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. ER05-1352-001
RT04-1-017
ER04-48-017

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued March 15, 2006)

1. In this order the Commission denies rehearing of its October 7, 2005 Order in this proceeding,[1] clarifies withdrawal fee waiver procedures, accepts certain tariff sheets, and rejects one tariff sheet included in the compliance filing that Southwest Power Pool, Inc. (SPP) filed to comply with the Commission's directives in that order, subject to further compliance obligation.

I. Background

2. SPP has been authorized as a Regional Transmission Organization (RTO) since October 1, 2004.[2] Among other things, its Membership Agreement and Bylaws provide that members of SPP must pay initial application and annual membership fees, as well as fees payable upon withdrawal from SPP. In the Commission's order issued February 11, 2005 in this proceeding,[3] the Commission directed SPP to revise its Bylaws and Membership Agreement in a manner consistent with *WestConnect*,[4] where the

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[1] *Southwest Power Pool, Inc.*, 113 FERC ¶ 61,014 (2005) (October 7, 2005 Order).

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

[3] *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,138 at P 13 (2005) (February 11, 2005 Order).

[4] *Arizona Public Service Company, et al.*, 101 FERC ¶ 61,350 at P 26 (2002) (*WestConnect*).

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.[5]

3. On August 9, 2005, SPP filed revised tariff sheets to amend its Bylaws and Membership Agreement in a number of important respects, including a more detailed description of the types of long-term outstanding financial obligations SPP's members must pay their share of upon withdrawal from membership. At the time of the filing, the Bylaws required withdrawing members to pay unpaid dues and, based on a formula set forth in the Bylaws, to pay a percentage share of all existing long-term obligations defined to include the member's share of "amounts outstanding and payable . . . under negotiated financial obligations, including but not limited to . . . debt obligations, and debt instruments." In the subject filing, SPP proposed to clarify further what the financial obligations consist of, such as including the remaining "future" interest owed under existing debt instruments. In addition, SPP proposed changes to provide an exemption for certain member classes from the long-term and interest obligation component of the withdrawal fees of certain non-customer membership classes (alternative energy members, large non-residential retail customer members, public interest members, and small residential and other retail members), claiming that the proposal was in compliance with the Commission's February 11, 2005 Order in these dockets.

4. Of relevance here, the withdrawal fee provisions of the filing were protested by Golden Spread Electric Cooperative, Inc. (Golden Spread), and Lafayette Utilities System (Lafayette).[6] SPP and Southwest Industrial Customer Coalition (Southwest Industrial) filed Answers opposing the protests. Although it stated that it is not a member of SPP or directly interconnected to the SPP Transmission Owner facilities, Golden Spread asserted that the proposed withdrawal fees create a barrier to small entities like it from becoming members of SPP to obtain voting rights in its governance. It also stated its concern that, because it is a non-transmission owning transmission customer of a member of SPP, Southwestern Public Service Company (SPS), it might be subject to paying withdrawal fees in the future if the transmission owner withdraws. Accordingly, Golden Spread urged the Commission to limit any withdrawal obligation of a non-transmission owning member to the member's unpaid annual membership fees, dues or other assessments and any out-of-pocket costs caused by the withdrawal. Lafayette asserted that although it has voting rights in SPP, SPP has indicated to it that Lafayette

[5] *Id*.

[6] Xcel Energy Services, Inc. (Xcel) also filed a protest to certain of SPP's proposed changes to membership withdrawal procedures. Xcel did not seek rehearing of the October 7, 2005 Order, which rejected Xcel's proposed changes.

cannot participate in the RTO services because it is not directly interconnected with SPP and, therefore, if Lafayette withdraws from membership, it should not have to pay for RTO development costs.

5. In its October 7, 2005 Order, with the one exception of the proposed exemption of certain member groups from certain cost components of withdrawal fees, which it rejected, the Commission conditionally accepted the proposed tariff revisions effective August 10, 2005, subject to a filing condition. Regarding the proposed exemption provision, the Commission noted that, in the February 11, 2005 Order, citing *WestConnect*, *supra*, the Commission directed SPP to establish a process for providing waivers or reductions of application or annual membership fees for legitimate public interest groups, including end users, upon the written request of such entities.[7] The Commission observed that in its August 9, 2005 filing, SPP had not proposed a process for legitimate public interest groups to seek waivers or reductions of application or annual membership fees in writing and, instead, had proposed increased financial obligations and expanded exemptions that went beyond the narrow compliance obligation that the February 11, 2005 Order imposed on SPP. Specifically, SPP proposed to exempt 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 from the obligation to pay a share of long-term debt, interest and other cost components of the "Existing Obligations" such members would otherwise be responsible for upon their withdrawal. Accordingly, the Commission found that SPP's proposed revisions to its Bylaws and Membership Agreement did not comply with the February 11, 2005 Order and directed SPP to comply with the Commission's directive in that order.[8]

6. However, although the Commission found that SPP's proposed exemption provision was not in compliance with the February 11, 2005 Order, the Commission, nonetheless, treated it as a new section 205 proposal and reviewed it. The Commission found that SPP's proposal to exempt various member groups from long-term debt, interest and other cost components of withdrawal fees was discriminatory, unclear, and unsupported. Accordingly, the Commission rejected the proposal without prejudice to SPP filing a fully-supported exemption proposal clearly defining the criteria governing the waiver.[9]

[7] 110 FERC ¶ 61,138 at P 13.

[8] 113 FERC ¶ 61,014 at P 13.

[9] *Id.* at P 22.

The Commission directed SPP to file revised tariff sheets reflecting the deletion of the rejected proposed exemptions.[10] On December 12, 2005, SPP filed to comply with the directives of the order.

7. Regarding the protests by Golden Spread and Lafayette, the Commission found that their concerns were unsupported, Lafayette's proposal to parse out costs from the withdrawal fee would require a difficult, case-by-case analysis, and their concerns should have been raised with respect to SPP's original RTO proposal. Among other things, the Commission explained that the increase in potential withdrawal fee financial obligations or the proposed exemption for certain member groups does not change the nature of the fees or create new issues that could not have been raised before the Commission approved the RTO proposal. The Commission held that, if Golden Spread's transmission provider is assessed a withdrawal fee that it proposes to charge Golden Spread, Golden Spread could protest that filing. Further, the Commission stated that it would consider a request for waiver of the withdrawal fees at such time, if any, that Lafayette becomes liable for withdrawal fees. Golden Spread, Lafayette, and Southwest Industrial filed requests for rehearing of the October 7, 2005 Order, which we deny in the discussion below.

II. Rehearing

A. Lafayette's Request for Rehearing and Clarification

1. Lafayette's Arguments

8. Lafayette asserts that it was error for the Commission to reject Lafayette's proposal to disaggregate SPP's long-term obligations and to remove RTO development costs from any withdrawal fee Lafayette may be charged. Lafayette asserts that the Commission failed to give effect to the cost causation principle with the result that SPP will recover an excessive amount of withdrawal costs from entities whose involvement in SPP operations was limited. Lafayette states that included in the aggregate amount of long-term obligations that SPP will assess a departing member are obligations that SPP has incurred to fund RTO startup and market development costs, including the costs of developing the software and hardware for the Energy Imbalance Services (EIS) market that SPP is developing. Lafayette argues that it would be wrong to impose a share of these costs on Lafayette (should it withdraw from SPP) since it has been advised by SPP that, because of the lack of a direct physical interconnection between Lafayette and SPP, Lafayette cannot participate fully in SPP market operations.[11] Lafayette states that SPP has

[10] *Id.*

[11] Lafayette Request for Rehearing at 2.

clarified that Lafayette may participate in the RTO as a transmission-dependant utility, but not as a transmission owner due to the lack of direct interconnection, absent some further set of arrangements.[12]

9. Lafayette states that the Commission rejected its proposal for three reasons: that its arguments should have been raised with respect to SPP's original RTO proposal, that the proposal would require a difficult case-by-case analysis of what functions and actions do not benefit a member of SPP like Lafayette, and that Lafayette has not provided any specific evidence of what the withdrawal fee would be if it were to withdraw from SPP. Lafayette asserts that each reason is in error.

10. First, Lafayette asserts that it is error to claim that it should have raised its arguments in connection with SPP's original RTO certification request as that view ignores the substantial changes in circumstances that have occurred since the Commission conditionally granted SPP status as an RTO. Lafayette submits that the amount and nature of SPP's long-term obligations have changed since the Commission granted SPP RTO status. It asserts that the October 7, 2005 Order seems to proceed from the premise that the Commission's initial acceptance of a particular methodology for assigning costs provides approval in perpetuity regardless of any change in the nature or level of the underlying costs. Here, it asserts, the amount of the long-term obligations subject to assignment by the withdrawal have increased dramatically and the composition of the costs has changed substantially since SPP's RTO filing. It asserts that the Commission has effectively given SPP a "blank check" to recover whatever costs it classifies as part of its "long-term obligations."[13] It argues that it is the Commission's duty to review the nature and amount of these costs to ensure that their assignment to particular departing members is consistent with the principle of cost causation.[14]

11. Second, as to the Commission's statement about the difficulty of a case-by-case analysis to implement Lafayette's proposal, Lafayette argues that the record contains no substantial evidence (in the form of detailed estimates subject to examination and careful review) that might conceivably support such a finding. It asserts that supposition about the cost to implement its proposal will not validate the Commission's finding. Further, it asserts that SPP already disaggregates the costs of its operations in its billings, charging some costs (*e.g.*, RTO costs, tariff administration costs, etc.) to customers that take

[12] *Id.*, note 1.

[13] *Id.* at 4.

[14] *Id.* at 3-4.

service under the SPP regional tariff, and non-RTO costs to other customers through annual fees. Lafayette states that it is simply asking that a similar approach be applied to withdrawal fees and, as such, cannot be a significant burden on SPP.

12. Third, Lafayette argues that the Commission's statement that Lafayette has not provided evidence of what it would be charged in withdrawal fees not only improperly shifts the burden of proof to Lafayette, but also fails to recognize that Lafayette has demonstrated that a significant portion of SPP's long-term obligations relate to RTO and EIS development activities from which, as matters now stand, Lafayette can derive no benefit.

13. Finally, Lafayette asks the Commission to clarify the nature of the waiver it has in mind. It states that it is concerned that the tariff fails to provide SPP with authority to grant such a waiver. Accordingly, Lafayette requests that the Commission direct SPP to provide in its tariff for a waiver of withdrawal charges to customers based on the amount or nature of RTO services that the customer receives from SPP. Lafayette states that, if the Commission declines to direct SPP to place such a provision in its tariff, then the Commission should clarify the nature of the waiver that the Commission will consider if and when Lafayette becomes liable for withdrawal fees.[15]

2. Discussion of Lafayette's Rehearing Issues

14. Throughout these proceedings, Lafayette has asserted that it has had a special status as it has been unable to participate fully in or benefit from the SPP RTO. As such, it argues, it should not pay for RTO development costs in a withdrawal fee. While it does not contest SPP's long-standing two-part formula for allocating SPP's existing long-term obligations, such as lease and debt costs, it seeks a reduction of the costs that the formula would allocate to it upon withdrawal from SPP membership to strip out such RTO-related items. To accomplish this, it requested that we first direct SPP to disaggregate the RTO-related financial obligations that are recovered by withdrawal fees from other obligations. Having considered its arguments, we will deny rehearing and stand by the Commission's decision to reject its request and defer Lafayette to a waiver process.

15. At the outset, we clarify that, contrary to Lafayette's claims, the Commission's October 7, 2005 Order did not preclude Lafayette from raising objections to SPP's withdrawal fees or to the formula for allocating existing financial obligations if it could support its objections. The point made in suggesting that its claims should have been raised in the initial RTO proceedings simply was that SPP's August 9, 2005 filing did not change the withdrawal fees or create any more reason to object to them at that time than at any other time. Other than to propose exemptions from withdrawal fees that the

[15] *Id.* at 6, *citing* 113 FERC ¶ 61,014 at P 24.

Commission rejected without prejudice to being refiled in a fully supported proposal, the only significant change to the withdrawal provisions of the Membership Agreement and Bylaws was to further clarify the types of long-term financial obligations that the existing provisions include for recovery in the withdrawal fees.

16. The Commission did not commit error in failing to grant Lafayette's request to require SPP to disaggregate its long-term financial obligations into RTO and non-RTO categories. The purpose of that endeavor, which could be difficult insofar as SPP does not appear to draw a distinction between RTO and non-RTO related functions, is to support a reduction in the withdrawal fee for Lafayette based on an unproven theory. More specifically, Lafayette failed to produce evidence showing that, even if the obligations could be disaggregated in that fashion, Lafayette received no benefit whatsoever from SPP's incurrence of such RTO-related expenditures. In the absence of such evidence, we cannot assume Lafayette obtains no benefit from the RTO solely because it is not directly interconnected to SPP facilities. Lafayette could benefit from SPP's RTO marketing development and other features of the RTO that the Commission has recognized as benefits of RTOs.[16] Moreover, in its role as a member of SPP, Lafayette has had the opportunity to further its own interests in the operation of the RTO. According to SPP, Lafayette has an SPP voting seat and sector representation and has fully participated in the stakeholder process that formed and is guiding the SPP RTO.[17] In addition, Lafayette's proposal was premature in that its circumstances may change by the time it might seek to withdraw from membership. For example, its participation in SPP's proposed imbalance market is the subject of SPP's pending application in Docket No. ER06-451-000, and Lafayette cannot preclude the possibility that it may yet directly participate in the SPP's proposed imbalance market, when and if implemented.[18] Finally, the Commission did not unreasonably shift the burden of production of evidence to Lafayette. Lafayette is the proponent of a change in SPP's approved methodology for assigning a share of SPP's long-term financial obligations to withdrawing members and, therefore, Lafayette appropriately bears the burden to show that the approved methodology should be changed or waived.

17. However, while it appears that Lafayette does obtain some benefits from the RTO due to its membership in SPP, given its unique status as not being able to avail itself fully of the benefits of the RTO at this time, Lafayette should be given the opportunity to

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[16] *See, e.g.*, *Regional Transmission Organizations*, Order No. 2000, FERC Stat. & Reg. ¶ 31,089 at p. 31,017 (1999).

[17] SPP Answer to Protests at 4.

[18] *See also* Lafayette Request for Rehearing at note 1 (indicating that SPP and Lafayette are holding discussions regarding Lafayette's participation in SPP as a transmission owner).

demonstrate that it should not bear a portion of SPP's existing long-term financial obligations in a withdrawal fee if it withdraws from SPP membership. Because Lafayette's request focuses on its claimed unique status, we believe a waiver process is more appropriate to address the issues raised by its request than opening up SPP's long-standing withdrawal fee formula and cost allocation process to further review on a generic basis. Finally, we clarify that the waiver request is to be made to the Commission, not SPP. Therefore, no change in SPP's tariff, Membership Agreement or Bylaws is required.

18. Accordingly, the denial of rehearing is without prejudice to Lafayette filing a fully supported request for Commission waiver of a portion of the withdrawal fee if and at such time as Lafayette is assessed a withdrawal fee. In making such waiver request, Lafayette will bear the burden to show that SPP's incurrence of RTO-related long-term financial costs to be recovered in the withdrawal fees did not result in benefits to Lafayette, whether as a member or after termination of formal membership in SPP, and are excessive.

B. Golden Spread's Request for Rehearing

1. Golden Spread's Arguments

19. Golden Spread argues that SPP's proposal to modify the Bylaws and Membership Agreement to increase the withdrawal fees for terminating members by including payment obligations under leases, payment of unfunded liabilities of SPP employee pension funds, and payment of general and administrative expenses, and the use of an allocation methodology that assigns one-fourth of these costs on a per-capita basis regardless of size, is unjust and unreasonable and will constitute a deterrent from joining the SPP RTO.[19] Golden Spread contends that the proposed cost assessments upon withdrawal disadvantage small non-transmission owners who may find continued membership in the SPP RTO irrelevant because the transmission owner that provides service has itself withdrawn from the RTO.

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[19] Section 4.3.2 of the SPP Membership Agreement requires withdrawing members to pay their share of "Existing Obligations" upon their withdrawal. Section 8.7.2 of the SPP Bylaws, in turn, contains a formula for computing a withdrawing member's percentage share of such member's "Existing Obligations" for purposes of determining withdrawal fees. The formula, which SPP did not propose to change in the instant proceeding, provides for a share equal to the sum of: (1) .25 divided by the total number of members, and (2) .75 times the withdrawing member's previous year Net Energy for Load within SPP divided by the total of previous year Net Energy for Load for all members. Golden Spread's request for rehearing focuses on the .25 factor.

20. Golden Spread maintains that the Commission's decision that Golden Spread's protest is untimely is erroneous, because, according to Golden Spread, it is only in the instant proceeding that SPP is proposing what Golden Spread asserts is an increase in allocated expenses, and the per capita allocator, when adopted, could not have applied to the types of costs proposed here because the function of SPP was not then that of an RTO. It asserts that the Commission has erred in effectively ruling that, because SPP previously implemented a pricing scheme that collected a portion of certain costs from withdrawing members on a per capita basis, there can be no justification for protesting at this time the recovery of any level of dollars from a withdrawing member on a per capita basis. It asserts that the Commission's determination that Golden Spread's arguments should have been raised with respect to SPP's original RTO proposal is, in effect, a determination that the arguments are barred by the doctrine of collateral estoppel. It asserts that collateral estoppel requires that the matters at issue in the later proceeding must be identical to the issues that were litigated and determined in the earlier one. It claims that is not the case here because, when SPP first implemented the per capita allocation, it was functioning as a reliability organization with a limited mandate, whereas now it is "morphing into a RTO" with vastly expanded functions and vastly enlarged costs, including costs associated with developing and monitoring wholesale power markets.[20]

21. Golden Spread asserts that the Commission's reasoning is in error as a matter of law and, in addition, is unworkable as a matter of policy. It states that the Commission would require a protest of matters that have no significant effect on them at the time based solely on the theoretical potential of a subsequent application. Golden Spread argues that, at the time SPP applied to become an RTO, Golden Spread was the transmission-dependent customer of SPS, who "was engaged in the practice of serving annual notices of withdrawal from the SPP" and, therefore, Golden Spread did not actively contemplate becoming an SPP member. Given recent developments, including the movement of SPP to become an RTO, Golden Spread asserts that membership has become of much greater interest. However, based on a Staff Report in Docket No. PL04-16-000,[21] Golden Spread asserts that the 25 percent per capita allocation of costs could be significant and would have a chilling effect on SPP membership. It states that the Staff Report reflects $30 million in SPP costs for transmission hardware and software, but questions how the withdrawal from membership of a non-transmission owner (like itself) can result in economically stranding this investment such that the departing member should be assessed 25 percent of that responsibility on a per capita basis.

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[20] Golden Spread Request for Rehearing at 4.

[21] *Cost Ranges for the Development and Operation of a Day One Regional Transmission Organization* (October, 2004) (Day Ahead Staff Report).

22. Golden Spread states that it recognizes that it must actively participate in SPP activities but is concerned that, should it join SPP and then withdraw following the withdrawal of its transmission supplier, SPS, it may wind up paying not only its own expenses upon withdrawal, but also a share of SPS's withdrawal costs, which presumably would include the SPP withdrawal fee, absent specific Commission action to exclude that fee from SPP's transmission rates. Golden Spread argues that it would thus pay twice for expenses growing out of a decision to withdraw made not by Golden Spread itself, but by its control area operator, SPS. Golden Spread argues that such a result would be unjust and unreasonable.

23. Golden Spread submits that, to avoid such a result, the Commission should limit any withdrawal fee imposed upon non-transmission-owning members of SPP to the member's unpaid annual membership fee, unpaid dues assessments and other similar amounts, and any out of pocket costs caused by the withdrawal that would not otherwise be reimbursed.

2. Discussion of Golden Spread's Rehearing Issues

24. Golden Spread seeks to be completely absolved, in advance, from any potential obligation to pay any portion of SPP's long-term financial obligations in a withdrawal fee if Golden Spread becomes a member and then withdraws. It attacks the .25 per capita component of the formula and claims that the fees create a barrier to membership and result in a double recovery of costs.[22] We find that its arguments are unsupported, based on speculation and, therefore, are premature. Accordingly, we deny rehearing.

25. The withdrawal fee formula reflects cost percentage allocations that appear to be the product of an equitable and a reasonable compromise that has stood for a number of years. In particular, the existing two-part formula for allocating outstanding long-term financial obligations, including the .25 per capita component, was implemented in SPP's

[22] As clarified above in response to Lafayette's similar arguments, contrary to Golden Spread's claims, the Commission's October 7, 2005 Order did not preclude Golden Spread from raising objections to SPP's withdrawal fees or to the formula for allocating existing financial obligations if it could support its objections and was simply pointing out that SPP's filing did not change the existing withdrawal fee formula. Golden Spread's claim, at page 6 of its rehearing request, that "the SPP proposal in this docket serves no legitimate purpose" fails to reflect the fact that the instant filing did not establish the withdrawal fee financial obligation .25 allocation factor and appropriately clarified the types of long-term financial obligations that are recovered in withdrawal fees under the existing approved methodology.

original power pool Membership Agreement and Bylaws[23] and did not change when it obtained authorization as an RTO. Under SPP's existing formula, 75 percent of the member's allocated share of SPP's existing long-term financial obligations is reasonably based on the size of the member's share of load. The formula also provides that 25 percent of the member's share of these obligations is based on a per capita share of these costs, which acknowledges that some members will have no direct use of the system but will, nonetheless, gain benefits from membership. Golden Spread has presented no arguments or evidence that support a change in either component and it simply wishes to be absolved of all responsibility for SPP's outstanding financial costs in a withdrawal fee however the formula is constructed.

26. We are not persuaded by Golden Spread's claim that the imposition of withdrawal fees will deter new members from joining SPP and thus create a barrier to membership and find its claim to be unsupported.[24] The Commission has examined this claim on at least two occasions and found no evidence to support it.[25] That the fees may have increased since SPP was authorized as an RTO does not, in and of itself, prove that they are too high or otherwise inappropriate. Regardless of the extent to which the level of costs potentially recoverable in withdrawal fees has increased following the inception of the RTO, Golden Spread again failed to provide evidence that such fees are so high as to create a barrier to joining SPP. Like application and annual membership fees, withdrawal fees should not be so high as to create a barrier to entry to membership in the RTO. However, they must be high enough to ensure that prospective members are serious and have enough of an interest in the RTO to warrant the monetary costs of membership. Withdrawal fees, therefore, help provide stability and avoid volatility in the membership that pays for the costs of the RTO. Further, 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. Also, Golden Spread overlooks the benefits that an entity derives from RTO membership and the costs that

[23] *See* Bylaws, section 8.7.2, Original Sheet No. 40B; Membership Agreement, section 4.2.2(d), Original Sheet No. 21.

[24] Golden Spread Request for Rehearing at 2-7.

[25] *See* 113 FERC ¶ 61,014 at P 23; 110 FERC ¶ 61,138 at P 12-13.

SPP must incur to provide those benefits.[26] As a member, Golden Spread would have an opportunity to work with SPP to lower the RTO's costs and increase the benefits that the RTO provides.

27. Golden Spread's claimed potential of being charged twice for withdrawal fee costs is unsupported, speculative, and not a valid basis for granting its request even if events come to pass as it postulates. Golden Spread is not now a member of SPP. Golden Spread asserts that if it joins SPP and then, at some later date, Golden Spread's transmission provider, SPS, leaves SPP and, then, Golden Spread also leaves SPP, Golden Spread may be liable for a share of SPS's withdrawal costs as well as its own. Thus, it asserts that it would be charged "twice" for expenses growing out of a decision by its control area operator, SPS, to withdraw from SPP -- once in SPS's rates and a second time in its own withdrawal fee. That speculative scenario does not show that SPP's withdrawal fee methodology is unjust or unreasonable. SPP would only charge Golden Spread once for costs properly allocated to Golden Spread due to its withdrawal. SPS would separately be charged for its appropriate share of SPP's outstanding financial obligations if it were to withdraw. As a result, SPP would not overrecover its financial costs and, of particular importance to the remaining members who would continue to be responsible for SPP's remaining costs, SPP's balance of outstanding financial obligations would appropriately be reduced to reflect the departure of both members. While exempting Golden Spread in advance for the financial obligation component of SPP's withdrawal fees might induce Golden Spread to become a member, it would be unfair to the other members should it later decide to withdraw.

28. Accordingly, SPP's methodology for recovering a portion of outstanding financial obligations from departing members appears to be just and reasonable. SPP should not be responsible for how SPS recovers its own costs under Golden Spread's hypothetical scenario. Further, as the Commission stated in the October 7, 2005 Order, should all of these possibilities come to pass, Golden Spread may protest any attempt by SPS to assess Golden Spread a portion of SPS's withdrawal costs in the proceeding in which SPS proposes to pass through such costs. That would be the appropriate proceeding in which to address its claim of a double assessment, should all these events transpire.

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[26] The *Day One Staff Report* on which Golden Spread relies addressed only the estimated costs of an RTO and not the benefits that an RTO provides to its members, such as more efficient dispatch and the elimination of redundant functions. *See Day One Staff Report* at i.

C. Southwest Industrial's Request for Rehearing

1. Southwest Industrial's Rehearing Arguments

29. Southwest Industrial requests rehearing of the Commission's rejection of SPP's proposed exit fee exemption provisions.[27] Specifically, SPP proposed to exempt 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 from the obligation to pay a share of long-term debt, interest and other cost components of the "Existing Obligations" such members would otherwise be responsible for upon their withdrawal. Southwest Industrial argues that the Commission erred in relying on *WestConnect*, *supra*, to reject the proposed exit fee exemption because *WestConnect* dealt with initial and annual membership fees and not with withdrawal fees. It states that, in *WestConnect*, the Commission directed WestConnect's Board to "provide fee waivers or reductions on a non-discriminatory case-by-case basis for legitimate public interest groups upon the written request for such entities" in response to arguments that the proposed initial and annual RTO membership fees were excessive and posed "an unjustifiable barrier to participation by interested parties, particularly retail customers."[28] Thus, Southwest Industrial asserts, the impact of exit fees on retail customer participation in governance of the RTO was not at issue in *WestConnect*. In this proceeding, it asserts, exit fees are the key barrier to retail customer entry as SPP members.

30. Southwest Industrial also argues that the Commission erred in concluding that exempting several customer classes generically, and not upon written request or a showing of financial hardship on a case-by-case basis, would be unduly discriminatory.[29] Southwest Industrial submits that retail customer members of SPP, who are generally prohibited from directly accessing wholesale power markets, are not similarly situated to SPP's other members, who have direct access to those markets. Rather, it asserts, retail customers must depend on load-serving entities to access the wholesale market on their behalf. In turn, it states, the load-serving entities recover the resulting wholesale market and related transmission costs from retail customers via retail rates. As a result, it asserts, the level of and means by which SPP incurs costs for providing service to retail customers are drastically different than SPP's cost of serving other SPP members with direct access to wholesale markets.

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[27] Southwest Industrial Request for Rehearing at 4.

[28] *Id.* at 4, *citing WestConnect*, 101 FERC ¶ 61,350 at P 25-26.

[29] *Id.* at 5.

31. Similar to Golden Spread, Southwest Industrial also argues that allowing SPP to assess exit fees against retail customer members would expose those members to double recovery of costs, once from the load-serving entities and again as a result of exit fees that expose them "to paying again for SPP-related costs or hedge against SPP-related risks that are already reflected in retail rates by load-serving entities."[30] Further, it asserts that assessing exit fees on retail customers would violate the principle of cost causation, on the asserted basis that retail customer members do not directly contribute to wholesale market costs.

32. Finally, Southwest Industrial contends that the Commission erred by concluding that SPP's weighted formula for calculating withdrawing members' financial obligations (*i.e.*, 75 percent of the withdrawing member's pro rata share of total Net Energy for Load within SPP) adequately addresses the obstacle to SPP participation presented by exit fees. It asserts that cost causation principles require that costs be assigned to those using and benefiting from the facilities in question. It reiterates its argument that retail customers do not directly engage in wholesale market activities, and do not directly purchase transmission service from SPP. This fact notwithstanding, it asserts that a substantial part of SPP's formula for computing financial obligations upon withdrawal, *i.e.*, 25 percent of the member's per capita share of the costs, does not take into account the level of participation in the SPP wholesale market by the departing SPP member. Rather, it asserts, the formula includes a sizable per member allocation of costs. It asserts that the exit fee for a departing retail customer member could potentially exceed $1 million and this result is clearly inconsistent with cost causation principles since retail customer members do not directly use SPP services or facilities. Southwest Industrial asserts that, without the prospect of an exemption from SPP's exit fee provisions, retail customers will continue to have difficulty securing corporate clearance to participate in SPP.

2. Discussion of Southwest Industrial's Rehearing Issues

33. For the reasons that follow, we deny Southwest Industrial's Request for Rehearing. Southwest Industrial first asserts that the Commission erred in rejecting SPP's proposed exit fee exemption by concluding that the Commission's decision in *WestConnect* controls the disposition of the withdrawal fee issues in this case.[31] This argument rests on an incorrect interpretation of the October 7, 2005 Order. The Commission rejected the proposed exit fee exemption on the bases that the proposal was unduly discriminatory, unclear, and unsupported.[32] The Commission's reference to *WestConnect* was not meant

[30] *Id.* at 7.

[31] *Id.* at 3-5.

[32] 113 FERC ¶ 61,014 at P 22.

to imply that *WestConnect* controls issues regarding exemptions from withdrawal fees. The Commission recognizes that *WestConnect* dealt with the reduction or waiver of annual *membership* fees, not *withdrawal* fees. It was SPP who incorrectly cited *WestConnect* and the Commission's February 11, 2005 Order, *supra*, which imposed a compliance obligation on SPP to file *membership* fee waiver procedures required by *WestConnect*, as support for its unsolicited *withdrawal fee* exemption proposal.[33] The Commission's reference to *WestConnect* in the October 7, 2005 Order only was to distinguish *WestConnect* in response to SPP's claim that its proposal conformed to that order and did not signal a finding that *WestConnect* controls the outcome of the instant withdrawal fee issues. Thus, the Commission went on to explain that it did not oppose, in principle, exemptions for withdrawal fees on grounds different from those underlying the waiver procedure adopted in *WestConnect*, to wit: "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."[34] However, the Commission found that SPP's specific proposal was unduly discriminatory, unclear and unsupported.

34. Southwest Industrial also challenges the Commission's finding that SPP's proposal to exempt several customer classes, including retail customers such as the members of Southwest Industrials, would be unduly discriminatory. The Commission rejected the proposed exemption because SPP did not include any support for it and it was unclear. Among other things, the Commission found that SPP failed to show why its proposal to exempt so many classes of customers was not unduly discriminatory when waiver requests could be reviewed based on financial hardship or other reasons on a case-by-case basis. The Commission also found that the proposal to exempt certain classes of withdrawing members who are not themselves "market participants" was unclear because it did not define "market participants" and did not specify which entities it believes would currently fall within that category.[35] Thus, the Commission did not commit error in rejecting SPP's proposal.[36] Further, our ruling did not preclude generic exemptions if fully supported and clearly defined. Thus, the Commission explained that the rejection was without prejudice to SPP filing a fully supported, clear exemption proposal.

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[33] *See* Transmittal Letter to SPP's August 9, 2005 filing in Docket No. ER05-1352-000, at 2.

[34] 113 FERC ¶ 61,014 at P22.

[35] *Id.* at note 32.

[36] We also reject Southwest Industrial's arguments regarding double charges and cost causation for the same reasons as we reject the similar arguments of Golden Spread in the discussion above.

III. Compliance Filing

A. Summary of the Filing

35. On December 12, 2005, SPP submitted a filing containing changes to its Bylaws and Membership Agreement to comply with the requirements of the October 7, 2005 Order. As required by the Commission, SPP proposes tariff revisions that reflect the removal of language from the Bylaws and Membership Agreement that SPP had proposed in its August 9, 2005 filing that would have provided for the exclusion of certain financial cost components of the withdrawal fees for various member groups and associated changes to the formula for allocating existing obligations to withdrawing members.

36. In addition, asserting that its proposal is pursuant to the October 7, 2005 Order, SPP also proposes to add a provision to section 8.2 of its Bylaws to provide that Alternative Power/Public Interest, Large Retail Customer, and Small Retail Customer sectors of the membership may seek waiver of the annual membership fee. The new provision also requires that each entity seeking a waiver should submit a request for waiver to the President of SPP in writing 90 days in advance of the start of each fiscal year. SPP states that it requests an effective date of August 10, 2005, for the revisions consistent with the date granted by the October 7, 2005 Order.

B. Notice of Compliance Filing

37. Notice of the SPP's December 12, 2005 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 107 (2006), with motions to intervene and protests due on or before January 3, 2006. Southwest Industrial and Lafayette filed comments.

C. Comments on SPP's Compliance Filing

38. Lafayette states that it does not contest SPP's compliance filing, but notes that, in the October 7, 2005 Order, the Commission stated that it would consider a request for waiver of certain withdrawal fees if and when Lafayette becomes subject to those charges. Lafayette states that, although the Commission did not require SPP to include language in this compliance filing concerning waiver of withdrawal fees, if the Commission denies its rehearing request, the Commission should clarify the nature and source of the waiver referred to in the last sentence of P 24 of the order.

39. Southwest Industrial requests that the Commission clarify that any new members of SPP from the Alternative Power/Public Interest, Large Retail Customer, and Small Retail Customer sectors are not subject to SPP's proposed 90-day notification requirement and, thus, may seek waiver of the annual membership fee upon initial application.

D. Discussion of Compliance Filing

40. We find that SPP's December 12, 2005 filing is in compliance with the Commission October 7, 2005 Order only with respect to the direction to remove language it proposed in its August 9, 2005 filing that would have provided for the exclusion of certain financial cost components of the withdrawal fees for various member groups and associated changes to the formula for allocating existing obligations to withdrawing members. The tariff sheets reflecting those changes are accepted effective August 10, 2005.[37] However, the proposal to modify the Bylaws to provide a procedure for waiver of annual membership fees for various member groups upon request 90 days in advance of the start of each fiscal year is rejected as not in compliance with the October 7, 2005 Order.[38] The October 7, 2005 Order directed SPP to file revised provisions to comply with the February 11, 2005 Order's requirement, to wit: "to provide waivers or reductions of application or annual membership fees on a non-discriminatory, case-by-case basis for legitimate public interest groups (which may include end-users) upon the written request of such entities."[39] In *WestConnect*[40] the Commission stated that Public Interest Organizations include "*e.g.*, consumer advocates, environmental groups, and citizen participation." SPP's proposal would include Alternate Power, Large Retail Customer, and Small Retail Customer sectors of the membership, which do not qualify as legitimate public interest groups, as clarified in *WestConnect*. Accordingly, SPP has failed to comply with the Commission's direction by including the foregoing additional member groups and by adding a 90 day advance request period. Moreover, the February 11, 2005 Order required the waiver process to apply to application fees as well as to annual membership fees. SPP is directed, to comply with the specific direction of the Commission in the February 11, 2005 Order and only that direction, within 15 days of this order. Southwest Industrials' request for further changes in SPP's proposed provision is rejected as moot.

41. Finally, Lafayette's proposed language to address waiver of the withdrawal fees is rejected as beyond the issues raised by the compliance filing. In any event, we believe we have adequately clarified Lafayette's right to file for waiver in the discussion of its rehearing request above.

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[37] *See* First Revised Sheet No. 22B to the SPP Membership Agreement and First Revised Sheet Nos. 40A and 40B to the SPP Bylaws.

[38] *See* Original Sheet No. 38A to SPP Bylaws.

[39] 110 FERC ¶ 61,138 at P 13, *cited at* 113 FERC ¶ 61,014 at P 13.

[40] 101 FERC ¶ 61,350 at P 22.

The Commission orders:

(A) The requests for rehearing are denied and withdrawal fee waiver procedures are clarified as set forth in the discussion above.

(B) First Revised Sheet No. 22B to the SPP Membership Agreement, Original Volume No. 3, and First Revised Sheet Nos. 40A and 40B to the SPP Bylaws, Original Volume No. 4, are accepted, effective August 10, 2005, as discussed in the body of this order.

(C) Original Sheet No. 38A to the SPP Bylaws, Original Volume No. 4, is rejected, as discussed in the body of this order.

(D) SPP must submit, within 15 days of the date of this order, a compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.