

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Wind Energy Association, *et al.*

v.

Southwest Power Pool, Inc.

Docket No. EL19-11-000

COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)
AND TEXAS INDUSTRIAL ENERGY CONSUMERS (“TIEC”)

The Electricity Consumers Resource Council (“ELCON”) and Texas Industrial Energy Consumers (“TIEC”) appreciate the opportunity to submit these comments in support of the Complaint filed by the American Wind Energy Association and Wind Coalition in this proceeding.¹

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members’ operations.

¹ ELCON and TIEC previously submitted intervention filings in this docket.

TIEC is an unincorporated trade association representing large industrial companies engaged in a wide variety of businesses across the state of Texas, including areas within the Southwest Power Pool (“SPP”).

On November 2, 2018, Complainants’ filing requested “that the Commission find sections of the ‘Financial Obligations of Withdrawing Members’ (hereinafter “exit fees”) in SPP’s Bylaws and Membership Agreement, as applied to Independent Power Producer (“IPPs”) and other similarly situated non-transmission owners (“non-TOs”) and non-load-serving entities (“non-LSEs”), are unlawful, unjust and unreasonable, and unduly discriminatory.” Accordingly, Complainants requested that the Commission “direct SPP to cease and desist from imposing those sections of the exit fee on IPPs, as well as other non-TOs and non-LSEs” and order SPP to revise its Bylaws and Membership Agreement accordingly.

ELCON and TIEC support the Complaint, which establishes that SPP’s exit fees clearly violate Section 206 of the Federal Power Act, and its requested relief. ELCON’s and TIEC’s members include industrial consumers, behind-the-meter generators and demand response providers in the SPP footprint. Although in a different category of market participants than Complainants, ELCON’s and TIEC’s members are equally aggrieved by SPP’s exit fees policy. ELCON’s and TIEC’s members are locked out of the opportunity to become SPP members and fully participate in discussions about and vote on SPP policy issues that impact them. SPP is perpetuating the undue influence of traditional utilities to the detriment of the interests of consumers and other market participants.

SPP's unique, substantial and disproportionate exit fees establish an insurmountable barrier to SPP membership for non-TOs and non-LSEs.² In other RTOs/ISOs, which have "exit fees" that are based on outstanding market obligations or membership dues only, our member companies actively participate as voting members. To date, none have become members of SPP.

ELCON and TIEC agree with Complainants that SPP's exit fee requirements violate cost causation principles in that they in effect require a member who wishes to leave SPP to: "(1) subsidize future members' means to do business in SPP; (2) pay for costs for which they will receive no further benefit once they withdraw; and (3) pay for costs that are not caused by them." In other words, there is no connection between the exit fee and the financial impact of an exiting non-TO/non-LSE member on the cost of running SPP's business. The result -- that SPP voting is dominated by the traditional utility interests that constitute the vast majority of its membership³ -- is "unduly discriminatory and preferential." Thus, in granting RTO status to SPP, the Commission required "balanced stakeholder representation on the Members Committee [so that] no one class dominates its recommendations or decisions."⁴ In establishing a high barrier to entry through its exorbitant exit fees, SPP has failed to comply with the Commission's directive.

² SPP's exit fees, although they cannot be precisely calculated in advance, are estimated to be in the range of \$700,000 to 1,000,000 and include charges for a range of matters unrelated to a member's exit including: "debts of SPP, whether held through mortgages, loans, loan agreements, borrowings, promissory notes, bonds, or credit lines; payments on equipment leases, financing leases, capital leases, real estate and office space, consulting contracts, and other contracts for services; SPP employee pension funds' unfunded liabilities; and SPP's overhead for three months." Complaint at pp. 3, 9-10, 19.

³ Complainants note that only 22% of SPP members are non-TOs/non-LSEs, whereas the vast majority (71-82%) of members in ISO-NE, MISO and PJM are non-TOs/non-LSEs. Complaint at p. 12.

⁴ *Southwest Power Pool, Inc.*, 106 FERC ¶61,110 at ¶38; Complaint at p. 29.

For the foregoing reasons, ELCON and TIEC urge the Commission to promptly grant the relief requested by Complainants in this proceeding.

Respectfully Submitted:

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ATTORNEYS FOR TEXAS INDUSTRIAL ENERGY CONSUMERS

Dated: November 30, 2018

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 of this proceeding.

Dated at Washington, D.C.: November 30, 2018

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup