

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. ER05-1352-000,  
RT04-1-014, and  
ER04-48-014

ORDER ON COMPLIANCE AND PROPOSED TARIFF REVISIONS

(Issued October 7, 2005)

1. On August 9, 2005 Southwest Power Pool, Inc. (SPP) filed proposed changes to its Bylaws and Membership Agreement in revised tariff sheets to be effective July 26, 2005. In this order, the Commission finds that SPP failed to comply with the Commission's February 11, 2005 Order in this proceeding.<sup>1</sup> This filing is conditionally accepted subject to SPP complying with the February 11, 2005 Order, certain proposed provisions are rejected as unsupported, and certain other proposals are accepted. Waiver of the 60-day notice requirement is granted, and the proposed tariff sheets are accepted to be effective August 10, 2005, subject to the conditions of this order as discussed below.

**Background**

2. SPP has been authorized as a Regional Transmission Organization (RTO) since October 1, 2004.<sup>2</sup> In the February 11, 2005 Order,<sup>3</sup> the Commission directed SPP to

---

<sup>1</sup> *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,138 (2005) (February 11, 2005 Order).

<sup>2</sup> *See Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

<sup>3</sup> February 11, 2005 Order at P 13.

revise its Bylaws and Membership Agreement in a manner consistent with *WestConnect*.<sup>4</sup> In *WestConnect*, the Commission required WestConnect to provide waiver or reductions of application and annual membership fees on a non-discriminatory, case-by-case basis for legitimate public interest groups (which may include end-users) upon written request of such entities.<sup>5</sup>

3. On August 9, 2005, SPP filed revised tariff sheets to amend its Bylaws and Membership Agreement in three respects. First, SPP states, to ensure the independence of the compliance function, it proposes to revise its Bylaws to specify that SPP's North American Electric Reliability Council (NERC) compliance function will report directly to SPP's Board of Directors (SPP Board).<sup>6</sup> Second, SPP states that it proposes to revise its Membership Agreement to more clearly detail the obligations of SPP's members upon withdrawal. Third, SPP states that it proposes to revise its Bylaws and its Membership Agreement to reflect changes to the fee obligations and amounts for certain membership classes, in compliance with the Commission's February 11, 2005 Order in these dockets.

4. SPP requests that the Commission allow the proposed revisions of its Bylaws and Membership Agreement to go into effect as of July 26, 2005.<sup>7</sup>

#### **Notice of Filing and Responsive Pleadings**

5. Notice of SPP's filing was published in the *Federal Register*, 70 Fed. Reg. 49, 917 (2005), with interventions and protests due on or before August 30, 2005. On August 30, 2005 Oklahoma Gas & Electric Company, the Louisiana Public Service Commission, and the Southwest Industrial Customer Coalition (Southwest Industrial) filed motions to intervene. On August 30, 2005, the Lafayette Utilities System (Lafayette), Golden Spread Electric Cooperative, Inc. (Golden Spread), and Xcel Energy Services, Inc on behalf of Southwestern Public Service (Xcel) filed motions to intervene and protests. On September 14, 2005, Southwest Industrial filed an answer to protests. On September 15, 2005, SPP filed an answer to protests. On September 28, 2005, Golden Spread filed an answer.

---

<sup>4</sup> See *Arizona Public Service Company, et al.*, 101 FERC ¶ 61,350 at P 26 (2002) (*WestConnect*).

<sup>5</sup> *WestConnect* at P 26.

<sup>6</sup> Transmittal Letter at 1.

<sup>7</sup> *Id.*

### **Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept SPP's, Golden Spread's, and Southwest Industrial's answers because they provided information that assisted us in our decision-making process.

8. We find good cause to waive the 60-day notice requirement of the FPA to permit the section 205 changes to take effect on, August 10, 2005, since they help clarify the tariff and enhance the independence of SPP's North American Electric Reliability Council (NERC) compliance function.<sup>8</sup>

### **Discussion**

#### **A. Withdrawal Fee Exemption Proposal**

9. Section 4.2.2 of the Membership Agreement currently provides that SPP shall invoice a withdrawing member for the member's "Existing Obligations" as soon as reasonably practical after the effective date of the member's withdrawal or termination. SPP proposes to modify section 4.2.2 of the Membership Agreement and add a new, essentially identical section 8.7 of the Bylaws to provide for additional types of Financial Obligations for withdrawing members and to provide for exemption from certain components of the total exit fee payment including the member's share of long-term Financial Obligations<sup>9</sup> and Future Interest<sup>10</sup> payments for several classes of members who

---

<sup>8</sup> The Commission generally does not entertain compliance filings intermingled with section 205 filings. See *Midwest Independent Transmission System Operator*, 112 FERC ¶ 61,169 (2005). However, we also find good cause to waive the prohibition against including new proposals with a compliance filing for the same reasons as support our waiver of the notice period. SPP is cautioned not to attempt to include new proposals in the compliance filing it is directed to make herein as such changes will be subject to summary rejection.

<sup>9</sup> See section 8.7.1(c).

<sup>10</sup> See section 8.7.1(e).

are not themselves market participants.” Further, it proposes certain changes in the invoice procedures used to assess these obligations to withdrawing members.

10. The “Existing Obligations” that withdrawing members are invoiced upon their termination or withdrawal as members are currently defined in that section to include: member's unpaid annual membership fees, prior assessments, costs imposed on SPP as a direct result of the member's withdrawal, and member's share of SPP's long-term obligations such as debt obligations. In the instant filing, SPP proposes to further define long-term Financial Obligations to include, but not be limited to: Payment of unfunded liabilities of SPP employee pension funds and payment of general and administrative overhead.

11. SPP also proposes to modify section 4.3.2 of the Membership Agreement and include in new section 8.7 of the Bylaws the provision that withdrawing members who are not themselves “market participants” (section 8.7.1 of the Bylaws) or “customers” (section 4.3.2 of the Member Agreement) and who are alternative energy members, large retail customer members, public interest members, or small retail customer members will not be subject to the financial obligation to pay a share of long-term debt and interest upon their withdrawal from membership.

### **1. Compliance With the February 11, 2005 Order**

12. SPP observes that, in the February 11, 2005 Order, the Commission directed SPP to establish a procedure for processing requests for waivers or reductions of application or annual membership fees on a non-discriminatory, case-by-case basis for end-users and/or other legitimate public interest groups, as the Commission ordered in *WestConnect*.<sup>11</sup> SPP states in the transmittal to its filing that, in lieu of establishing a procedure for processing waiver requests, SPP instead obtained approval of the SPP Board to explicitly waive certain fee requirements for the following member classes: alternative energy members, large retail customer members, public interest members, and small retail customer members. More specifically, in the instant filing, SPP proposes to modify section 4.3.2 of the Membership Agreement and add a new section 8.7 of the Bylaws to provide that withdrawing members who are not themselves “market participants” and who are alternative energy members, large retail customer members, public interest members, or small retail customer members will not be subject to the financial obligation to pay a share of long-term debt and interest upon their withdrawal from membership in the RTO.

---

<sup>11</sup> February 11, 2005 Order at P13. See *WestConnect* at P 26.

### **Discussion**

13. As noted above, in the February 11, 2005 Order the Commission directed SPP to establish a process for providing waivers or reductions of application or annual membership fees for legitimate public interest groups, upon the written request of such entities.<sup>12</sup> In this filing, SPP has not proposed a process for legitimate public interest groups to seek waivers or reductions of application or annual membership fees and has proposed increased financial obligations and expanded exemptions that go beyond the narrow compliance obligation that the February 11, 2005 Order imposed on SPP. Thus, its proposed revisions to the Bylaws and Member Agreement do not comply with the February 11, 2005 Order. We will direct SPP to file, within 30 days from the date of this order, a filing complying with the foregoing directive in the February 11, 2005 Order. Nonetheless, in the sections that follow, we will address its proposed withdrawal fee provisions as new proposals under section 205 of the FPA.

#### **2. Section 205 Withdrawal Fee Exemption Proposal**

14. As noted above, SPP proposes to increase cost elements of withdrawal fees and to provide that withdrawing members who are not themselves “market participants” and who are alternative energy members, large retail customer members, public interest members, or small retail customer members will not be subject to the financial obligation to pay a share of long-term debt and interest upon their withdrawal from membership in the RTO when they withdraw their membership from SPP. The proposed withdrawal fee exemptions would include exemption from future interest liabilities that would otherwise accrue in connection with SPP’s financial obligations.<sup>13</sup>

### **Protests**

15. In its protest, Golden Spread opposes the proposed changes that concern the financial obligations of withdrawing members. Golden Spread states that it is not a member of the RTO or directly interconnected to RTO Transmission Owner facilities but that it is a transmission customer of SPP. It argues that, when Southwestern Public Service Company (SPS), the control area operator for most of the retail load of Golden Spread’s customers, decided to become a member of the SPP RTO, Golden Spread automatically was brought into the SPP footprint. It essentially asserts that, if it were to formally become a member of SPP, then it would have a voice in SPP’s governance, but,

---

<sup>12</sup> February 11, 2005 Order at P 13.

<sup>13</sup> Transmittal Letter at 4.

having been made subject to the SPP “involuntarily,” it “should not have to purchase the right to participate in governance.”<sup>14</sup> It argues that, as a smaller entity, it should not be obligated to pay the same allocation of the existing costs as larger entities and that the withdrawal fee will create a significant barrier for small entities to participate in SPP's governance.<sup>15</sup> Golden Spread contends that SPP allocates 25 percent of the "Existing Obligations" on a per-capita basis to all withdrawing members regardless of their size. Golden Spread states that unlike a transmission owner, a transmission customer's withdrawal from SPP does not cause any financial hardship. It maintains that a transmission customer's withdrawal from a control area will not decrease SPP's load or its transmission revenues.

16. Golden Spread argues that the burden on a transmission customer is two fold. Under SPP's proposal, if the transmission customer withdraws, it must pay a withdrawal fee. If a transmission owner/control area operator withdraws, then the transmission customer is expected to pay a share of the transmission owner's costs owed to SPP.<sup>16</sup> Golden Spread further maintains that SPP's proposed withdrawal fee will constitute a significant barrier to the participation of small entities in SPP's governance.<sup>17</sup>

17. In its protest, Lafayette states that, based on inquiry, it understands SPP's position to be that, if Lafayette were to withdraw from membership in SPP, it would be subject to the provisions of revised section 4.3 of the SPP Membership Agreement and revised section 8.7 of the Bylaws.<sup>18</sup> Lafayette contends that the creation of certain specified exempt classes, with SPP having the authority to decide which members fall into those classes, is unlawful discrimination.<sup>19</sup> Lafayette states that it would be grossly inequitable to assign RTO development costs to Lafayette.<sup>20</sup> Lafayette states that it is a member of SPP but, because of a lack of interconnection to the RTO, SPP has indicated that

---

<sup>14</sup> Golden Spread Protest at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Golden Spread at 3-4.

<sup>17</sup> Golden Spread at 5.

<sup>18</sup> Lafayette at 5.

<sup>19</sup> Lafayette at 9.

<sup>20</sup> Lafayette at 6.

Lafayette cannot participate in the SPP RTO.<sup>21</sup> As a result, it asserts, it would become liable for a share of SPP's outstanding debt regardless of the purpose for which those obligations were incurred. Lafayette maintains that, since it cannot participate in the RTO there can be no justification for assigning it a share of SPP's RTO development costs should Lafayette elect to terminate its membership in SPP.<sup>22</sup> Lafayette argues that it is willing to pay its appropriate share of SPP's long-term obligations from which it directly benefited, but asks that the Commission direct SPP to modify the language in its withdrawal provisions so that SPP would assign a withdrawing member only such costs as are fairly attributable to activities from which the member benefited or could have benefited in a direct and material way.<sup>23</sup> Lafayette states that a withdrawal fee may be assessable against the transmission owners that the RTO was expressly created to benefit. That principle may be extended to apply under some circumstances to non-transmission owning members of an RTO that were intended to benefit directly from the provision of RTO services. However, Lafayette states that the principle can not be stretched to assign RTO-development costs to an entity that, because of the lack of interconnection, was deemed ineligible to receive service from the RTO in the first place.<sup>24</sup>

### **Answers**

18. In its answer to the protests, SPP responds to Golden Spread's objection that the 25 percent allocation unfairly allocates the same amount to a small cooperative as to a larger investor-owned utility. SPP states that the Commission has already accepted withdrawal fees based on the per capita allocation of 25 percent of existing SPP RTO obligations as just and reasonable and that the current filing is consistent with this requirement.<sup>25</sup> SPP also states that its formula for calculating withdrawal fees takes a

---

<sup>21</sup> In its protest, Lafayette states that it owns and operates transmission facilities that contribute significantly to the system operations of SPP. Lafayette is a long-standing member of SPP but it is not directly interconnected with other SPP Transmission Owners. Lafayette is interconnected at high voltages with both Entergy Corporation and Cleco pursuant to agreements filed with the Commission.

<sup>22</sup> Lafayette at 7.

<sup>23</sup> Lafayette at 9-10.

<sup>24</sup> Lafayette at 7, 8.

<sup>25</sup> SPP Answer at 2-3.

members size into account.<sup>26</sup> Further, SPP asserts that under its proposal, Golden Spread and the withdrawing Transmission Owner would only be charged for their respective costs. Therefore, SPP claims, the Transmission Owner may not be able to charge Golden Spread since the withdrawal charge would be applied to the Transmission Owner's native load. SPP argues that the Commission previously agreed with SPP that imposing an exit fee as a condition of membership constitutes sound policy, since SPP's members should be financially vested in the right to participate in the direction and affairs of the SPP RTO.<sup>27</sup>

19. In response to Lafayette's protest, SPP states that Lafayette has been a long-time, active member of SPP and states that: "By virtue of its status as a member in the SPP RTO," Lafayette has a voting seat and sector representation, as does any other member of SPP.<sup>28</sup> Accordingly, it asserts, Lafayette should, therefore, bear the appropriate share of RTO obligations upon its withdrawal from the organization.<sup>29</sup> SPP notes its position in Docket No. ER05-1285-000, that it would currently be inappropriate for Lafayette to seek compensation for its transmission revenue requirement from SPP since SPP does not use Lafayette's transmission system to provide transmission service within the SPP region. Furthermore, SPP states that Lafayette's participation in SPP's proposed energy imbalance market gives Lafayette the right to sell energy to a control area operator within the SPP footprint. However, SPP states that sales into the imbalance market and an RTO transmission pricing mechanism do not constitute the totality of SPP's functions as an RTO. SPP asserts that it has never taken the position that Lafayette cannot participate in the SPP RTO. SPP states that it encouraged Lafayette's continued participation in SPP's decision making process.<sup>30</sup>

20. In its Answer, Southwest Industrial states that both Golden Spread and Lafayette were parties to the stakeholder process that resulted in the proposed fee waivers.

---

<sup>26</sup> SPP Answer at 3,4 (*citing* to Bylaws section 8.7.2).

<sup>27</sup> SPP Answer at 3. (*citing* to *Southwest Power Pool Inc.*, 108 FERC ¶ 61,003 at P 36 (2004)).

<sup>28</sup> SPP Answer at 4.

<sup>29</sup> SPP Answer at 4.

<sup>30</sup> SPP Answer at 5.

Southwest Industrial argues that since Golden Spread and Lafayette did not raise their objections to the proposed fee waivers earlier, they should not be heard to object to them now.<sup>31</sup>

21. Finally, in an Answer to both the answers of SPP and Southwest Industrials, Golden Spread argues that its protest is not a collateral attack on earlier orders approving withdrawal fees since the instant filing proposes to increase the withdrawal fees, an issue not previously addressed. It also reiterates its claim that significantly increasing the potential liability of a withdrawing customer serves as a significant deterrent to Golden Spread or any other comparable small utility from becoming a member of SPP thereby being able to participate in SPP's governance.

### **Discussion**

22. We find that the proposal to waive certain components of withdrawal fees for various member groups is unduly discriminatory as proposed, is unsupported and will be rejected. In *WestConnect*, the Commission found it appropriate to require reductions or waivers to *membership* fees on a non-discriminatory basis upon written request for public interest groups. The reasoning was that the Commission found this to be the most appropriate means to ensure that all potential members may join an RTO. While we do not oppose, in principle, proposals to provide exemptions for non-Transmission Owner member classes for whom RTO costs and expenses are not directly incurred and who do not themselves use the RTO services, the instant proposal is unclear and unsupported.<sup>32</sup> Specifically, SPP does not explain why it is appropriate to allow further reductions or waivers of exit fees to so many customer classes on a generic basis, when its tariff already takes into account the size of a member when computing that member's Financial Obligations upon termination of membership. Pursuant to Section 8.7.2 of the Bylaws, a member's Financial Obligation is weighted heavily toward size. In this respect, 75 percent of the Financial Obligation is computed according to the member's previous year net Energy for Load within SPP. Moreover, in connection with membership fees, the

---

<sup>31</sup> Southwest Industrial Answer at 3.

<sup>32</sup> For example, the basis for the proposal to waive a portion of withdrawal fees for certain undefined non-market "participants" and not all non-market "participants" is unclear. Further, SPP does not provide the criteria for defining "market participant" and does not specify which entities it believes would currently fall in that category. Nor does it explain why the exemption in section 4.3.2 of the Member Agreement exempts members "who are not themselves customers" whereas "market participants" are exempt under proposed section 8.7.1 of the Bylaws.

Commission found that the fees charged by RTOs were not excessive, but permitted certain waivers or reductions for public interest groups upon their written request. SPP has not explained why it is not unduly discriminatory to existing customers that do not receive an exemption to exempt several classes of customers generically, and not upon written request or showing of financial hardship on a case by case basis. Accordingly, the proposal to exempt certain member groups from withdrawal fees is rejected without prejudice to SPP filing a fully supported exemption proposal clearly defining the criteria. SPP is directed to file revised tariff sheets reflecting the deletion of the rejected proposed exemptions.

23. We find the concerns of Golden Spread and Lafayette's to be unsupported and that they should have been raised with respect to SPP's original RTO proposal, which the Commission conditionally approved in the February 10, 2005 Order. The increase in potential withdrawal fee financial obligations or the proposal to exempt certain other entities from debt-related components of the existing fees does not change the nature of the fees or create new issues that could not have been raised before the Commission acted to conditionally approve the RTO proposal. Further, the Commission has previously ruled that, with the exception of waivers for legitimate public interest groups, the Commission will not generally require SPP to provide for waiver or reduction of fees in the absence of evidence that the financial obligations are excessive or will preclude any entity from joining the RTO.<sup>33</sup> Neither protester has provided such evidence. Because Golden Spread is a transmission customer and not a member of SPP, Golden Spread is not assessed withdrawal fees until its control area operators, AEP and SPS, decide to withdraw. If, at that time, AEP and SPS seek to charge Golden Spread a portion of the withdrawal fees, Golden Spread may protest that filing. We believe that the possibility of a withdrawal fee being assessed is not a sufficient deterrent to membership in the RTO to warrant changes in the withdrawal fee structure at this time. The issue that Golden Spread raises is, therefore, premature and we will not further consider it here.

---

<sup>33</sup> In the February 11, 2005 Order, the Commission addressed Southwest Industrial's argument on rehearing that certain fee provisions in SPP's Bylaws and Membership Agreement would be unjust and unreasonable as applied to end-users and that end-users should be exempt from such financial responsibilities. The Commission denied Southwest Industrial's request for rehearing, stating that SPP did not have to provide specific exemptions for end-users as a prerequisite for RTO status and that Southwest Industrials "has not provided any evidence that the financial obligations about which it claims are excessive or will preclude end-users from joining SPP." February 11, 2005 Order at P 12-13.

24. Lafayette's arguments also should have been raised to SPP's original RTO proposal. Further, its proposal to parse out non-RTO costs from the withdrawal fees would require a difficult, case-by-case analysis of what functions and actions do not benefit a member of SPP like Lafayette. In addition, Lafayette has not provided any specific evidence that withdrawal fees it may incur if it were to withdraw from SPP are excessive. Any member of SPP would be subject to the rights and obligations, including withdrawal fees, of the RTO. However, we will consider a request for waiver at such time, if any, that Lafayette becomes liable for withdrawal fees.

## **2. Proposed Changes to Withdrawal Procedures and Financial Obligations**

25. SPP states that, on January 7, 2005, SPP's Finance Committee approved revisions to the Membership Agreement clarifying SPP's intent and historic practices regarding the commitments of members and their financial obligations upon withdrawal from SPP.<sup>34</sup> It states that these changes were sent to SPP's Board, which approved the changes on April 26, 2005. These proposed changes are to revise sections 4.1, 4.2, 4.3, 6.0, and 7.0 of the Membership Agreement to more clearly specify what constitutes a termination and a withdrawal and to clarify the members' obligations upon the occurrence of these events, including their obligation to pay for: (a) current and existing obligations; (b) construction of transmission facilities; and (c) regulatory approvals.<sup>35</sup> As noted above, in the instant filing SPP proposes to clarify that Financial Obligations that must be paid by withdrawing or terminated members include payment for unfunded liabilities of SPP employee pension funds, and payment of general and administrative (G&A) overhead. In addition, SPP proposes to require the withdrawal fees be paid no later than 5 days after issuance of the invoice.

## **Protests and Comments**

26. In its protest, Xcel asks that the Commission direct SPP to clarify those provisions of the revised Membership Agreement that assess the costs to members after the termination date.<sup>36</sup> Xcel argues that the definition of certain withdrawal obligations that SPP proposes are vague and indefinite and would impose indeterminate liabilities on

---

<sup>34</sup> Transmittal Letter at 3.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> SPP Membership Agreement section 4.3 (b) (iii) (c).

withdrawing Members.<sup>37</sup> Specifically, Xcel argues that section 4.3.2(b)(iii)(c) concerning unfunded liabilities of employee pension funds, lacks specificity and a prescribed time frame. Similarly, Xcel argues that section 4.3.2(b)(iii)(d)'s reference to "general and administrative overhead" is broad and undefined.

27. Xcel also objects to the proposal for a terminating member to pay the withdrawal fee no later than five days after the issuance of the invoice as unreasonable. Xcel requests that SPP change the payment of existing obligations date from five days to thirty days after the date of termination. Xcel states that members may receive the bill within three to four days and only have one to two days to pay the invoice.<sup>38</sup>

28. In response to Xcel's protest, SPP asserts that its definition of financial obligations upon withdrawal is clear and that a five day requirement is reasonable and consistent with prior Commission determinations.<sup>39</sup>

### **Discussion**

29. With regard to Xcel's concerns that the term "unfunded liabilities of any SPP employee pension funds" lacks specificity and a defined time frame, we find that "unfunded liabilities of any SPP employee pension funds" to be a clearly defined accounting term.<sup>40</sup> Moreover, the unfunded liability portion of the exit fee related to employee pension funds will be calculated as the amount "outstanding as of the Termination Date."<sup>41</sup> Thus, there is no unspecified time frame. We will require that SPP, in its efforts to mitigate the total Financial Obligations to departing customers, to credit any overfunded amounts related to its employee pension funds calculated at the date of termination. Similarly, "administrative and general expenses" are not undefined terms that need further specificity. Such expenses are defined in our regulations and uniform system of accounts.<sup>42</sup> Also, the proposed provision provides a clearly defined

---

<sup>37</sup> Xcel at 5-6.

<sup>38</sup> Xcel at 6-7.

<sup>39</sup> SPP Answer at 5-6 (*citing* Cal. Indep. Sys. Operator Corp. Tariff at sections 7.5.1.2 and 11.3.2).

<sup>40</sup>FSAS No. 87, p. 895 (defining unfunded accumulated benefit obligation as "the excess of the accumulated benefit obligation over plan assets").

<sup>41</sup>SPP Membership Agreement section 4.3.2(b)(iii).

<sup>42</sup>18 C.F.R. Part 101 Account No. ( 2005)

time frame consisting of “a period of three (3) months,” for which such costs will be assessed to withdrawing or terminating Members. Therefore, we will not require further definition or explanation with regard to either of these liabilities or expenses.

30. We will not require SPP to change the invoice payment period. SPP in the Membership Agreement outlines the financial obligations that withdrawing members have. Withdrawing members are aware of the costs associated with withdrawal and have an adequate amount of time to calculate their financial obligations prior to termination or the issuance date of the invoice of financial obligations. Because members are on notice of their obligations upon withdrawal, it should not be necessary for SPP to allow more than 5 days for members to pay their invoices.

31. Finally, we find that the proposed changes to clarify definitions and procedures regarding termination of membership in sections 4.1, 4.2, 4.3 (with the exception of the section 4.3.2 proposals rejected or suspended above), 6.0, and 7.0 of the Membership Agreement are reasonable and will be accepted.

### **3. Reliability Function**

32. SPP states that SPP's NERC compliance function now reports to SPP's President. SPP states that when NERC monitored SPP for compliance with NERC's reliability criteria, NERC found that having the compliance function report to the President gave rise to conflicts of interest between SPP's reliability and marketing functions. SPP states that it intends to do away with any appearance of conflict by modifying its Bylaws so that the SPP Board will select the Director of the Compliance Function (Director) and the Director will report directly to the SPP Board.<sup>43</sup> SPP states that it will also modify its Bylaws to provide that the President will ensure that the Director has adequate resources, access to information, and the full cooperation of SPP's staff and organizational groups for the proper execution of its duties.<sup>44</sup> SPP proposes to further modify its Bylaws so that compliance monitoring functions will include confirmation that SPP is conforming to its own criteria and to its Open Access Transmission Tariff (OATT), business practices, and reliability operations in a manner that does not stifle the efficiency of energy markets.

33. SPP proposes to further modify its Bylaws to provide that the Markets and Operations Policy Committee will: (a) coordinate with NERC and periodically review NERC's policies and standards and evaluate how those policies and standards apply to

---

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.*

SPP and its members; and (b) make appropriate recommendations to the Board of Directors regarding SPP's compliance with NERC policies and standards.<sup>45</sup>

34. These proposed changes to the Bylaws were not protested.

**Discussion**

35. As currently constituted with the director reporting to the President there is the appearance of a conflict of interest. We will accept this change to the Bylaws effective August 10, 2005, without suspension to provide the separation of the independence of the NERC Compliance Function, subject to the Commission's final determination in the Notice of Proposed Rulemaking Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, Docket No. RM05-30-000.

The Commission orders:

(A) Waiver of the 60 day notice requirement of the FPA is granted and, SPP's proposed tariff sheets are accepted subject to modification, as discussed in the body of this order, to become effective August 10, 2005.

(B) SPP is hereby directed to make a compliance filing reflecting the modifications discussed in the body of this order within 30 days of the date of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

---

<sup>45</sup> *Id.*