

167 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Wind Energy Association
The Wind Coalition

Docket No. EL19-11-000

v.

Southwest Power Pool, Inc.

ORDER ON COMPLAINT

(Issued April 18, 2019)

1. On November 5, 2018, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),¹ the American Wind Energy Association and the Wind Coalition (Complainants) filed a complaint (Complaint) against Southwest Power Pool, Inc. (SPP) alleging that the membership exit fee provisions in SPP's bylaws and membership agreement,² as applied to entities that are not transmission owners or load-serving entities (LSEs) (together, non-TOs/LSEs), are unlawful, unjust, unreasonable, and unduly discriminatory or preferential. Complainants request that the Commission remove SPP's membership exit fee provisions for non-TOs/LSEs and direct SPP to adopt new withdrawal requirements for non-TOs/LSEs that do not include a membership exit fee.

2. In this order, we partially grant the Complaint and find that SPP's membership exit fee, as applied to non-transmission owners, is unjust and unreasonable. We direct SPP to eliminate the membership exit fee for non-transmission owners and find that doing so will result in rates that are just and reasonable.

¹ 16 U.S.C. §§ 824e, 825e, 825h (2012).

² SPP's bylaws and membership agreement are part of its Governing Document Tariff on file with the Commission.

I. Background

3. Under SPP's governing documents, members of SPP must pay a \$6,000 annual membership fee³ and, if they withdraw from membership, must pay an exit fee.⁴ The exit fee is defined as the sum of the withdrawing member's existing obligations at the time of withdrawal, which include any unpaid dues or assessments and any costs directly incurred by SPP due to the membership termination, as well as the member's calculated share of SPP's outstanding long-term financial obligations. These long-term financial obligations include loans, leases, pensions, and interest (that have terms in excess of six months), as well as general and administrative overhead for a three-month period. The withdrawing member's share of these long-term obligations is calculated pursuant to a weighted formula: 25 percent is based per capita on the total number of SPP members, and 75 percent is based on the withdrawing member's load share, if any.⁵

4. Membership in SPP confers certain rights to participate in the stakeholder process that are unavailable to non-members, including the ability to: vote on SPP initiatives; elect directors to the SPP Board of Directors (SPP Board); propose changes to the SPP Open Access Transmission Tariff (Tariff), business practice manuals, and governing documents; serve on committees, task forces, and working groups; participate in closed or executive session discussions; request dispute resolution; and appeal decisions to the SPP Board.⁶ Non-members are permitted some participation in the stakeholder process, such as being able to attend open meetings and submit comments on proposals.⁷ Non-

³ SPP, Governing Documents Tariff, Bylaws, § 8.2 (Annual Membership Fee).

⁴ SPP, Governing Documents Tariff, Bylaws, § 8.7 (Financial Obligation of Withdrawing Members); Membership Agreement, § 4.3.2 (Obligations Upon Termination). Additionally, when an SPP member seeks to withdraw from membership in SPP, it must give notice two years in advance and submit a cash deposit as a prepayment for costs SPP incurs to process the withdrawal.

⁵ The formula is as follows: $A = 100 [0.25(1/N) + 0.75(B/C)]$, where A = the withdrawing member's exit fee percentage, N = the total number of SPP members, B = the withdrawing member's previous year net energy for load, and C = the total factor B for all members. SPP, Governing Documents Tariff, Bylaws, § 8.7.2 (Computation of a Member's Existing Obligations).

⁶ SPP, Governing Documents Tariff, Bylaws, §§ 3.9, 3.10, 3.13, 4.3, 4.4, 4.6.1, 5.1, 6.1, 6.6; SPP, Governing Documents Tariff, Membership Agreement, § 3.0.

⁷ See SPP, Governing Documents Tariff, Bylaws, § 3.5 (Meetings); SPP Answer at 16.

members may also participate in SPP's Integrated Marketplace⁸ and take transmission service under the SPP Tariff.

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

II. Complaint

6. Complainants argue that SPP's membership exit fee as applied to non-TOs/LSEs is unjust, unreasonable, and unduly discriminatory or preferential for two reasons: (1) the exit fee violates the cost causation principle⁹ and results in rates that are unjust and unreasonable because there is no causal relationship between a non-TO/LSE's termination of membership and the majority of the exit fee; and (2) the exit fee is a practice that directly affects jurisdictional rates and results in rates that are unduly discriminatory or preferential by creating a barrier to membership for non-TOs/LSEs and the underrepresentation of non-TOs/LSEs as voting members in SPP.¹⁰

7. First, Complainants assert that SPP's exit fee violates the cost causation principle because the exit fee requires non-TOs/LSEs to pay a portion of SPP's long-term financial obligations even though there is no causal link between SPP's incurrence of those long-term financial obligations and a non-TO/LSE's membership status.¹¹ Complainants argue that SPP's long-term financial obligations were incurred to serve customers in the SPP market and to ensure the viability of SPP activities (such as running the market,

⁸ Since March 2014, SPP has administered the Integrated Marketplace, which is a centralized day-ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management. The terms and conditions of the Integrated Marketplace are found in Attachment AE of the Tariff.

⁹ Complaint at 18 (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (stating that the cost causation principle requires "all approved rates reflect to some degree the costs actually caused by the customer who must pay them")); *Nat'l Assoc. of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277, 1285 (D.C. Cir. 2007) (finding that the cost causation principle requires that costs "be allocated to those who cause the costs to be incurred and reap the resulting benefits").

¹⁰ *Id.*

¹¹ *Id.* at 19.

providing reliability coordinator services, and operating and planning the transmission system), and were not caused by any entity joining as a member, its membership, or its withdrawal from membership. Complainants explain that if, for example, a generator owner stopped participating in the SPP market, the financial impact on SPP would be the same regardless of whether the entity is a member. Moreover, Complainants state that an entity terminating its membership has no financial impact on the costs of running SPP or its long-term financial obligations, aside from the loss of an annual membership fee. Therefore, Complainants argue that there is no causal connection between the exit fee assessed for withdrawal and the financial impact on SPP or other members upon such withdrawal, and as a result the exit fee is unjust and unreasonable.¹² Complainants also argue that the exit fee requires a withdrawing member to subsidize future members' participation in SPP and pay for costs for which they will receive no further benefit.¹³

8. Complainants argue that the appropriate mechanism for SPP to recover its ongoing obligations is through an administrative fee, as is the practice in other regional transmission organizations/independent system operators (RTOs/ISOs), and which SPP already collects through transmission charges.¹⁴ Complainants also contend that, even if a member's withdrawal did financially affect SPP, SPP does not attempt to correlate the amount of the exit fee with the amount of costs caused by a withdrawing non-TO/LSE member or the effect of its withdrawal. For example, Complainants state that a public interest entity with no market activity would pay the same exit fee as an entity with thousands of megawatts of generation in SPP.¹⁵

9. Second, Complainants assert that SPP's exit fee is an unreasonable practice that directly affects rates by impeding non-TOs/LSEs from becoming members, which deprives them of voting rights, results in voting outcomes that are not reflective of the diversity of market participants in SPP, and increases the probability that rates are unduly discriminatory and preferential.¹⁶ Complainants estimate that, based on communications with SPP, the exit fee is between \$700,000 and \$1,000,000 for a non-TO/LSE, although

¹² *Id.* at 19-21, 23.

¹³ *Id.* at 3.

¹⁴ *Id.* at 23. However, Complainants also state that they take no position "on whether the fees objected to herein, should be assessed through administrative costs in SPP." *Id.* n.8.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 23.

the exact amount is not known prior to withdrawal.¹⁷ Complainants argue that SPP's exit fee is exorbitant, unduly excessive, and acts as a barrier to membership for non-TOs/LSEs, which Complainants explain often are newer market participants, have new business models, or are smaller entities.¹⁸

10. Complainants contend that there is a direct correlation between SPP's exit fee and the small number of non-TO/LSE members in SPP compared to other RTOs/ISOs.¹⁹ Complainants state that no other RTO/ISO has a membership exit fee for non-TOs/LSEs or otherwise imposes a fee based on the RTO/ISO's future long-term costs when a member withdraws.²⁰ Complainants assert that the vast majority of voting members in ISO New England Inc. (ISO-NE), Midcontinent Independent System Operator, Inc. (MISO), and PJM are non-TOs/LSEs (ranging from 71 percent in MISO to 82 percent in PJM), while in SPP only 22 percent of voting members are non-TOs/LSEs. Complainants contend that many of the entities that do business in SPP are voting members in other RTOs but have not become members in SPP in large part because of the onerous exit fee.²¹ Complainants argue that while RTOs/ISOs can address needs differently so long as their practices are just and reasonable, SPP's exit fee is not just and reasonable.²²

11. Additionally, Complainants argue that, while the Commission rejected a 2004 proposal to exempt certain customer classes from SPP's exit fee, there is now additional evidence that the exit fee is excessive and discourages entities from becoming members.²³ Complainants note that there have been a number of changes in SPP since 2004, including growth in SPP membership from 50 to 96 members, growth of

¹⁷ *Id.* at 3 (citing example of member withdrawal obligation of \$822,008 from SPP Corporate Governance Committee Meeting materials).

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4-5.

²⁰ *Id.* at 11, 23-24 (noting, for example, that PJM Interconnection, L.L.C. (PJM) only requires withdrawing members to pay outstanding obligations in the marketplace and unpaid membership fees).

²¹ *Id.* at 11-13, 25.

²² *Id.* at 24-25.

²³ *Id.* at 25 (citing *Sw. Power Pool, Inc.*, 110 FERC ¶ 61,138 (2005) (2005 Rehearing Order)).

independent power producer generation from insignificant numbers to over 17 gigawatts, and the investment of hundreds of millions of dollars in the SPP market by independent power producers and power marketers. However, Complainants argue that many of the companies that have invested in the SPP market have not become members because the risk of exit fee liability is too high, and therefore they have no means by which to vote on policies that affect their operations, profitability, and risk. Complainants state that SPP's membership is currently considering a number of important policy issues (such as generation interconnection queue reform, integrated transmission planning, network upgrade cost recovery, long-term capacity rights, and transmission service reform) that directly affect non-TOs/LSEs, and Complainants assert that non-TOs/LSEs should be adequately represented in the process.²⁴

12. Complainants argue that the barrier to membership created by the exit fee results in an underrepresentation of non-TOs/LSEs in SPP's membership, as well as two classes of market participants – TOs and LSEs – dominating SPP voting.²⁵ Complainants maintain that TOs/LSEs make up 78 percent of voting members in SPP and that they have been able to dominate voting on committees and control the development of SPP rules and policies.²⁶ Complainants assert that, given the lack of non-TO/LSE membership in SPP, TOs/LSEs have the power to decide any matter that requires voting and have an overwhelming influence over the direction of SPP.²⁷ As examples, Complainants state that: (1) only members were allowed to participate in the positions taken in comments when the Strategic Planning Committee was addressing the U.S. Environmental Protection Agency's Clean Power Plan; (2) the SPP Board approved the

²⁴ *Id.* at 25-27.

²⁵ *Id.* at 4-5.

²⁶ *Id.* at 12-13, 15-16, 29-30. For example, Complainants state that the Markets and Operations Policy Committee has two voting sectors, TO members and transmission-using members. Under SPP's bylaws, the voting result for a sector is the percent of approving votes to the total number of members voting, and an action is approved if the average of the two sector averages is at least 66 percent. Complainants contend that there are so few non-TO/LSE members in the transmission-using sector that LSEs have the power to decide any vote for that sector. As another example, Complainants state that if all 26 independent power producers and power marketers that are currently transmission-using members vote against a proposal, and the remaining 43 entities (including LSEs, cooperatives, municipalities, and federal/state agencies) in the transmission-using sector vote in favor of a proposal, the transmission-using sector's vote will be in favor of the proposal. *Id.* at 30-31 (citing SPP, Governing Documents Tariff, Bylaws, § 3.9.1).

²⁷ *Id.* at 29-30.

creation of and made appointments to SPP's Holistic Integrated Tariff Team without feedback from the majority of SPP market participants (i.e., non-TOs/LSEs that are not members); and (3) the SPP Board approved policies and drafted tariff and governing document revisions related to the integration of the Mountain West Transmission Group into SPP without feedback from the majority of SPP market participants, who would be significantly affected by such changes.²⁸ Complainants argue that the balanced stakeholder representation the Commission contemplated in Order No. 2000²⁹ is currently not being realized in SPP and that eliminating the exit fee for non-TOs/LSEs would expand representation of different stakeholder classes and decrease the chance that SPP rules and policies produce unduly discriminatory or preferential rates.³⁰

13. As a remedy, Complainants request that the Commission direct SPP to exempt non-TOs/LSEs from the component of the membership exit fee that pertains to SPP's long-term financial obligations and require revisions to SPP's bylaws and membership agreement. Specifically, under Complainants' proposed revisions, withdrawing non-TOs/LSEs would be responsible for unpaid membership fees or dues, outstanding obligations for transactions in the Integrated Marketplace, and any direct costs associated with processing the member's withdrawal, but would not be responsible for any portion of SPP's long-term financial obligations.³¹ Complainants acknowledge that their proposal could cause an increase in the exit fees charged to TOs/LSEs, but take no position on whether TOs/LSEs should bear such costs.³²

III. Notice and Responsive Pleadings

14. Notice of the Complaint was published in the *Federal Register*, 83 Fed. Reg. 56,316 (2018), with interventions and protests due on or before November 23, 2018. On November 8, 2018, the Commission's Secretary issued an errata notice identifying the correct comment due date as November 26, 2018, and on November 23, 2018, the

²⁸ *Id.* at 16 & n.37.

²⁹ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross referenced at 89 FERC ¶ 61,285), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross referenced at 90 FERC ¶ 61,201), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

³⁰ Complaint at 29, 31.

³¹ *Id.* at 32 & Att. 2.

³² *Id.* n.8.

Commission's Secretary granted a motion filed by SPP requesting an extension of time to file comments until November 30, 2018.

15. Timely motions to intervene were filed by: Advanced Energy Economy (Advanced Energy); Ameren Services Company; American Electric Power Service Corporation; Apex Clean Energy Management, LLC; Avangrid Renewables, LLC; Basin Electric Power Cooperative; Cargill Power Markets LLC; Clean Grid Alliance; City Utilities of Springfield, Missouri; Climate + Energy Project; DC Energy, LLC (DC Energy); East Texas Electric Cooperative, Inc.; EDF Renewables North America LLC (EDF Renewables); EDP Renewables, Inc.; Electricity Consumers Resource Council (ELCON); Electric Power Supply Association (EPSA); Empire District Electric Company; Enel Green Power North America, Inc. (Enel); E.ON Climate & Renewables North America, LLC (E.ON); Exelon Corporation; Flat Ridge 2 Wind Energy LLC; Golden Spread Electric Cooperative, Inc.; Grand River Dam Authority; GridLiance High Plains LLC; Interwest Energy Alliance (Interwest); Invenergy Energy Management LLC (Invenergy); ITC Great Plains, LLC; Kansas Electric Power Cooperative, Inc.; Lincoln Electric System; Mid-Kansas Electric Company, Inc.; Mercuria Energy America, Inc. (Mercuria); Midwest Energy, Inc.; Missouri Joint Municipal Electric Utility Commission; Municipal Energy Agency of Nebraska; Natural Resources Defense Council and Sustainable FERC Project; Nebraska Public Power District; NorthWestern Corporation; Oklahoma Gas & Electric Company; Omaha Public Power District; Public Citizen, Inc.; Renewable Energy Systems Americas, Inc.; Sierra Club; Solar Energy Industry Association (Solar Energy Industries); Solar RTO Coalition; Sunflower Electric Power Corporation; Texas Industrial Energy Consumers (TIEC); TradeWind Energy, Inc. (Tradewind); Tri-State Generation and Transmission Association, Inc.; Westar Energy, Inc., Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company; Western Area Power Administration; Western Farmers Electric Cooperative; Western Power Trading Forum; Western Resource Advocates; Xcel Energy Inc.; and Xcel Energy Services Inc. The Iowa Utilities Board and the Kansas Corporation Commission filed notices of intervention.

16. On November 30, 2018, SPP filed its response to the Complaint (SPP November 30 Answer). The following entities filed comments: Advanced Energy; DC Energy; ELCON/TIEC; EPSA; Interwest; Invenergy; Mercuria; Public Interest Organizations;³³

³³ Public Interest Organizations are: Alliance for Affordable Energy; Clean Grid Alliance; Climate + Energy Project; Natural Resources Defense Council; Sierra Club Environmental Law Program; Southern Renewable Energy Association; Sustainable FERC Project; and Western Resource Advocates.

Solar Energy Industries; Solar RTO Coalition; SPP Generation Market Participants;³⁴ Western Area Power Administration; and Western Power Trading Forum. SPP Load Serving Entities³⁵ filed a protest to the Complaint. On January 4, 2019, Complainants filed an answer to SPP's answer and SPP Load Serving Entities' protest. On February 14, 2019, SPP filed an answer to the Complainants January 4 Answer. On March 15, 2019, SPP Generation Market Participants filed an answer to the SPP February 14 Answer. On March 22, 2019, Complainants filed an answer to the SPP February 14 Answer.

A. SPP November 30 Answer

17. SPP argues that the Commission should deny the Complaint because the allegations are unsupported and Complainants do not meet their burden under section 206 of the FPA.³⁶ SPP asserts that rescinding the exit fee for non-TOs/LSEs would allow these entities to enjoy voting rights and other membership benefits without undertaking all of the obligations of membership, including the exit fee. SPP argues that Complainants offer no evidence that SPP's exit fee is excessive or discourages membership. SPP notes that several of the types of entities that Complainants claim are discouraged from membership are current SPP members, including: 14 independent power producers, 12 power marketers, and one large retail customer.³⁷ SPP further argues that Complainants' estimate for the exit fee for non-TOs/LSEs is not accurate and that SPP's estimate for the exit fee for this type of entity, as of October 31, 2018, would

³⁴ SPP Generation Market Participants are EDF Renewables, Enel, E.ON, and Tradewind.

³⁵ SPP Load Serving Entities are: American Electric Power Service Corporation; Basin Electric Power Cooperative; City Utilities of Springfield, Missouri; Empire District Electric Company; Evergy Companies; Golden Spread Electric Cooperative, Inc.; Grand River Dam Authority; Lincoln Electric System; Mid-Kansas Electric Company, Inc.; Midwest Energy, Inc.; Missouri Joint Municipal Electric Utility Commission; Nebraska Public Power District; Oklahoma Gas & Electric Company; Omaha Public Power District; Sunflower Electric Power Corporation; Western Farmers Electric Cooperative; and Xcel Energy Services, Inc.

³⁶ SPP November 30 Answer at 17.

³⁷ *Id.* at 17-18 n.52.

be approximately \$621,851.³⁸ Furthermore, SPP adds that as its debt is extinguished, the exit fee will continue to decrease.³⁹

18. SPP also contends that Complainants' comparisons of SPP to other RTOs/ISOs is irrelevant. SPP asserts that the Commission has recognized that differences in membership composition and structure can appropriately give rise to different fee requirements for joining and/or withdrawing from an RTO/ISO.⁴⁰ SPP claims that Complainants' suggestion that minority positions are muted or unrepresented in SPP's stakeholder process ignores the numerous means by which non-member stakeholders may communicate their views to the SPP Board.⁴¹ SPP also disagrees with Complainants' suggestion that TO/LSE members vote in lockstep and contrary to the interests of independent power producers and non-LSEs.⁴²

19. SPP contends that Complainants' claim that a lower exit fee would promote expanded membership in SPP is beside the point.⁴³ SPP argues that any membership-driven organization can induce new members by lowering fees, but the organization's revenue stream must be sufficient to maintain operations and recover costs. SPP notes that its Commission-approved governance structure would need to be changed in the event that, in response to the Complaint, relaxed entry/exit requirements produced a significant increase in SPP membership.⁴⁴ SPP asserts that Complainants have provided no evidence that SPP's current fees are causing SPP to over-recover its costs, nor have Complainants explained how the exemption they seek for non-TOs/LSEs would not result in discriminatory and unreasonable reallocation of SPP costs to SPP's remaining members. SPP estimates that Complainants' proposal could force the reallocation of

³⁸ *Id.* at 18, Dunn Aff. at ¶ 4.

³⁹ *Id.*

⁴⁰ *Id.* at 19 (citing *Am. Transmission Sys. Inc.*, 140 FERC ¶ 61,226, at P 31 (2012)).

⁴¹ *Id.* (citing *Sw. Power Pool, Inc.*, 133 FERC ¶ 61,069, at P 46 (2010)).

⁴² *Id.* at 20.

⁴³ *Id.* at 21.

⁴⁴ *Id.* at n.65.

between \$16 million and \$32 million in costs (i.e., a cost shift in the exit fee obligation, based on the current formula) to other SPP members.⁴⁵

20. SPP contends that membership in SPP is voluntary and involves both the benefits of RTO membership and the assumption of obligations, including ensuring the viability of the enterprise. SPP adds that entities electing to join SPP are required to execute the SPP membership agreement and are thereby bound by the agreement's terms and conditions, including the exit fee provisions. SPP argues that non-member third parties, such as Complainants, seeking to modify the terms of such a voluntary, arm's length agreement entered into by sophisticated entities must meet the heightened standard imposed by *Mobile-Sierra*⁴⁶ and that Complainants have not shown that the revisions urged in the Complaint are compelled by the public interest.⁴⁷

21. SPP notes that its exit fee provisions already allocate 75 percent of fixed and long-term costs based on the size of a member's share of load, leaving only 25 percent of these costs to be allocated equally among all types of members.⁴⁸ SPP asserts that the financial obligations captured in the exit fee are caused by all SPP members and that, under the cost causation principle, entities who benefit from the incurrence of these costs should pay a share of such costs.⁴⁹ Furthermore, SPP argues that, under Complainants' cost causation reasoning, no withdrawing member (including TOs/LSEs) should bear any responsibility for SPP's existing and future obligations because imposing such responsibility would unjustly and unreasonably require a withdrawing member to subsidize future members' participation in SPP, pay for costs for which they receive no benefit post-withdrawal, and incur costs not caused by them.⁵⁰ SPP asserts that if members could come and go without any responsibility for SPP's existing and future liabilities, SPP's ability to recover its costs, including debt service costs, would be severely impaired. SPP further asserts that if there is a material change to the structure of SPP's member obligations, SPP's existing financial arrangements could be directly and adversely affected. SPP adds that exit fees promote RTO stability and that

⁴⁵ *Id.* at 21-22, Dunn Aff. at ¶ 6.

⁴⁶ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

⁴⁷ SPP November 30 Answer at 22.

⁴⁸ *Id.* at 23.

⁴⁹ *Id.* at 23-24.

⁵⁰ *Id.* at 25-26.

Complainants' proposed remedy would force SPP to either reallocate costs to other members or face the prospect of defaulting on SPP's financial obligations.⁵¹

22. SPP contends that Complainants concede that there are benefits to RTO membership yet fail to acknowledge that these benefits could not be delivered without SPP's assumption of financial obligations necessary to fund the formation and maintenance of the RTO.⁵² According to SPP, these financial obligations are substantial, noting that the cost to implement the Integrated Marketplace alone was \$115 million.⁵³ SPP states that it funds the vast majority of its capital expenditure program by issuing notes to institutional investors and commercial lenders.⁵⁴ SPP explains that each of the term notes issued by SPP contains provisions requiring prepayment of the outstanding principal balance upon membership withdrawals exceeding specific trigger thresholds. In addition, SPP states that each of these notes contains negative covenants that trigger an event of default should SPP members withdraw and SPP not enforce the withdrawal provisions. SPP concedes that lenders place significantly more importance on ensuring that the larger members are able to shoulder their burden of the withdrawal obligation should they choose to exit SPP; however, SPP asserts that the notion that every member shares in supporting that commitment is important for SPP in negotiations with lenders. SPP argues that any significant changes to SPP membership-related obligations, including the exit fee, could impact SPP's existing financial arrangements. Finally, SPP asserts that its investment grade A- issuer rating with Fitch Ratings, which facilitates SPP's ability to negotiate attractive interest rates and minimal covenants with lenders when SPP issues new notes, is supported by members' commitment to the long-term success of SPP.⁵⁵

B. Comments

1. Comments Supporting Complaint

23. Twelve parties, representing industrial end users, independent power producers, and other non-TOs/LSEs, filed comments urging the Commission to grant the Complaint. Most of these commenters agree that SPP's exit fee acts as a barrier for non-TO/LSE

⁵¹ *Id.* at 26-27.

⁵² *Id.* at 28.

⁵³ *Id.* at 28-29, Dunn Aff. at ¶ 6.

⁵⁴ *Id.*, Dunn Aff. at ¶ 6.

⁵⁵ *Id.*, Dunn Aff. at ¶¶ 6, 9.

membership. Several of these commenters claim that they have not become members of SPP because of the exit fee.⁵⁶ By comparison, Invenergy states that in order to have a voice in matters that impact its business, it participates as a PJM and MISO member under reasonable terms that do not expose it to extraordinary financial exposures.⁵⁷ Solar Energy Industries asserts that the current exit fee structure is unworkable for many new market entrants that rely on capital markets for financing and cannot carry the potential liabilities on their balance sheets.⁵⁸ Western Power Trading Forum states that, should SPP expand into the Western Interconnection, Western Power Trading Forum and its members would hope to become members of SPP but share many of the concerns raised in the Complaint.⁵⁹ Climate + Energy Project states that SPP's exit fee would exceed its annual budget and is the primary reason it is not a member of SPP.⁶⁰

24. EPSA argues that SPP's exit fee not only presents a barrier to entry into SPP for new stakeholders, it also provides a barrier to *exit* for SPP members who have diminished or lessened business activities in SPP. EPSA contends that the exit fee is egregiously high for non-transmission owners and that it would be more cost-effective for an existing SPP member to maintain an inactive membership for over 116 years than to exit SPP.⁶¹ Mercuria, a current member of SPP, states that it would like to withdraw its membership, which it acquired through a merger, but continues to pay SPP's \$6,000 annual membership fee because it is significantly lower than the \$699,598 estimated exit fee that SPP provided to it in December 2017.⁶²

25. Commenters assert that SPP's exit fee, by acting as a barrier to non-TO/LSE membership, results in SPP's stakeholder process being dominated by TOs/LSEs, whom often have different commercial interests than non-TOs/LSEs. Many commenters state

⁵⁶ DC Energy Comments at 3-4; ELCON/TIEC Comments at 2-3; Interwest Comments at 3; Invenergy Comments at 4-5; Public Interest Organizations at 10-11; SPP Generation Market Participants Comments at 3, Sunderman Aff. ¶ 3, Gresham Aff. ¶ 11, Kemper Aff. at ¶ 7.

⁵⁷ Invenergy Comments at 4.

⁵⁸ Solar Energy Industries Comments at 8.

⁵⁹ Western Power Trading Forum Comments at 4.

⁶⁰ Public Interest Organizations Comments, Barnett Aff. at ¶ 4.

⁶¹ EPSA Comments at 4-5.

⁶² Mercuria Comments at 4-6.

that they cannot vote or participate in SPP's stakeholder process without becoming a member.⁶³ For example, Invenergy states that it had no vote on SPP's compliance with Order Nos. 841⁶⁴ and 845,⁶⁵ SPP's filing related to dispatchable variable energy resources, and SPP's compliance with the Attachment Z2 Task Force recommendations.⁶⁶ Solar Energy Industries states that it is concerned that SPP's strategic planning committee – responsible for the development and recommendation of strategic direction for SPP – does not have a single voting member to represent solar, renewables, or advanced technologies.⁶⁷ Solar RTO Coalition argues that SPP's exit fee prohibits many companies from influencing the development of SPP's rules on topics ranging from market design, interconnection rules, transmission planning, and cost allocation.⁶⁸ SPP Generation Market Participants assert that issues important to the wind industry are not given full consideration in SPP committees because the TOs/LSEs, who hold chairs and constitute the voting supermajority, do not view wind and renewable generation as a priority.⁶⁹ Enel provides an example of a recent SPP filing with the Commission to scale back the type of network upgrades that qualify for Attachment Z2 reimbursement that was supported by TOs/LSEs in the stakeholder process but was not in the interest of independent power producers that use Attachment Z2 as a means for reimbursement for funding network upgrades when other market participants rely on the network upgrade to receive transmission service.⁷⁰ E.ON asserts that it is not developing

⁶³ DC Energy Comments at 1-3; Interwest Comments at 4; Invenergy Comments at 4; Public Interest Organizations Comments at 11-14; Solar Energy Industries Comments at 4-5; Solar RTO Coalition Comments at 2; SPP Generation Market Participants Comments at 6-8, Gresham Aff. at ¶¶ 12-13, Sunderman Aff. at ¶ 4.

⁶⁴ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018).

⁶⁵ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g and clarification*, Order No. 845-A, 166 FERC ¶ 61, 137 (2019).

⁶⁶ Invenergy Comments at 5.

⁶⁷ Solar Energy Industries Comments 4-5.

⁶⁸ Solar RTO Coalition Comments at 2.

⁶⁹ SPP Generation Market Participants Comments at 7.

⁷⁰ *Id.*, Szot Aff. at ¶ 12.

generation in SPP because it is unable to protect its assets by voting on SPP policies as a member due to the risk of being subject to an exit fee of as much as \$1,000,000 if it decides to leave SPP.⁷¹ Tradewind provides an example of an Energy Resource Interconnection Service criteria change task force recommendation that was supported by generation developers, including Tradewind, but that was not allowed to advance to SPP's Markets and Operations Policy Committee for a vote because, Tradewind alleges, the chair of the task force was a TO/LSE member that did not support the recommendation.⁷²

26. Many commenters assert that the concentration of voting members in only certain classes of market participants in SPP's stakeholder process violates Commission precedent. Commenters state that the exit fee creates a significant barrier to participation in SPP stakeholder processes, contrary to Order No. 2000.⁷³ Public Interest Organizations add that this is also a violation of Order No. 888,⁷⁴ and this barrier denies SPP the value of a diverse membership.⁷⁵ ELCON/TIER state generally that the domination of traditional utility interests in SPP voting is unduly discriminatory and preferential.⁷⁶ Further, SPP Generation Market Participants assert that the Commission

⁷¹ *Id.*, Gresham Aff. at ¶¶ 12-13.

⁷² *Id.*, Sunderman Aff. at ¶¶ 8-19.

⁷³ Advanced Energy Comments at 9-10; DC Energy Comments at 4-5; EPSA Comments at 3-4; Invenergy Comments at 3-6; Public Interest Organizations Comments at 2; SPP Generation Market Participants Comments at 11-16.

⁷⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷⁵ Public Interest Organizations Comments at 2.

⁷⁶ ELCON/TIER Comments at 3.

has regularly acted to ensure that rates and fees do not bar and discourage participation in Commission-regulated activities and markets.⁷⁷

27. Many commenters assert that the SPP membership exit fee violates the cost causation principle, arguing that there is no connection between the exit fee and the financial impact of a withdrawing non-TO/LSE member on the cost of running SPP's market.⁷⁸ Invenergy argues that an entity withdrawing after one month of SPP membership could effectively face the same exit fee as if it had been a member for 10 years, because a portion of the exit fee has no relation to the entity's business or duration of membership.⁷⁹ Mercuria asserts that SPP's long-term obligations are outside of the control of non-asset owning members and are not caused by them. Mercuria concludes that it is unjust and unreasonable for a withdrawing SPP member to be forced to pay for the outstanding financing of products, equipment, and structures on a going-forward basis from which it will not realize any benefit after exiting.⁸⁰ SPP Generation Market Participants argue that SPP incurred its long-term financial obligations without any regard to whether the independent power producer community was part of SPP and will continue to incur these costs even if all independent power producers leave.⁸¹

28. Invenergy argues that the types of operating costs SPP is attempting to recover through its exit fee should be recovered through an administrative charge that takes into account the many market activities that SPP manages.⁸² SPP Generation Market Participants state that they understand that SPP is seeking to revamp its administrative fee

⁷⁷ SPP Generation Market Participants Comments at 9-10 (citing, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,231, at P 6 (2004); *Sw. Power Pool, Inc.*, 112 FERC ¶ 61,303, at P 28 (2005)).

⁷⁸ DC Energy Comments at 4; ELCON/TIER Comments at 3; EPSA Comments at 3; Interwest Comments at 2; Invenergy Comments at 1, 6-7; Mercuria Comments at 2, 5; Public Interest Organizations Comments at 4-6; Solar RTO Coalition Comments at 1-2; SPP Generation Market Participants Comments at 4-6.

⁷⁹ Invenergy Comments at 6.

⁸⁰ Mercuria Comments at 5.

⁸¹ SPP Generation Market Participants Comments at 4.

⁸² Invenergy Comments at 7.

and, to the extent non-TOs/LSEs are involved, that fee will be a source of revenue in future years when future members and market participants pay those fees.⁸³

2. Comments Opposing Complaint

29. In their protest, SPP Load Serving Entities assert that Complainants have not adequately demonstrated that SPP's existing exit fee is exorbitant relative to the hundreds of millions of dollars that Complainants state are invested and transacted in the SPP marketplace by market participants and that the exit fee cannot be a serious deterrent to membership.⁸⁴ SPP Load Serving Entities contend that Complainants have failed to meet the statutory burden to show that SPP's exit fee is unjust and unreasonable or unduly discriminatory and request that the Commission reject the Complaint.⁸⁵

30. SPP Load Serving Entities argue that the growth in membership of non-traditional transmission owners and LSEs in SPP shows that viable SPP membership options exist under current SPP rules and that those entities have deemed the exit fee to be a reasonable cost of transacting and benefiting from the broader SPP market.⁸⁶ SPP Load Serving Entities assert that Complainants have offered no evidence supporting the proposition that the long-term financial obligation portion of the exit fee is the reason that SPP's current membership makeup is as it is today. SPP Load Serving Entities disagree with Complainants' argument that SPP does not take into account the size of the impact of a departing member and assert that allocation of exit fees based on load is intended to take the size of the impact into account.⁸⁷ SPP Load Serving Entities state that the implementation of SPP's Integrated Marketplace is SPP's largest debt burden and will be paid off by 2025. SPP Load Serving Entities assert that Complainants' members benefit

⁸³ SPP Generation Market Participants Comments at 5. Additionally, SPP Generation Market Participants assert that TOs/LSEs should not be responsible for an exit fee based on future costs or, at most, should only be responsible for certain costs that the Commission has ordered when a utility has sought to leave an RTO/ISO, such as what MISO requires in regard to transmission construction cost obligations. *Id.* at 5-6.

⁸⁴ SPP Load Serving Entities Protest at 1.

⁸⁵ *Id.* at 2.

⁸⁶ *Id.* at 5.

⁸⁷ *Id.* at 6.

through investing and conducting hundreds of millions of dollars in transactions annually in the Integrated Marketplace.⁸⁸

31. In addition, SPP Load Serving Entities argue that Complainants have not explained how SPP's members do not cause SPP to incur its long-term financial obligations, which SPP Load Serving Entities argue appropriately include the administrative and operational costs of running SPP.⁸⁹ SPP Load Serving Entities add that Complainants are drawing a distinction between members who use the markets and pay these costs and non-member market participants who use the markets but do not pay these costs. SPP Load Serving Entities also argue that Complainants have failed to demonstrate why members with the ability to exercise more rights within SPP's governance structure should not pay more than non-members.⁹⁰

32. SPP Load Serving Entities also argue that Complainants do not demonstrate which portion of the exit fee represents future costs and instead seek generic absolution for all costs.⁹¹ Furthermore, SPP Load Serving Entities assert that Complainants have not met their burden of proof to show that the way SPP collects the costs associated with its financial obligations is unjust and unreasonable or discriminatory.⁹²

33. SPP Load Serving Entities argue that the Commission has addressed and rejected claims that are similar to Complainants' claims, and the Commission need not address Complainants' proposal on a generic basis.⁹³ SPP Load Serving Entities state that the Commission can instead direct Complainants to pursue a waiver process if and when Complainants incur any exit fees.⁹⁴

34. SPP Load Serving Entities argue that Complainants' reference to exit fees in other RTOs is irrelevant and does not satisfy their burden under section 206 to show that SPP's

⁸⁸ *Id.* at 7.

⁸⁹ *Id.* at 7-8.

⁹⁰ *Id.* at 8.

⁹¹ *Id.* at 9.

⁹² *Id.*

⁹³ *Id.* at 10-11.

⁹⁴ *Id.* at 11.

exit fee is unjust and unreasonable.⁹⁵ SPP Load Serving Entities argue that the Commission allows RTOs to pursue different approaches to collect RTO costs and it is of no legal consequence that other RTOs have different structures.⁹⁶

35. Additionally, SPP Load Serving Entities argue that Complainants' actual concern appears to be with SPP governance, and granting the Complaint could comprise a change to SPP governance by allowing market participants to join as members and then depart without financial obligations.⁹⁷ SPP Load Serving Entities argue that SPP's exit fees are not a deterrent to membership but instead provide practical and reasonable incentives for members not to exit.⁹⁸

36. SPP Load Serving Entities argue that Complainants have not demonstrated that their proposal to eliminate SPP's exit fee is a just and reasonable replacement rate and have not supported their proposal to eliminate for non-TOs/LSEs all of the other termination, notice, and deposit provisions under the SPP governing documents.⁹⁹ SPP Load Serving Entities contend that Complainants fail to demonstrate how their proposal, which would increase the costs that TOs/LSEs pay, would not be unduly discriminatory or preferential against TOs/LSEs. Furthermore, SPP Load Serving Entities argue that Complainants have not shown why, if the exit fee should be removed for non-TOs/LSEs, it should not also be removed for all SPP members to avoid discrimination and undue preference, which would remove the method by which SPP recovers these costs. SPP Load Serving Entities explain that if Complainants' proposal is adopted and only a subset of members pay the long-term financial obligations, then a portion of SPP's debts would become unsecured, increasing the cost of debt and overall costs to load. Lastly, SPP Load Serving Entities state that Complainants' proposal would allow non-TOs/LSEs to shift other market costs to TOs/LSEs, and ultimately their customers, through their increased participation in the SPP stakeholder process.¹⁰⁰

37. Western Area Power Administration filed comments stating that it could be adversely impacted by revisions to the SPP membership agreement, bylaws, or Tariff that

⁹⁵ *Id.* at 12.

⁹⁶ *Id.*

⁹⁷ *Id.* at 12-13.

⁹⁸ *Id.* at 14.

⁹⁹ *Id.* at 15.

¹⁰⁰ *Id.* at 17.

change the original intent of the Commission-approved Federal Power Marketing Administration provisions required by Western Area Power Administration to allow its Upper Great Plains Customer Service Region to join and remain a transmission-owning member of SPP.¹⁰¹

C. Complainants January 4 Answer

38. Complainants assert that the record contains sufficient evidence to grant the Complaint, noting that commenters explained that the exit fee is a barrier to their membership in SPP and provided examples where TOs/LSEs exercised voting leverage. Complainants also argue that they are not required to provide a just and reasonable replacement rate, and that the issue of whether TOs/LSEs should be subject to the exit fee is beyond the scope of the Complaint. Additionally, Complainants contend that SPP has not identified any regional differences that justify an exit fee structure different from other RTOs/ISOs.¹⁰²

39. Complainants assert that SPP mischaracterizes Complainants' cost causation argument. Complainants contend that the majority of the costs in the exit fee should be recovered through a mechanism that has a nexus with those costs and should be assigned to them in a manner aligned with the benefits received. Complainants maintain that the costs the exit fee collects are unrelated to membership and instead are related to participation in the SPP market; therefore, all participants or customers in the market should be assigned their share of those costs. Additionally, Complainants argue that there are no cost shifts when a non-TO/LSE member withdraws because a change to SPP's revenue would only occur if a market participant or other customer currently paying SPP's costs left the market. Complainants also note that, while the exit fee could decrease as SPP's debt is extinguished, it is highly possible that SPP will increase its debt by improving or expanding its market in the future. Complainants further state that the exit fee only provides revenues if a member withdraws, and because very few parties have ever withdrawn from SPP membership, the exit fee is not a fundamental change to the way SPP recovers its costs.¹⁰³

40. In response to SPP's argument that non-TO/LSE membership has increased since SPP became an RTO, Complainants maintain that the increase is much smaller than in other RTOs/ISOs and that TOs/LSEs still have an overwhelming influence over the direction of SPP by being able to dominate committee voting. Moreover, Complainants

¹⁰¹ Western Area Power Administration Comments at 4-5.

¹⁰² Complainants January 4 Answer at 4-11.

¹⁰³ *Id.* at 11-16.

contend that the *Mobile-Sierra* doctrine is inapplicable to the exit fee provisions in SPP's membership agreement because they are not akin to the types of contracts captured under the doctrine and that, in any event, removal of the exit fee for non-TOs/LSEs would serve the public interest.¹⁰⁴ Complainants also contend that they have supported eliminating the two-year notice and deposit requirements for withdrawal from SPP because other RTOs/ISOs have shorter notice and no deposit requirements, and because SPP's requirements add to the exit fee barrier. Finally, in response to SPP's argument that changing its exit fee structure could have material implications on its debt covenants, Complainants state that SPP did not provide support for its assertions and that lenders would be unlikely to base continued debt availability on withdrawal provisions given that the value of the exit fee is unknown.¹⁰⁵

D. SPP February 14 Answer

41. SPP argues that Complainants January 4 Answer fails to cure the Complaint's evidentiary deficiencies.¹⁰⁶ In response to Complainants' barrier-to-membership claims, SPP asserts that the fact that some entities weigh the cost and benefits of membership, and some choose not to pursue membership, proves nothing with regard to the justness and reasonableness of the exit fee. In response to Complainants' claim that SPP has not identified regional differences that warrant SPP imposing an exit fee on its non-TO/LSE members when all other RTOs/ISOs have no such fee, SPP contends that Complainants bear the burden of proof in this case and that SPP is not required prove that its membership obligations continue to be just and reasonable in light of the fact that other RTOs/ISOs may have chosen to impose different obligations.¹⁰⁷

42. SPP asserts that Complainants' challenges to SPP's governance and decision-making structures are irrelevant to the disposition of the Complaint, unproven, and inaccurate.¹⁰⁸ SPP argues that the Commission should disregard allegations that SPP's governance structure is skewed toward TOs/LSEs and compromised by the concentration of power held by certain members. SPP contends that a simple head count of sector members offers no meaningful information regarding the composition, level, or allocation of SPP's exit fee obligations. SPP notes that its governance structure has been evaluated

¹⁰⁴ *Id.* at 16-18, 20-21.

¹⁰⁵ *Id.* at 22-23.

¹⁰⁶ SPP February 14 Answer at 8.

¹⁰⁷ *Id.* at 13.

¹⁰⁸ *Id.* at 17.

by the Commission and determined to fairly balance diverse interests and facilitate “a full-range of viewpoints [to] inform decision making.”¹⁰⁹ SPP points out that independent power producers and non-LSEs actively participate in the SPP stakeholder process, and these members have held (and continue to hold) leadership positions on key stakeholder committees.¹¹⁰

43. SPP contends that the Complaint offers no theory regarding how Complainants’ proposed remedy might be implemented consistent with the just and reasonable standard. Therefore, SPP asserts that the Commission cannot implement such a remedy on a record that provides no relevant analysis, discussion, or empirical data supporting any such replacement rate.¹¹¹

44. SPP asserts that the withdrawal deposit requirement for an exiting non-LSE member is strictly cost-based, used to fund expenses incurred by SPP to remove the member from SPP’s systems and processes, and is also trued-up, with any overpayment refunded to the exiting member. SPP emphasizes that the costs recovered in the exit fee are not future costs, but current costs that have already been incurred by SPP to develop and support existing services and related contractual liabilities assumed by SPP, during the period when the exiting member held membership in SPP. SPP also refutes Complainants’ claim that the *Mobile-Sierra* doctrine does not apply to Complainants’ proposed changes to the SPP membership agreement and bylaws. SPP asserts that the Commission declined to consider whether provisions of the membership agreement, such as exit fees, might have characteristics warranting application of *Mobile-Sierra* protections.¹¹²

E. SPP Generation Market Participants Answer

45. SPP Generation Market Participants take issue with SPP’s arguments that the affidavits filed with SPP Generation Market Participants’ comments are inaccurate. For example, SPP Generation Market Participants question SPP’s ability to assess the

¹⁰⁹ *Id.* at 18 (citing *Sw. Power Pool, Inc.*, 133 FERC ¶ 61,069 at P 44).

¹¹⁰ *Id.* at 18.

¹¹¹ *Id.* at 23 (citing *Public Serv. Comm’n of N.Y. v. FERC*, 813 F.2d 448, 465 (D.C. Cir. 1987)).

¹¹² *Id.* (citing *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059, at PP 128-29 (2013) (SPP Order No. 1000 Compliance Order)).

credibility of a generation developer's business decision to not develop generation in SPP because of the exit fee.¹¹³

F. Complainants March 22 Answer

46. Complainants disagree with SPP's statement that MISO places an obligation on non-transmission owning members for MISO's outstanding obligations.¹¹⁴ With regard to SPP's argument that Complainants' proposed remedy would result in a massive reallocation of fee liabilities to other SPP members,¹¹⁵ Complainants assert that SPP's argument is baseless because SPP collects the ongoing expenses of its market in its administrative fee, and payment of obligations through the exit fee would only occur in the unlikely event of SPP's collapse. Additionally, Complainants state that there are several significant examples of closed meetings where non-members were excluded from participation, including meetings involving Mountain West Transmission Group discussions and an SPP Board meeting that discussed and formed the Holistic Integrated Tariff Team.¹¹⁶

IV. Discussion

A. Procedural Issues

47. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

48. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept the Complainants January 4 Answer, SPP February 14 Answer, SPP Generation Market Participants Answer, and Complainants March 22 Answer because they have provided information that assisted us in our decision-making process.

B. Substantive Issues

49. For the reasons discussed below, we partially grant the Complaint. We find that SPP's membership exit fee, as applied to non-transmission owners, is unjust and

¹¹³ SPP Generation Market Participants Answer at 1-2, 11.

¹¹⁴ Complainants March 22 Answer at 3-4.

¹¹⁵ SPP February 14 Answer at 3.

¹¹⁶ Complainants March 22 Answer at 5-6.

unreasonable because it creates a barrier to SPP membership for non-transmission owners and because it appears to be excessive based on the record before us. We direct SPP to revise its governing documents to eliminate the membership exit fee for non-transmission owners and find that doing so will result in rates that are just and reasonable.

50. Our finding that SPP's exit fee is unjust and unreasonable for non-transmission owners is based on consideration of whether the exit fee is a barrier to membership and whether it is justified based on the objectives that the Commission has found reasonable in setting an exit fee (i.e., financial solvency, avoiding cost shifts, maintaining stability in RTO/ISO membership, and ensuring members have a financial commitment in the RTO/ISO).¹¹⁷ Having considered these factors, we find that SPP's exit fee for non-transmission owners is unjust and unreasonable because it creates a barrier to membership, is not needed to maintain SPP's financial solvency or avoid cost shifts, and is excessive as a means of ensuring stability in membership and members' financial commitment.

51. The Commission previously considered whether SPP's exit fee acted as a barrier to membership or was excessive in a series of orders related to SPP's application for RTO status.¹¹⁸ At that time, the Commission concluded that the parties challenging the exit fee had not provided sufficient evidence that the exit fee created a barrier to membership or was excessive. However, in the instant proceeding, we now find that there is sufficient evidence in the record to demonstrate that SPP's exit fee creates a barrier to membership and is excessive, as discussed further below. Moreover, circumstances in SPP have changed significantly since the Commission made its findings in the Exit Fee Orders, such that the burden of paying the exit fee has grown substantially.

¹¹⁷ See *infra* P 59.

¹¹⁸ 2005 Rehearing Order, 110 FERC ¶ 61,138 (rejecting arguments that end-users should be exempted from the exit fee in an order on rehearing of a July 2004 order addressing SPP's application for RTO status); *Sw. Power Pool, Inc.*, 113 FERC ¶ 61,014 (2005) (rejecting challenges to SPP's general exit fee structure and rejecting SPP proposal to exempt several classes of members from paying the exit fee in an order on SPP's proposed revisions to the exit fee provisions in its governing documents) (2005 RTO Order); *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,273 (2006) (rejecting a challenge to the per capita component of the exit fee formula in an order on rehearing of the 2005 RTO Order) (2006 Rehearing Order) (collectively, Exit Fee Orders).

1. Barrier to Membership

52. We agree with Complainants that SPP's exit fee is high enough that it creates a barrier to membership for non-transmission owners. As the Commission has stated, exit fees "should not be so high as to create a barrier to entry to membership in the RTO."¹¹⁹ The record in this proceeding includes various estimates of the size of the exit fee for an entity with no load.¹²⁰ The only actual instance of an exit fee being assessed in the record is when Trans-Elect Development Company, LLC was assessed an \$822,008 exit fee in 2015 upon the involuntary termination of its membership for nonpayment of obligations.¹²¹ SPP calculates that, as of October 31, 2018, the exit fee would be approximately \$621,851 for an entity with no load.¹²² Other parties point to different estimates from SPP, including a \$769,542 estimate from a June 30, 2017 SPP presentation¹²³ and a \$699,598 estimate as of December 31, 2017 provided to Mercuria.¹²⁴

53. Although there is no specific number at which an exit fee becomes high enough to become a barrier to entry to membership, we find that even the lowest SPP estimate of approximately \$621,851 could place a significant burden on smaller entities or new market entrants that are not transmission owners, as evidenced by the record in the instant proceeding. For example, one commenter stated that an exit fee of approximately

¹¹⁹ 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26.

¹²⁰ The exact amount of the exit fee will vary based on the number of SPP members and the amount of SPP's long-term financial obligations at the time of the member's withdrawal. *See supra* P 3 & n.5.

¹²¹ Complaint at n.5; SPP November 30 Answer, Dunn Aff. ¶ 4.

¹²² SPP November 30 Answer at 18, Dunn Aff. ¶ 4. SPP states that the exit fee is lower than it was in 2015 because SPP has more members and its long-term financial obligations have decreased as a result of debt repayment. SPP November 30 Answer, Dunn Aff. ¶ 4.

¹²³ Complainants January 4 Answer at 15 & n.49. Complainants did not provide a copy of the presentation or other documentation for this estimate.

¹²⁴ Mercuria Comments at Att. A. Complainants assert that the exit fee could be as high as \$1 million, and SPP Generation Market Participants assert that SPP informed them that the exit fee could be as high as \$1 million for a non-TO/LSE; however, neither group provided documentation or other support for these assertions. Complaint at 5; SPP Generation Market Participants Comments at 6.

\$700,000 would exceed its annual budget and that it would be irresponsible for it to incur a potential liability of such an amount.¹²⁵ Given the size of the exit fee, it is reasonable to conclude that smaller entities could not afford to pay the exit fee and would not be able to bear the risk of having to pay the exit fee after becoming new SPP members.¹²⁶

Likewise, as Solar Energy Industries argue, new market entrants relying on capital markets for financing would likely be unable to carry a potential liability the size of the exit fee on their balance sheets and therefore similarly conclude that it is uneconomic to become an SPP member.¹²⁷ Even entities that could conceivably afford to pay the exit fee or carry it as a potential liability may be discouraged from becoming members because of the significant financial impact that bearing the exit fee could entail.

54. Our conclusion that SPP's exit fee creates a barrier to non-transmission owning entities joining SPP as members is supported by comments from many entities in this proceeding stating that the exit fee is preventing them or the membership that composes the organization from becoming members of SPP. DC Energy, EDF Renewables, ELCON/TIEC, E.ON, Interwest, Invenergy, Public Interest Organizations, and Tradewind all state that they or their members have not become members of SPP because of the potential burden associated with paying the exit fee.¹²⁸ Many of these entities state that they or their members are members of other RTOs/ISOs but are not members of SPP

¹²⁵ Public Interest Organizations Comments at 10, Barnett Aff. at ¶ 4.

¹²⁶ *See, e.g.*, Interwest Comments at 4 (“A non-profit trade association such as Interwest would be precluded from membership status because of the unreasonable risk this excessive potential cost would pose on its budget”); Public Interest Organizations Comments at 10 (“SPP’s exit fee disproportionately impacts smaller organizations, such as the [Public Interest Organizations], because it represents a much higher percentage of their annual operating budgets.”); SPP Generation Market Participants Comments at 6 (“[Independent power producers] cannot operate with such ‘financial uncertainty.’”).

¹²⁷ Solar Energy Industries Comments at 8.

¹²⁸ DC Energy Comments at 3-4; ELCON/TIEC Comments at 2-3; Interwest Comments at 3; Invenergy Comments at 4-5; Public Interest Organizations at 10-11; SPP Generation Market Participants Comments at 3, Sunderman Aff. ¶ 3, Gresham Aff. at ¶ 11, Kemper Aff. at ¶ 7. We note that these entities represent a wide range of non-transmission owning entities, including independent power producers, end users, and consumer or environmental advocates.

because of the exit fee.¹²⁹ These comments are evidence that the exit fee is creating a barrier to non-transmission owning entities becoming members of SPP.

55. Additionally, we note that circumstances in SPP have changed significantly since the Commission found, in the Exit Fee Orders, that there was not enough evidence to support a conclusion that SPP's exit fee was a barrier to membership. At the time of the Exit Fee Orders, the Commission had just approved SPP's application for RTO status, and SPP provided limited RTO services, such as transmission service scheduling. SPP's long-term financial obligations were relatively low – in 2006, they were approximately \$25,000,000.¹³⁰ Since then, SPP has evolved as an RTO and has greatly expanded the services that it provides, notably by first administering an energy imbalance market, and then by administering its Integrated Marketplace, a centralized day-ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management. SPP's transmission footprint has also grown substantially during this time.

56. SPP financed the expansion of its market and RTO services by incurring additional long-term debt. SPP's long-term debt appears to have grown by over a factor of six between 2008 and 2012, from approximately \$39,574,000 to \$258,258,000.¹³¹ This coincides with the development of the Integrated Marketplace, which launched in March 2014.¹³² Since the high point at year-end 2012, SPP's long-term debt has decreased, but as of year-end 2017, SPP's long-term debt of \$215,642,000 remained over eight times higher than its long-term debt of approximately \$25,000,000 in 2006¹³³ – the last time the Commission ruled on exit fees in SPP.

57. As previously discussed, the size of a withdrawing member's exit fee is based on the amount of SPP's long-term financial obligations at the time of the member's

¹²⁹ DC Energy Comments at 1-2; ELCON/TIEC Comments at 2-3; Public Interest Organizations at 13; SPP Generation Market Participants Comments, Sunderman Aff. at ¶¶ 3-4, Gresham Aff. at ¶¶ 11-12, Kemper Aff. at ¶¶ 6-7.

¹³⁰ SPP Annual Reports, 2006, *available at* <https://www.spp.org/spp-documents-filings/?id=18274>.

¹³¹ SPP Annual Reports, 2008-2012.

¹³² SPP states that its existing debt was primarily incurred to plan, launch, and operate the Integrated Marketplace, which cost \$115 million, and to finance the SPP office building and control center. SPP November 30 Answer, Dunn Aff. at ¶ 7.

¹³³ SPP Annual Reports, 2012-2017.

withdrawal. Because SPP's long-term financial obligations are much greater today than they were at the time of the Exit Fee Orders, the potential burden of the exit fee is similarly much larger today than it was then.¹³⁴ The increase in exit fee size directly contributed to it becoming a barrier to membership. Although, as the Commission has previously stated, the fact that the exit fee "may have increased since SPP was authorized as an RTO does not, in and of itself, prove that [it is] too high or otherwise inappropriate,"¹³⁵ in the instant proceeding the magnitude of the increase, the current high level of the exit fee, and the comments from entities in the record that they have not become SPP members due to the exit fee all support our finding that the exit fee is creating a barrier to membership for non-transmission owners.

58. The exit fee acting as a barrier to membership creates actual harm because becoming an SPP member provides an entity with the opportunity for increased participation in the SPP stakeholder process and influence over the direction of SPP initiatives.¹³⁶ By preventing many non-transmission owning entities from becoming members, the exit fee deprives them of the ability to vote on SPP initiatives and otherwise participate as members in the SPP stakeholder process. Consequently, the barrier to membership is one reason contributing to our finding that SPP's exit fee is unjust and unreasonable as applied to non-transmission owners.

2. Purpose of Exit Fee

59. We also find that SPP's exit fee is excessive for certain customer classes because, based on the record before us, there is insufficient evidence of a financial need for an exit fee for non-transmission owners and because the exit fee is higher than necessary to serve as a mechanism for ensuring stability in SPP membership. In previous orders, the Commission has stated that the purpose of an exit fee is to: (1) ensure the RTO/ISO's

¹³⁴ We recognize that SPP membership has increased since 2006, and that, because the exit fee structure for entities with no load is based per capita on the total number of SPP members, an increase in the number of members will, all else being equal, decrease the exit fee. However, the rise in the exit fee resulting from the increase in SPP's long-term debt has greatly outpaced the decrease associated with SPP's growing membership. For example, even though SPP grew from 47 members to 95 members between 2006 and 2017, because of the large increase in SPP's long-term debt we estimate that the long-term debt component of the exit fee for a member with no load in 2006 would have been approximately \$132,979, compared with \$567,479 in 2017. *See* SPP Annual Reports, 2006 and 2017.

¹³⁵ 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26.

¹³⁶ *See supra* P 4 (describing various benefits of SPP membership).

ability to recover its costs and service its debt;¹³⁷ (2) ensure withdrawing members do not impose increased responsibility for the RTO/ISO's financial obligations on remaining members;¹³⁸ and (3) "ensure that prospective members are serious and have enough of an interest in the RTO" and "help provide stability and avoid volatility in the membership."¹³⁹ We examine whether SPP's exit fee fulfills these purposes below.

60. First, we find that charging an exit fee to non-transmission owners is not necessary for SPP to be able to ensure it recovers its costs or services its debt or to ensure withdrawing members do not leave increased responsibility for SPP's financial obligations on remaining members. We note that, on an ongoing basis, the way SPP and other RTOs/ISOs recover their costs and service debt is through an administrative fee.¹⁴⁰

¹³⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at PP 54, 58 & n.63 (2002) ("... [MISO] depends on its Transmission Owners to ensure that the debt it incurs is paid. Each decrease in the potential use of these [RTO] services caused by the withdrawal of a transmission owner diminishes [MISO's] ability to recover its costs and to service its debt.").

¹³⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,255, at P 18 (2011) ("The purpose of the exit fees is to hold the loads of MISO's remaining members harmless from increased responsibility for the financial obligations on MISO's balance sheet at the time of a transmission owner's withdrawal. The exit fees are accordingly based on the loads of the withdrawing transmission owner's transmission system, reflecting the responsibility for such costs that would have been borne by those loads if they remained in MISO."); 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26 ("withdrawal fees help ensure that cost recovery formerly allocated to and the responsibility of members through the payment of their membership fees is not shifted to the remaining members").

¹³⁹ 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26.

¹⁴⁰ See MISO, FERC Electric Tariff, schedules 10, 16, 17; PJM, Open Access Transmission Tariff, schedules 9-1, 9-2, 9-3, 9-4, 9-5; New York Independent System Operator, Inc., Open Access Transmission Tariff, Schedule 1; ISO-NE, Open Access Transmission Tariff, § IV.A, schedules 1, 2, 3; California Independent System Operator, CAISO eTariff, Appendix F, schedule 1. See also SPP November 30 Answer, Dunn Aff. at ¶ 4 ("Funding for repayment of . . . debt is included as part of SPP's Schedule 1-A rate, which is charged to all transmission customers."). All RTOs/ISOs, including SPP, pay for their long-term financial obligations through administrative fees. However, SPP differs from most other RTOs/ISOs in that its administrative fee is recovered from transmission service customers only, in contrast to the separate administrative fees for

The potential effect of a member's withdrawal on the RTO/ISO's ability to recover costs through the administrative fee differs depending on whether the withdrawing member is a transmission owner or a non-transmission owner. When a transmission owner withdraws from an RTO/ISO, the RTO/ISO's ability to recover its costs or service its debt could be affected by the transmission owner's departure. That is because a withdrawing transmission owner takes its transmission assets, as well as its interconnected load and generation, with it upon withdrawal, thereby reducing the customer base that pays the RTO/ISO's administrative fee. Without an exit fee, the withdrawing transmission owner's responsibility for the RTO/ISO's financial obligations is shifted to remaining members. This shift in exit fee responsibility could induce additional withdrawals, and if enough transmission owners withdraw, the RTO/ISO could be at risk of not having any remaining customer base to pay its costs or service its debt. Therefore, an exit fee for transmission owners can help ensure that the RTO/ISO is able to meet its financial obligations despite the reduction in the customer base paying the administrative fee. An exit fee can also ensure a transmission owner's withdrawal does not lead to cost shifts to remaining members as a result of the reduction of the customer base paying the administrative fee.

61. By contrast, when a non-transmission owner withdraws from an RTO/ISO, the financial impact is not the same as when a transmission owner withdraws because the non-transmission owner does not have transmission assets. Therefore, the non-transmission owner's withdrawal does not reduce the customer base paying the RTO/ISO's administrative fee, and thus the act of withdrawal does not affect the RTO/ISO's ability to ensure it recovers its costs and services its debt.¹⁴¹ Additionally, because a non-transmission owner's withdrawal from membership does not result in a reduction of the customer base paying the administrative fee, there is not the same concern about remaining members bearing increased responsibility for the financial obligations recovered through the administrative fee. Consequently, we find that applying SPP's exit fee to non-transmission owners is not needed to ensure it recovers its costs or services its debt or to ensure remaining members do not bear increased

market services (recovered from market participants) and transmission services (recovered from transmission customers) prevalent in other RTOs/ISOs.

¹⁴¹ To the extent a withdrawing non-transmission owner is a transmission customer (i.e., the non-transmission owner serves load or owns generation that is interconnected with the SPP transmission system), we do not expect SPP would lose a transmission customer paying the administrative fee because the non-transmission owner would still be dependent on SPP transmission service to serve its load or sell the output from its generator.

responsibility for SPP's financial obligations. As a result, we find that there is not a financial need for SPP to charge an exit fee to non-transmission owners.

62. Finally, we recognize that, in a previous order, the Commission found that an exit fee can help ensure that prospective members take membership seriously, helping to provide stability and avoid volatility in membership.¹⁴² As indicated in that order, an exit fee can provide a benefit by ensuring prospective members make a financial commitment to the RTO/ISO. However, while there may be some benefit to an exit fee being high enough to ensure the seriousness of prospective members and to provide stability in membership, the exit fee must not be so high as to create a barrier to membership. As discussed above, we find that SPP's exit fee is at a level that is high enough to create a barrier to membership. We also find that the exit fee is at a level that is higher than necessary to ensure stability in SPP's membership or members' financial commitment to the RTO. Further, we do not find that the potential benefits provided by an exit fee for non-transmission owners are necessary to ensure just and reasonable rates in an RTO/ISO. While some level of exit fee that does not act as a barrier to membership and is not excessive could be appropriate in SPP, because we are finding here that no exit fee for non-transmission owners will result in just and reasonable rates,¹⁴³ we do not need to consider at this time whether a smaller exit fee for non-transmission owners would also be just and reasonable.

3. Remedy

63. In addition to finding that SPP's exit fee, as applied to non-transmission owners, is unjust and unreasonable, we find that eliminating SPP's exit fee for non-transmission owners will result in rates that are just and reasonable. Elimination of the exit fee for non-transmission owners will eliminate the barrier to membership created by the exit fee and will remove the exit fee as an unjust and unreasonable practice from SPP's Governing Documents Tariff. Therefore, we direct SPP to submit a compliance filing within 60 days of the date of this order that revises the exit fee provisions in SPP's bylaws and membership agreement in its Governing Documents Tariff to eliminate the exit fee for non-transmission owners. Additionally, we direct SPP to revise its exit fee formula to ensure that the continued application of the exit fee to transmission owners ensures SPP's debt is fully secured.¹⁴⁴

¹⁴² 2006 Rehearing Order, 114 FERC ¶ 61,273 at P 26.

¹⁴³ See *infra* PP 63-64.

¹⁴⁴ Specifically, when considering the value for the withdrawing member's previous year net energy for load ("B" in the exit fee formula), SPP should ensure that this value includes the load of load-serving entities connected to the withdrawing

64. SPP's ability to meet its financial obligations and maintain financial solvency should not be affected by the elimination of the exit fee for non-transmission owners because: (1) SPP will continue to recover costs associated with paying its financial obligations through its administrative fee; and (2) we are not directing SPP to remove its exit fee for transmission owners, as we find it is appropriate and not unduly discriminatory or preferential for SPP to continue applying its exit fee requirements to transmission owners given the financial impact their withdrawal from SPP could have on SPP and remaining members.¹⁴⁵ The continued application of the exit fee to transmission owners will ensure that SPP will be able to meet its financial obligations and that there are no cost shifts to remaining members from the reduction in the customer base if a transmission owner withdraws from SPP.

65. By removing the barrier to membership created by SPP's exit fee, we expect non-transmission owning entities that have been prevented from becoming members in SPP will be more likely to become members. We expect this will result in a more diverse membership and a stakeholder process that takes into account the interests of a wider spectrum of entities, including smaller entities and new market entrants that were previously discouraged from membership by the high exit fee.

66. Complainants argue that the exit fee is unjust and unreasonable for independent power producers and other similarly situated non-transmission owners and non-load serving entities.¹⁴⁶ Thus, we view the Complaint's allegation that the exit fee is unjust and unreasonable to include the exit fee applicable to load-serving entities that are *not* transmission owners, and we find that the application of SPP's exit fee to non-transmission owning load-serving entities is unjust and unreasonable. A non-transmission owning load-serving entity's withdrawal from SPP membership does not have the same financial impact as when a transmission owner withdraws from membership. A transmission owner's withdrawal from membership corresponds with its withdrawal from SPP, and as discussed above, its withdrawal from SPP reduces the customer base paying SPP's administrative fee and SPP's ability to meet its financial

transmission owner's system. Additionally, SPP should either remove the per capita component of the exit fee formula or exclude non-transmission owners from the total number of SPP members value ("N" in the exit fee formula). *See supra* n.5.

¹⁴⁵ *See supra* P 60.

¹⁴⁶ Complaint at 1 (arguing that the exit fee, "as applied to Independent Power Producer[s] . . . and other similarly situated non-transmission owners . . . and non-load-serving entities . . . [is] unlawful, unjust and unreasonable, and unduly discriminatory").

obligations.¹⁴⁷ By contrast, a non-transmission owning load-serving entity's withdrawal from membership does not necessarily result in the withdrawal of its load from SPP, and therefore the act of relinquishing membership itself does not reduce SPP's ability to meet its financial obligations. We find that the financial impact of a non-transmission owning load-serving entity's relinquishing membership is similar to the financial impact of other non-transmission owners withdrawing from SPP membership.¹⁴⁸ As a result, we find that there is not a financial need for SPP to charge an exit fee to non-transmission owning load-serving entities, and therefore the current application of the exit fee to non-transmission owning load-serving entities is unjust and unreasonable. Therefore, we direct SPP to also remove the exit fee for non-transmission owning load-serving entities.

67. We will not require SPP to adopt the specific proposed revisions to SPP's Governing Documents Tariff requested in the Complaint.¹⁴⁹ Aside from elimination of the exit fee, the specific revisions requested in the Complaint are not adequately supported. For example, Complainants have not shown that changes to the two-year notice or deposit requirements are barriers to membership or are otherwise unjust and unreasonable. While Complainants argue that other RTOs/ISOs have shorter notice and no deposit requirements,¹⁵⁰ that comparison alone does not demonstrate that the notice and deposit requirements are unjust and unreasonable, and that claim is not further supported in the record.

4. Other Matters

68. SPP asserts that any change to its exit fee structure could have material implications on its debt covenants.¹⁵¹ Similarly, SPP Load Serving Entities maintain that, if some members are not required to pay the costs of SPP's financial obligations, then a

¹⁴⁷ See *supra* P 60.

¹⁴⁸ See *supra* P 61.

¹⁴⁹ See Complaint at 32 & Att. 2.

¹⁵⁰ Complainants January 4 Answer at 22.

¹⁵¹ SPP November 30 Answer at 4, 26, Dunn Aff. at ¶ 6. Specifically, SPP states that “[e]ach of the term notes issued by SPP contains provisions requiring prepayment of the outstanding principal balance upon membership withdrawals exceeding specific trigger thresholds” and that “each of these notes contains negative covenants that trigger an event of default should SPP Members withdraw and SPP not enforce and apply the withdrawal provisions that are the subject of the Complaint.” SPP November 30 Answer, Dunn Aff. at ¶ 6.

portion of SPP's debt would become unsecured and the cost of debt could increase, in turn increasing overall costs to load.¹⁵² However, the remedy ordered here should provide adequate security for SPP's debt because it ensures that transmission owners are responsible for their pro rata share of SPP's long-term financial obligations upon withdrawal. The financial security currently provided by non-transmission owners' exit fee liability will be reallocated to transmission owners, so we do not expect any loss in SPP's ability to recover its debt. SPP also argues that eliminating the exit fee will result in a cost shift of \$16 million to \$32 million to other SPP members.¹⁵³ While we acknowledge that transmission owners that choose to withdraw from SPP will pay higher exit fees after elimination of the exit fee for non-transmission owners compared with what they would pay currently, we find this appropriate given the difference between the potential effect of a transmission owner's withdrawal and a non-transmission owner's withdrawal on the customer base that pays SPP's administrative fee, as discussed above.¹⁵⁴

69. Additionally, SPP and SPP Load Serving Entities contend that SPP's exit fee already recognizes differences in size and usage among withdrawing members.¹⁵⁵ We agree that the existing exit fee formula weights the exit fee such that entities with load will pay a higher exit fee than entities with no load.¹⁵⁶ Nonetheless, the exit fee for non-transmission owners can still be high enough, and as we find above is high enough, to create a barrier to membership for some non-transmission owners even if transmission owners pay a higher exit fee. SPP and SPP Load Serving Entities also maintain that a number of non-transmission owning members have become members of SPP since 2004, indicating that the exit fee is not creating a barrier to membership.¹⁵⁷ However, although some non-transmission owning entities have decided to become SPP members under the current exit fee structure, the record in this proceeding indicates that the exit fee is nonetheless acting as a barrier to membership for other prospective non-transmission

¹⁵² SPP Load Serving Entities Protest at 17.

¹⁵³ SPP November 30 Answer at 5.

¹⁵⁴ *See supra* PP 60-61.

¹⁵⁵ SPP November 30 Answer at 5, 18, 23; SPP Load Serving Entities Protest at 6-7.

¹⁵⁶ *See supra* n.5.

¹⁵⁷ SPP November 30 Answer at 5, 7, n.52; SPP Load Serving Entities Protest at 5.

owning entities, particularly those that are smaller or new market entrants, as discussed in more detail above.¹⁵⁸

70. SPP further states that it anticipates that its outstanding financial obligations will continue to decrease in the coming years as it pays down its debt through its administrative fee, and that as a result the size of the exit fee will continue to decrease.¹⁵⁹ However, it is not certain that SPP's outstanding debt will continue to decrease because it is possible that SPP could take on additional debt to finance future market developments or for other reasons. It would be speculative to attempt to predict whether and to what extent SPP's financial obligations will decrease or increase in the future and whether SPP's financial obligations might decrease to an extent that the exit fee would no longer be a barrier to membership or excessive.

71. SPP argues that its membership agreement is subject to the *Mobile-Sierra* doctrine and therefore can only be modified upon a showing that the modifications are required by the public interest.¹⁶⁰ We disagree. In orders addressing SPP's compliance with Order No. 1000,¹⁶¹ the Commission ultimately determined that the membership agreement is not subject to a *Mobile-Sierra* presumption.¹⁶² In its Order No. 1000 compliance filing, SPP argued that the membership agreement was protected by the *Mobile-Sierra* doctrine and that the Commission had not met the public interest standard in requiring SPP to remove a provision that contained a federal right of first refusal (section 3.3 of the membership agreement). The Commission stated that in ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, it must determine whether the instrument at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose

¹⁵⁸ See *supra* section IV.B.1.

¹⁵⁹ SPP November 30 Answer at 18, Dunn Aff. at ¶ 4.

¹⁶⁰ SPP November 30 Answer at 22; SPP February 14 Answer at 26.

¹⁶¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹⁶² SPP Order No. 1000 Compliance Order, 144 FERC ¶ 61,059, *order on reh'g*, 149 FERC ¶ 61,048 (2014) (SPP Order No. 1000 Rehearing Order), *denying petition for review, Okla. Gas & Elec. Co. v. FERC*, 827 F.3d 75 (D.C. Cir. 2016).

in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. The Commission further stated that the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.¹⁶³ The Commission found that section 3.3 of the membership agreement lacked the characteristics necessary to justify a *Mobile-Sierra* presumption. The Commission also found that given the breadth and complexity of the membership agreement, it was neither practical nor necessary to evaluate whether the preponderance of the membership agreement's provisions include tariff rates or contract rates.¹⁶⁴

72. On rehearing, the Commission clarified that it need not apply different presumptions to different provisions of the membership agreement, and as a form contract, the membership agreement must be viewed in its entirety as containing rates, terms, or conditions that are generally applicable to all entities seeking SPP membership, and as a result, the agreement is not subject to a *Mobile-Sierra* presumption.¹⁶⁵ In denying a petition for review of these two orders, the D.C. Circuit pointed out that in the SPP Order No. 1000 Rehearing Order, the Commission did not alter its determination that section 3.3 of the membership agreement failed the threshold, arms-length bargaining test, "but as an aside clarified that the other Agreement provisions, not just Section 3.3, also amounted to generally applicable terms and conditions not subject to *Mobile-Sierra*."¹⁶⁶ Therefore, we disagree with SPP's argument that the membership agreement is subject to the *Mobile-Sierra* presumption. Consequently, we find that the membership agreement may be modified without showing that the agreement adversely affects the public interest.

73. Finally, in response to Western Area Power Administration's comments, we do not view the changes to SPP's membership agreement and bylaws required in this order as affecting the negotiated provisions the Commission accepted when Western Area

¹⁶³ SPP Order No. 1000 Compliance Order, 144 FERC ¶ 61,059 at P 127.

¹⁶⁴ *Id.* P 129.

¹⁶⁵ SPP Order No. 1000 Rehearing Order, 149 FERC ¶ 61,048 at P 100.

¹⁶⁶ *Okla. Gas & Elec. Co. v. FERC*, 827 F.3d at 78.

Power Administration's Upper Great Plains Customer Service Region joined SPP as a transmission-owning member.¹⁶⁷

The Commission orders:

(A) The Complaint is granted in part, as discussed in the body of this order.

(B) SPP is hereby directed to make a compliance filing within 60 days of the date of this order removing the exit fee requirement for non-transmission owners, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶⁷ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,113, at P 136 (2014), *order on reh'g and clarification*, 153 FERC ¶ 61,051 (2015).