

March 15, 2010

**VIA HAND DELIVERY**

Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *Southwest Power Pool, Inc.*, Docket No. ER10-\_\_\_\_\_  
Submission of Revisions to Open Access Transmission Tariff to Modify  
Pro Forma Meter Agent Services Agreement and Related Tariff Provisions

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Part 35 of the regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. § 35, Southwest Power Pool, Inc. ("SPP"), as authorized by its independent Board of Directors, proposes to revise its Open Access Transmission Tariff ("OATT" or "Tariff") to incorporate revisions to SPP's *pro forma* Meter Agent Services Agreement ("Meter Agreement") and related Tariff provisions. SPP requests an effective date of May 14, 2010 for these Tariff modifications. In support, SPP states the following:

**I. Background**

SPP is a Commission-approved Regional Transmission Organization ("RTO"). It is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 56 members serving more than 5 million customers and covering a geographic area of 370,000 square miles. SPP's current membership consists of 14 investor-owned utilities, 9 municipal systems, 11 generation and transmission cooperatives, 4 state authorities, 5 independent power producers, 10 power marketers, and 3 independent transmission companies.<sup>1</sup>

<sup>1</sup> As of January 1, 2010, two additional investor-owned utilities will join SPP, bringing SPP's total membership to 56 members.

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As an RTO, SPP is a transmission provider administering transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. Relevant to this filing, SPP administers a centralized energy imbalance service market (“EIS Market”). In its orders approving SPP’s EIS Market, the Commission required SPP to adopt a *pro forma* Meter Agreement establishing the terms and conditions governing the relationship between a market participant and its designated metering agent.<sup>2</sup>

In this filing, SPP proposes to remove outdated language from its *pro forma* Meter Agreement and related Tariff provisions, to incorporate provisions allowing modification of the Meter Agreement and requiring notification to SPP, and to incorporate miscellaneous revisions that clarify SPP’s Tariff.

## II. SPP Stakeholder Process and Approval of Proposed Tariff Revisions

In this filing, SPP proposes to incorporate revisions modifying its *pro forma* Meter Agreement and related Tariff provisions. These revisions were developed through SPP’s stakeholder process, with initial responsibility being delegated to SPP’s Market Working Group (“MWG”).<sup>3</sup> On June 16, 2009, the MWG approved its initial revisions to SPP’s Tariff, and forwarded them to SPP’s Regional Tariff Working Group (“RTWG”).<sup>4</sup> The RTWG modified the MWG’s proposed revisions and approved the modified version on June 25, 2009. On July 20, 2009, the MWG approved the RTWG’s modification of its proposed revisions. After a second review, the RTWG incorporated additional minor revisions and approved the modified version on October 1, 2009.

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<sup>2</sup> See *Sw. Power Pool, Inc.*, 117 FERC ¶ 61,139, at PP 19-20 (2006) (accepting SPP’s *pro forma* Meter Agreement, subject to further compliance) (“Compliance Order”); *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,289, at P 115, *order on reh’g*, 116 FERC ¶ 61,289 (2006) (requiring SPP to submit a standard metering agent agreement) (“EIS Market Order”); see also *Sw. Power Pool, Inc.*, Letter Order, Docket Nos. ER06-451-013 and ER06-1467-001 (Jan. 3, 2007) (accepting SPP compliance filing modifying relevant SPP Tariff provisions and *pro forma* Meter Agreement) (“Letter Order”).

<sup>3</sup> The MWG is responsible for the development and coordination of the changes necessary to support any SPP administered wholesale markets, including energy, congestion management, and market power mitigation consistent with direction from SPP’s Markets and Operations Policy Committee (“MOPC”) as well as proposing changes to the SPP OATT to implement suggested market changes.

<sup>4</sup> The RTWG is responsible for the development, recommendation, overall implementation, and oversight of SPP’s regional Tariff.

On October 22, 2009, the Operating Reliability Working Group (“ORWG”) determined that the proposed Tariff revisions would have no reliability impacts on SPP’s transmission system.<sup>5</sup> The proposed revisions were then forwarded to SPP’s MOPC for further review and consideration.<sup>6</sup> At its January 12, 2010 meeting, the MOPC voted to recommend to the SPP Board of Directors that the revisions be approved. Finally, on January 26, 2010, SPP’s Board of Directors granted final approval to the Tariff revisions submitted in this filing.

Thus, all of the revisions proposed in this filing have been thoroughly vetted through the SPP stakeholder process, with all entities having an interest able to participate in their development and approval. While SPP recognizes that such stakeholder approval by itself does not cause a filing to be just and reasonable, SPP requests that the Commission provide substantial deference to the wishes of SPP’s stakeholders, consistent with its precedent.<sup>7</sup>

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<sup>5</sup> The ORWG maintains, coordinates and implements Criteria related to the reliable and secure operation of the bulk electric system operated by SPP’s members, provides oversight and direction for the Reliability Coordinator function of the SPP, and is responsible for ensuring compliance of the SPP Criteria with North American Electric Reliability Corporation Operating Policies and Standards.

<sup>6</sup> The MOPC reports to the SPP Board of Directors. The representatives to the MOPC consist of an officer or employee of each SPP member. Among its responsibilities, the MOPC reviews proposed tariff changes developed through the stakeholder process and endorses/approves those changes and recommends them to the Board of Directors for approval.

<sup>7</sup> The Commission has previously recognized that provisions approved through the stakeholder processes of RTOs and ISOs are due deference. *See Sw. Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 33 (2009) (noting how the Commission “accord[s] an appropriate degree of deference to RTO stakeholder processes”); *New Eng. Power Pool*, 105 FERC ¶ 61,300, at P 34 (2003) (Commission approving transmission cost allocation proposal based upon the extensive and thorough stakeholder process); *Policy Statement Regarding Regional Transmission Groups*, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 30,976, at 30,872 (1993) (“RTG Policy Statement”) (the Commission will afford an appropriate degree of deference to the stakeholder approval process). The Commission’s deference to RTO stakeholder processes has been upheld by the courts. *See Pub. Serv. Comm’n of Wis. v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008) (noting how the Commission often gives weight to a proposal that is the position of the majority of a stakeholder group of the RTO) (*quoting Am. Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 172 (2008)).

### III. Description and Justification for Tariff Revisions

#### A. Removal of Outdated Language

A meter agent is responsible for the acquisition and transfer to SPP of all meter data and losses. When SPP first submitted its proposed EIS Market to the Commission, it proposed that for the first year of the market, the applicable balancing authority would act as meter agent for all market participants in its balancing authority area. In the EIS Market Order, the Commission accepted SPP's proposal, but required SPP to submit a *pro forma* Meter Agreement setting forth the terms and conditions that will govern the relationship between a market participant and its meter agent.<sup>8</sup> In a compliance filing, SPP submitted Tariff provisions and a *pro forma* Meter Agreement providing, among other things, that for the initial year of the EIS Market, balancing authorities would act as the meter agent for all market participant resources and load within a transmission owner's zone unless otherwise mutually agreed upon by the balancing authority and market participant. SPP's proposed Meter Agreement also included an initial term of one year after the startup of the EIS Market. The Compliance Order accepted SPP's proposed Tariff revisions and *pro forma* Meter Agreement, subject to SPP's clarification that market participants may submit their own meter data to SPP after the first year of EIS Market operations.<sup>9</sup>

SPP implemented its EIS Market on February 1, 2007.<sup>10</sup> Because the one-year anniversary of the EIS Market was February 1, 2008, the provisions in SPP's Tariff and its *pro forma* Meter Agreement designating balancing authorities as meter agents for all market participant resources and load are now outdated. As a result, parties that enter into SPP's *pro forma* Meter Agreement must update these provisions, causing the modified Meter Agreement to be nonconforming with the *pro forma* Meter Agreement. Because the modified Meter Agreements are nonconforming, they must be submitted to the Commission for its review and approval.

In this filing, SPP proposes to remove these outdated provisions from its Tariff and *pro forma* Meter Agreement. Specifically, Section 1.2.8 of Attachment AE of SPP's Tariff has been revised to allow market participants to designate any qualified entity to perform the meter agent function or perform this function on its own behalf. Similarly, language designating the Balancing Authority as the meter agent for the initial year of the

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<sup>8</sup> See EIS Market Order at P 115.

<sup>9</sup> See Compliance Order at P 19. On November 30, 2006, SPP submitted the required clarification in a compliance filing, which was accepted by the Commission in the Letter Order.

<sup>10</sup> See *Sw. Power Pool, Inc.*, 118 FERC ¶ 61,055 (2007) (certifying SPP's EIS Market for implementation on February 1, 2007).

EIS Market has been removed from the first Whereas clause of SPP's *pro forma* Meter Agreement, and Article II, Section 2.1 of SPP's *pro forma* Meter Agreement has been revised to allow the parties to specify the dates of the initial term of the agreement.<sup>11</sup>

SPP's proposed revisions are just and reasonable because they remove outdated language from SPP's Tariff and its *pro forma* Meter Agreement, which will obviate the need to file with the Commission Meter Agreements where such language has been modified or removed. SPP's proposed revisions also provide EIS Market participants additional flexibility by allowing them to designate any qualified entity as their meter agent, including themselves. SPP's proposed revisions are therefore in the public interest, and warrant Commission approval.

**B. New Provisions Concerning Amendment, Modification, and Notice to SPP**

SPP has included new Article III, Sections 3.6 and 3.7 to allow the parties to Meter Agreements amend the Meter Agreement and Exhibit A of the Meter Agreement, respectively, by a written instrument duly executed by each of the parties. Such amendments will become effective and a part of the agreement upon satisfaction of all Applicable Laws and Regulations. SPP added these provisions to provide parties to the Meter Agreement the ability to modify the Meter Agreement. SPP has incorporated similar amendment and modification provisions in other sections of its Tariff.<sup>12</sup>

SPP has also added a new Article III, Section 3.8 specifying that the initial Meter Agreement and any subsequent amendments will be provided to SPP upon execution. This provision is necessary because SPP must know the meter agent arrangements for each market participant, but SPP is not a party to the Meter Agreement. This provision ensures SPP will be made aware of each market participant's meter agent arrangements.

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<sup>11</sup> Outdated language has also been removed from the cover page and the opening paragraph of SPP's *pro forma* Meter Agreement.

<sup>12</sup> See SPP Tariff at Attachment V, Appendix 2, Sections 17.9 and 17.10 (allowing parties to amend and modify Interconnection Feasibility Study Agreement); *id.* at Attachment V, Appendix 6, Articles 30.9 and 30.10 (allowing parties to amend and modify Large Generator Interconnection Agreement); *id.* at Attachment V, Appendix 8, Articles 30.9 and 30.10 (allowing parties to amend and modify Interim Large Generator Interconnection Agreement).

### C. Miscellaneous Revisions

SPP also has incorporated various miscellaneous revisions throughout its *pro forma* Meter Agreement and related Tariff provisions. These modifications provide additional clarity to SPP's Tariff, and are therefore just and reasonable. The specific changes are:

- SPP removed extraneous language from the cover sheet for SPP's *pro forma* Meter Agreement, which has been revised to simply reference the meter agent.
- SPP either added or moved various acronyms for certain terms in order to add clarity to its *pro forma* Meter Agreement. In the third Whereas clause, SPP moved the acronym for SPP to after "Southwest Power Pool", and before the word "Market". In Article I, Section 1.1, Subsection 1, SPP added the acronym for Open Access Transmission Tariff in its proper place after the first use of the term in Section 1. In Article I, Section 1.1, Subsection 4(a)(2), SPP added the term Net Actual Interchange to clarify the term for the acronym NAI.
- SPP updated Article I, Section 1.1, Subsection 6(a) and Article I, Section 1.2, Subsection 7 to refer to Appendix D of SPP's Market Protocols. This change is necessary because the provisions of SPP's Market Protocols governing metering have been moved from Appendix E to Appendix D of SPP's Market Protocols.
- SPP revised the unilateral termination provision in Article II, Section 2.3 to require 60 calendar days notice by the terminating party. This revision clarifies the notice a terminating party must provide, and is consistent with other timeframes in the SPP Tariff.<sup>13</sup>
- SPP revised Article IV, Section 4.1 to allow the parties to the Meter Agreement to provide any notice, demand, or request required or authorized by the Meter Agreement to be provided through any written means.

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<sup>13</sup> See *id.* at Attachment V, Section 8.6 (providing 60 calendar days for any restudy of a Definitive Interconnection System Impact Study); *id.* at Attachment V, Section 8.11 (providing 60 calendar days for any restudy of an Interconnection Facilities Study); *id.* at Attachment V, Sections 11.1 and 11.2 (providing 60 calendar days for SPP, a transmission owner and an interconnection customer to negotiate the appendices to a Large Generator Interconnection Agreement).

- SPP incorporated minor grammatical and capitalization improvements into Section 1.2.8 of Attachment AE; Article I, Section 1.1, Subsection 5; Article I, Section 1.2, Subsection 4; and Article III, Section 3.1. In addition, a revision to Article IV, Section 4.1 allows parties to specify email addresses for notices, and a revisions to the signature block in Article V, Section 5.1 requires parties to print the names of the individuals executing the agreement.<sup>14</sup>

#### **IV. Effective Date**

SPP requests that the Commission accept the Tariff revisions proposed in this filing with an effective date of May 14, 2010.

#### **V. Additional Information**

##### **A. Information Required by Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13:<sup>15</sup>**

##### **1. Documents submitted with this filing:**

In addition to this transmittal letter, the following material is provided with this filing: (a) a non-redlined copy of the revised portions of SPP's Tariff, as Exhibit I; and (b) a redlined copy of the revised portions of SPP's Tariff, as Exhibit II.<sup>16</sup>

##### **2. Effective Date:**

As discussed in this filing, SPP requests that the Commission accept the proposed Tariff revisions with an effective date of May 14, 2010.

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<sup>14</sup> In addition a numerical error in Article V, Section 5.1 has been corrected.

<sup>15</sup> Because the revisions to the SPP Tariff submitted herein do not involve any change in rates, the use of the abbreviated filing procedures as set forth in 18 C.F.R. § 35.13(a)(2)(iii) is appropriate.

<sup>16</sup> SPP notes that the Tariff revisions submitted in this filing include language that is currently pending before the Commission in Docket No. ER09-1050-001, and has not yet been accepted. This particular language is indicated in italics. To the extent language changes due to a Commission order in Docket No. ER09-1050-001, SPP will reflect that language change in a subsequent filing.

**3. Service:**

SPP has served a copy of this filing on all its Members and Customers. A complete copy of this filing will be posted on the SPP web site [www.spp.org](http://www.spp.org), and is also being served on all affected state commissions.

**4. Requisite Agreements:**

SPP's Board of Directors approved this filing at its meeting on January 26, 2010.

**5. Specifically assignable facilities installed or modified:**

There are none.

**B. Communications:**

Correspondence and communications with respect to this filing should be sent to, and SPP requests the Secretary to include on the official service list, the following:

Heather H. Starnes, J.D.  
Manager, Regulatory Policy  
Southwest Power Pool, Inc.  
415 North McKinley, Suite 140, Plaza West  
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**VI. Conclusion**

For all of the foregoing reasons, SPP respectfully requests that the Commission accept the Tariff revisions submitted in this filing, with an effective date of May 14, 2010. SPP further requests waiver of any additional Commission regulations that the Commission may deem applicable.

Respectfully submitted,



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Wendy N. Reed  
Matthew K. Segers  
Tyler R. Brown

**Attorneys for  
Southwest Power Pool, Inc.**

# Exhibit I

than or equal to \$1000/megawatt-hour until such time as the Transmission Provider demonstrates in a filing with the Commission that sufficient demand response exists in the EIS Market to allow a higher Offer Curve price limit or removal of the Offer Curve price limit. Beginning with the EIS Market Effective Date, Offer Curves shall be subject to the provisions of Section 3.2.4 of Attachment AF to this Tariff.

### **1.2.7 Scheduling and Dispatch**

Market Participants shall, where applicable:

- (a) Follow the Transmission Provider's dispatch instructions where such dispatch instructions are described under Section 4.1 of Attachment AE;
- (b) Incorporate the Transmission Provider's Adjusted Net Scheduled Interchange, as calculated pursuant to Section 4.1, into their respective Control Area energy management systems;
- (c) Report Resource Plan changes to the Transmission Provider throughout the Operating Day resulting from changes in Resource availability;
- (d) Report changes to Ancillary Service Plans resulting from changes in Resource availability to the Transmission Provider; and
- (e) Abide by the procedures set forth in the Market Protocols.

### **1.2.8 Energy Imbalance Service Settlement**

Market Participants, or their designated Meter Agent, shall submit to the Transmission Provider for each hour of the Operating Day meter data representing the actual generation output and actual load consumption, or where actual data is not available estimates thereof, associated with their registered load and Resources in accordance with the timelines specified in the Market Protocols. A Market Participant may designate any qualified entity to perform the meter agent function or perform this function on its own behalf.

Any entity performing the meter agent function for a Market Participant must execute the Meter Agent Agreement specified in Attachment AM prior to performing such function.

**1.2.9 Calculation of Real-Time Demand Response from Variable Demand Response Resources**

The demand response provided by the Variable Demand Response Resource is sent directly to the Transmission Provider. This value will represent the actual net generation.

**1.2.10 Aggregation of Controllable Load as a Resource**

For purposes of participation in the SPP EIS Market, an ARC may aggregate demand response of: (1) end-use retail customers of utilities that distributed more than 4 million MWh in the previous fiscal year, unless precluded by the laws or regulations of the relevant electric retail regulatory authority including state-approved retail tariff(s); and (2) end-use retail customers of utilities that distributed 4 million MWh or less in the previous fiscal year, where the relevant electric retail regulatory authority, including any state-approved retail tariff(s), affirmatively permits such customer's demand response to be bid into the SPP EIS Market by an ARC. An ARC wishing to offer demand response in the EIS Market must execute all agreements necessary to become a Market

**ATTACHMENT AM**

**METER AGENT SERVICES AGREEMENT**

**FOR**

**SPP MARKET**

**BETWEEN**

**MARKET PARTICIPANT**

**AND**

**METER AGENT**

**(DATE)**

Issued by: Heather H. Starnes, Manager, Regulatory Policy

Issued on: March 15, 2010

Effective: May 14, 2010

This Agreement made and entered this \_\_ day of \_\_\_\_\_, \_\_\_\_\_, is between \_\_\_\_\_ (“Market Participant”) and \_\_\_\_\_ (“Meter Agent”). Market Participant and Meter Agent are each sometimes referred to in the Agreement as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Market Participant and Meter Agent are registered entities of the Southwest Power Pool (“SPP”) Market .

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, the parties hereto mutually agree as follows:

Issued by: Heather H. Starnes, Manager, Regulatory Policy

Issued on: March 15, 2010

Effective: May 14, 2010

**ARTICLE I**  
**Responsibilities of the Parties**

**1.1 Market Participant Responsibilities:**

1. **Governing Documents:** In addition to this Agreement, Market Participant agrees that it will comply with the provisions of the SPP Open Access Transmission Tariff (“OATT”) and Market Protocols as they may be amended from time to time which relate to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern.
2. **Data Communications:** Market Participant shall provide or arrange for communication of meter data in a mutually acceptable format to the Meter Agent.
3. **Settlement Location Definition:** Exhibit A defines the meter(s) and calculations associated with each Settlement Location (“SL”).
4. **Notice of Meter Changes:** Market Participant shall inform the Meter Agent of any additions, deletions, and modifications of metering that will impact the market data.
  - a. Market Participant shall provide full details of the meter information to the Meter Agent a minimum of 60 days prior to the implementation of the change, except when the meter equipment is changed or replaced due to equipment failure in which case notice of change will be provided as soon as possible. This information to be provided shall include the following:
    1. Information relating to retrieval of the meter data from the data source. This includes the method of doing so, communications, and full description of the meter.
    2. Information relating to the data and the processing of such data that will be applied for the new or modified SL and the impact to other existing SL or Net Actual Interchange (“NAI”) calculations.
    3. Completing the SPP Market registration required, which includes real-time data exchange and modeling coordination with SPP.
    4. Updating of Exhibit A.
  - b. In addition, Market Participant shall be responsible for developing and testing a complete system for submission of data under this Agreement.

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- c. Market Participant shall notify Meter Agent of any significant metering issues related to the data provided to the Meter Agent within 24 hours after the issue is identified. This includes change out of a meter, meter failures, real-time data failures, etc.
5. **Settlement Location Notification:** Market Participant shall notify any other entity affected by the change in the SL (i.e. other Market Participant, Balancing Authority) at least seven days prior to the change.
6. **Data Exchange and Data Quality:** Market Participant shall provide meter data for each Meter identified in Exhibit A to the Meter Agent in a timely manner.
  - a. Data shall be provided to the Meter Agent at least one (1) full business day prior to SPP's deadline for submission of meter data, as specified in Appendix D of the Market Protocols.
  - b. Upon notification to or upon discovery by the Market Participant that the data exchange has failed or data quality is questionable, the Market Participant will resolve the issue at its source.
  - c. In the absence of actual values for data required for settlement, it is the Market Participant's responsibility to provide estimated values for such data to the Meter Agent; however, if the Market Participant fails to provide the actual or estimated meter data in a timely manner, the Meter Agent will estimate the data for submission to SPP by the appropriate deadline. The Meter Agent will be held harmless as set forth in section 3.2.
7. **Submission Failures:** If the Meter Agent fails to submit the meter data or NAI data by the Final Settlement Statement data cutoff, the Market Participant is responsible for initiating and pursuing the SPP OATT Dispute process. The Meter Agent must provide to SPP any data it has available to help resolve the dispute.

## 1.2 Meter Agent Responsibilities:

1. **Governing Documents:** In addition to complying with this Agreement, Meter Agent shall provide services on behalf of the Market Participant in accordance with SPP's OATT and Market Protocols as they may be amended from time to time related to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern.

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2. **Meter Agent Registration:** Meter Agent shall be a registered Meter Agent with the SPP Market.
3. **Settlement Location Development:** Meter Agent shall provide all settlement data required for the SLs designated by the Market Participant in Exhibit A.
4. **Data Communications:** Meter Agent and the Market Participant shall mutually agree upon a format and method of exchange of settlement data required to be provided by the Market Participant.

5. **Settlement Location Values**

Meter Agent shall determine the Meter Value for each of the Settlement Locations identified in Exhibit A by applying all parameters as identified therein.

6. **Data Issue Notifications:**

- a. Meter Agent will notify the Market Participant, as soon as practicable, of any data exchange issues with the meter data source.
- b. Upon failure to receive meter data from the Market Participant by the data submission deadline, the Meter Agent will notify the Market Participant as soon as practicable and, if necessary, the Meter Agent will estimate the data pursuant to 1.1 6. c. of this agreement.

7. **Data Submission:** Meter Agent shall submit Settlement Location Meter Values to SPP and the appropriate Balancing Authority by the deadlines outlined in Appendix D of the Market Protocols.

**ARTICLE II**  
**Term and Termination**

- 2.1 **Initial Term:** This Agreement shall become effective on \_\_\_\_\_, \_\_\_\_\_ and shall continue until \_\_\_\_\_, \_\_\_\_\_.
- 2.2 **Extended Term:** This Agreement shall continue on a year to year basis at the conclusion of its Initial Term, unless terminated as specified in the Agreement.

Issued by: Heather H. Starnes, Manager, Regulatory Policy

Issued on: March 15, 2010

Effective: May 14, 2010

- 2.3 **Termination:** This Agreement may be terminated at any time by mutual agreement of the Market Participant and Meter Agent. Either the Market Participant or the Meter Agent may terminate the Agreement after the Initial Term, upon giving 60 calendar days written notice to the other Party.

### ARTICLE III Miscellaneous

- 3.1 **Force Majeure:** An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Party will not be considered in default as to any obligation under this Agreement to the extent such Party is prevented or delayed from fulfilling such obligation due to the effect of Force Majeure. A Party whose performance under this Agreement is prevented or delayed by Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement, and shall take all reasonable steps to eliminate the cause; however, neither Party shall be required to settle or resolve labor disturbances or strikes, or to accept or agree to governmental or regulatory orders or conditions without objection or contest except on any basis agreeable to such Party in its sole discretion. The affected Party, as soon as reasonably possible, shall give notice of Force Majeure.
- 3.2 **Indemnification:** Each Party hereto shall indemnify and hold harmless the other Party (in such case, the "Indemnified Party"), its officers, directors, agents and employees from and against any and all claims for death or injury to persons or destruction of or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorneys fees, and all other obligations by or to third parties (collectively "liabilities"), arising out of or resulting directly or indirectly from the Indemnified Party's performance of its obligations under this Agreement on behalf of the Indemnifying Party, except to the extent any such liability arises, directly or indirectly, from the Indemnified Party's gross negligence or intentional wrongdoing. For example, the provisions of this section 3.2 could apply in circumstances where equipment malfunction (or other inadvertent error not involving gross negligence or intentional wrongdoing) causes imbalance information to be inaccurately reported, resulting in billing errors.
- 3.3 **Successors and Assignment:** This Agreement shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assignable by either Party except with the prior written consent of the other Party which shall not be unreasonably withheld.

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