member.

A similar example is that of a member who chooses to terminate its membership, such as a developer seeking to build new generation resources in SPP, for instance, a municipality (which was formerly a customer of SPP), or a party representing the interests of others (*e.g.*, environmental group or consumer group). Membership termination of any of these entities would have no measurable financial impact on the cost of running SPP's business. Indeed, nothing would have changed regarding the impact to the ongoing or long-term expenses of SPP

[50] The same could be said about other non-TO/non-LSE market participants of SPP.

as a result of any of these members terminating their membership. Yet, SPP's exit fees require that these exiting members pay for ongoing obligations that they have not caused merely because of a change in their membership status, which does not comport with cost causation principles. There is simply no causal connection between the exit fees assessed for membership termination and the financial impact on SPP or other members when such parties terminate their membership. Thus, SPP's provisions for charging these exit fees are unjust and unreasonable.

Even assuming arguendo that there is an impact from members exiting, SPP does not distinguish between the impacts of different types of members exiting the RTO or the relative impact of membership withdrawal. Specifically, SPP has made no attempt to correlate the exit fee with the amount of any costs caused by a non-TO/non-LSE withdrawing as a member. While the formula employed by the Tariff does attempt to calculate certain costs for LSEs, all non-TO/non-LSEs are obligated to pay the same exit fee regardless of the scope of their activity or the impact of their withdrawal from membership. For example, public interest and not-for-profits entities, which have no market activity whatsoever, must pay the same exit fee as an entity with thousands of megawatts of generation in the footprint. SPP simply does not take into account the size of the impact of the departing member or the cost caused by that entity when applying the exit fee.

In 2004, when some market participants sought an exemption from SPP's proposed exit fees, SPP stated that "members should be financially invested in the membership as the *quid pro quo* for voting privileges and the right to participate in decisions affecting the direction and affairs of SPP."[51] While we do not take issue that members, including non-TOs/non-LSEs, should be "financially invested" in SPP, it is another thing to say that this investment should

[51] *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,003 at P 33 (2004).

require non-TOs/non-LSEs to pay for a share of SPP's long-term financial obligations, as a "*quid pro quo* for voting privileges," as those costs are not related to the actions of non-TO/non-LSE members. The obligation to pay for pensions, leases, debts, and interest on debts that are based on SPP operating 10, 20, or more years after a member decides to leave are simply not related to a party's decision to terminate membership in SPP and are clearly not what the Commission had in mind with respect to ensuring that members are financially invested in SPP. Rather, because these costs are not actually caused by the exiting member who must pay them, they result in rates that are not just and reasonable.[52] Further, as discussed below, SPP is a different market than it was in 2004. SPP is now a "Day 2" market, with non-TOs/non-LSEs "financially invested" in numerous ways, bringing benefits to customers within SPP.

Finally, we note that SPP already appropriately collects an ongoing, customer-based administrative fee to pay for the costs that SPP incurs from non-TOs/non-LSEs participating in the market. SPP collects the administrative fee through transmission charges.[53] The customer-based administrative fee is the appropriate place to collect all such ongoing obligations as they are incurred each year. In fact, this is the practice in other RTOs/ISOs, and, just as in those

[52] *See, e.g.*, *Buckeye Power, Inc. v. Am. Transmission Sys.*, 142 FERC ¶ 63,007, 66077 (2013) ("[t]o be just and reasonable under Commission policy and precedent, a rate must always satisfy the cost causation principle"); *MISO TOs*, 373 F.3d at 1368 ("all approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them"); *Pennsylvania Elec. Co. v. FERC*, 11 F.3d 207, 211 (D.C. Cir. 1993) ("Utility customers should normally be charged rates that fairly track the costs for which they are responsible.").

[53] *See* Tom Kleckner, *SPP Stakeholders to Study Admin Fee Changes*, RTO Insider, https://www.rtoinsider.com/spp-mopc-administrative-fee-96730/ (July 23, 2018) ("The administrative fee, currently 42.9 cents/MWh, is collected under Schedule 1A of SPP's Tariff on transmission contracts between transmission providers and customers."); SPP Board of Directors/Members Committee Briefs: Dec. 5, 2017, *Directors Approve 1-cent Hike in Admin Fee,* RTO Insider, https://www.rtoinsider.com/spp-board-administrative-fee-2018-budget-82078/ (Dec.https://www.rtoinsider.com/spp-board-administrative-fee-2018-budget-82078/ (Dec. 11, 2017) ("The RTO's administrative fee shot up 13.2% for 2017, from 37 cents/MWh to 41.9 cents, compensating for a lack of load growth. With this year's increase, the 2018 fee will stand at 42.9 cents, just under its Tariff cap of 43 cents.").

markets, SPP is not financially impacted by withdrawal of a non-TO/non-LSE except for the loss of the annual membership fee.[54]

B. SPP's Exit Fee is a Practice that Directly Affects Rates and Increases the Likelihood that Jurisdictional Rates are Unduly Discriminatory and Preferential.

Even assuming for the sake of argument that the exit fee is not a "rate" itself, it directly affects rates. Specifically, the exit fee amounts to an unreasonable practice that directly affects rates by impeding IPPs and other parties from becoming SPP members, depriving them of the means to vote on SPP interconnection, transmission, and market policies and rules. This invariably influences voting outcomes in SPP, as they are not reflective of its diverse classes of market participants and, in turn, increases the probability that jurisdictional rates are unduly discriminatory and preferential.

1. No Other RTO/ISO Requires Non-TOs/Non-LSEs to Pay an Exit Fee.

No other RTO/ISO requires membership exit fees for non-TOs/non-LSEs departing their market. In addition, no other RTO/ISO imposes any type of fee on departing members based on a portion of the RTO/ISO's future long-term costs. SPP stands entirely alone in this regard.

In PJM, for example, membership is governed by the Reliability Assurance Agreement ("PJM RAA") for LSEs and by the PJM Operating Agreement for other members.[55] An entity becomes a "PJM Participant," which is what a member is called in PJM, by signing the PJM Operating Agreement and is then granted voting rights. The PJM Operating Agreement only

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[54] *See, e.g.*, PJM, *How Does PJM Make Money*¸ https://learn.pjm.com/who-is-pjm/how-does-pjm-make-money.aspx (last visited Oct. 3, 2018) ("PJM recovers its administrative costs – the costs of operating the electric transmission system and the wholesale electricity markets – through fixed rates billed to members based on their activity levels").

[55] *See* PJM Interconnection, LLC, *Reliability Assurance Agreement Among Load Serving Entities in the PJM Region,* Rate Schedule FERC No. 44 (effective date May 28, 2013), *available at* https://www.pjm.com/directory/merged-tariffs/raa.pdf; PJM Interconnection, LLC, *Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.*, Rate Schedule FERC No. 24 (effective date July 14, 2011), *available at* https://www.pjm.com/directory/merged-tariffs/oa.pdf.

requires withdrawing members to pay outstanding obligations and does not impose any additional conditions, such as bearing the cost of PJM's long-term obligations, on exiting members. Even when a PJM Participant is forced to withdraw from membership, that member is only required to settle up on what they owe for current obligations to the marketplace and unpaid membership fees. This results in a more diverse PJM membership voting on its policies and rate structures.

With respect to MISO, Article Five of the MISO Transmission Owners Agreement distinguishes between a member that is an owner of transmission facilities and a member that is not. A member that owns transmission is responsible for any "[o]bligations relating to the construction of new [transmission] facilities."[56] Both the TOs and non-TOs are responsible for "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal."[57] However, there is no obligation for any party terminating its membership to pay for MISO's long-term obligations,[58] such as SPP currently imposes. This results in a more diverse MISO membership voting on its policies and rate structures.

In short, no other RTO/ISO requires exiting members to pay exit fees that include the organized market's long-term costs. There is no reason why SPP's membership exit fee criteria for non-TOs/non-LSEs should not resemble all other RTOs/ISOs' current structure. While the Commission has taken the position in the past that RTOs can address needs differently as long as the practice is just and reasonable, for the reasons stated herein, SPP's membership exit fees for non-TOs/non-LSEs are certainly not just and reasonable. In other words, the fact that Sections

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[56] MISO Transmission Owners Agreement, Article 5, Section I and Section II. C Article 5.
[57] *Id.*, Article 5, Section II. B.
[58] *See Louisville Gas and Electric Co.*, *et al.*, 114 FERC ¶ 61,282 at P. 24 (2006) (finding that for the Midwest ISO exit fee, withdrawing transmission owners are not required to contribute to the ongoing operating costs of the Midwest ISO).

205 and 206 of the FPA confer upon the Commission the responsibility to ensure that rates and charges for transmission, including any practice affecting them, are just and reasonable and not unduly discriminatory or preferential, supersede any argument made for regional variation in this matter.

2. SPP's Membership Exit Fees Are a Barrier to Membership and Voting Rights.

In 2004 the Commission was asked to consider exempting certain customer classes from SPP's membership exit fees. The Commission denied the request finding, among other things, an "absence of evidence that the financial obligations are excessive or will preclude any entity from joining the RTO."[59] This was years ago and at a time of SPP's infancy, when it was still seeking to become an RTO.

Fourteen years have now transpired and the evidence has mounted, as detailed herein, that these fees are both excessive and discourage entities from becoming members. In fact, while the non-TO/non-LSE membership in SPP has increased over the years, it has neither come close to approaching the levels found in other RTOs/ISOs nor does it reflect the number of IPPs that own and/or operate generation within SPP or power marketers that do business within SPP.[60]

When SPP applied to become an RTO in 2004 it had 50 members comprised of 14 investor-owned utilities, six municipal systems, eight generation and transmission cooperatives, three state authorities, one federal power marketing agency, two independent power producers, and 16 power marketers.[61] Since that time a lot has changed. SPP's current membership has grown to 96 members generally comprised of 16 investor owned utilities, 14 municipal systems,

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[59] S*outhwest Power Pool, Inc.*, 110 FERC ¶ 61,138 at P 23 (2005) (footnote omitted).
[60] *See, e.g.*, data from SPP's 2018 Q2 EQR provided above.
[61] *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at 5 (2004) ("2004 RTO Order").

16 cooperatives, eight state agencies, one federal agency, 15 independent power producers, 12 power marketers, and one SPP contract participant.

The sheer volume (in MW) of IPP generation in SPP has grown exponentially. Renewable generation owned by non-LSEs has gone from insignificant numbers to over 17 GW. Each company operating those generating facilities has invested hundreds of millions of dollars in generating assets and transmission upgrades in SPP. Likewise, power marketers have invested hundreds of millions of dollars in the SPP market and spent hundreds of millions of dollars transacting and adding liquidity in SPP's markets. Many of these companies do so, however, without becoming a member of SPP because they have concluded that the risk of the exit fee liability is too high.

These companies have taken on business risk to invest in the SPP market, and that risk is unjustly intensified by their inability to vote on matters within the region that impact them. The barrier created by the SPP exit fees has put companies in the difficult and precarious position of owning generating assets that cost hundreds of millions of dollars, with the need to sell power in SPP's Integrated Marketplace or under a long-term power purchase agreement to an LSE within SPP, but effectively no means to vote on policies that directly impact their operations, profitability, and risk.

Similar evidence exists for entities interested in demand response, distributed resources, environmental interests, consumer interests, and end users (industrial or otherwise).[62] Currently, SPP has only one member primarily dedicated to represent any of these interests even though there are more entities who could fill that role if the membership barrier created by the exit fee

[62] MISO has sector categories for some of these entities that do not require any membership fee, nor an exit fee. While these non-paying members are given equal opportunities to vote in the MISO process and to hold leadership roles in committees, they are not granted the opportunity to vote for the Board of Directors.

did not exist.[63] All of these market participants should have a realistic path to secure the means to vote and protect their investment and interests in SPP and should not be hindered by the excessive and undue exit fees of as much as $1 million or more should they want to leave SPP.

Market participants must have a viable path to become members and vote on new measures, allowing them to protect their investment in the SPP market. They should also have other rights that are afforded to members, such as the right to request dispute resolution or to appeal a decision to the Board. Right now the SPP membership is considering multiple important new policy issues (*e.g.*, generation interconnection queue reform, integrated transmission planning, network upgrade cost recovery, long-term capacity rights, transmission service reform) that will directly impact non-TOs/non-LSEs. Accordingly, non-TOs/non-LSEs should be adequately represented on committees and empowered to vote on these measures. If SPP's membership exit fees are revised so that they are truly reflective of cost causation principles for the non-TOs/non-LSEs, the SPP membership will likely increase to include the breadth of market participants invested in SPP today.

It is true that there are now a handful of non-TO/non-LSE members in SPP, including a few IPP members.[64] However, the fact that a few IPPs, or other non-TOs/non-LSEs, are willing to take the risk of an unknown and expensive liability (which is not causally related to their participation in SPP) through the exit fees, does not mean that SPP's exit fees are just and reasonable or that this practice does not unreasonably and unjustly affect rates.

[63] Walmart joined as an SPP member in July 2018. *See* Tom Kleckner, *New SPP Member Walmart Eyes "Everyday Low Costs"*, RTOInsider, https://www.rtoinsider.com/spp-walmart-chris-hendrix-98176/ (Aug. 16, 2018).

[64] These few non-TO/non-LSE members could have large balance sheets and high-risk tolerances and, therefore, be more willing to bear costs for which they are not responsible. Regardless, their numbers are very few and are not representative of the vast number of non-TO/non-LSE market participants in SPP.

In short, today's SPP marketplace, with robust assets and diverse market participants, requires membership criteria that encourages a robust voting membership. However, SPP's membership exit fees are causing the exact opposite result. Therefore, the Commission should remove this unreasonable practice, which serves as an impediment to ensuring SPP's membership grows commensurate with the manner in which SPP's customers and other market participants have grown and changed over time in the RTO.

3. SPP's Membership Exit Fee Results in Unbalanced Voting Practices and, in Turn, Increases the Likelihood for Unduly Discriminatory and Preferential Rates.

The lack of membership by IPPs and other non-TOs/non-LSEs is the major contributing factor to the lack of sector balance in the voting rights on committees in SPP. By deterring market participants and stakeholders from becoming members of SPP in the first place, the exit fee, in turn, restricts their ability to vote on and shape SPP's rules and policies that set the framework for rates in the market.

The Commission has recognized that an RTO/ISO is stronger and healthier when policy is forged from a membership that is robust and reflects all active participants in an organized market. Specifically, in Order No. 2000, the Commission stated that organized markets must provide for balanced stakeholder representation on member committees in order to ensure independence.[65]

[65] *See* Order No. 2000 at 233 ("any RTO governance proposals, whether from an ISO, transco or a hybrid arrangement, will be judged on a case-by-case basis against the overarching standard that its decisionmaking process must be independent of individual market participants and classes of market participants"); *see also id*. at 234 ("we emphasize that the common element for all types of RTOs must be that they satisfy the threshold principle that their decisionmaking should be independent of market participants").

When the Commission granted SPP RTO status, it reiterated the Order No. 2000 principle that RTOs must have independence in both "reality and perception."[66] The Commission required that SPP provide "for balanced stakeholder representation on the Members Committee" so that "no one class dominates its recommendations or decisions."[67] The Commission also explained the need for the market to allow for "broad participation by all market participants" on the membership committee,[68] stating that "expanding the stakeholder classes will provide a better representation of market participants that have not been adequately represented in the past."[69] The Commission thus recognized that cross-sectional representation is essential for the comprehensive understanding of the issues facing SPP and that membership should not be limited to any particular sector.

The expectation that SPP have "balanced representation" is clearly not currently being realized in SPP. Instead, the reality in SPP, unlike in other RTOs/ISOs, is that one or two classes (TOs and/or LSEs) have an overwhelming percentage of the influence in the direction of the organization by being able to dominate voting on committees. In SPP's "membership driven" organization, this is not a trivial fact. Their unique interests overwhelmingly influence any vote

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[66] *See* 2004 RTO Order (noting that "In Order No. 2000, we reaffirmed the principle that an RTO needs to be independent in both reality and perception" and finding that there were certain issues with SPP's proposal that must be resolved for SPP to meet the Commission's independence standard).

[67] *Id.* at ¶ 38, citing Order No. 2000 where the Commission stated:

> Where there is a governing board with classes of market participants, we would expect that no one class would be allowed to veto a decision reached by the rest of the board and that no two classes could force through a decision that is opposed by the rest of the board. Where there is a non-stakeholder board, we believe that it is important that this board not become isolated. Both formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board. Where there are stakeholder committees that advise or share authority with a non- stakeholder board, it is important that there be balanced representation on the stakeholder committees so no one class dominates its recommendations or its decisions.

Order No. 2000 at 233.

[68] *Id.* at ¶ 133.

[69] *Id.* at ¶ 42.

and/or debate on SPP policy and rules—misrepresenting the full breadth of actual participation in the SPP marketplace.

For example, Section 3.9.1 of SPP's Bylaws address voting on the MOPC and provide for two voting sectors: TO members and Transmission Using members. This section of the Bylaws provides: "Each sector votes separately with the result for that sector being a percent of approving votes to the total number of Members voting. An action is approved if the average of these two percentages is at least sixty-six percent."[70] While non-TOs/non-LSEs are part of the Transmission Using sector, when a vote is taken, it is based on one member getting one vote. There are so few non-TO/non-LSE members in SPP that whenever a vote is taken, the reality is that the LSEs in the Transmission Using sector have the power to decide any vote. Further, the TOs in the TO sector often vote in an aligned fashion. A diverse Transmission Using sector would help bring balance to how the TO sector votes.

The current membership make-up (specifically, the lack of non-TOs/non-LSEs), however, precludes that from occurring. By way of example, if all 26 of the IPPs/power marketers that are currently members of the Transmission Users sector vote against a proposal, and the remaining 43 cooperative/municipality/federal and state agencies and LSEs in the Transmission Using sector vote in favor of a proposal, the Transmission Using sector's vote will be in favor of a proposal.[71] This is true across the committee structure in SPP.[72] This is not the

[70] SPP Bylaws Section 3.9.1.

[71] Under SPP's rules, a proposal in MOPC will only pass if "the average of these two percentages is at least sixty-six percent."

[72] For instance, with so few members that are non-TOs/non-LSEs, the Strategic Planning Committee is dominated by LSEs—with only one non-LSE on the Committee. *See* SPP, *Strategic Planning Committee*, https://www.spp.org/organizational-groups/board-of-directorsmembers-committee/strategic-planning-committee/.

case in other RTOs/ISOs where there is a vast pool of IPP, power marketing, and end-use customer members to ensure that representative interests are balanced in voting in committees.[73]

If SPP had a robust number of IPP/storage/power marketing/independent transmission/ advanced technology members participating in such votes, as in all other RTOs, it is safe to assume the outcomes in committees would likely be very different. The exit fee is the barrier that prevents that from occurring. Removing the exit fee would surely result in the expansion of the stakeholder classes represented in SPP's membership and, in turn, voting outcomes in SPP would be less likely to favor just one or two classes—decreasing the chances that the resulting rules or policies produce unduly discriminatory or preferential rates, and also fulfilling the Commission's policy in Order No. 2000.

In short, the lack of non-TOs/non-LSEs members in SPP in "reality and perception" is skewing the voting and policy development in SPP towards interests that do not fully represent the assets and diversity of market participants that exist in SPP today and increasing the likelihood for unduly discriminatory and preferential rates. Consistent with Order No. 2000, in order to ensure that there is a more "balanced representation on the stakeholder committees [in SPP] so no one class dominates its recommendations or its decisions,"[74] the Commission should direct SPP to amend its exit fees in accordance with this Complaint.

VII. REQUESTED RELIEF

[73] Other RTOs and ISOs also have a different membership structure that recognizes the diversity of member types by separating members into a larger number of sectors, where the interests of each sector tend to be more uniformly aligned. This type of sector structure allows for better representation and understanding of minority perspectives, even if those perspectives are not large enough to carry or influence a vote. In those cases, it can be seen that a sector votes against a policy or rule, where such understanding is not easy to see in SPP's structure where IPPs, power marketers, and others are all lumped into the Transmission Using sector.

[74] Order No. 2000 at 31,074.

AWEA and the Wind Coalition respectfully request that the Commission issue an order requiring: (1) SPP to remove portions of the membership exit fees for IPPs, as well as for other non-TOs/non-LSEs, in SPP's Bylaws and Membership Agreement that are not just and reasonable and are unduly discriminatory and preferential; and (2) SPP to adopt the proposed revisions in **Attachment 2**. AWEA and the Wind Coalition request that the Commission order that the revisions are effective the earliest date allowed under the FPA, which is the date this Complaint is filed with the Commission.[75]

VIII. REQUEST FOR SUMMARY DISPOSITION

The Commission is able to provide the requested relief in this proceeding based on this Complaint. No evidentiary hearing is required for the Commission to reach the determinations sought in this proceeding.[76] The Commission has established a practice of seeking to resolve proceedings without hearings when there are no genuine issues of material fact involved.

IX. OTHER MATTERS

A. Other Proceedings

The issues raised in this Complaint are not pending in an existing Commission proceeding or a proceeding in any other forum in which any Complainant is a party.

B. Negotiations Among the Parties

Complainants did not contact FERC's Enforcement Hotline, Dispute Resolution Service, and did not use any Tariff-based dispute resolution mechanisms or other informal dispute

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[75] FPA section 206(b) provides, "In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint." *Id*. The Commission should establish a refund effective date as of the date of filing this Complaint, as it has done in another complaint proceedings. *See, e.g.*, *E.ON Climate & Renewables North America, LLC v. Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,076 (2011); *Jeffers South, LLC v. Midwest ISO*, 134 FERC ¶ 61,013 at P 36 (2011); *Old Dominion Elec. Coop. and N. Carolina Elec. Membership Corp v. Virginia Elec. and Power Co.*, 133 FERC ¶ 61,009 at P 36 (2010); *Midwest ISO v. PJM*, 131 FERC ¶ 61,284 at P 58 (2010).
[76] *E.g., Northern Indiana Pub. Serv. Co. v. F.E.R.C.*, 954 F.2d 736 (D.C. Cir. 1992) (trial-type hearing is necessary only if the material facts in dispute cannot be resolved on the basis of the written record).

resolution procedures. Given the currently skewed make-up of SPP, it is unlikely that members and SPP management would agree to revise the membership exit fees for non-TOs/non-LSEs. SPP management has been approached in the past and recently about the extraordinarily high exit fees for non-TOs/non-LSEs and the impact it is having, but no corrective actions have been initiated by SPP. Indeed, Complainants met with the SPP Board and stakeholders in late 2017 about this need, and have since informed SPP that a Complaint was forthcoming; but SPP has not initiated any action to address this need. Thus, no SPP-based mechanism would result in the relief requested nor would any dispute resolution within SPP be fruitful. Further, the Commission has explained that stakeholders have a right to bring an action before the Commission under FPA section 206 without going through the stakeholder process.[77]

C. Financial Impact

The information in this Complaint explains why SPP's current membership exit fees are unjust and unreasonable and unduly discriminatory and preferential in violation of the FPA. Complainants (and their constituents) have direct business and commercial interests that are impacted by SPP's current extraordinarily high membership exit fees. The financial impact to Complainants and their members is and has been significant. The lack of ability to vote on policy direction within the SPP marketplace is causing incalculable harm in terms of protecting and maximizing the value of existing assets and exposure in the SPP marketplace and deterring opportunities to benefit from future business which, in turn, would bring increased liquidity to SPP and increased cost efficiency to consumers in SPP.

[77] *See, e.g.*, *Otter Tail Power Co. v. Midcontinent Indep. Sys. Op., Inc.*, 151 FERC ¶ 61,220 at P 58 (2015) ("While we encourage parties to follow the MISO stakeholder process when requesting changes to MISO's Tariff, parties have a statutory right to file complaints under section 206 of the FPA.")

Complainants request an order on the merits from the Commission as soon as possible. SPP is facing numerous market-overhauling challenges. It is imperative that the broadest population of market participants has means to vote on these and future matters. The basis for that relief is discussed in this Complaint.

D. Service and Form of Notice

A form of notice of the Complaint suitable for publication in the *Federal Register* is provided in **Attachment 1**.

E. Documents Included with this Complaint

All documents that support the facts in this Complaint that are in possession of, or are otherwise attainable by, Complainants are discussed herein or are included as Attachments to this Complaint. The following documents are included with and in support of this Complaint:

Attachment 1—Notice of Complaint

Attachment 2— Mark-Up of SPP's Bylaws and Membership Agreement

X. CONCLUSION

WHEREFORE, for the foregoing reasons, we respectfully request that the Commission: (1) find that the membership exit fees for IPPs, as well as for other non-TOs/non-LSEs, in SPP's Bylaws and Membership Agreement are not just and reasonable and are unduly discriminatory and preferential; (2) order SPP to adopt the proposed revisions in **Attachment 2**; and (3) order that the revisions are effective as of the date of this Complaint.

Dated: November 2, 2018

Respectfully submitted,

/s/ Gene Grace

Gene Grace
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(202) 383-2500
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CERTIFICATE OF SERVICE

The undersigned certifies, on behalf of Complainants, that a copy of the Complaint and has been served on the contacts for the Southwest Power Pool, Inc. as listed on the Commission's list of Corporate Officials posted on its website.

Dated at Washington, DC this 2nd day of November 2018.

/s/ Gene Grace
Gene Grace
Senior Counsel
American Wind Energy Association

Attachment 1

NOTICE OF COMPLAINT

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Wind Energy Association, et al.	)	
	)	
	)	
Complainants	)	
	)	
	)	
v.	)	Docket No. EL18-___-000
	)	
Southwest Power Pool, Inc.,	)	
	)	
Respondent	)	

NOTICE OF COMPLAINT
(October ___, 2018)

Take notice that on November 2, 2018, the American Wind Energy Association and the Wind Coalition filed a formal complaint, pursuant to sections 206 and 306 of the Federal Power Act and rule 206 of the Commission's Rules of Practice and Procedures. Complainants request that the Commission: (i) find that the membership exit fees in the Bylaws and Membership Agreement of the Southwest Power Pool, Inc. ("SPP") that pertain to Independent Power Producers and other market participants are no longer just and reasonable and are unduly discriminatory and preferential; and (2) order SPP to revise the membership exit fees for IPPs to create a membership structure that better represents the energy sector in SPP and is more closely aligned with other regional transmission organizations' membership structure.

Complainants certify that a copy of the complaint has been served on the contacts for the SPP as listed on the Commission's website in the list of Corporate Officials. Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at http://www.ferc.gov, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose, Secretary

Attachment 2

MARK-UP OF SPP'S BYLAWS AND MEMBERSHIP AGREEMENT

Southwest Power Pool - Governing Documents Tariff - Bylaws, First Revised Volume No. 4 - Bylaws 8.0 Fiscal Administration Bylaws 8.7 Financial Obligation of Withdrawing Members

8.7.1 Financial Obligation of Withdrawing Transmission Owning and Load-Serving Members

8.7.1.1 Existing Obligations

"Existing Obligations" are the following:

a. Member's unpaid annual membership fee.

b. Member's unpaid dues, assessments, and other amounts charged under Section 3.8 of the Membership Agreement, section 8.4 of the Bylaws, or otherwise under the Bylaws, plus the Member's share of costs SPP customarily includes in such dues, assessments or other charges, but which as of the Termination Date SPP had not included in such dues, assessments or other charges.

c. Member's share (computed in accordance with the Bylaws) of the entire principal amounts of all SPP Financial Obligations outstanding as of the Termination Date. "Financial Obligations" are all long-term (in excess of six (6) months) financial obligations of SPP, including but not limited to the following:

i. debts under all mortgages, loans, loan agreements, borrowings, promissory notes, bonds, and credit lines, under which SPP is obligated, including principal and interest;

ii. all payment obligations under equipment leases, financing leases, capital leases, real estate and office space leases, consulting contracts, and contracts for outsourced services;

iii. any unfunded liabilities of any SPP employee pension funds, whether or not liquidated or demanded; and

iv. the general and administrative overhead of SPP for a period of three (3) months.

d. Any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable, and including without limitation prepayment premiums or penalties arising under SPP Financial Obligations.

e. Member's share (computed in accordance with the Bylaws) of all interest that will become due for payment with respect to all interest bearing Financial Obligations after the Termination Date and until the maturity of all Financial Obligations in accordance with their respective terms ("Future Interest"). In the event that a Financial Obligation carries a variable interest rate, the interest rate in effect at the Termination Date shall be used to calculate the applicable Future Interest. In determining the Member's share of Future Interest, SPP shall take into account any reduction of Financial Obligations due to mitigation under this Section.

8.7.1.2 Computation of a Transmission Owning or Load Serving Member's Existing Obligations

For purposes of computing the Existing Obligations of any withdrawing or terminated **Transmission Owning or Load Serving** Member in accordance with the Membership Agreement, such "Member's share" is a percentage calculated as follows:

A = 100 [0.25(1/N) + 0.75(B/C)]

Where: A = Member's share (expressed as a percentage)

N = Total number of **Transmission Owning or Load Serving** Members

B = The Member's previous year Net Energy for Load

C = Total of factor B for all Members

The Finance Committee shall have the discretion to reduce the Existing Obligations of any withdrawing or Terminated **Transmission Owning or Load Serving** Member, to reflect any SPP costs or expenses that may be mitigated in connection with such **Transmission Owning or Load Serving** Member's withdrawal or termination. In the event of consolidation of affiliate memberships or the transfer of membership from one corporate entity to another, whereby one entity remains a member of SPP, the withdrawal obligation for the departing company(ies) may be waived at SPP's sole discretion.

8.7.1.3 Financial Obligations for Transmission Facilities

To the extent that Section 4.3.3A of the Membership Agreement is applicable, a Terminated **Transmission Owning or Load Serving** Member shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date.

8.7.1.4 Penalty Costs

A Terminated Transmission or Load Serving Member shall remain liable for its share of costs associated with penalties assessed against SPP by FERC, the FERC-approved Electric Reliability Organization, any Electric Reliability Organization-approved Regional Entity, or any other governmental or regulatory authority with jurisdiction over SPP that **SPP** incurs as a result of events that occurred prior to Member's Termination Date but that SPP is unable to recover under the SPP OATT.

8.7.1.5 Limitation on Financial and Penalty Obligations of Certain Transmission Owning and Load Serving Members

(a) Notwithstanding the delineation of Members' financial obligations in Section 8.7, a Federal Power Marketing Agency shall not be subject to the financial obligations listed in this Section 8.7 in the event FERC finds that SPP has not adhered to all of the Federal Power Marketing Agency Amendments as that term is defined in Section 1.0 of these Bylaws or if SPP files and FERC approves material changes to the Federal Power Marketing Agency Amendments.

(b) Provided further, notwithstanding any language to the contrary in these Bylaws, a Federal Power Marketing Agency has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has it accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of these Bylaws. SPP, in accepting Western-UGP as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of Western-UGP. SPP will identify the amount of any penalty or fine that SPP allocates to Western-UGP or that SPP determines is attributable to Western-UGP and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in these Bylaws means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

8.7.2 Obligation of a Withdrawing Non-Transmission Owning or Non-Load Serving Member

A non-Transmission Owning or non-Load Serving member that wishes to withdraw its membership shall be obligated for the following as an exit fee:

a. Member's unpaid annual membership fee.

b. Member's unpaid dues, assessments, and other amounts charged under Section 3.8 of the Membership Agreement.

c. Member's unpaid obligations for its transactions in the SPP marketplace

d. SPP's direct costs to process the Member's withdrawal and termination.

4.2 Termination Procedures and Effective Dates for Transmission Owning or Load Serving Members

4.2.1 Notice of Voluntary Withdrawal

(a) Notice. Subject to Section 4.3, a Member may withdraw voluntarily from this Agreement, provided that it has given written notice to the President of its intent to withdraw. Notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President no less than twenty-four (24) months prior to such date; provided, however, that a generation owner or operator or supplier need only provide three (3) months advance notice. The President will advise the Members and the Board of Directors of any withdrawal notices received. In order to assure that there is no more than one proposed termination date with respect to a Member, a withdrawal notice shall be deemed to supersede any prior withdrawal notice given by the Member, except that a Member may not submit a withdrawal notice less than twenty-four (24) months (or three (3) months for a generation owner or operator or supplier) prior to the termination date proposed in the Member's previous notice of intent to withdraw. Voluntary withdrawal is a Termination and creates the same obligations as a Termination for any other reason. Upon receiving a notice of intent to withdraw, SPP shall account for such notice of intent to withdraw in the SPP planning process, unless the Member plans to continue to take transmission service from SPP after the termination date.

(b) Withdrawal Deposit. A Member submitting a written notice of its intent to withdraw from this Agreement must simultaneously submit a cash withdrawal deposit to SPP, as set forth in the table below. SPP will not accept a notice of intent to withdraw without a withdrawal deposit. SPP will treat the withdrawal deposit as a pre-payment of a portion of the costs SPP incurs to process the Member's withdrawal from SPP, as set forth in Section 4.3.2(d) of this Agreement, or the costs associated with reintegrating the Member into SPP if the Member subsequently rescinds its notice of intent to withdraw and SPP incurs costs to reintegrate the Member. Withdrawal deposits are as follows:

Member Category	**Withdrawal Deposit**
Load Serving Entity	$ 150,000

If the cost of processing Member's withdrawal as calculated by SPP pursuant to Section 4.3.2(d) of this Agreement exceeds the withdrawal deposit, the additional amount shall be included in the invoice SPP provides to the Member under 4.3.2(e) of this Agreement. If the Member rescinds its notice of intent to withdraw and the cost of processing the Member's withdrawal and subsequent reintegration into SPP exceeds the withdrawal deposit, SPP shall invoice the Member for the amount of the cost that exceeds the deposit, and the Member shall provide payment to SPP within thirty (30) days of receipt of the invoice. If the withdrawal deposit exceeds the costs of processing the Member's withdrawal and/or reintegration, SPP shall refund the difference to the Member. Notwithstanding the foregoing, a Federal Power Marketing Agency shall not be required to make a withdrawal deposit and shall only be responsible for paying SPP costs after they are incurred and appropriately invoiced pursuant to 4.3.2(e).

4.2.2 Effective Date of Termination

(a) Voluntary Withdrawal. If the withdrawing Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date proposed in the withdrawal notice under Section 4.2.1 or otherwise agreed by SPP. If the withdrawing Member is a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the later of (i) the proposed date specified in the withdrawal notice or otherwise agreed by SPP, (ii) the effective date, if any, set by the FERC order approving the withdrawal; or (iii) the date that such FERC order is no longer subject to review by a court of competent jurisdiction.

(b) Termination other than Voluntary Withdrawal. If the Termination occurs for any reason other than the Member's voluntary withdrawal under Section 4.2.1 or by agreement with SPP, the Termination Date shall be as follows:

(i) If the Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date of the event by which the Termination occurs, for example, the date a party gives notice that it will treat a breach or repudiation as a Termination or the date a Member withdraws in order to comply with the terms of a law or regulation. The foregoing notwithstanding, if the Termination occurs due to the order of a court or administrative agency, the Termination Date shall be the date the order is no longer subject to review by a court of competent jurisdiction.

(ii) If the Member is a Transmission Owner requiring regulatory agency approval prior to effectively withdrawing from SPP, then the Termination Date shall be the later of (i) the effective date, if any, set by the regulatory agency order approving the Termination; or (ii) the date that such regulatory order is no longer subject to review by a court of competent jurisdiction.

(iii) In conjunction with the requirements and limitations imposed in Section 4.2.2(b)(ii) above; Transmission

Owning Members of SPP wishing to withdraw from SPP and requiring regulatory agency approval prior to such withdrawal being effective are required to initiate the required regulatory filings seeking approval to withdraw prior to the end of the 24-month notice period. Additionally, these members must provide SPP copies of the regulatory filings in a timely manner after filing with the appropriate regulatory agency. Failure to comply with the terms of this paragraph will effectively rescind the notice of the withdrawing member.

(iv) Member may terminate this Agreement with less than the required twenty-four (24) months', or three (3) month notice, as applicable, in the event that the Federal or state law governing Member changes, or any provisions of this Agreement, the provisions of SPP's OATT, or SPP's Bylaws are changed or modified in a manner that causes a conflict with the Member's Federal or state law, regulations, or rate schedules, and the internal dispute resolution process described in Section 12 of the OATT is unable to resolve such conflict. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with Federal or state law.

(v) Any Member with Transmission Facilities located in the Upper Missouri Zone may terminate this Agreement with less than the required twenty-four (24) month notice in the event that Western- UGP or Basin Electric Power Cooperative withdraws from SPP in accordance with its respective withdrawal rights or if FERC finds that SPP has not adhered to all of the Federal Power Marketing Agency Amendments, the Basin Electric Amendments, or the

Heartland Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by Western-UGP or Basin Electric Power Cooperative, Member's withdrawal will become effective on the same date as that of Western-UGP or Basin Electric Power Cooperative. Such Member also may terminate this Agreement in the event that SPP files and FERC approves changes to the Federal Power Marketing Agency Amendments, the Basin Electric Amendments, or the Heartland Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

4.3 Obligations Upon Termination of Transmission Owning or Load Serving Members

4.3.1 Obligation to Hold Users Harmless

Transmission Customers taking service which involves facilities being withdrawn by a Transmission Owner from the functional control of SPP and where such service is under transmission contracts executed before the Termination Date shall continue to receive the same service for the remaining term of each such contract at the same rates, terms, and conditions that would have been applicable if the Termination or Partial Termination had not occurred. Transmission Owner agrees to continue providing service to such Transmission Customers in accordance with the preceding sentence, and shall receive revenues calculated in accordance with the OATT but no more in revenues for that service that if there had been no Termination or Partial Termination.

4.3.2 Obligation to Pay Current and Existing Obligations

(a) In the event of a Termination or Partial Termination, Member shall pay all obligations incurred under this Agreement at any time prior to the Termination Date. In addition, in order for SPP to recover a portion of certain debts and cost payable by SPP after the Termination Date as further specified in this Agreement, the Member shall pay all Existing Obligations (as defined herein) calculated as of the Termination Date. SPP shall make reasonable efforts to mitigate the Member's Existing Obligations by commercially reasonable actions (such as prepayment of allocable debt, or investment of part or all of the Member's payment in an interest-bearing instrument) and, in its discretion, may further discount the Member's Existing Obligations to reflect any additional mitigation SPP determines it will achieve.

(b) Except in regard to generation owners and operators and suppliers, “Existing Obligations” are all of the following and other obligations as may be set forth in the Bylaws from time to time;

i. Member's unpaid annual membership fee,

ii. Member's unpaid dues, assessments, and other amounts charged under Section 3.8 of this Agreement, Section 8.4 of the Bylaws, or otherwise under the Bylaws, plus the Member's share of costs SPP customarily includes in such dues, assessments or other charges, but which as of the Termination Date SPP had not included in such dues assessments or other charges.

iii. Member's share (computed in accordance with the Bylaws) of the entire principal amounts of all SPP Financial Obligations outstanding as of the Termination Date. "Financial Obligations" are all long-term (in excess of six (6) months) financial obligations of SPP, including but not limited to the following:

a. debts under all mortgages, loans, loan agreements, borrowings, promissory notes, bonds, and credit lines under which SPP is obligated, including principal and interest;

b. all payment obligations under equipment leases, financing leases, capital leases, real estate and office space leases, consulting contracts, and contracts for outsourced services;

c. any unfunded liabilities of any SPP employee pension funds, whether or not liquidated or demanded; and

d. the general and administrative overhead of SPP for a period of three (3) months.

iv. Any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable, and including without limitation prepayment premiums or penalties arising under SPP Financial Obligations.

v. Member's share (computed in accordance with the Bylaws) of all interest that will become due for payment with respect to all interest bearing Financial Obligations after the

Termination Date and until the maturity of all Financial Oblations in accordance with their respective terms ("Future Interest"). In the event that a Financial Obligation carries a variable interest rate, the interest rate in effect at the Termination Date shall be used to calculate the applicable Future Interest. In determining the Member's share of Future Interest, SPP shall take into account any reduction of Financial Obligations due to mitigation under this Section.

(c) In the event of a Partial Termination, Existing Obligations shall first be calculated as though a Termination occurred, and the Member shall pay a percentage thereof as Existing Obligations due to the Partial Termination. Such percentage shall be the percentage reduction of the Net Energy for Load Ratio applicable to the Member resulting from the Partial Termination.

(d) In the event of a Termination or Partial Termination by a Member, the Member shall pay to SPP all costs SPP incurs to remove the Member's facilities and/or load from SPP markets and operations. Such costs will be determined by SPP and shall include but not be limited to costs associated with modifying systems and databases, staff time, legal costs, and all costs of completing other tasks necessary to process the Member's Termination. SPP will apply the Member's withdrawal deposit, as specified in Section 4.2.1(b), to such costs, and any costs exceeding the withdrawal deposit shall be included in the invoice to the Member as discussed in Section 4.3.2(e) of this Agreement.

(e) SPP shall invoice Member for Existing Obligations within one month after the Termination Date, except that delay by SPP in issuing the invoice shall not diminish Member's obligation to make timely payment. The invoice shall be due and payable no later than five (5) business days after issuance. Any amounts owed by SPP to the Member shall, solely at SPP's election and in its discretion, be offset against the Member's Existing Obligations or paid to the Member concurrently with issuance of the invoice.

(f) The Member acknowledges and agrees that Existing Obligations include amounts that SPP expects to accrue and that will become payable by SPP between the date of Member's Notice of Termination and the Member's Termination Date, and that no part of a payment of Existing Obligations shall be refundable to the Member under any circumstances, including (except as provided in this Section with respect to mitigation or the execution of a new Agreement by the Member after the Member's Termination) any reduction of the Financial Obligations. Any
disagreement as to the calculation of Existing Obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws. If, after Termination, the Member elects to re-join SPP and execute the Agreement then in effect, SPP, in its sole discretion, may elect to credit a portion or all of the Member's Existing Obligations paid to SPP upon the Member's earlier Termination against any future payments owed by the Member to SPP.

4.3.3 Construction of Transmission Facilities

Any obligations relating to the construction of new facilities pursuant to an approved plan of SPP shall be negotiated between SPP and the Transmission Owner prior to the Termination Date so as to continue the Transmission Owner's construction obligation for facilities for which SPP has issued a notification to construct to the Transmission Owner prior to the Termination Date. If such obligations cannot be resolved through negotiations, they shall be resolved in accordance with the dispute resolution procedures in the Bylaws and Agreement.

4.3.3A Financial Obligations for Transmission Facilities

This Section 4.3.3A applies to any Terminated Member that was a Transmission Owner at the time it submitted its notice of intent to withdraw. Such Terminated Member shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date. Payments in fulfillment of any such obligations and allocated costs shall commence on the date that the costs of such transmission facilities are reflected in SPP's generally applicable rates, unless SPP and the Terminated Member agree to an alternate date. Rights, obligations, and payments applicable to time periods prior to the Termination Date shall be honored by SPP and the Terminated Member. Fulfillment and performance of such rights and obligations, and rights and obligations regarding the use of such transmission facilities, shall be negotiated between SPP and the Terminated Member, and any disputes involving such rights and obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws and Agreement.

4.3.4 Regulatory and Other Approvals or Procedures

Any Termination with respect to a Transmission Owner shall be subject to applicable Federal and state law and regulatory approvals or procedures.

4.4 Termination Procedures and Effective Dates of a Non-Transmission Owning or Non-Load Serving Member

A Non-Transmission Owning or Non-Load Serving Member may withdraw voluntarily from this Agreement, provided that it has given 30 days written notice to the President of its intent to withdraw. Such membership termination shall thereafter be effective when such Member has paid any exit fee due. Such Member shall be obligated for the following as an exit fee:

a. Member's unpaid annual membership fee.

b. Member's unpaid dues, assessments, and other amounts charged under Section 3.8 of the Membership Agreement.

c. Member’s unpaid obligations for its transactions in the SPP marketplace.

d. SPP’s direct costs to process the Member’s withdrawal and termination.

Document Content(s)