

FERC Order 1000 – Financial Requirements

June [26](#), 2012

SPP Finance Committee Task Force on Order 1000



Revision History

Date or Version Number	Author	Change Description	Comments
5/30/2012	Thomas P. Dunn	First draft	Based on May 24 meeting
6/12/2012	Thomas P. Dunn	Second draft	Based on June 6 meeting

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FERC Order 1000 Background

On July 21, 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000. Per the Order, public utility transmission providers must either amend their open access transmission tariffs (“OATT”) to comply with the requirements of Order 1000 or demonstrate how their existing OATT provisions already comply.

In response to Order 1000, the Southwest Power Pool, Inc. (“SPP”) Board of Directors tasked SPP’s Strategic Planning Committee (“SPC”) with leading SPP’s response to the regional policy requirements contained in Order 1000. After initial meetings of the SPC to discuss requirements of Order 1000, the SPC formed the SPC Task Force on Order 1000 (“SPCTF”) to examine SPP’s existing OATT to determine whether SPP’s current transmission planning and cost allocation provisions comply with the Order 1000 requirements and whether additional revisions will be necessary. Further, the SPCTF was tasked with proposing how SPP should respond in its compliance filing with FERC.

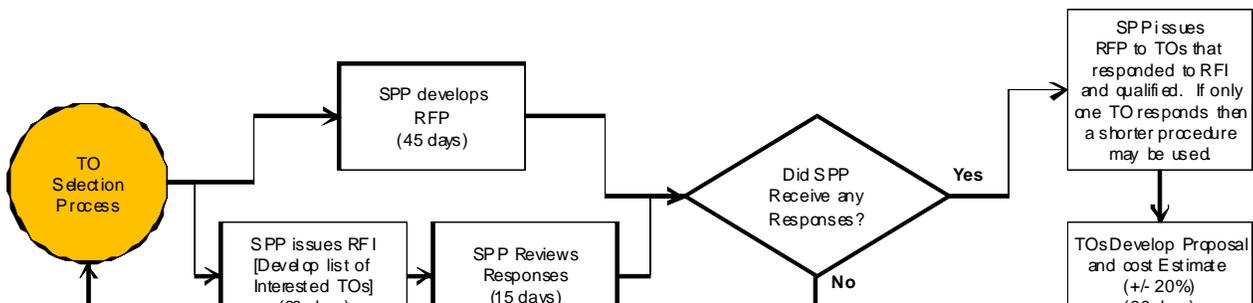
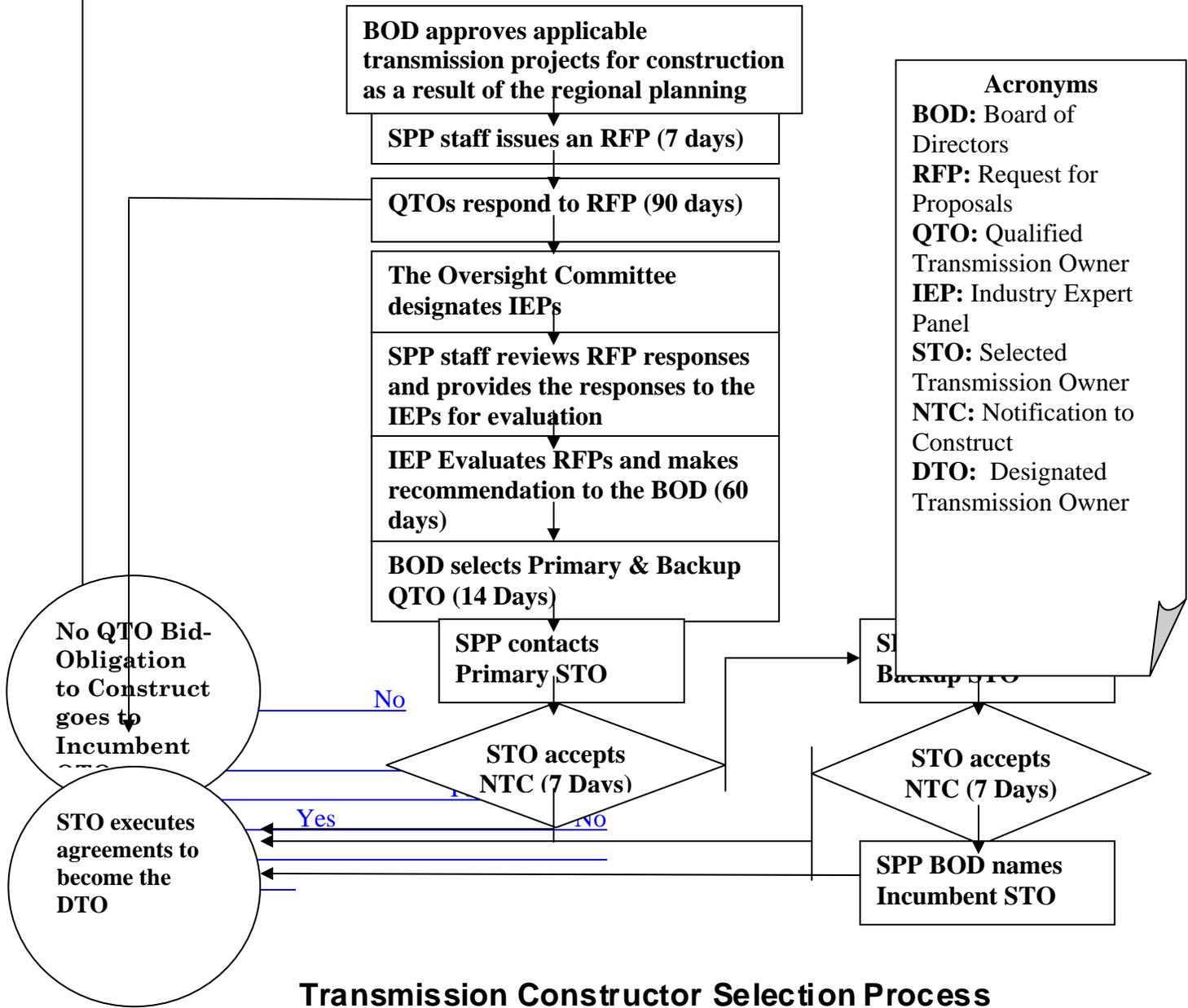
Order 1000 requires each public utility transmission provider to revise its OATT to demonstrate that the regional transmission planning process in which it participates has established appropriate qualification criteria for determining an entity’s eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation, whether that entity is an incumbent transmission provider or a non-incumbent transmission developer. The SPCTF unanimously recommends that SPP’s compliance filing contain Transmission Owner qualification requirements that must be met **before** a potential Transmission Owner can participate in SPP’s Competitive Solicitation Process.

Recommended Transmission Owner qualification criteria include:

1. Threshold eligibility criteria that will be developed by the SPC Task Force on Order 1000;
2. Financial criteria that will be developed by SPP’s Finance Committee; and
3. Managerial criteria that will be developed by the SPC Task Force on Order 1000 demonstrating ability to site, construct, own and operate transmission projects.

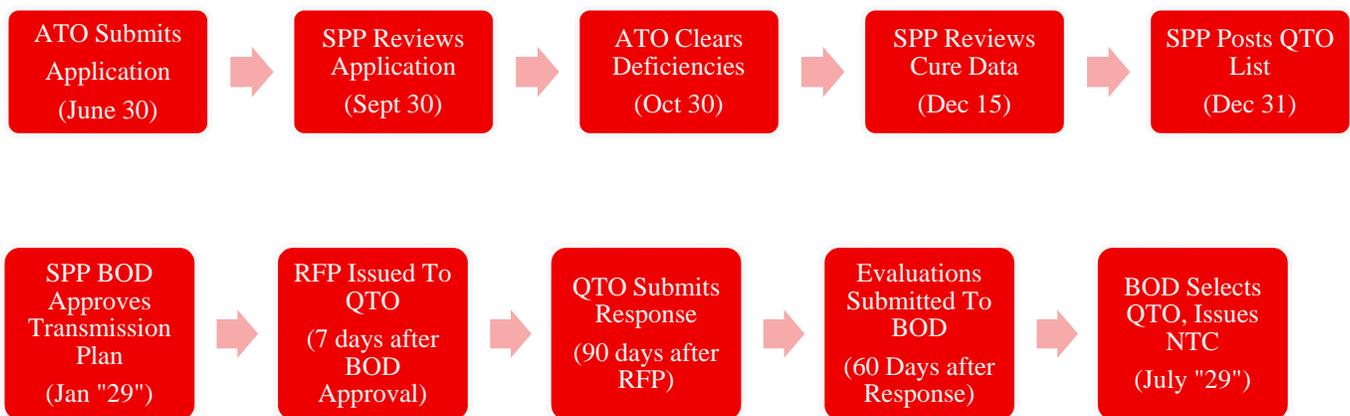
The flow chart below illustrates the Transmission Owner Selection Process recommended by the SPC Task Force on Order 1000.

TO Selection Process Flowchart (6/19/12)



Application and Process To NTC Issuance

The SPCTF’s final report recommends the Applicant Transmission Owner (“ATO”) submit an application to become a Qualified Transmission Owner (“QTO”) prior to June 30 of the calendar year prior to the year the ATO plans to participate in SPP’s Competitive Solicitation Process. SPP will then have 90 days to review the application and make a determination if the ATO meets the requirements of a QTO or if the application contains deficiencies. ATOs submitting applications with deficiencies will have 30 days to cure the deficiencies after being notified of the deficiencies. SPP will then have 45 days to determine if the deficiencies have been cured. A final list of all QTOs will be posted on December 31. Additionally, once qualified, the QTO will not be required to demonstrate its qualifications in any subsequent SPP planning process cycles or with respect to any subsequent SPP Competitive Solicitation Processes unless the QTO experiences a change in circumstances. A simplified timeline of the entire process is illustrated below.



The application submitted by the ATO for consideration to become a QTO will address three areas:

1. **Threshold eligibility criteria:** These criteria address basic requirements to successfully fulfill the role of a Transmission Owner in SPP (example: does ATO meet membership requirements of SPP and have the ability to execute the SPP membership agreement)
2. **Financial criteria:** These criteria are designed to ensure the ATO has the financial capacity to fulfill the role of a Transmission Owner in SPP (example: does ATO have access to sufficient capital to complete transmission project)
3. **Managerial criteria:** An Application from an ATO must include a showing that the ATO has expertise to construct, own, and operate electric transmission facilities.

[The Finance Committee Task Force on Order 1000 recommends the following changes to the application process:](#)

1. [If the ATO is not a member in good standing of SPP, the ATO must submit an application fee of \\$6,000 with its application. For members of SPP this fee is covered by their annual membership fee.](#)

2. Approval is valid for a five year term. After five years the QTO must submit a full application package and be re-approved as a QTO.
3. Prior to June 30 of years 2, 3, 4, and 5 following approval as a QTO, the QTO must submit a representation letter indicating any material changes from the application and representing that the QTO continues to meet the threshold, financial, and managerial requirements to be a QTO.
4. If the QTO is not a member in good standing of SPP then the QTO must also submit a \$1,000 filing fee with its annual representation letter. For members of SPP this fee is covered by their annual membership fee.

3.

Financial Requirements

The determination of Financial Requirements is intended to ensure ATOs have the capacity to access capital to meet the project costs plus a reasonable contingency and the ATO is an entity sustainable to meet the ongoing maintenance requirements of the project. Absent establishment of basic financial capacity, the Competitive Solicitation Process runs the risk of becoming ineffective in actually meeting the objective of developing needed transmission projects because winning bidders may not be capable of performing on the project (i.e. accessing sufficient capital to fund the project).

The Finance Committee Task Force on Order 1000 identified several alternatives intended to determine the financial capacity of an ATO prior to the ATO becoming a QTO. These alternatives are detailed along with potential issues which must be addressed. For purposes of this report the alternatives will be grouped into two categories: i) pre-qualification, ii) post-qualification.

Pre-Qualification

The Pre-Qualification financial requirements specifically address the task assigned by the SPC Task Force on Order 1000 which is to identify minimum criteria to be met prior to awarding QTO status to an ATO.

Investment Grade Rating

ATOs would be required to demonstrate a senior unsecured investment grade rating or an issuer rating from a “nationally recognized statistical rating organization¹”. Investment grade ratings for the three major-acceptable rating organizations are as follows:

Moody's	S&P and Fitch
Aaa	AAA
Aa1	AA+
Aa2	AA
Aa3	AA-
A1	A+
A2	A
A3	A-
Baa1	BBB+
Baa2	BBB
Baa3	BBB-

- *Not all ATOs carry debt rating issued by NRSROs*
- *Is rating from any NRSRO acceptable?*
- *Is investment grade enough/too much?*
- *Would downgrade to below investment grade trigger suspension of QTO status or revoke status immediately?*

¹ A **Nationally Recognized Statistical Rating Organization (NRSRO)** is a credit rating agency (CRA) that issues credit ratings that the U.S. Securities and Exchange Commission (SEC) permits other financial firms to use for certain regulatory purposes. NRSROs acceptable to SPP are ~~Currently there are nine organizations designated as NRSROs:~~ Standard & Poor's, Moody's Investors Service, and Fitch Ratings, ~~Kroll Bond Rating Agency, A.M. Best Company, Dominion Bond Rating Service, Ltd., Japan Credit Rating Agency Ltd., Egan Jones Rating Company, and Morningstar Inc.~~

Corporate Commitment Letter Guaranty

~~A Corporate Commitment Letter is a legally valid document that commits two parties to a financial assistance agreement. In the case of an ATO, the Corporate Commitment Letter would be issued by a party with an investment grade rating indicating it will support the ATOs obligations (see sample attached at Exhibit A). If an ATO does not have an investment grade rating~~

issued by an approved NRSRO the ATO may utilize a Guaranty from its parent/affiliated organization that possesses and investment grade rating from an approved NRSRO.

A guaranty obligates the guarantor entity to satisfy the obligations of the guarantee entity. Parental Guaranties are acceptable where the ATO is a subsidiary, joint venture, or affiliate of the parent. The guaranty will be in the form consistent with Appendix D of Attachment X of the SPP Tariff (see attached) and will satisfy the following requirements:

1. Be duly authorized by the guarantor and signed by an officer of the guarantor
2. State a minimum effective period of five years, or provide for automatic renewal subject to cancellation on no less than sixty (60) days notice and provided that in all events the guaranty is effective for all obligations of the ATO undertaken prior to cancellation
3. Include certification of the corporate secretary that the execution, delivery, and performance of the guaranty have been duly authorized
4. Certify that the guaranty is not in violation of other undertakings or requirements applicable to the guarantor, and enforceable against the guarantor in accordance with its terms
5. Obligate the guarantor to submit a representation letter annually as is also required of the ATO/QTO
6. Secure all obligations of the ATO/QTO under or in connection with the SPP Tariff and/or other Agreements; and
7. Be supported by adequate consideration and be otherwise binding as a matter of law
8. Include as an attachment thereto the resolution(s) of the board of directors or other governing body of the guarantor authorizing the guaranty.

- ~~• While this is a legally binding agreement one should question its enforceability (and cost to enforce).~~
- ~~• Can this apply to a municipality? Cooperative?~~
- ~~• Is requirement it be issued by investment grade entity firm?~~

- ~~• Not useful for start-up organizations~~
- ~~• Is qualitative analysis valid for ATO qualification purposes?~~
- ~~• Quantitative analysis weighted less for "Not For Profit" customers (40%-50%)~~

SPP Credit Scoring Methodology

~~Article Four of Attachment X to the SPP tariff describes the credit underwriting process utilized by SPP to determine the creditworthiness of customers of the tariff. The process includes both a qualitative and quantitative review of each customer ultimately ending with a single credit score for a customer; scale is from 1—6 with 1 being the best rating and 6 being the worst.~~

Bank Reference Letter or Bonding Indication

A formal letter of reference from a commercial bank or bonding indication letter from an insurance or surety company either of which indicate a willingness to extend credit to the ATO in an amount of at least \$10,000,000 (for bank) or willingness to provide surety bond in the amount of at least \$10,000,000 (for insurance/surety company).

Commercial bank reference letters acceptable to SPP will be the issued by a financial institution organized under the laws of the United States or any state of the United States or the District of Columbia or a branch or agency of a foreign commercial bank located in the United States, with a minimum corporate debt rating of an “A-” by S&P, “A3” by Moody’s, “A-” by Fitch.

Bonding indication letters acceptable to SPP will be issued by insurance or surety companies with a minimum financial strength rating from A.M.Best of A- X².

Municipal / Cooperative / Not For Profit Entities

Municipalities, cooperatives and other not for profit entities may meet the pre-qualification financial requirements by providing evidence of direct rate setting authority or taxing authority. The ATO must have this authority and cannot rely on an affiliation to another entity which possesses the rate setting or taxing authority.

² A- rating indicates excellent or superior financial strength. X rating indicates financial size as measured by policyholders surplus of at least \$500,000,000

Post-Qualification

Post-qualification financial requirements are intended to provide assurance that the QTO has the financial capacity to support the individual transmission projects for which bids are submitted. It is expected that post-qualification financial requirements would be incorporated as a critical component of the QTOs RFP response [and evaluated by the IEPs](#).

The SPCTF has worked to craft the requirements of the RFP response. The preliminary work product details the following requirements:

- **General:** The RFP will include an overview of the purpose for the RFP including: the need for the transmission project, regulatory context and authority, confidentiality statement, and other necessary information.
- **Proposal Submission Content Requirements and Procedures:** The RFP will include a deadline for all proposal submissions. The RFP will also identify all minimum bid submission requirements. Each RFP respondent will be required to include all bid conditions in its proposal.
- **Cost and Financial Requirements:** The RFP will require each respondent to provide financial information specific to each transmission project for which it submits a proposal. This information will include, but not be limited to: demonstration of financing and itemized revenue requirement calculations.
- **Engineering:** The RFP will require each respondent to provide engineering information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to engineering design of the project and technical requirements.
- **Construction:** The RFP will require each respondent to provide construction information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to anticipated project timeline, demonstration of past transmission construction experience, equipment acquisition processes, description of applicable ROW / real estate acquisition process, description of routing process, description of permitting, description of construction clearance processes, and identification of responsible party for construction inspection.
- **Operations and Maintenance:** The RFP will require each respondent to provide operations and maintenance information specific to each transmission project for which it submits a proposal. This information may include, but not be limited to: demonstration of operations, statement of which entity will be operating and maintaining the transmission facility, storm / outage response plan, maintenance plan, staffing, equipment, crew training, and record of past maintenance and outage performance.
- **Information Exchange:** The RFP will include information exchange requirements such as identification of data required to be provided to the SPP in accordance with NERC reliability standards, data of design of the facilities for the Transmission Provider, and CEII requirements.
- **Safety program/Current/past statistics:** The RFP will require each respondent to provide safety information such as identification of the internal safety program, contractor safety program, and safety performance record.

- **Evaluation Procedure:** The RFP will include a description of the proposal evaluation procedure, including the statement of proposal evaluation methodology, criteria for acceptable proposals, and identification of applicable proposal evaluation fees.
- **Attachments:** The RFP will be a standard form that the respondent must fill out and may supplement with attachments demonstrating the information outlined above.

QTO Pre-Selection Criteria

Bid Bond: Required from all QTOs that do not have an investment grade rating by a NRSRO or do not have a ~~corporate commitment letter~~ Guaranty from an entity that carries an investment grade rating issued by a NRSRO.

A bid bond issued by an insurance company with a minimum A.M. Best rating of A- X. A bid bond is issued as part of a bidding process by the surety to the project owner, to guarantee that the winning bidder will undertake the contract under the terms at which they bid. A bid bond guarantees that the “obligee” will be paid the difference between the principal's tender price and the next closest tender price. This action is only triggered should the principal be awarded the contract but fails to enter into the contract, as agreed, with the obligee. The bid bond penalty is generally ten percent of the bidder's tender price. Contractors prefer the use of bid bonds because they are a less expensive option and they do not tie up cash or bank credit lines during the bidding process. Owners and general contractors also use bid bonds because they establish and confirm that the bidding contractor or supplier has the support of a Surety Company and is qualified to undertake the project.

Evidence of Financing: The QTO or the entity providing the corporate commitment letter must demonstrate an ability to secure capital sufficient to fund the project plus a reasonable amount of contingency. The evidence may consist of: i) demonstrated history of securing financing, ii) term sheet from investors indicating desire to fund the project, iii) adequate cash, investments, or lines of credit to fund the project plus reasonable contingency, iv) other?

Material Conditions: QTO must disclose any bankruptcy, dissolution, merger, or acquisition within the past five years of the QTO, parent, controlling shareholder, or entity providing Corporate Commitment letter. The QTO must also prove that there are no remaining material issues from any of these aforementioned events.

Financial Plan & Business Plan: Formal plans indicating how the QTO anticipates operations of the project to progress, both during construction and post-construction.

- *What minimum requirements for the surety to qualify?
A.M. Best rating?*

QTO Post-Selection Criteria

Firm Capital Commitment: Upon notification of selection of the QTO to be the Designated Transmission Owner (“DTO”) for the project, the DTO must provide firm commitment of capital sufficient to complete the project. Evidence can be in the form of a binding commitment letter from lenders, cash held in escrow, performance & payment/surety bond, etc., existing balance sheet liquidity or demonstrated history of ability to obtain adequate capital to support the project.

Evidence of Ability to Construct and Operate Transmission: Generally provided by state regulators.

Execute SPP Membership Agreement: DTO becomes a full member of SPP and obligated to all conditions of the Membership Agreement.

Other Questions or Open Issues (random order)

- *Currently QTO has ~~10~~7 days to accept NTC otherwise it will be offered to next highest backup ranked QTO*

- a) Can SPP require QTO or DTO to demonstrate authority to construct and operate transmission within the Competitive Solicitation Process?
- b) View on allowing specialists to bid on portions of projects? Multiple specialists without single “parent” organization?
- c) Change in ownership of DTO post-selection?
- d) Do financial requirements apply to SPP members? Incumbent transmission owners?
- e) Demonstrate financial ability to maintain project?
- e)f) Financial gating, how would this be utilized in evaluation of responses to RFP?

Exhibit A

Mary Homer Clark
Green Recycling Solutions
PO Box, 679
Trenton, New Jersey 09834-48458

Date: 1st of February 2012

Hamilton Clark
Director, Waste Disposal Operations
New Jersey Department of Environmental Protection
PO Box 706
Trenton, New Jersey 09834-48458

Reference: Application for financial assistance as per Project List for SFY 2012 and NJAC 389-9-1.

Dear Mr. Clark,

This is in reference to the provisions of the Priority System, Intended Use Plan and Project List for SFY 2012 and NJAC 389-9-1. As the authorized representative for my firm on the project, we hereby commit to meet the project deadlines and the deadlines for financial application as defined by the trust and the NJDEP for participation in the SFY2012 Financing Program.

We as a firm understand that a failure on our part to meet the requirements as specified and the deadlines as set by the New Jersey Department of Environmental Protection can result in legal action and hold us ineligible for the 2012 Financing Program. Enclosed please find a project ranking form, including a list of proposed modifications to the information representing list given earlier.

Thanking you,

Yours sincerely

(M.H.Clark)

Mary Homer Clark

Green Recycling Solutions **GUARANTY AGREEMENT**

This Guaranty Agreement (the "Guaranty") is made by _____ ("Guarantor"), a _____ corporation, in favor of Southwest Power Pool, Inc. ("Creditor"), an Arkansas **[non-stock] corporation.**

WHEREAS, one or more direct or indirect subsidiaries of the Guarantor (each referred to individually as "Debtor" and collectively as "Debtors") and the Creditor are parties to [DESCRIBE AGREEMENT(S)] (collectively "Agreements");

WHEREAS, Guarantor is the direct or indirect parent of the Debtor, will receive substantial and direct benefits from the extensions of credit contemplated by the Agreements and has agreed to enter into this Guaranty to provide assurance for the performance of Debtor's obligations in connection with the Agreements and to induce the Creditor to enter into the Agreements; and

WHEREAS, the execution and delivery of this Guaranty is a condition to Creditor's further performance of its obligations under the terms of the Agreements;

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

1. **Guaranty.** Guarantor hereby unconditionally and absolutely guarantees the punctual payment as and when due of Debtor's payment obligations arising under any Agreement, as such Agreement may be amended or modified from time to time, together with any interest thereon (collectively, the "Guaranteed Obligations"). Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and Guarantor shall have no obligation otherwise to perform under any Agreement, including, without limitation, to sell, deliver, purchase, receive, or transmit any electrical energy product or service.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:
 - (a) any lack of validity or enforceability of or defect or deficiency in any Agreement or any other documents executed in connection with any Agreement;

 - (b) any modification, extension or waiver of any of the terms of any Agreement;

 - (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Agreement or any other agreement or instrument executed in connection therewith;

 - (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed, or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from this Guaranty or any other guaranty, for all or any of the Guaranteed Obligations;

 - (e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Creditor to exercise, in whole or in part, any right or remedy held by Creditor with respect to any Agreement or any transaction under any Agreement;

 - (f) any change in the existence, structure or ownership of Guarantor or any Debtor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Debtor or its assets; or

 - (g) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Debtor or any other individual, partnership, joint venture, corporation, association, trust or other enterprise that is a party to any Agreement, or any other agreement or instrument (including any guarantor) in respect of the Guaranteed Obligations, other than payment in full of the Guaranteed Obligations.

The obligations of the Guarantor hereunder are several from any Debtor or any other person, and are primary obligations concerning which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty,

except as expressly contained herein. It shall not be necessary for Creditor, in order to enforce payment by Guarantor under this Guaranty, to show any proof of any Debtor's default, to exhaust its remedies against any Debtor, any other guarantor, or any other person liable for the payment or performance of the Guaranteed Obligations. Creditor shall not be required to mitigate damages or take any other action to reduce, collect, or enforce the Guaranteed Obligations.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by Creditor upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Debtor or any other guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Debtor or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

3. **Waiver.** This is a guaranty of payment and not of collection. Guarantor hereby waives:

- (a) notice of acceptance of this Guaranty, of the creation or existence of any of the Guaranteed Obligations and of any action by Creditor in reliance hereon or in connection herewith;
- (b) notice of the entry into any Agreement between any Debtor and the Creditor and of any amendments, supplements or modifications thereto; or any waiver of consent under any Agreement, including waivers of the payment and performance of the obligations thereunder;
- (c) notice of any increase, reduction or rearrangement of any Debtor's obligations under any Agreement or any extension of time for the payment of any sums due and payable to the Creditor under any Agreement;
- (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and
- (e) any requirement that suit be brought against, or any other action by Creditor be taken against, or any notice of default or other notice be given to, or any demand be made on, Debtor or any other person, or that any other action be taken or not taken as a condition to Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against Guarantor.

4. **Expenses.** Notwithstanding and in addition to the limit on Guarantor's liability hereunder set forth in Section 1, Guarantor agrees to pay on demand any and all costs, including reasonable legal fees and expenses, and other expenses incurred by Creditor in enforcing Guarantor's payment obligations under this Guaranty; provided that the Guarantor shall not be liable for any expenses of Creditor if no payment under this Guaranty is due.

5. **Subrogation.** Guarantor shall be subrogated to all rights of Creditor against the Debtors in respect of any amounts paid by Guarantor pursuant to this Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Creditor against any Debtor or any collateral which the Creditor now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to Creditor in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all the Guaranteed Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of Creditor and shall forthwith be paid to Creditor to be applied to the Guaranteed Obligations. If (a) the Guarantor shall perform and shall make payment to Creditor of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, Creditor shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by Guarantor.
6. **Setoff.** The Creditor is hereby authorized at any time, to the fullest extent permitted by law, to set off and apply any deposits (general or special, time or demand, provisional or final) and other indebtedness owing by the Creditor to or for the account of Guarantor against any and all of the obligations of Guarantor under this Guaranty, irrespective of whether or not the Creditor shall have made any demand under this Guaranty or such Agreement and although such obligations may be contingent and unmatured. The Creditor agrees promptly to notify Guarantor after any such set-off and application made by the Creditor provided that the failure to give such notice shall not affect the validity of such set-off and application.
7. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, by express courier with traceable receipt, by facsimile, or personally delivered. Notices shall be sent to the following addresses:

If to Creditor:

Southwest Power Pool, Inc.
415 N. McKinley, #140
Little Rock, AR 72205
Attention: Financial Coordinator

If to Guarantor:

8. **Demand and Payment.** Any demand by Creditor for payment hereunder shall be in writing, signed by a duly authorized officer of Creditor and delivered to the Guarantor pursuant to Section 6 hereof, and shall (a) reference this Guaranty, (b) specifically identify the Debtor, the Guaranteed Obligations to be paid and the amount of such Guaranteed Obligations, and (c) set forth payment instructions. There are no other requirements of notice, presentment or demand. Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within three (3) business days of receipt of such demand.
9. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of Creditor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
10. **Term; Termination.** This Guaranty shall continue in full force and effect for the term of the Agreement. Notwithstanding the foregoing, this Guaranty may be terminated at any time by the Guarantor by providing at least sixty (60) days' prior written notice to Creditor; provided, however, upon termination hereof, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any obligations incurred prior to the termination date, and any fees and costs of enforcement in connection herewith.
11. **Assignment; Successors and Assigns.** Creditor may, upon notice to Guarantor, assign its rights hereunder without the consent of Guarantor. Guarantor may assign its rights hereunder with the prior written consent of Creditor, which consent shall not be unreasonably withheld. Subject to the foregoing, this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
12. **Amendments, Etc.** A written amendment executed by the Guarantor only may (a) increase the guaranty limit specified in Section 1 and/or (b) extend the termination date of this Guaranty. No other amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Creditor. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Creditor. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.
13. **Captions.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

14. Representation and Warranties.

The Guarantor represents and warrants as follows:

- (a) the Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty. This representation is evidenced by a copy of the resolution(s) of the board of directors or other governing body of the Guarantor authorizing this Guaranty, which is attached to and made a part of this Agreement;

- (b) the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets;
- (c) this Guaranty is not in violation of other undertakings or requirements applicable to Guarantor, and is enforceable against the Guarantor in accordance with these terms;
- (d) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting Creditor's rights and to general equity principles; and
- (e) the audited financial statements of Guarantor for the most recent fiscal year and the unaudited financial statements of Guarantor for the most recent quarter (the "Financial Statements"), heretofore delivered to Creditor or filed with the United States Securities Exchange Commission by Guarantor present fairly the financial condition and results of operations of Guarantor and its consolidated subsidiaries as of the dates and for the period specified therein in conformity with United States generally accepted accounting principles, and, except as otherwise expressly stated therein, consistently applied. Except as expressly stated to Creditor in writing, there has been no Material Adverse Change in the financial condition of Guarantor and its consolidated subsidiaries since the dates of the Financial Statements.

15. **Limitation by Law.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

16. **GOVERNING LAW; SUBMISSION TO EXCLUSIVE JURISDICTION. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARKANSAS AND ANY APPLICABLE FEDERAL LAW. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY ARKANSAS STATE COURT SITTING IN PULASKI COUNTY, ARKANSAS, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE PARTIES HEREBY WAIVE ANY OBJECTION TO VENUE IN PULASKI COUNTY, ARKANSAS, AND ANY OBJECTION TO ANY ACTION OR PROCEEDING ON THE BASIS OF FORUM NON CONVENIENS.**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this ___ day of _____, _____ (“Effective Date”).

[GUARANTOR]

By: _____
Name: _____
Title: _____