

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

American Wind Energy Association,)	
<i>et al.</i>)	Docket No. EL19-11-001
Complainants)	
v.)	
)	Docket Nos. ER19-2522-000
)	ER19-2523-000
Southwest Power Pool, Inc.)	
)	
Respondent.)	(not consolidated)

**ANSWER OPPOSING, IN PART,
MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 213(a)(3) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the American Wind Energy Association (“AWEA”),² the Solar Energy Industries Association (“SEIA”),³ the Advanced Power Alliance (“APA”),⁴ and the Solar Council (“Council”)⁵ (collectively, “Renewable Industries”) respectfully submit this Answer opposing in part⁶ the Southwest Power Pool’s

¹ 18 C.F.R. § 385.213(a)(3) (2018).

² 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’s members include active participants in the markets administered by SPP. The views in this filing do not necessarily represent the views of each individual member of AWEA.

³ SEIA is the national trade association of the U.S. solar energy industry, which now employs more than 250,000 Americans. SEIA works with its member companies to build jobs and diversity, champion the use of cost competitive solar in America, remove market barriers and educate the public on the benefits of solar energy. The comments contained in this filing represent the position of SEIA as an organization, but do not necessarily reflect the views of any particular member with respect to any issue.

⁴ The Advanced Power Alliance is a trade organization representing renewable developers and public interest organizations interested in renewable development in the SPP and Electric Reliability Council of Texas regions of the United States.

⁵ The Solar Council is a group of companies participating in AWEA’s RTO Advisory Council that own, operate, develop, and finance solar projects and act, in coordination with AWEA, to advance joint goals before the Federal Energy Regulatory Commission and the nation’s regional transmission organizations and independent system operators.

⁶The Renewable Industries oppose an extension with regard to the Commission’s first compliance requirement, as detailed below, but do not take a position with respect to whether an extension is appropriate for the second

(“SPP’s”) January 24, 2020 Motion for Extension of Time in the above-captioned proceedings. The Renewable Industries respectfully submit that SPP has not shown good cause for such an extension. In fact, granting SPP’s motion would only serve to further delay the relief that the Commission granted in response to AWEA/APA’s Complaint,⁷ as an extension would perpetuate uncertainty for prospective SPP members regarding the implications for membership.

I. BACKGROUND

On December 19, 2019, the Commission issued an Order⁸ denying rehearing of its April 2019 Order,⁹ which had instructed SPP to remove its exit fee for non-transmission owners (“TOs”). The December 2019 Order also conditionally accepted a compliance filing from SPP,¹⁰ and rejected an alternative proposal.¹¹ In accepting SPP’s Compliance Filing, which removed the exit fee for non-TOs, the Commission required a further compliance filing within 60 days (by February 18, 2020) to address two issues: first, ensuring “that a withdrawing non-transmission owner is only exempt from paying a share of SPP’s long-term financial obligations, rather than all existing obligations associated with membership withdrawal,”¹² and second, instructing “SPP to include in its further compliance filing proposed revised Tariff language to ensure that a withdrawing transmission-owning member’s previous year net energy for load includes the load of all load-serving entities connected to the withdrawing transmission owner’s

compliance obligation discussed in SPP’s request - specifically, SPP’s proposed revised Tariff language to ensure “that a withdrawing transmission-owning member’s previous year net energy for load includes the load of all load-serving entities connected to the withdrawing transmission owner’s system.”

⁷ See *Am. Wind Energy Ass’n, Complaint to Revise the Membership Exit Fees in the Southwest Power Pool, Inc.*, Docket No. EL19-11 (Nov. 2, 2018)(“Complaint”).

⁸ *Am. Wind Energy Ass’n v. Sw. Power Pool, Inc.*, 169 FERC ¶ 61,227 (2019) (“December 2019 Order”).

⁹ *Am. Wind Energy Ass’n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033 (2019) (“April 2019 Order”).

¹⁰ *Submission of Exit Fee Compliance Revisions*, Docket No. ER19-2522-000 (Aug. 1, 2019) (“Compliance Filing”).

¹¹ *Submission of Revisions to the Bylaws and Membership Agreement to Amend the Exit Fee*, Docket No. ER19-2523-000 (Aug. 1, 2019) (“Alternative Filing”).

¹² December 2019 Order at P114.

system.”¹³ On January 24, 2020, SPP filed a motion seeking an extension of time for these compliance obligations until May 1, 2020.¹⁴

II. ANSWER

The Renewable Industries oppose the SPP Motion with regard to the first compliance requirement¹⁵ – establishing which specific obligations (other than long-term financial obligations) a non-TO SPP member is responsible for – for two reasons.

First, SPP has not shown good cause for such an extension with respect to this obligation. SPP bases its motion on the need for SPP Board approval, its desire to use the already-scheduled SPP Board meetings, and a 30-day notice requirement to members.¹⁶ The Renewable Industries appreciate that the Commission’s directions in the December 2019 Order require revisions to SPP’s Governing Documents; however, we believe that establishing the financial obligations which non-TO members are responsible for upon withdrawal can be addressed with a largely ministerial set of changes. Indeed, the items at issue, such as SPP’s cost to process a member’s withdrawal and the member’s open position in the SPP marketplace, have previously been in effect in SPP’s Governance Documents.¹⁷ Therefore, these are not new issues for the Board to address. The compliance obligation should merely reinstate (for non-TOs) the status quo prior to the filing of the AWEA/APA complaint and the Commission’s April 2019 Order. These same requirements are presently listed in SPP’s Governance Documents as applying to a TO or load-serving entity.¹⁸ In fact, the initial complaint made clear that AWEA/APA were not seeking

¹³ December 2019 Order at P115.

¹⁴ *Sw. Power Pool, Inc.*, Motion for Extension of Time and Request for Expedited Ruling of Southwest Power Pool, Inc., Dockets No. EL19-11-000, ER19-2522, and ER19-2523 (Jan. 24, 2020) (“SPP Motion”).

¹⁵ As noted above, the Renewable Industries take no position on an extension for the second compliance obligation.

¹⁶ SPP Motion at pp. 3-7.

¹⁷ See *Southwest Power Pool, Submission of Exit Fee Compliance Revisions in Response to Order Issued in Docket No. EL19-11-000*, Docket No. ER19-2522 at p.26, section 4.3.2 (Aug. 1, 2019)(removing non-TO obligations by adding text to SPP’s Bylaws stating “A Member that is not a Transmission Owner is not subject to the obligations [to pay current and existing obligations] set forth in this Section 4.3.2.”).

¹⁸ See, e.g. *Southwest Power Pool, Inc., Bylaws*, First Revised Volume No. 4 (“Bylaws”) at 4.3.2.

reform of these specific items.¹⁹ In this respect, the need for Board approval seems a non-issue, or at most perfunctory.²⁰

Even if Board approval is needed, SPP's Bylaws clearly allow for in-person Board meetings upon the Chair's determination, as well as telephonic Board meetings which "may be called as appropriate by the Chair with at least one-day prior notice."²¹ Similarly, SPP's Bylaws authorize telephone conference meetings for all SPP Committees – including those that may have a role in approving this limited compliance obligation.²² SPP's clear ability to schedule Board and Committee meetings telephonically suggests that its representations regarding the 30-day notice requirement to members are irrelevant. Indeed, the SPP Board is meeting *today* to discuss SPP matters, including Bylaws revisions – and the required notice for those Bylaw revisions was circulated on December 23, four days after the December 2019 Order.²³ Hence, there appears to be no reason that SPP could not have brought forward these limited proposed changes to its Governing Documents with sufficient time to satisfy the 30-day requirement. SPP could then have used its previously planned meeting in January, or scheduled ad-hoc in-person or telephonic meetings of the Corporate Governance Committee and the Board of Directors/Members Committee in February, to achieve the February 18 compliance deadline. The Commission should reject SPP's motion for extension of time on this issue given SPP's

¹⁹ Complaint at pp9-10 ("Complainants do not take issue with the first two enumerated obligations, which require payment of funds already owed by an exiting member." Specifically, these obligations are the member's unpaid annual membership fee and the member's unpaid dues, assessments, and other amounts.).

²⁰ This contrasts with the second compliance item from the December 2019 Order which requires a revision to SPP's Governance Documents to determine the exit fee for a transmission owner or load-serving entity based on net energy and load, for which the Renewable Industries do not oppose an extension of time.

²¹ Bylaws at 4.6.1.

²² Bylaws at 3.5 ("Telephone conference meetings may be called as appropriate by the Chair of any Organizational Group with at least one-day prior notice.").

²³ See Agenda for Jan. 28, 2020 SPP Corporate Governance Committee Meeting at p.6, <https://www.spp.org/Documents/61367/BOD-MC%20Materials%2020200128%20 PGD.pdf#page=6>.

failure to address (or even offer an explanation for) why these limited proposed changes were not included on the January 28, 2020 meeting agenda.

Second, SPP's Motion would unnecessarily delay the relief the Commission granted in response to the Complaint that precipitated the April and December 2019 Orders, by continuing to withhold clarity on precisely which financial obligations non-TOs would owe and how they would be calculated. In turn, this uncertainty risks prolonging the barrier to membership that the Commission identified in its April and December 2019 Orders, and would delay the opportunity of non-TOs to participate in the SPP stakeholder process and influence the direction of SPP initiatives, including voting on such matters. If the Commission grants SPP's Motion, the compliance filing on this issue will not be submitted until May 1, with the Commission unlikely to act thereon until July of 2020 at the earliest. Thus, it could take a further six months (or even longer) from the December 2019 Order before a clear path for SPP membership, with all withdrawal-related financial obligations and calculations clearly specified, would be available for non-TOs. This is not consistent with the Commission's directions to SPP in this proceeding. Indeed, the Commission issued its Order granting the Complaint in April 2019. If SPP's Motion were granted, the terms for a non-TO to exit SPP membership would not be accepted and be part of SPP's Governance Documents until July 2020. Renewable Industries respectfully submit that allowing *fifteen months* to elapse from when the Commission issued its order on the Complaint, to when the terms that apply to a non-TO seeking to exit SPP membership are definitively established, is not just and reasonable and is inconsistent with the Commission's findings in the April 2019 and December 2019 Orders.

III. CONCLUSION

WHEREFORE, for the aforementioned reasons, the Renewable Industries respectfully request that the Commission consider this Answer, and reject SPP's Motion with respect to the first compliance obligation identified in the December 2019 Order.

Respectfully submitted,

Gene Grace
Gabe Tabak
Counsel to AWEA
American Wind Energy Association
1501 M Street, NW, Suite 900
Washington, DC 20005
(202) 383-2500
ggrace@awea.org
gtabak@awea.org

Katherine Gensler
Vice President, Regulatory Affairs
Solar Energy Industries Association
1425 K Street NW, Suite 1000
Washington, DC 20005
(202) 682-0556
kgensler@seia.org

Steve Gaw
SPP Policy Director
Advanced Power Alliance
The Wind Coalition
610 Brazos Street, Suite 210
Austin, Texas 78701
(573) 645-0777
rsgaw1@gmail.com

Heather Curlee
Wilson Sonsini Goodrich & Rosati, PC
701 Fifth Ave, Suite 5100
Seattle, WA 98104
(206) 883-2522
hcurlee@wsgr.com
Counsel to SEIA

Steven Shparber
Nelson Mullins Riley & Scarborough
101 Constitution Avenue, N.W., Suite 900
Washington, D.C. 20001
(202) 689-2994
steven.shparber@nelsonmullins.com
Counsel for AWEA, SEIA & the Solar Council

January 28th, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 28th day of January 2020.

Gabe Tabak
Counsel
American Wind Energy Association
1501 M Street, NW, Suite 900
Washington, DC 20005
(202) 383-2500
gtabak@awea.org