



Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE MEETING

September 2, 2010

OMPA Offices
2701 W. I-35 Frontage Road
Edmond, OK 73013
405-340-5047

• A G E N D A •

8:30 a.m. – 2:00 p.m. CDT

- 1. Call to Order and Administrative Items.....Nick Brown
- 2. Organizational EffectivenessNick Brown
 - a. Meeting Participation Guidelines
 - b. NACD Director Registry
- 3. 2011 Election Ballot.....Nick Brown
 - a. Directors
 - b. Trustee
 - c. Members Committee
- 4. Vacancy/Strategic Planning CommitteeStacy Duckett
- 5. Voting StructureStacy Duckett
 - a. Affiliate Voting
 - b. Members Committee Voting
- 6. Standards of Conduct
 - a. Members Committee.....Mike Palmer
 - b. Materiality Discussion UpdateStacy Duckett
- 7. Membership Agreement RevisionStacy Duckett
- 8. Withdrawal Obligations.....Stacy Duckett
- 9. Future Meetings
 - March 3, 2011
 - September 1, 2011

*Relationship-Based • Member-Driven • Independence Through Diversity
Evolutionary vs. Revolutionary • Reliability & Economics Inseparable*

Southwest Power Pool
CORPORATE GOVERNANCE COMMITTEE MEETING
JOINT STRATEGIC PLANNING COMMITTEE/CORPORATE GOVERNANCE COMMITTEE MEETING
Embassy Suites Downtown/Old Market – Omaha, NE

July 15, 2010

• M I N U T E S •

Joint Strategic Planning Committee and Corporate Governance Committee Meeting

The Corporate Governance Committee Chair Nick Brown called the Corporate Governance Committee meeting to order at 11:08 a.m. Members in attendance or represented by proxy were: Jim Eckelberger (Director), Rob Janssen (Dogwood), Cindy Holman (OMPA), Mel Perkins (OG&E), and Steve Parr (KEPCo). SPP Staff included Stacy Duckett. Those attending the Strategic Planning Committee prior to this meeting remained (Attachment 1 – Attendance).

Agenda Item 11 – Transmission Construction Withdrawal Obligations of TOs

The group discussed the current draft of revisions to the governing documents and policy direction regarding transmission construction withdrawal obligations of Transmission Owners (Attachment 2 – Withdrawal Obligations), asked many questions and discussed multiple scenarios. Staff is to develop a set of principles to ensure all are in agreement on the desired end result. Any additional comments/questions should be directed to Stacy Duckett. Staff will continue to refine the draft language.

Agenda Item 12 – Withdrawal from Membership

Stacy Duckett reviewed the Membership Agreement revisions associated with the term of membership and withdrawal (Attachment 3 – Membership Agreement Revisions). Discussion followed. No action was taken at this meeting. Additional comments/questions should be directed to Stacy Duckett.

Corporate Governance Committee Meeting

Agenda Item 2 – Finance Committee Action Items

Nick Brown noted a vacancy on the Finance Committee. Stacy Duckett advised the TO members were notified and three candidates indicated an interest in serving. Following discussion, Cindy Holman moved to recommend Sandra Bennett from American Electric Power to fill the vacancy; Steve Parr seconded the motion. The motion passed unanimously.

Nick Brown presented a request from the Finance Committee to establish a Credit Working Group (Attachment 4 – Credit Working Group Scope). The group has previously been a task force, but there is a need to establish this as a permanent group. The Committee reviewed the Credit Working Group Scope and proposed roster. Rob Janssen moved approval of the roster; Mel Perkins seconded the motion. The motion passed unanimously.

Agenda Item 3 – Organizational Effectiveness

Stacy Duckett reviewed the Annual Organizational Effectiveness Survey schedule. Nick Brown encouraged everyone to participate in these surveys.

The group discussed the Chair/Secretary Workshop and whether one is needed in 2010. Following discussion, the group determined a live meeting was not necessary, but a teleconference may be held to review the survey results. Following the next survey cycle, a determination will be made as to whether a future workshop is needed.

Corporate Governance Committee
July 15, 2010

Nick Brown referenced the draft rules for public participation in the SPP Board of Directors/Members Committee meetings (Attachment 5 – Rules for Public Participation). Discussion followed. The document will be revised to refer to “general public” rather than “members of the public”, as well as other revisions to establish these as guidelines rather than rules. A revised document will be circulated to the Committee. The purpose remains to enable participation while allowing for proper conduct of meetings.

Nick Brown referenced a survey from NACD. Due to technical issues with printing, it was not available and discussion will be tabled to a future meeting.

Agenda Item 4 – Voting Structure

Nick Brown reviewed questions raised regarding affiliate votes and Members Committee representation in the organization. Discussion followed. The Committee is to consider and plan for discussion and possible action at the September meeting. Staff will provide background, including various scenarios, in advance of the meeting to allow adequate time for review and consideration.

Agenda Item 1 – Administrative Items

Nick Brown referred to draft minutes for the December 8, 2009, January 8 and March 4, 2010 meetings (12/8/09, 1/8/10 and 3/4/10 Minutes – Attachment 6). Steve Parr moved to approve the minutes as presented. Mel Perkins seconded the motion, which passed unanimously.

Agenda Item 5 – Future Meetings

The next Corporate Governance Committee meeting is September 2 in Oklahoma City at the OMPA offices. The Committee will consider meeting between the close of surveys and the Board of Directors December meeting to review the survey results.

Adjournment

Nick Brown thanked everyone for participating and adjourned the meeting at 2:08 p.m.

Respectfully submitted,

Stacy Duckett, Secretary



GUIDELINES FOR PARTICIPATION BY THE GENERAL PUBLIC AT SPP MEETINGS

In accordance with Southwest Power Pool Inc.'s Bylaws, Section 3.5 *Meetings*, SPP meetings are open. The following guidelines will apply specifically to participation by the general public at SPP meetings.

1. Parties may attend in person or via teleconference. Parties are requested to register in advance at www.spp.org to facilitate attendance.
2. Requests to speak at a meeting should be submitted in writing to the Secretary of the group to coordinate participation with the meeting agenda.
3. Comments should be limited to those issues that are within the scope and authority of SPP and the particular group, and should be concise and not repetitive. Parties should state their name and the name of any organization or person they are representing
4. Written comments or other materials may be submitted to the Secretary of the group in advance or following the meeting. Any submissions will be distributed to the members of the group and/or posted at www.spp.org.
5. The Chairperson may interrupt or discontinue comments at any time.

GUIDELINES FOR PARTICIPATION BY THE GENERAL PUBLIC AT SPP MEETINGS

In accordance with Southwest Power Pool Inc.'s Bylaws, Section 3.5 *Meetings*, ~~participation in~~ SPP meetings ~~is~~ are ~~open to any interested party~~. The following guidelines will apply specifically to participation by the general public at SPP meetings.

1. Parties may attend in person or via teleconference. ~~Members of the general public~~ Parties are requested to register in advance at www.spp.org to facilitate attendance, ~~as are all meeting participants.~~
2. ~~Following registration of attendance, any requests~~ Requests to speak at a meeting should be submitted in writing to the Secretary of the group to coordinate participation with the meeting agenda. ~~The request must include the name of the person speaking, the organization he/she represents, and a general statement of the purpose of the comments.~~
3. ~~The Chairperson of the group, at his/her sole discretion, may allow comment opportunities for the general public during a meeting if he/she deems doing so appropriate.~~ Comments will ~~should~~ be limited to those issues that are within the scope and authority of SPP and the particular group, and should be concise and not repetitive. Parties should state their name and the name of any organization or person they are representing
4. ~~Any member of the general public addressing an SPP group should state his/her name and the name of any organization or person he/she is representing.~~
5. ~~4. Any member of the general public~~ Written comments or other materials may be submitted ~~written comments or other materials to the group in advance or following the meeting by providing them to the Secretary of the group in advance or following the meeting.~~ ~~, who will~~ Any submissions will be distributed ~~them~~ to the members of the group and/or posted them appropriately at www.spp.org. ~~Written comments or other materials may be accepted at a meeting at the discretion of the Secretary in consultation with the Chairperson. Written comments accepted will be limited to those issues that are within the scope and authority of SPP and the particular group.~~
6. ~~The Chairperson will direct the responses to specific questions or comments addressed by the speaker to the group, or to any member of the group, or to any other representative of SPP, or alternatively that the matter be taken under advisement.~~
7. ~~5. The Chairperson may interrupt or discontinue comments at any time~~ limit the amount of time a speaker may have to comment or make further comment with respect to any matter or for any meeting. ~~The Chairperson may limit the total amount of time for which the group will receive comments from the general public with respect to any matter or for any meeting.~~



~~§.6. SPP may at any time make and enforce any other or additional rules regarding the participation of the general public at its meetings.~~

SPP BOARD OF DIRECTORS

	TERM EXPIRES
Larry Altenbaumer	2011
Phyllis Bernard	2010
Julian Brix	2010
Nick Brown	N/A
Jim Eckelberger	2012
Josh Martin	2011
Harry Skilton	2012

Class of 2010
Phyllis Bernard
Julian Brix

Class of 2011
Josh Martin
Larry Altenbaumer

Class of 2012
Jim Eckelberger
Harry Skilton

REGIONAL ENTITY TRUSTEES

	TERM EXPIRES
Gerry Burrows	2011
Dave Christiano	2012
John Meyer	2010

Class of 2010
John Meyer

Class of 2011
Gerry Burrows

Class of 2012
Dave Christiano

SPP MEMBERS COMMITTEE

SECTOR		COMPANY	TERM EXPIRES
Investor Owned Utilities	Kelly Harrison	Westar	2010
	Mel Perkins	OG+E	2011
	Mike Deggendorf	KCPL	2012
	Stuart Solomon	AEP	2010
Cooperatives	Steve Parr	KEPCo	2011
	Gary Roulet	WFEC	2012
	Gary Voigt	AECC	2010
	Mike Wise	GSEC	2012
Municipals	Jeff Knottek	City Utilities of Springfield	2010
	Cindy Holman	OMPA	2011
IPPs/Marketers	Trudy Harper	Tenaska	2012
	Rob Janssen	Dogwood	2010
	vacant		2011
State/Federal Agencies	Kevin Easley	GRDA	2012
	Pat Pope	NPPD	2011
Large Retail Customer	vacant		2011
Small Retail Customer	vacant		2010
Public Interest/ Alternative Power	vacant		2011
	vacant		2012

Class of 2010

Kelly Harrison
 Stuart Solomon
 Gary Voigt
 Jeff Knottek
 Rob Janssen
 Sm. Retail (vacant)

Class of 2011

Mel Perkins
 Steve Parr
 Cindy Holman
 Pat Pope
 IPP/Marketers (vacant)
 Lg. Retail (vacant)
 Publ Int/Alt Pwr (vacant)

Class of 2012

Mike Deggendorf
 Gary Roulet
 Mike Wise
 Trudy Harper
 Kevin Easley
 Publ Int/Alt Pwr (vacant)



Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE
September 2, 2010

Affiliate Voting

Background

The Corporate Governance Committee has been asked to review the voting rules related to Affiliate Companies.

Analysis

In Section 1.1, the Bylaws define Affiliate Relationships as follows:

Affiliate Relationships are relationships between SPP Members that have one or more of the following attributes in common:

- (a) are subsidiaries of the same company;
- (b) one Member is a subsidiary of another Member;
- (c) have, through an agency agreement, turned over control of a majority of their generation facilities to another Member;
- (d) have, through an agency agreement, turned over control of a majority of their transmission system to another Member, except to the extent that the facilities are turned over to an independent transmission company recognized by FERC;
- (e) have an exclusive marketing alliance between Members; or
- (f) ownership by one Member of ten percent or greater of another Member.

For purposes of electing Directors, Regional Entity Trustees and Members Committee representatives, companies with Affiliate Relationships are considered a single member (Bylaws Sections 4.3(c), 5.1.2(c), and 9.7.3(c)) and may only cast one vote.

For all other purposes, companies with Affiliate Relationships are considered separate companies. The relevance of this distinction is:

- Each company has a representative for the Membership and for votes other than those noted above, has a vote.
- Each company has a representative for the MOPC and for all votes has a vote.
- Representatives from each company may serve on Organizational Groups and for all votes would have a vote.



As an example, AEP has four member companies:

- AEP Oklahoma Transmission Company, Inc. (non-TO member)
- AEP Southwestern Transmission Company, Inc. (non-TO member)
- Public Service Company of Oklahoma (TO member)
- Southwestern Electric Power Company (TO member)

Board of Directors elections: These affiliate companies would have one vote to cast.

MOPC votes: Each company would have one vote to cast; in this case, two would be in the TO category and two would be in the non-TO category.

Issues to consider

- The impact the current voting structure has on SPP governance.
- Changes to the way votes of affiliate companies are counted in various circumstances.
- How the Affiliate Relationships definition applies to cooperatives that are SPP members and also members of a G&T cooperative that is a member of SPP.
- How the Affiliate Relationships definition applied to municipals that are SPP members and also members of a municipal power authority that is a member of SPP.

Action Requested: Discussion as to whether revisions to the voting structure and/or definition of Affiliate Relationships are appropriate.

SOUTHWEST POWER POOL, INC.

STANDARDS OF CONDUCT

These Standards of Conduct (“Standards”) apply to current members of the Southwest Power Pool, Inc. (“SPP”) Board of Directors. For purposes of these Standards, "Third Party" means an entity including its representatives, agents, and employees (i) that is an owner, operator or user of the bulk power system in the SPP region, as defined in the Delegation Agreement between the North American Electric Reliability Corporation and SPP; (ii) that is a Transmission Customer as defined in the SPP Open Access Transmission Tariff ("Tariff") or any other tariff that SPP administers; (iii) for which SPP provides services under contract, including, but not limited to, tariff administration services; or (iv) that engages in purchases or sales of wholesale or retail electric energy in the SPP Region.

As a Regional Transmission Organization, SPP is not subject to the Federal Energy Regulatory Commission’s (“FERC”) published standards of conduct set forth in 18 C.F.R. Part 358. Instead, SPP Directors shall be subject to the standards set forth herein.

1. NO INVOLVEMENT IN MARKETING

- 1.1 No SPP Director shall have any involvement in the purchase or sale of electric energy at wholesale or retail except for the provision of services by SPP under the SPP Tariff or other tariff administered by SPP.

2. CONFIDENTIALITY OF INFORMATION

- 2.1 SPP Directors shall treat all information supplied by a Third Party as confidential to the extent required by the Tariff, the SPP Membership Agreement or other governing document, and shall not disclose that information, unless the information is required to be placed on an Open Access Same-Time Information System (“OASIS”), or is otherwise explicitly approved for disclosure.
- 2.2 Notwithstanding the restrictions in Sections 2.1, SPP Directors may share confidential information obtained from a Third Party as expressly permitted by the Tariff, including, but not limited to (a) sharing the information with FERC when required by the Tariff, and (b) sharing the information with NERC or NERC Regional Entities where SPP determines such disclosure is required to enhance and/or maintain reliability within the SPP Region or neighboring regions or to comply with NERC Reliability Standards. Before any such information is disclosed other than to FERC, the receiving party shall execute a written agreement to maintain the information as confidential and SPP shall make any required notification to the affected Third Party.

- 2.3 Only SPP Employees providing support to the Regional Entity function and the Regional Entity Trustees shall have access to confidential information associated with the Regional Entity function. Access to confidential Regional Entity information shall be limited to the information required to perform the specific support function. Confidential Regional Entity information shall be maintained as confidential by the SPP Employee providing support and the Regional Entity Trustees and shall not be shared with any SPP Directors.

3. DISCLOSURE OF TRANSMISSION SYSTEM INFORMATION

- 3.1 SPP Directors may not disclose to any entity, its employees, representatives or agents, engaged in wholesale or retail purchases or sales of electric energy any information concerning the transmission system unless that information is (i) posted on the appropriate OASIS or Internet website or (ii) otherwise contemporaneously available to the general public without restriction.
- 3.2 SPP Directors shall not give preferential access to any other information concerning the transmission system to any Third Party.
- 3.3 Any disclosures of transmission system information not in compliance with Sections 3.1 and 3.2 shall be posted immediately on the appropriate OASIS or Internet website.
- 3.4 SPP Directors may disclose transmission information to appropriate other parties if required (a) to comply with NERC Reliability Standards, or (b) to maintain or restore operation of the transmission system or generating units, or that may affect the dispatch of generating units.
- 3.5 SPP Directors may discuss with a Third Party a specific request for transmission service submitted by such Third Party. SPP Directors are not required to contemporaneously publicly disclose information provided in such discussions if the information relates solely to the Third Party's specific request for transmission service.

4. ACCESS TO FACILITIES

- 4.1 No employee, agent, or contractor engaged in wholesale or retail purchases or sales of electric energy shall have access to the SPP control center or backup control center except for educational tours. Such access must be approved in advance by an SPP Officer. Notification of such tours must be posted on the SPP OASIS.

5. IMPLEMENTATION OF TARIFFS

- 5.1 SPP Directors must strictly enforce all provisions of the SPP Tariff or any other tariff administered by SPP, if the tariff provisions do not permit the use of discretion.

- 5.2 Where a provision of the SPP Tariff or any other tariff administered by SPP permits the use of discretion, SPP Directors shall exercise that discretion in a fair and impartial manner that treats all customers in a nondiscriminatory manner.
- 5.3 SPP Directors shall not give any undue preference to any person in implementing the SPP Tariff or any other tariff administered by SPP.

6. RECORDKEEPING

- 6.1 SPP shall maintain records showing the transactions under the SPP Tariff or any other tariff administered by it for a period of three (3) years unless otherwise provided for in the tariff or by law or regulation. Records will be available for inspection by FERC.
- 6.2 SPP shall maintain a written log detailing the circumstances and manner in which SPP Directors exercise permitted discretion under the terms of any tariff. The information contained in this log is to be posted on the appropriate OASIS or Internet website within 24 hours of when an SPP Director exercises discretion under the terms of any tariff.

7. GENERAL RULES GOVERNING SPP DIRECTORS

- 7.1 No SPP Director may be an employee, director, consultant or contractor to any Third Party.
- 7.2
 - (a) No SPP Director shall have a financial interest in any Third Party.
 - (b) No SPP Director, or his/her immediate family members, may own securities¹ issued by any Third Party. For purposes of this section, “immediate family members” include: spouses; minor children; or any person for whom the Director has power of attorney or guardianship rights.
 - (c) If an SPP Director owns such securities, he/she must dispose of them within four months of:
 - (i) the commencement of engagement at SPP;
 - (ii) the time a new Third Party begins to conduct business with SPP; or
 - (iii) the date of receipt of a gift or inheritance or other taking of legal control of those securities.
 - (d) SPP Directors may indirectly own securities issued by a Third Party through a mutual fund or similar arrangement under which the SPP Director does not control the purchase or sale of such securities, except for any fund or arrangement specifically targeted towards the electric industry or the electric utility industry, or any segments thereof.
 - (e) SPP will maintain a listing of Third Party entities for SPP Directors’ reference.

¹ Securities include any equity or debt instruments issued by an entity, as well as any derivative instruments whose value is derived based on the value of any equity or debt instrument issued by an entity (e.g. option contracts).

(f) Exceptions to Section 7.2 may be considered on a case-by-case basis per the provisions of Section 9.5 of these Standards.

- 7.3 SPP Directors shall not put themselves in a position in which their personal interests might conflict with SPP's interests, SPP's ability to administer the SPP Tariff or any other tariff administered by SPP, or to perform its other obligations on a fair and impartial basis. A "conflict of interest" arises if an SPP Director is offered a gift by another party, where such gift is being made to influence the proposed recipient's actions in their position with SPP, or where acceptance of the gift would reasonably create that impression. Non-cash nominal gifts and entertainment customarily provided in the ordinary course of business will generally not give rise to a conflict of interest. Nominal gifts are gifts or entertainment of any form with token or modest value that will not place SPP Directors under any real or perceived personal obligation to the donor. Should a conflict of interest arise, the SPP Director is required to notify the Office of the General Counsel.
- 7.4 SPP Directors shall not personally accept any form of cash from other parties, or current and potential members, vendors and customers; or from any persons or entities with which SPP does or might do business.
- 7.5 SPP Directors shall not use company resources, including SPP's email or its facilities, to support a political campaign. Endorsements or work on a political campaign in a person's capacity as an SPP Director is strictly prohibited.

8. RELATIONSHIPS WITH OTHER PARTIES

- 8.1 Any payments made by SPP to another party, including members, vendors and customers, must be made only for identifiable, business-related purposes in relation to services or products that were provided to SPP. Payments must be reasonable and in relation to the services or products provided and must be provided in accordance with SPP policies and procedures.
- 8.2 SPP Directors are not permitted to give, offer or promise payments or gifts to another party with the intent to improperly influence (or which may appear to improperly influence) the party or to place such party under obligation to the SPP Director or SPP.

9. IMPLEMENTATION AND ENFORCEMENT

- 9.1 SPP will inform SPP Directors with regard to these Standards of Conduct.
- 9.2 SPP will require that each SPP Director execute the Standards of Conduct upon election and annually thereafter.
- 9.3 All SPP Directors must follow these Standards and are obligated to report, in a timely fashion, any possible violations they may witness or of which they become aware. Reporting a violation demonstrates a sense of responsibility and fairness to fellow SPP Directors, Third Parties, contractors, vendors and other parties with which the company engages. If an SPP Director believes he/she or another SPP

Director may have violated the Standards of Conduct, it is the SPP Director's responsibility to immediately report the violation to the Office of General Counsel. Reports and inquiries will be handled confidentially to the greatest extent possible.

- 9.4 Any SPP Director failing to comply with these standards may be subject to action, which may include reprimand, termination of engagement, or other action determined appropriate by SPP.

Violations of these Standards of Conduct include but are not limited to:

- a) Actions that directly violate these Standards
- b) Requesting another SPP Director, Regional Entity Trustee or SPP Employee to violate these Standards
- c) Failure to promptly report a known or suspected violation of these Standards
- d) Failure to cooperate in an SPP investigation of possible violations of these Standards
- e) Retaliation against another SPP Director, Regional Entity Trustee or SPP Employee for reporting a violation or ethical concern

- 9.5 Only the SPP Board of Directors may authorize a waiver of these Standards for officers, and any such waiver must be promptly disclosed to the SPP Membership. Only the Office of General Counsel, in consultation with the President/Chief Executive Officer, may authorize a waiver of these Standards for SPP Directors.

Compliance Statement
SPP Standards of Conduct

I, _____, have read SPP's Standards of Conduct and agree to comply with these standards.

(Signature)

(Date)

“This is provided further to our discussion of this topic at the December meeting. PJM has now filed to revise its Standards of Conduct to address materiality in applying the prohibitions on investments.”



PJM Interconnection
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Norristown, PA 19403-2497

Jennifer H. Tribulski
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July 19, 2010

VIA FEDERAL EXPRESS

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

Re: PJM Interconnection, L.L.C., Docket No. EL10- -000

Dear Ms. Bose:

PJM interconnection, L.L.C. ("PJM"), hereby submits for filing an original and 4 copies of the attached Petition For Declaratory Order along with a check in the amount of \$23,140.00 for the filing fee required by 18 C.F.R. §§ 385.207(c) and 381.302(a).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JHT' followed by a flourish.

Jennifer H. Tribulski
Counsel for,
PJM Interconnection, L.L.C.

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

PJM Interconnection, L.L.C.) Docket No. EL10-____-000

**PETITION FOR DECLARATORY ORDER OR, IN THE ALTERNATIVE,
REQUEST FOR LIMITED WAIVER OF 18 C.F.R. § 35.34(j)(1)(i)
OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rule 207 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.207, PJM Interconnection, L.L.C. ("PJM") requests that the Commission issue a declaratory order to find that PJM's application of the methodology described herein that will allow, under limited circumstances, employees and board members of PJM to hold a financial interest in certain companies or their affiliates that are defined by FERC as "Market Participants" but whose participation in PJM's markets are miniscule in relation to their overall business activities. PJM seeks to ascertain if its proposed methodology is appropriate despite the general prohibition of such activity in the Commission's regulations.¹ Clarification and guidance by the Commission is needed to enable PJM to administer its Code of Conduct in a feasible manner that is fully consistent with the independence requirement applied to RTOs, and to avoid unintended compliance issues so that independence will not be jeopardized.

Under its regulations, the Commission can exclude an entity from being defined as a market participant (as that term is used in Commission regulation), and hence exempt that entity from the general prohibition against financial investment, if the entity

¹ 18 C.F.R. § 35.34(j)(1)(i).

“does not have an economic or commercial interest that would be significantly affected by the [RTO’s] actions or decisions.”² PJM proposes to interpret this exemption through a methodology that would determine when an entity does not have an economic or commercial interest that would be significantly affected by PJM’s actions or decisions. In summary, PJM will examine publicly available information concerning PJM members, or their publicly traded affiliates, to determine whether they are engaged in generation, transmission or distribution of electricity and, if not, whether their transactions in PJM’s markets compared to their non-PJM related business activities are commercially and financially *de minimis*. PJM asks the Commission to approve the proposed methodology and declare that PJM’s application of the methodology would be an acceptable means for excluding an entity from the general prohibition against financial investments consistent with the Commission’s regulations.

In the alternative, PJM seeks a limited waiver of the regulations to apply the methodology on an on-going basis and allow its employees and board members to invest in the securities of those PJM market participants or their publicly traded affiliates whose core businesses are not electricity-related and whose market activity in PJM is *de minimis*.

I. COMMUNICATIONS

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

² 18 C.F.R. § 35.34(b)(2)(i).

Craig Glazer
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II. BACKGROUND

Consistent with Commission regulations requiring a regional transmission organization to maintain independence, PJM has adopted and administers a Code of Conduct that, among other things, restricts its employees, board members, their spouses and minor children (hereinafter referred to as “PJM personnel”) from directly owning the securities of its members and market participants. Whereas market participant traditionally described transmission-owning, generation-owning, load serving and electricity trading and marketing companies, in recent years non-traditional companies whose primary businesses cannot be described objectively as electricity or electricity-related related have joined PJM in increasing numbers. Many of these companies that have not previously participated in wholesale electricity market activities are now engaged in PJM’s demand response and energy efficiency markets. These non-traditional market participants, such as the ones identified in Exhibit A to this Petition,³ include large industrials, large consumer product retailers and financial

³ The companies listed in Exhibit A resulted from application of the two-part test described herein and primarily is based on 2009 data.

institutions that likely were not contemplated as market participants when the Commission issued its RTO rulemaking⁴ and adopted its RTO regulations.⁵

PJM is proposing a limited exception to this prohibition that would permit PJM personnel to own securities of market participants or their publicly traded affiliates when owning such securities would not present a material conflict of interest or otherwise compromise the independence of PJM personnel. PJM sets forth below its proposed procedure to ensure consistent and objective application of this policy. As explained in detail below, PJM believes its proposed methodology constitutes a reasonable implementation of the Commission's regulation where it permits an exclusion from the definition of market participant for those entities with economic or commercial interests that cannot be materially affected by an RTO's actions or decisions. Further, this limited exception will provide needed flexibility to ensure compliance with the Commission's regulations in a manner that is consistent with the reasoning behind such regulations – that is to ensure the independence of the RTO remains intact.

III. PETITION FOR DECLARATORY ORDER OR, IN THE ALTERNATIVE, REQUEST FOR WAIVER

A. DECLARATORY ORDER IS APPROPRIATE

PJM makes this request for a declaratory order (or alternatively a waiver) because it places the utmost priority in maintaining corporate compliance. Presently, the compliance obligation prohibits PJM personnel from owning the stock of market participants or their affiliated publicly traded parents. No PJM stakeholder or PJM

⁴ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁵ 18 C.F.R. § 35.34.

personnel asked PJM to make this request. Rather, PJM's Office of General Counsel initiated this effort out of concern that the compliance obligation facing PJM personnel has become unduly complicated and counterintuitive so as to unnecessarily increase the risk of inadvertent non-compliance.

PJM characterizes the obligation as complex and counterintuitive because for certain public companies where ownership is prohibited, their participation in PJM is ancillary and remote to the core lines of business for which the company is known. This attenuation places an unreasonable burden on PJM personnel to "connect the dots" between a company which is commonly regarded as running a business wholly unrelated to the business of electricity, but might somewhere in its vast corporate expanse, participate insignificantly (perhaps through an indirect subsidiary) in PJM. Further, running this risk of non-compliance is unnecessary. When applied so indiscriminately, the rule meets no underlying policy or conflict of interest objective because no action that PJM personnel could take in their role with the RTO could conceivably affect the stock price of the PJM market participant.

The Commission's existing regulation recognizes this logic by anticipating circumstances where an exemption (by way of excluding companies from the definition of market participant)⁶ is appropriate to avoid blindly applying the rule where it would serve no underlying purposes. PJM submits that the instant request represents a reasonable, conservative, objective and self-executing means to implement this exemption and seeks Commission guidance concerning the consistency of this proposed policy with the Commission's rule. If granted, PJM will implement this

⁶ Specifically excluded from the definition of market participants are entities that do not have an economic or commercial interest could be significantly affected by the RTO's actions or decisions. 18 C.F.R. § 35.34(b)(2)(i).

proposal through its Code of Conduct and ongoing Code of Conduct training as described in Section III.B, below.

Section 554(e) of the Administrative Procedure Act (“APA”) provides that an agency in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty.⁷ Following this APA guidance, Rule 207(a)(2) of the Commission’s Rules of Practice and Procedure “expressly provides for petitions seeking: ‘A declaratory order or rule to terminate a controversy or remove uncertainty.’”⁸ Issuing a declaratory order is appropriate to provide definitive guidance for all interested parties.⁹ It is in the public interest and therefore a proper use of the Commission’s discretion to find that PJM’s proposed methodology will result in exclusion of the appropriate entities from the general prohibition against RTO personnel from owning a financial interest in its market participants.

B. METHODOLOGY TO ALLOW CERTAIN ENTITIES TO BE EXCLUDED FROM THE GENERAL PROHIBITION AGAINST FINANCIAL INTEREST IN MARKET PARTICIPANTS

PJM asks the Commission to find its proposal consistent with those regulations that allow the Commission to exclude certain entities from the definition of market participants, and, as a result, remove such entities from the general prohibition against the RTO’s personnel from owning a financial interest in them. As stated previously, currently PJM prohibits PJM personnel from owning the securities of market participants or their affiliates. In other words, all market participants and their affiliates are on a “prohibited investments” list. Under PJM’s proposal, it could remove a market

⁷ 5 U.S.C. § 554(e) (2002).

⁸ *USGen New Engl., Inc.*, 118 FERC ¶ 61,172, at P 18 (2007).

⁹ See, e.g., *Nicole Gas Prod. Ltd.*, 103 FERC ¶ 61,328 (2003); *Express Pipeline Partnership*, 75 FERC ¶ 61,303 (1996).

participant or its affiliates from the prohibited investments list if (i) the company's primary business purpose is not electricity-related and (ii) the company's revenues and expenditures in PJM markets are not significant in relation to the company's total revenues over the same time period. This test is conservative as evident from the description as follows:

1. Is the entity an “electricity-related” company?

First, PJM will determine whether the primary business purpose of the market participant or its affiliate is electricity-related according to the company's code(s) under the North American Industry Classification System (“NAICS”). PJM will classify a company as an electricity-related company, and retain such company on the prohibited investments list, if its NAICS code(s) indicates a company whose primary business purpose concerns the generation, transmission, or distribution of electricity (*i.e.*, 221111 to 221122). If the company's NAICS code demonstrates its primary business purpose is not electricity-related, PJM will then apply the second prong of this determination.

2. Is the entity's participation in PJM's markets *de minimis* compared to its total business activities?

Next, if the market participant or the affiliate is not an electricity-related company, PJM then will determine whether the company's revenues and expenditures in PJM's markets are insignificant in relation to the company's total revenues over the same time period. A market participant's total “activity” equals the sum of the absolute value of all of its purchases and sales in the applicable ISO/RTO markets during the relevant time period. For this determination, PJM will evaluate only those companies for whom reliable, public information is available (*e.g.*, companies whose securities are registered with the Securities and Exchange Commission). For market participants or their

subsidiaries, PJM will determine whether the market participant's total activity in its markets is less than 1% of its gross revenues over a set period of time (e.g., the company's most recently completed fiscal year).

Where the publicly traded company is a parent of the market participant, PJM will determine whether the market participant's total activity in the PJM markets is less than 1% of the parent company's gross revenues over a set time period (e.g., the company's most recently completed fiscal year). PJM will apply the test for such companies where the market participant's financial information has been consolidated into its parent company's financial reports. Finally, if there is more than one market participant with the same parent company participating in PJM's markets, PJM will aggregate these market participants' purchase and sale data in applying the test to this class of companies.

3. Non-discriminatory, Ongoing and Transparent Implementation

A list of PJM members or their publicly traded affiliates that are indicative of the companies which could be excluded from the general prohibition against PJM personnel from owning the securities of such companies is included in Exhibit A to this petition. This list would be considered a "permitted investments" list. PJM proposes to apply the methodology to those companies on the "permitted investments" list, and any new companies joining PJM, at least on a bi-annual basis to coincide with PJM's Code of Conduct that requires PJM personnel to divest its financial interests in members or their publicly traded affiliates within six months of the employee or the company joining PJM. PJM will post the "permitted investments" list on both its internal and external website for full transparency.

C. IN THE ALTERNATIVE, IF THE COMMISSION DECLINES TO ISSUE A DECLARATORY ORDER AS REQUESTED, PJM SEEKS WAIVER OF THE REGULATIONS WITH RESPECT TO CERTAIN ENTITIES

PJM asserts that the Commission's regulations allow the Commission to find that PJM's methodology will result in the appropriate exclusion of entities that should not otherwise be defined as market participants. However, if the Commission declines to issue the declaratory order that PJM seeks, then PJM asks the Commission to grant an on-going waiver of 18 C.F.R. §35.34(j)(i) with respect to entities that (1) are not electricity-related and (2) engage in a *de minimis* level of activity in the PJM markets compared to its total business activities, which will be determined through on-going application of PJM's proposed methodology.

The Commission will grant a waiver of its regulations for good cause shown.¹⁰ Good cause exists to waive the general prohibition against financial investment as described herein because, as applied to the entities that would pass under PJM's methodology, the regulation prohibiting RTO personnel from having a financial interest in its market participants creates unnecessary uncertainty and does not further the Commission's independence goal.

IV. CONCLUSION

WHEREFORE, PJM respectfully requests the Commission grant PJM's petition for declaratory order or, in the alternative, a limited waiver of 18 C.F.R. §35.34(j)(1)(i) to allow PJM personnel to have a financial interest in certain entities as described in detail herein.

¹⁰ See, e.g., *Southwest Power Pool, Inc.*, 124 FERC ¶ 61,220 (2008).

Respectfully submitted,



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*On behalf of
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Jignasa Gadani,
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Mason Emmett,
Associate Director, FERC Office of Energy Policy and Innovation

EXHIBIT A

- Air Liquide Industrial US
- Air Products & Chemicals, Inc.
- ArcelorMittal USA Inc.
- Bank of America, NA
- Citigroup
- Domtar Paper Company, LLC
- Elkem Metals Company – Alloy, LP
- Gerdau Ameristeel Energy, Inc.
- HSBC
- Kimberly Clark Corporation
- Lehigh Portland Cement Company
- Bank of America (Merrill Lynch)
- Proctor & Gamble
- Royal Bank of Canada
- Safeway
- SeverStal
- Societe General
- Target
- UBS



Southwest Power Pool, Inc.

SPP STAFF

Recommendation to the Corporate Governance Committee

September 2, 2010

Revisions to Membership Agreement – Definition of Transmission Owner

Background

With the implementation of SPP's new highway/byway cost recovery method, it is necessary to change the definition of Transmission Owner (TO) in the Tariff and the Membership Agreement.

Analysis

This Committee has discussed an expanded definition of Transmission Owner and other revisions in the context of the continuing obligation to pay transmission costs in the event of withdrawal from membership (which remains pending). The definition also impacts what type of entity qualifies as a TO, and thus when in the development process an entity can begin to recover costs.

The following revisions to the current definition are recommended to address this immediate concern. These revisions will allow for the recovery of costs by entities constructing transmission facilities in the SPP region that do not fit in the current rules under the Tariff. No additional changes should be needed as the work on withdrawal obligations continues. The Regional Tariff Working Group in parallel is considering similar revisions to the definition of TO in the Tariff and relevant revisions to Attachment O. If approved, these revisions would ultimately be presented at the October Board of Directors meeting for approval (following the requisite notice to the Membership).

1.26 Transmission Owner

A signatory to this Agreement which: (1) transfers functional control related to the rates, terms and conditions of the OATT to SPP by executing this Agreement; (2) ~~or~~ appoints SPP under another agreement to provide service under the Transmission Tariff over Tariff Facilities which it owns or controls; (3) is assigned by SPP to construct and accepts the obligation to construct new Tariff Facilities; or (4) undertakes another Transmission Owner's obligation to construct Tariff Facilities in accordance with Section 3.3(c) of this Agreement and Attachment O of the SPP OATT.

Recommendation

SPP Staff recommends revisions to the Membership Agreement to update the definition of a Transmission Owner.

Approved: Corporate Governance Committee



Action Requested: Approve recommendation

PRINCIPLES FOR WITHDRAWAL OBLIGATIONS FOR ASSIGNED TRANSMISSION COSTS

SPP has a formula for calculating the withdrawal fee for an exiting Member to cover that Member's pro rata share of SPP, Inc.'s financial obligations at the effective date of the withdrawal. With the implementation of regional cost allocation for transmission projects, it is necessary for SPP to revise its governing documents to address an exiting Member's continued obligations for transmission costs allocated to it. These principles are intended to provide guidance to determine the appropriate revisions.

- SPP encourages voluntary membership in the organization. SPP policies and governance should encourage membership while protecting the Membership from undue monetary burden that may result due to a Member's withdrawal from the organization.
- An exiting Member should incur its share of assigned transmission costs upon withdrawal from Membership.
- Remaining Members should not incur increases in their respective shares of assigned transmission costs due to the withdrawal of a Member.
- The withdrawal obligation for transmission costs should be calculable at any date, as is the withdrawal fee for SPP's financial commitments.
- The withdrawal obligation for transmission costs should be payable in full at the time the withdrawal is effective.
 - Funds collected will not be treated as revenue for SPP, but as cost recovery for the TOs. A distribution process will be developed to implement this.
- The calculation of the withdrawal obligation for transmission costs will include existing projects and estimated costs for those projects for which Notices to Construct have been issued.
- The effective date of withdrawal will remain 12 months following notice, or such other mutually agreeable date, pending upon any required regulatory approval(s).
- Upon receipt of notice of withdrawal and statement of an effective date, SPP staff will begin the planning process for removing the Member. A fee of \$200,000 will be payable at the time of the notice to cover SPP's costs in removing the Member.
 - If the withdrawal is rescinded within six months of the notice date, 75% of the fee is refundable.
 - If the withdrawal is rescinded within six months of the effective date, no portion of the fee is refundable.
- An exiting Member will no longer receive payments toward transmission costs for facilities previously assigned to the region. This is a benefit of membership that is forfeited upon exit.
- A Network Service Customer is liable for transmission costs assigned regardless of the status of the NITSA.
- SPP should establish an initial term for membership for Transmission Owners of five years with no provision for early termination during that term.