

**Southwest Power Pool
CORPORATE GOVERNANCE COMMITTEE MEETING**

Teleconference

November 20, 2012

• M I N U T E S •

Agenda Item 1 – Administrative Items

Nick Brown called the meeting to order at 1:05 p.m. Other members in attendance or represented by proxy were: Rob Janssen (Dogwood), Cindy Holman (OMPA) also proxy for Steve Parr (KEPCo), Jim Eckelberger (Director), Mel Perkins (OG&E), and John McClure (NPPD). SPP Staff included Stacy Duckett, Mike Riley and Paul Suskie. Others attending were Kip Fox (AEP); Bruce Cude (Xcel); Paul Malone and Harold Hadland (NPPD); Bary Warren (Empire); Tom Hesterman (Sunflower); and Matt Binette (Wright & Talisman).

Agenda Item 2 – Withdrawal Obligations Reviews

Nick Brown noted the primary purpose of the call was to review new drafts of documents for withdrawal obligations. Stacy Duckett noted the materials provided as well as some additional questions provided by Nebraska Public Power District (NPPD) and American Electric Power (AEP) (Withdrawal Obligation Revisions – Attachment 1). Matt Binette noted that primary changes since the last meeting were to remove provision of credit for future service. The group discussed several issues:

Membership Agreement

- **Seams**: There was discussion regarding a requirement for the seams agreement prior to effectiveness of the withdrawal; direction was to revise to date seams agreements become effective to address those instances when FERC approval may not be required; clarified that not mimicked in section related to jurisdictionals because it is covered in overall request of FERC approval and the new section 4.2.3; add similar language from 4.2.2(a) regarding effective dates to 4.2.3 as well.
- **Notice**: Consider limiting accruing additional obligations past notice period (current proposal 24 months) to help limit impact of process becomes protracted. Staff will check that this type of revision is still in accord with lending covenants.
- **24 months**: This is extended to accommodate the ITP planning process; risk is really one planning cycle and facilities and the withdrawing member would be removed from the next cycle.
- **4.3.3**: Insert “withdrawing” in front of Transmission Owner (TO) in edit.
- **4.3.3A**: AEP question was regarding impact on remaining members if base plan funding projects are removed and not taking service, not on specific lines. May remove hold harmless obligations related to continuing service already sold to further clarify. Review limitations in regards to state law and tax status per sections 3.12 and 5.0.

Tariff

- **Schedule 13**: Add “approved for construction” in paragraph for clarification.
- **Calculation**: If review of payments result in re-balancing, terminated members will receive a new payment schedule or retain the one calculated at withdrawal (impact of RACAR process); need to address RCAR process in draft. Empire will work with staff to develop draft language.
- **Attachment H**: Include updated version in the next iteration.

Corporate Governance Committee
November 20, 2012

The group will further discuss the desired level of detail overall at the December meeting and prepare another iteration of drafts as well.

Agenda Item 3 – Indemnification Review

Stacy Duckett noted how the issue of indemnification arose and referred to the paper included in the background materials (Indemnification – Attachment 2). Paul Suskie briefly reviewed Legal's proposed approach to present the issue for discussion at the December meeting.

Agenda Item 4 – Future Meetings

Nick Brown noted that the group would next meet following the Board of Directors meeting in Dallas on December 11 from 1:00 p.m. – 5:00 p.m.

Adjournment

Nick Brown thanked everyone for participating and adjourned the meeting at 3:00 p.m.

Respectfully submitted,

Stacy Duckett, Secretary



Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE MEETING
November 20, 2012
Teleconference

• A G E N D A •

1:00 p.m. – 3:00 p.m.

1. Call to Order and Administrative Items..... Nick Brown
2. Withdrawal Obligations Reviews Stacy Duckett
3. Indemnification Review..... Paul Suskie
4. Future Meetings..... Nick Brown

December 11..... Dallas

2013

February 28

August 28

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

Southwest Power Pool Bylaws

Table of Contents

- 1.0 Definitions
- 2.0 Membership
 - 2.1 Qualifications
 - 2.2 Applications
 - 2.3 Member Responsibilities and Obligations
 - 2.4 Termination, Removal and Reinstatement
 - 2.5 Participation in Regional Entity Activities
- 3.0 Organizational Administration
 - 3.1 Structure
 - 3.2 Attendance and Proxy
 - 3.3 Leadership
 - 3.3.1 Appointment
 - 3.3.2 Terms
 - 3.3.3. Vacancies
 - 3.4 Executive Authority
 - 3.5 Meetings
 - 3.6 Order of Business
 - 3.7 Expenses
 - 3.8 Quorum
 - 3.9 Voting
 - 3.9.1. Markets and Operations Policy Committee and Membership
 - 3.9.2 Organizational Groups and Task Forces
 - 3.10 Appeal
 - 3.11 Staff Independence and Support
 - 3.12 Publications and Data Bases
 - 3.13 Dispute Resolution
 - 3.13.1 Instigation

- 3.13.2 Dispute Resolution Process
- 3.13.3 Resolution Procedures
- 3.13.4 Expenses
- 3.13.5 Liability
- 3.14 Meeting of Members
- 3.15 Liability, Insurance and Indemnification
 - 3.15.1 Waiver of Liability
 - 3.15.2 Insurance
 - 3.15.3 Indemnification of Directors, Officers, Agents and Employees
 - 3.15.4 Limitations
- 3.16 Compliance with Membership Requirements
- 3.17 Market Monitoring
- 4.0 Board Of Directors
 - 4.1 Duties
 - 4.2 Composition and Qualifications
 - 4.2.1 Composition
 - 4.2.2 Qualifications
 - 4.2.3 Conflicts of Interest
 - 4.3 Term and Election
 - 4.4 Resignation and Removal of Directors
 - 4.5 Vacancies
 - 4.6 Functioning of the Board of Directors
 - 4.6.1 Meetings and Notice of Meetings
 - 4.6.2 Chair and Vice Chair; Election and Terms
 - 4.6.3 Quorum and Voting
 - 4.6.4 Compensation of Directors
 - 4.6.5 Executive Session
- 5.0 Committees Advising The Board Of Directors
 - 5.1 Members Committee
 - 5.1.1 Composition and Qualifications

- 5.1.2 Term and Election
- 5.1.3 Resignation and Removal of Members Committee Representatives
- 5.1.4 Vacancies
- 5.1.5 Meetings
- 6.0 Committees Reporting To The Board Of Directors
 - 6.1 Markets and Operations Policy Committee
 - 6.2 Strategic Planning Committee
 - 6.3 Human Resources Committee
 - 6.4 Oversight Committee
 - 6.5 Finance Committee
 - 6.6 Corporate Governance Committee
- 7.0 Regulatory Involvement And Regional State Committee
 - 7.1 Retention of State Regulatory Jurisdiction
 - 7.2 Regional State Committee
 - 7.3 Retention of Other Regulatory Jurisdiction
- 8.0 Fiscal Administration
 - 8.1 Operating Budget
 - 8.2 Annual Membership Fee
 - 8.3 ERO and Regional Entity Costs
 - 8.4 Monthly Assessments
 - 8.5 Fiscal Agent
 - 8.6 Auditors
 - 8.7 Financial Obligation of Withdrawing Members
 - 8.7.1 Existing Obligations
 - 8.7.2 Computation of a Member's Existing Obligations
 - 8.7.3 Obligation to Pay Network Service Termination Charges
 - 8.7.4 Reliability Penalty Costs
- 9.0 Regional Entity Function
 - 9.1 Regional Entity
 - 9.2 Regional Entity Staff

- 9.3 RE General Manager
- 9.4 Duties of Regional Entity Staff
- 9.5 Regional Reliability Standards Setting
- 9.6 Compliance Monitoring and Enforcement Program
- 9.7 Regional Entity Trustees
 - 9.7.1 Functions and Duties of the Regional Entity Trustees
 - 9.7.2 Composition and Qualifications
 - 9.7.2.1 Composition
 - 9.7.2.2 Qualifications
 - 9.7.2.3 Conflicts of Interest
 - 9.7.3 Term and Election
 - 9.7.4 Resignation and Removal of Regional Entity Trustees
 - 9.7.5 Vacancies
 - 9.7.6 Meetings and Notice of Meetings
 - 9.7.7 Chair
 - 9.7.8 Quorum and Voting
 - 9.7.9 Compensation of Regional Entity Trustees
 - 9.7.10 Executive Session
- 10.0 Amendments To These Bylaws, The Articles of Incorporation, and Membership Agreement
- 11.0 Effective Date and Transition Provisions

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1.0 Definitions

Affiliate Relationships

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.

Articles of Incorporation

SPP's articles of incorporation as filed with the state of Arkansas.

Board of Directors

The Board of Directors of SPP, which shall manage the general business of SPP pursuant to these Bylaws.

Bylaws

These bylaws.

Criteria

Planning and operating standards and procedures as approved by the Board of Directors.

Existing Obligations

Certain financial obligations as defined in Section 8.7.1 of these Bylaws.

ERO

The Electric Reliability Organization under FERC jurisdiction that regulates reliability of the electric power grid.

Member

An entity that has met the requirements of Section 2.2 of these Bylaws.

Membership

The collective Members of SPP.

Membership Agreement

The contract, that specifies the rights and obligations of the parties, executed between SPP and an entity seeking to become an SPP member.

NERC

The North American Electric Reliability Corporation or successor organizations.

Net Energy for Load

The electrical energy requirements of an electric system are defined as system net generation plus energy received from others, less energy delivered to others through interchange. It includes system losses but excludes energy required for the storage at energy storage facilities.

Officers

The officers of SPP as elected by the Board of Directors. The Officers consist of the President and the Corporate Secretary, at a minimum. Any Officer must be independent of any Member organization.

Organizational Group

A group, other than the Board of Directors, comprising a committee or working group that is charged with specific responsibilities toward accomplishing SPP's mission.

Regional Criteria

SPP planning and operating standards and procedures as approved by the Board of Directors.

Regional Entity Trustees

A governing body of SPP, independent of the Board of Directors, which specifically oversees SPP's function as an ERO Regional Entity pursuant to the Delegation Agreement between SPP and the ERO.

Regional Reliability Standards

Electric reliability requirements submitted to the ERO by the Regional Entity Trustees; and once approved, implemented and enforced by SPP under authority as the Regional Entity.

Registered Entity(ies)

A bulk electric system owner, operator or user that is required to comply with ERO reliability standards pursuant to the Energy Policy Act of 2005.

SPP

Southwest Power Pool, Inc.

SPP Regional Entity

That part of SPP responsible for the delegated functions pursuant to the Delegation Agreement between SPP and the ERO.

SPP Compliance Monitoring and Enforcement Program

The program used by the North American Electric Reliability Corporation (“NERC”) and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States.

Staff

The technical and administrative staff of SPP as hired by the Officers to accomplish SPP’s mission.

Standards Development Team

An SPP Organizational Group assigned or choosing to develop an SPP Regional Reliability Standard for submission to the ERO for approval for enforcement.

Terminated Member

An entity that was a Signatory to the Membership Agreement but whose membership in SPP has been terminated under Section 4 of the Membership Agreement.

Transmission Owning Member

A Member that has placed more than 500 miles of non-radial facilities operated at or above 60 kV under the independent administration of SPP for the provision of regional transmission service as set forth in the Membership Agreement.

Transmission Using Member

A Member that does not meet the definition of a Transmission Owning Member.

6.4 Oversight Committee

The Oversight Committee (OC) shall be comprised of three members from the Board of Directors.

The Board of Directors shall appoint the representatives of the OC. Each representative of the OC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs, the Board of Directors will fill the vacancy.

The OC shall meet as needed, provided that a quorum, as defined in these Bylaws, is present. The OC shall report to the Board of Directors following each OC meeting with respect to its activities and with such recommendations, as the OC deems necessary.

The responsibilities of the Oversight Committee shall include:

- (a) Oversee the process of monitoring compliance to SPP and NERC policies other than that assigned to the Regional Entity Trustees under these Bylaws;
- (b) Independently review activities of the Staff;
- (c) Hear and rule on appeals from Members regarding penalty assessment or fine distribution prior to dispute resolution proceedings;
- (d) Recommend Regional Criteria changes necessary for enforcement of mandatory compliance and in response to unclear enforcement provisions of Regional Criteria;
- (e) Grant specific additional authority to the Staff responsible for the oversight monitoring function when needed to perform challenging investigations;
- (f) Oversee the Internal Audit function and receive regular reports, except for that work associated with ~~SAS70—Audit—~~service organization controls audit requirements and other financial matters;
- (g) Complete a self-assessment annually to determine how effectively the OC is meeting its responsibilities; and
- (h) Perform such other functions as the Board of Directors may delegate or direct.

6.5 Finance Committee

The Finance Committee (FC) shall be comprised of six members. Two representatives shall be from the Board of Directors, one of whom shall serve as the Chair; two representatives from the Transmission Owning Member sector as nominated by the Corporate Governance Committee; and two representatives from the Transmission Using Member sector as nominated by the Corporate Governance Committee.

The Board of Directors shall appoint the representatives of the FC. Each representative of the FC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs the Corporate Governance Committee will fill the vacancy on an interim basis until the next meeting of the Board of Directors.

The FC shall meet at least twice per calendar year, and additionally as needed, provided that a quorum, as defined in these Bylaws, is present. The FC shall report to the Board of Directors following each FC meeting with respect to its activities and with such recommendations, as the FC deems necessary.

The responsibilities of the Finance Committee shall include assistance to the Board of Directors in fulfilling its responsibility to the Members, and investment community with respect to its oversight of:

- (a) The quality and integrity of SPP's financial statements;
- (b) SPP's compliance with financially-based legal and regulatory requirements;
- (c) The independent auditor's qualifications, selection, and independence;
- (d) The performance of SPP's internal audit function and independent auditors as relates to ~~SAS70 Audit~~ service organization controls audit requirements;
- (e) The development and implementation of annual and long-term operating and capital budgets;
- (f) The management of risk;
- (g) Develop policies for management of debt financing and for long-term contracting;
- (h) Monitoring methodology for cost recovery to ensure continuing equity for Members;
- (i) Other duties and responsibilities detailed in the Finance Committee charter; and

- (j) Perform such other functions as the Board of Directors may delegate or direct.

8.7 Financial Obligation of Withdrawing Members

8.7.1 Existing Obligations

“Existing Obligations” are the following:

- a. Member’s unpaid annual membership fee.
- b. Member’s unpaid dues, assessments, and other amounts charged under Section 3.8 of the Membership Agreement, section 8.4 of the Bylaws, or otherwise under the Bylaws, plus the Member’s share of costs SPP customarily includes in such dues, assessments or other charges, but which as of the Termination Date SPP had not included in such dues, assessments or other charges.
- c. Member’s share (computed in accordance with the Bylaws) of the entire principal amounts of all SPP Financial Obligations outstanding as of the Termination Date. “Financial Obligations” are all long-term (in excess of six (6) months) financial obligations of SPP, including but not limited to the following:
 - i. debts under all mortgages, loans, loan agreements, borrowings, promissory notes, bonds, and credit lines, under which SPP is obligated, including principal and interest;
 - ii. all payment obligations under equipment leases, financing leases, capital leases, real estate and office space leases, consulting contracts, and contracts for outsourced services;
 - iii. any unfunded liabilities of any SPP employee pension funds, whether or not liquidated or demanded; and
 - iv. the general and administrative overhead of SPP for a period of three (3) months.
- d. Any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable, and

including without limitation prepayment premiums or penalties arising under SPP Financial Obligations.

- e. Member's share (computed in accordance with the Bylaws) of all interest that will become due for payment with respect to all interest bearing Financial Obligations after the Termination Date and until the maturity of all Financial Obligations in accordance with their respective terms ("Future Interest"). In the event that a Financial Obligation carries a variable interest rate, the interest rate in effect at the Termination Date shall be used to calculate the applicable Future Interest. In determining the Member's share of Future Interest, SPP shall take into account any reduction of Financial Obligations due to mitigation under this Section.

8.7.2 Computation of a Member's Existing Obligations

For purposes of computing the Existing Obligations of any withdrawing or terminated Member in accordance with the Membership Agreement, such "Member's share" is a percentage calculated as follows:

$$A = 100 [0.25(1/N) + 0.75(B/C)]$$

Where: A = Member's share (expressed as a percentage)

N = Total number of Members

B = The Member's previous year Net Energy for Load within SPP

C = Total of factor B for all Members

The Finance Committee shall have the discretion to reduce the Existing Obligations of any withdrawing or ~~terminated~~ Member, to reflect any SPP costs or expenses that may be mitigated in connection with such Member's withdrawal or termination. In the event of consolidation of affiliate memberships or the transfer of membership from one corporate entity to another, whereby one entity remains a member of SPP, the withdrawal obligation for the departing company(ies) may be waived at SPP's sole discretion.

8.7.3 Obligation to Pay Network Service Termination Charges

A Terminated Member shall be financially responsible to pay SPP for all applicable Network Service Termination Charges calculated pursuant to the OATT.

8.7.4 Penalty Costs

A Terminated Member shall remain liable for its share of costs associated with penalties assessed against SPP by FERC, the FERC-approved Electric Reliability Organization, any Electric Reliability Organization-approved Regional Entity, or any other regulatory authority with jurisdiction over SPP that SPP incurs as a result of events that occurred prior to Member's Termination Date but that SPP is unable to recover under the SPP OATT.

MEMBERSHIP AGREEMENT

TABLE OF CONTENTS

- 1.0 Definitions
- 2.0 Rights, Powers and Obligations of SPP
 - 2.1 Operation and Planning
 - 2.1.1 General
 - 2.1.2 Reliability
 - 2.1.3 Transmission Maintenance
 - 2.1.4 Generation Maintenance
 - 2.1.5 Planning Activities
 - 2.2 Non-Discriminatory Transmission Service
 - 2.2.1 Pricing
 - 2.2.2 Standards of Conduct
 - 2.2.3 OASIS
 - 2.2.4 Ancillary Services
 - 2.2.5 Transmission Service Scheduling
 - 2.3 Fiduciary Responsibilities and Duties of SPP to Members
 - 2.4 Additional Obligations of SPP
 - 2.4.1 Inspection and Auditing Procedures
 - 2.4.2 Stranded Cost Recovery Charges
- 3.0 Commitments, Rights, Powers, and Obligations of Member
 - 3.1 Redispatch and Curtailment
 - 3.2 Transmission and Generation Maintenance Practices
 - 3.3 Construction
 - 3.4 Use of Distribution Facilities
 - 3.5 Providing Information
 - 3.6 Facilities Access
 - 3.7 Inspection and Auditing Procedures
 - 3.8 Compliance and Bylaws and Other Policies and Procedures
 - 3.9 Planning and Participation
 - 3.10 Pricing
 - 3.11 No Waiver of Jurisdictional Immunity
 - 3.12 Compliance with State Law
- 4.0 Termination of Membership
 - 4.1 Events of Termination and Partial Termination
 - 4.2 Termination Procedures and Effective Dates
 - 4.2.1 Notice of Voluntary Withdrawal
 - 4.2.2 Effective Date of Termination
 - 4.3 Obligations Upon Termination
 - 4.3.1 Obligation to Hold Users Harmless

4.3.2 Obligation to Pay Current and Existing Obligations

4.3.3 Construction of Transmission Facilities

4.3.3A Continuing Payment for Base Plan Upgrades

4.3.3B Obligation to Pay Network Service Termination Charges

4.3.4 Regulatory and Other Approvals or Procedure

5.0 Regulatory, Tax, And Other Authorities

5.1 Regulatory and Other Authorities

5.2 Tax Authorities

5.3 Effectiveness as to Certain Members

6.0 Removal of Members

7.0 Effective Date, Duration, and Transition

8.0 Miscellaneous Provisions

8.1 Governing Law

8.2 Successors and Assigns

8.3 No Implied Waivers

8.4 Severability

8.5 Renegotiation

8.6 Representations and Warranties

8.7 Further Assurances

8.8 Delivery of Notices

8.9 Entire Agreement

8.10 Good Faith Efforts

8.11 Third Party Joint Agreements

8.12 Amendment

8.13 Counterparts

Appendix A

This Agreement is made between the Member and SPP, as defined herein.

1.0 Definitions

Agreement

This Membership Agreement.

Board of Directors

The Board of Directors elected pursuant to the Bylaws.

Bylaws

SPP's Bylaws or any successor document.

Distribution Facilities

Facilities that are the subject of a separate distribution charge pursuant to the Open Access Transmission Tariff.

Effective Date

This Agreement is effective on January 1, 2000 or upon the date of execution by Member if after January 1, 2000.

Electric Transmission System

The transmission facilities subject to SPP's tariff administration, except for any Distribution Facilities.

Existing Obligations

Shall have the meaning given in Section 4.3.2(b).

FERC

The Federal Energy Regulatory Commission or successor organization.

Financial Obligations

Shall have the meaning given in Section 4.3.2(b).

Future Interest

Shall have the meaning given in Section 4.3.2(b).

Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice

is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region. SPP Criteria and NERC Policies and Standards are considered Good Utility Practice.

Member

Signatory to this Agreement that has completed the application requirements pursuant to the Bylaws.

NERC

North American Electric Reliability Corporation or successor organizations.

Non-Transmission Owner

A Member that is not a Transmission Owner. A Non-Transmission Owner that owns or controls Tariff Facilities may have its status changed to a Transmission Owner under this Agreement upon notice to SPP and execution of this Agreement as a Transmission Owner.

Open Access Transmission Tariff (OATT)

The SPP nondiscriminatory, Open-Access Transmission Tariff (OATT) on file with FERC pursuant to Section 205 of the Federal Power Act under which SPP will offer transmission service, or any such successor tariff.

Partial Termination

Shall have the meaning given in Section 4.1.

Regional Entity

An entity having enforcement authority delegated to it by NERC pursuant to a delegation agreement accepted by FERC.

Reliability Coordinator

SPP, in performing its reliability coordinator function as recognized by NERC pursuant to its policies, and pursuant to SPP Criteria and this Agreement.

SPP

Southwest Power Pool, Inc., or successor organization.

SPP Criteria

SPP's approved operating and planning criteria.

SPP Region

The geographic area encompassing the transmission systems of Members that are Transmission Owners.

Standards of Conduct

SPP's Standards of Conduct that apply to the conduct of its directors, officers, employees, Regional Entity trustees, contractors, and agents.

Tariff Facilities

The Electric Transmission System and the Distribution Facilities subject to SPP's tariff administration.

Termination

Shall have the meaning given in Section 4.1.

Termination Date

Shall mean the date of Termination is effective in accordance with Section 4.2.2(b).

Terminated Member

An entity that was a Signatory to this Agreement but whose membership in SPP has been terminated under Section 4 of this Agreement.

Transmission Customer

A customer under the Open Access Transmission Tariff

Transmission Owner

A signatory to this Agreement which: (1) transfers functional control of Tariff Facilities related to the rates, terms and conditions of the OATT to SPP by executing this Agreement; or (2) appoints SPP under another agreement to provide service under the Transmission Tariff over Tariff Facilities which it owns or controls; or (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.

4.2 Termination Procedures and Effective Dates

4.2.1 Notice of Voluntary Withdrawal

(a) **Notice.** Subject to Section 4.3, a Member may withdraw voluntarily from this Agreement, provided that it has given written notice to the President of its intent to withdraw. Notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President no less than ~~twelve-twenty-four~~ (12/24) months prior to such date. The President will advise the Members and the Board of Directors of any withdrawal notices received. In order to assure that there is no more than one proposed termination date with respect to a Member, a withdrawal notice shall be deemed to supersede rescind any prior withdrawal notice given by the Member, except that a Member may not submit a withdrawal notice less than twenty-four (24) months prior to the termination date proposed in the Member's previous notice of intent to withdraw. Voluntary withdrawal is a Termination and creates the same obligations as a Termination for any other reason.

(b) **Withdrawal Deposit.** A Member submitting a written notice of its intent to withdraw from this Agreement must simultaneously submit a cash withdrawal deposit to SPP, as set forth in the table below. SPP will not accept a notice of intent to withdraw without a withdrawal deposit. SPP will treat the withdrawal deposit as a pre-payment of a portion of the costs SPP incurs to process the Member's withdrawal from SPP, as set forth in Section 4.3.2(d) of this Agreement, or the costs associated with reintegrating the Member into SPP if the Member subsequently rescinds its notice of intent to withdraw and SPP incurs costs to reintegrate the Member. Withdrawal deposits are as follows:

<u>Member Category</u>	<u>Withdrawal Deposit</u>
<u>Load Serving Entity</u>	<u>\$ 150,000</u>
<u>Non-Load Serving Entity</u>	<u>\$ 50,000</u>

If the cost of processing Member's withdrawal as calculated by SPP pursuant to Section 4.3.2(d) of this Agreement exceeds the withdrawal deposit, the additional amount shall be included in the invoice SPP provides to the Member under 4.3.2(e) of this Agreement. If the Member rescinds

its notice of intent to withdraw and the cost of processing the Member's withdrawal and subsequent reintegration into SPP exceeds the withdrawal deposit, SPP shall invoice the Member for the amount of the cost that exceeds the deposit, and the Member shall provide payment to SPP within thirty (30) days of receipt of the invoice. If the withdrawal deposit exceeds the costs of processing the Member's withdrawal and/or reintegration, SPP shall refund the difference to the Member.

4.2.2 Effective Date of Termination

- (a) **Voluntary Withdrawal.** If the withdrawing Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date proposed in the withdrawal notice under Section 4.2.1 or otherwise agreed by SPP, or the date that FERC accepts the seams agreement filed pursuant to section 4.2.3, whichever occurs later. If the withdrawing Member is a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the later of (i) the proposed date specified in the withdrawal notice or otherwise agreed by SPP, (ii) the effective date, if any, set by the FERC order approving the withdrawal; or (iii) the date that such FERC order is no longer subject to review by a court of competent jurisdiction.
- (b) **Termination other than Voluntary Withdrawal.** If the Termination occurs for any reason other than the Member's voluntary withdrawal under Section 4.2.1 or by agreement with SPP, the Termination Date shall be as follows:
- (i) If the Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date of the event by which the Termination occurs, for example, the date a party gives notice that it will treat a breach or repudiation as a Termination or the date a Member withdraws in order to comply with the terms of a law or regulation. The foregoing notwithstanding, if the Termination occurs due to the order of a court or administrative agency, the Termination Date shall be the date the order is no longer subject to review by a court of competent jurisdiction.

- (ii) If the Member is a Transmission Owner requiring regulatory agency approval prior to effectively withdrawing from SPP, then the Termination Date shall be the later of (i) the effective date, if any, set by the regulatory agency order approving the Termination; or (ii) the date that such regulatory order is no longer subject to review by a court of competent jurisdiction.
- (iii) In conjunction with the requirements and limitations imposed in Section 4.2.2(b)(ii) above; Transmission Owning Members of SPP wishing to withdraw from SPP and requiring regulatory agency approval prior to such withdrawal being effective are required to initiate the required regulatory filings seeking approval to withdraw prior to the end of the ~~12-24~~-month notice period. Additionally, these members must provide SPP copies of the regulatory filings in a timely manner after filing with the appropriate regulatory agency. Failure to comply with the terms of this paragraph will effectively rescind the notice of the withdrawing member.
- (iv) Member may terminate this Agreement with less than the required ~~twelve-twenty-four (1224)~~ months notice, in the event that the state law governing Member changes, or any provisions of this Agreement or the provisions of SPP's OATT are changed or modified in a manner that causes a conflict with the Member's state law, regulations, or rate schedules, and the internal dispute resolution process described in Section 12 of the OATT is unable to resolve such conflict. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with state law.

4.2.3 Obligations Prior to Termination Date

Upon the submission of a notice of intent to withdraw pursuant to Section 4.2.1, SPP and the Member that submitted the notice of intent to withdraw shall negotiate a seams agreement specifying the respective obligations of each party after the Termination Date. Such seams agreement must address, at a minimum, each party's responsibilities to fulfill the Obligations Upon Termination set forth in Section 4.3. Such seams agreement must be filed at FERC as soon as practicable, but by no less than sixty (60) days prior to the Termination Date. The effective date of the seams agreement shall be the Termination Date or such other date established by FERC order. No termination shall be effective until FERC accepts the seams agreement between SPP and the withdrawing Member.

4.3 Obligations Upon Termination

4.3.1 Obligation to Hold Users Harmless

Transmission Customers taking service which involves facilities being withdrawn by a Transmission Owner from the functional control of SPP and where such service is under transmission contracts executed before the Termination Date shall continue to receive the same service for the remaining term of each such contract at the same rates, terms, and conditions that would have been applicable if the Termination or Partial Termination had not occurred. Transmission Owner agrees to continue providing service to such Transmission Customers in accordance with the preceding sentence, and shall receive revenues calculated in accordance with the OATT but no more in revenues for that service than if there had been no Termination or Partial Termination.

4.3.2 Obligation to Pay Current and Existing Obligations

(a) In the event of a Termination or Partial Termination, Member shall pay all obligations incurred under this Agreement at any time prior to the Termination Date. In addition, in order for SPP to recover a portion of certain debts and cost payable by SPP after the Termination Date as further specified in this Agreement, the Member shall pay all Existing

Obligations (as defined herein) calculated as of the Termination Date. SPP shall make reasonable efforts to mitigate the Member's Existing Obligations by commercially reasonable actions (such as prepayment of allocable debt, or investment of part or all of the Member's payment in an interest-bearing instrument) and, in its discretion, may further discount the Member's Existing Obligations to reflect any additional mitigation SPP determines it will achieve.

- (b) "Existing Obligations" are all of the following and other obligations as may be set forth in the Bylaws from time to time;
- i. Member's unpaid annual membership fee,
 - ii. Member's unpaid dues, assessments, and other amounts charged under Section 3.8 of this Agreement, Section 8.4 of the Bylaws, or otherwise under the Bylaws, plus the Member's share of costs SPP customarily includes in such dues, assessments or other charges, but which as of the Termination Date SPP had not included in such dues assessments or other charges.
 - iii. Member's share (computed in accordance with the Bylaws) of the entire principal amounts of all SPP Financial Obligations outstanding as of the Termination Date. "Financial Obligations" are all long-term (in excess of six (6) months) financial obligations of SPP, including but not limited to the following:
 - a. debts under all loans, mortgages, loan agreements, borrowings, promissory notes, bonds, and credit lines under which SPP is obligated, including principal and interest;
 - b. all payment obligations under equipment leases, financing leases, capital leases, real estate and office space leases, consulting contracts, and contracts for outsourced services;
 - c. any unfunded liabilities of any SPP employee pension funds, whether or not liquidated or demanded; and

- d. the general and administrative overhead of SPP for a period of three (3) months.
 - iv. Any costs, expenses or liabilities incurred by SPP directly due to the Termination, regardless of when incurred or payable, and including without limitation prepayment premiums or penalties arising under SPP Financial Obligations.
 - v. Member's share (computed in accordance with the Bylaws) of all interest that will become due for payment with respect to all interest bearing Financial Obligations after the Termination Date and until the maturity of all Financial Oblations in accordance with their respective terms ("Future Interest"). In the event that a Financial Obligation carries a variable interest rate, the interest rate in effect at the Termination Date shall be used to calculate the applicable Future Interest. In determining the Member's share of Future Interest, SPP shall take into account any reduction of Financial Obligations due to mitigation under this Section.
- (c) In the event of a Partial Termination, Existing Obligations shall first be calculated as though a Termination occurred, and the Member shall pay a percentage thereof as Existing Obligations due to the Partial Termination. Such percentage shall be the percentage reduction of the Net Energy for Load Ratio applicable to the Member resulting from the Partial Termination.
- (d) In the event of a Termination or Partial Termination by a Member, the Member shall pay to SPP all costs SPP incurs to remove the Member's transmission facilities and/or customers from SPP markets and operations. Such costs will be determined by SPP and shall include but not be limited to costs associated with modifying systems and databases, staff time, legal costs, and all costs of completing other tasks necessary to process the Member's Termination. SPP will apply the Member's withdrawal deposit, as specified in Section 4.2.1(a), to such costs, and any costs exceeding the

withdrawal deposit shall be included in the invoice to the Member as discussed in Section 4.3.2(e) of this Agreement.

- (de) SPP shall invoice Member for Existing Obligations within one month after the Termination Date, except that delay by SPP in issuing the invoice shall not diminish Member's obligation to make timely payment. The invoice shall be due and payable no later than five (5) business days after issuance. Any amounts owed by SPP to the Member shall, solely at SPP's election and in its discretion, be offset against the Member's Existing Obligations or paid to the Member concurrently with issuance of the invoice.
- (ef) The Member acknowledges and agrees that Existing Obligations include amounts that SPP expects to accrue and that will become payable by SPP between the date of Member's Notice of Termination and the Member's Termination Date, and that no part of a payment of Existing Obligations shall be refundable to the Member under any circumstances, including (except as provided in this Section with respect to mitigation or the execution of a new Membership Agreement by the Member after the Member's Termination) any reduction of the Financial Obligations. Any disagreement as to the calculation of Existing Obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws. If, after Termination, the Member elects to re-join SPP and execute the Membership Agreement then in effect, SPP, in its sole discretion, may elect to credit a portion or all of the Member's Existing Obligations paid to SPP upon the Member's earlier Termination against any future payments owed by the Member to SPP.

4.3.3 Construction of Transmission Facilities

Any obligations relating to the construction of new facilities pursuant to an approved plan of SPP shall be renegotiated between SPP and the Transmission Owner prior to the Termination Date so as to continue the Transmission Owner's construction obligation for facilities approved prior to the Termination Date~~promptly thereafter~~. If such obligations cannot be resolved through negotiations,

they shall be resolved in accordance with the dispute resolution procedures in the Bylaws.

4.3.3A Continuing Payment for Base Plan Upgrades

Upon withdrawal of a Transmission Owner's Base Plan Upgrades ("Withdrawn Base Plan Upgrades"), customers allocated a portion of the ATRRs associated with such Withdrawn Base Plan Upgrades under Attachment J of the OATT shall continue to be permitted to use such Withdrawn Base Plan Upgrades and SPP shall be permitted to continue to provide service using such Withdrawn Base Plan Upgrades to such customers. Such customers shall continue to pay their share of the Annual Transmission Revenue Requirements associated with such Withdrawn Base Plan Upgrades, which shall be collected by SPP and remitted to the Terminated Member. Charges associated with Withdrawn Base Plan Upgrades shall be calculated using the methodology for calculating Base Plan Zonal charges and Base Plan Region-wide charges applicable to the customer's service as specified in Schedule 11 of the OATT. Continuing service on such Withdrawn Base Plan Upgrades and continuing payments to a Terminated Member shall be governed by a seams agreement to be negotiated by SPP and the Terminated Member.

4.3.3B Obligation to Pay Network Service Termination Charges

A Terminated Member shall be financially responsible to pay SPP for all applicable Network Service Termination Charges calculated pursuant to the OATT.

4.3.4 Regulatory and Other Approvals or Procedures

Any Termination with respect to a Transmission Owner shall be subject to applicable federal and state law and regulatory approvals or procedures.

Southwest Power Pool, Inc.
Open Access Transmission Tariff
Sixth Revised Volume No. 1
Superseding
Fifth Revised Volume No. 1

I. COMMON SERVICE PROVISIONS

- 1 Definitions
 - A - Definitions
 - B - Definitions
 - C - Definitions
 - D - Definitions
 - E - Definitions
 - F - Definitions
 - G - Definitions
 - H - Definitions
 - I - Definitions
 - J - Definitions
 - K - Definitions
 - L - Definitions
 - M - Definitions
 - N - Definitions
 - O - Definitions
 - P - Definitions
 - Q - Definitions
 - R - Definitions
 - S - Definitions
 - T - Definitions
 - U - Definitions
 - V - Definitions
 - W - Definitions
 - XYZ - Definitions
- 2 Initial Allocation and Renewal Procedures
 - 2.1 Initial Allocation of Available Transfer Capability
 - 2.2 Reservation Priority For Existing Firm Service Customers
- 3 Ancillary Services
- 4 Open Access Same-Time Information System (OASIS)
- 5 Local Furnishing Bonds
 - 5.1 Transmission Owners That Own Facilities Financed by Local Furnishing Bonds or that are Tax Exempt Entities
 - 5.2 Alternative Procedures for Requesting Transmission Service
- 6 Reciprocity
- 7 Billing and Payment
 - 7.1 Billing Procedure
 - 7.2 Interest on Unpaid Balances
 - 7.3 Financial Security Held By SPP
 - 7.4 Customer Default
- 8 Accounting for Use of the Tariff
 - 8.1 Study Costs and Revenues
- 9 Regulatory Filings
- 10 Force Majeure and Indemnification

- 10.1 Force Majeure
- 10.2 Liability
- 10.3 Indemnification
- 10.4 Further Limitation of Liability
- 10.5 Transmission Provider Recovery
- 11 Creditworthiness
- 12 Dispute Resolution Procedures
 - 12.1 Internal Dispute Resolution Procedures
 - 12.2 External Arbitration Procedures
 - 12.3 Arbitration Decisions
 - 12.4 Costs
 - 12.5 Rights Under The Federal Power Act
- II. POINT-TO-POINT TRANSMISSION SERVICE
- 13 Nature of Firm Point-To-Point Transmission Service
 - 13.1 Term
 - 13.2 Reservation Priority
 - 13.3 Use of Firm Transmission Service by the Transmission Owners
 - 13.4 Service Agreements
 - 13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs
 - 13.6 Curtailment of Firm Transmission Service
 - 13.7 Classification of Firm Transmission Service
 - 13.8 Scheduling of Firm Point-To-Point Transmission Service
- 14 Nature of Non-Firm Point-To-Point Transmission Service
 - 14.1 Term
 - 14.2 Reservation Priority
 - 14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Owner(s)
 - 14.4 Service Agreements
 - 14.5 Classification of Non-Firm Point-To-Point Transmission Service
 - 14.6 Scheduling of Non-Firm Point-To-Point Transmission Service
 - 14.7 Curtailment or Interruption of Service
- 15 Service Availability
 - 15.1 General Conditions
 - 15.2 Determination of Available Transfer Capability
 - 15.3 Initiating Service in the Absence of an Executed Service Agreement
 - 15.4 Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System
 - 15.5 Deferral of Service
 - 15.6 Other Transmission Service Schedules
 - 15.7 Real Power Losses
- 16 Transmission Customer Responsibilities
 - 16.1 Conditions Required of Transmission Customers
 - 16.2 Transmission Customer Responsibility for Third-Party Arrangements
- 17 Procedures for Arranging Firm Point-To-Point Transmission Service

- 17.1 Application
- 17.1a Time Requirements
- 17.2 Completed Application
- 17.3 Credit Arrangements
- 17.4 Notice of Deficient Application
- 17.5 Response to a Completed Application
- 17.6 Execution of Service Agreement
- 17.7 Extensions for Commencement of Service
- 17.8 Designated Resources Using Long-Term Point-To-Point Transmission Service
- 17.9 Interconnection of Delivery Points
- 18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service
 - 18.1 Application
 - 18.2 Completed Application
 - 18.3 Timing of Requests and Responses Regarding Reservation of Non-Firm Point-To-Point Transmission Service
 - 18.4 Determination of Available Transfer Capability
- 19 Additional Study Procedures For Firm Point-To-Point Transmission Service Requests
 - 19.1 Notice of Need for System Impact Study
 - 19.2 System Impact Study Agreement and Cost Reimbursement
 - 19.3 System Impact Study Procedures
 - 19.4 Facilities Study Procedures
 - 19.5 Facilities Study Modifications
 - 19.6 Due Diligence in Completing New Facilities
 - 19.7 Partial Interim Service
 - 19.8 Expedited Procedures for New Facilities
 - 19.9 Reporting Failure to Meet Study Deadlines
- 20 Procedures if The Transmission Provider is Unable to Complete New Transmission Facilities for Firm Point-To-Point Transmission Service
 - 20.1 Delays in Construction of New Facilities
 - 20.2 Alternatives to the Original Facility Additions
 - 20.3 Refund Obligation for Unfinished Facility Additions
- 21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities
 - 21.1 Responsibility for Third-Party System Additions
 - 21.2 Coordination of Third-Party System Additions
- 22 Changes in Service Specifications
 - 22.1 Modifications On a Non-Firm Basis
 - 22.2 Additional Charge To Prevent Abuse
 - 22.3 Modification On a Firm Basis
- 23 Sale or Assignment of Transmission Service
 - 23.1 Procedures for Assignment or Transfer of Service
 - 23.2 Limitations on Assignment or Transfer of Service
 - 23.3 Information on Assignment or Transfer of Service

- 24 Metering and Power Factor Correction at Receipt and Delivery Points(s)
 - 24.1 Transmission Customer Obligations
 - 24.2 Transmission Provider Access to Metering Data
 - 24.3 Power Factor
- 25 Compensation for Transmission Service
- 26 Stranded Cost Recovery
- 27 Compensation for New Facilities and Redispatch Costs
- III. NETWORK INTEGRATION TRANSMISSION SERVICE
- 28 Nature of Network Integration Transmission Service
 - 28.1 Scope of Service
 - 28.2 Transmission Provider and Transmission Owners Responsibilities
 - 28.3 Network Integration Transmission Service
 - 28.4 Secondary Service
 - 28.5 Real Power Losses
 - 28.6 Restrictions on Use of Service
- 29 Initiating Service
 - 29.1 Condition Precedent for Receiving Service
 - 29.2 Application Procedures
 - 29.3 Technical Arrangements to be Completed Prior to Commencement of Service
 - 29.4 Network Customer Facilities
 - 29.5 Filing of Service Agreement
- 30 Network Resources
 - 30.1 Designation of Network Resources
 - 30.2 Designation of New Network Resources
 - 30.3 Termination of Network Resources
 - 30.4 Operation of Network Resources
 - 30.5 Network Customer Redispatch Obligation
 - 30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With The Transmission Provider
 - 30.7 Limitation on Designation of Network Resources
 - 30.8 Use of Interface Capacity by the Network Customer
 - 30.9 Network Customer Owned Transmission Facilities
- 31 Designation of Network Load
 - 31.1 Network Load
 - 31.2 New Network Loads Connected With the Transmission Provider
 - 31.3 Network Load Not Physically Interconnected with the Transmission Provider
 - 31.4 New Interconnection Points
 - 31.5 Changes in Service Requests
 - 31.6 Annual Load and Resource Information Updates
- 32 Additional Study Procedures For Network Integration Transmission Service Requests
 - 32.1 Notice of Need for System Impact Study
 - 32.2 System Impact Study Agreement and Cost Reimbursement

- 32.3 System Impact Study Procedures
- 32.4 Facilities Study Procedures
- 32.5 Penalties for Failure to Meet Study Deadlines
- 32.6 Facilities Study Modifications
- 32.7 Due Diligence in Completing New Facilities
- 32.8 Partial Interim Service
- 32.9 Expedited Procedures for New Facilities
- 32.10 Delays in Construction of New Facilities
- 32.11 Alternatives to the Original Facility Additions
- 33 Load Shedding and Curtailments
 - 33.1 Procedures
 - 33.2 Transmission Constraints
 - 33.3 Cost Responsibility for Relieving Transmission Constraints
 - 33.4 Curtailments of Scheduled Deliveries
 - 33.5 Allocation of Curtailments
 - 33.6 Load Shedding
 - 33.7 System Reliability
- 34 Rates and Charges
 - 34.1 Monthly Demand Charge for all Zones except Zone 1
 - 34.2 Monthly Demand Charge – Zone 1
 - 34.3 Monthly Demand Charge – Zone 11
 - 34.4 Determination of Network Customer's Monthly Network Load
 - 34.5 Determination of Transmission Provider's Monthly Zone Transmission Load
 - 34.6 Redispatch Charge
 - 34.7 Stranded Cost Recovery
 - 34.8 SPP Costs
- 35 Operating Arrangements
 - 35.1 Operation under the Network Operating Agreement
 - 35.2 Network Operating Agreement
- 36 Scheduling
- IV. SPECIAL RULES ON USE OF TARIFF
- 37 During Transition Period
 - 37.1 Service Not Required for Bundled Customers or Customers Under Retail Access Programs
 - 37.2 Availability of Network Integration Transmission Service
 - 37.3 Unbundled Wholesale
 - 37.4 Grandfathered Transactions
- 38 After Transition Period
 - 38.1 Applicability to Retail Load Having Choice
 - 38.2 Applicability to All Retail Load Not Having Choice
 - 38.3 Grandfathered Agreements
- 39 Applicability of Non-Rate Terms and Conditions
 - 39.1 Subject to State Laws and Regulations and Public Power Rate Schedules
 - 39.2 Bundled Retail and Grandfathered Load

- V. RECOVERY OF COSTS FOR BASE PLAN UPGRADES AND APPROVED BALANCED PORTFOLIOS
 - 40 Base Plan Zonal Charge and Region-wide Charge
 - 41 Applicability to Resident Load
 - 42 Applicability to Point-To-Point Transmission Service
- SCHEDULE 1
 - Scheduling, System Control and Dispatch Service
- SCHEDULE 1-A
 - Tariff Administration Service
- SCHEDULE 2
 - Reactive Supply and Voltage Control from Generation or Other Sources Service
- SCHEDULE 3
 - Regulation and Frequency Response Service
- SCHEDULE 4
 - Energy Imbalance Service
- SCHEDULE 5
 - Operating Reserve - Spinning Reserve Service
- SCHEDULE 6
 - Operating Reserve - Supplemental Reserve Service
- SCHEDULE 7
 - Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service
- SCHEDULE 8
 - Non-Firm Point-To-Point Transmission Service
- SCHEDULE 9
 - Network Integration Transmission Service
- SCHEDULE 10
 - Wholesale Distribution Service
- SCHEDULE 11
 - Base Plan Zonal Charge and Region-wide Charge
- SCHEDULE 12
 - FERC Assessment Charge
- SCHEDULE 13
 - Network Service Termination Charges
- ATTACHMENT A
 - Form Of Service Agreement For Firm Point-To-Point Transmission Service
- ATTACHMENT A-1
 - Form Of Service Agreement For The Resale, Reassignment Or Transfer Of Point-To-Point Transmission Service
- ATTACHMENT B
 - Form Of Service Agreement For Non-Firm Point-To-Point Transmission Service
- ATTACHMENT C
 - Methodology To Assess Available Transfer Capability
- ATTACHMENT D
 - Methodology for Completing a System Impact Study
- ATTACHMENT E

Index Of Point-To-Point Transmission Service Customers	
ATTACHMENT F	
Service Agreement For Network Integration Transmission Service	
ATTACHMENT G	
Network Operating Agreement	
ATTACHMENT H	
Annual Transmission Revenue Requirement for Network Integration Transmission Service	
ATTACHMENT I	
Index Of Network Integration Transmission Service Customers	
ATTACHMENT J	
Recovery Of Costs Associated With New Facilities	
ATTACHMENT K	
Redispatch Procedures and Redispatch Costs	
ATTACHMENT L	
Treatment Of Revenues	
ATTACHMENT M	
Loss Compensation Procedure	
ATTACHMENT N	
Form of Service Agreement For Loss Compensation Service	
ATTACHMENT O	
Transmission Planning Process	
ATTACHMENT P	
Schedule of Firm Point-To-Point Transmission Service	
ATTACHMENT Q	
Form of Application For Short-Term Firm and Non-Firm Transmission Service	
ATTACHMENT R	
North American Electric Reliability Council Transmission Loading Relief (“TLR”) Procedure	
ATTACHMENT R-1	
North American Energy Standards Board Business Practices	
ATTACHMENT S	
Procedure for Calculation of MW-Mile Impacts for Use in Revenue Requirements, Revenue Allocation and Determination of Losses	
ATTACHMENT T	
Rate Sheets For Point-To-Point Transmission Service	
ATTACHMENT U	
Rate Schedule For Compensation For Rescheduled Maintenance Costs	
ATTACHMENT V	
Coordinated Generation Interconnection Procedures	
ATTACHMENT W	
Index of Grandfathered Agreements	
ATTACHMENT X	
Credit Policy	
ATTACHMENT Y	

Reserved for Future Use
ATTACHMENT Z1
Aggregate Transmission Service Study Procedures and Cost Allocation and Recovery for
Service Upgrades
ATTACHMENT Z2
Revenue Crediting for Upgrades
ATTACHMENT AA
Reserved for Future Use
ATTACHMENT AB
Reserved For Future Use
ATTACHMENT AC
Reservation Processing Method For Short Term Firm Transmission Service
ATTACHMENT AD
Southwestern Power Administration Agreement Between United States Of America and
Southwest Power Pool, Inc
ATTACHMENT AE
Energy Imbalance Service Market
ATTACHMENT AF
Market Power Mitigation Plan
ATTACHMENT AG
Market Monitoring Plan
ATTACHMENT AH
Market Participant Service Agreement
ATTACHMENT AI
Transmission Definition
ATTACHMENT AJ
Reserved for Future Use
ATTACHMENT AK
Treatment of Reserve Sharing Charges and Revenues
ATTACHMENT AL
Form of Non-Disclosure Agreement for Authorized Requestors
ATTACHMENT AM
Meter Agent Services Agreement
ATTACHMENT AN
Balancing Authorities Agreement
ATTACHMENT AO
Agreement Establishing External Generation Non-Physical Electrical Interconnection
Point
ATTACHMENT AP
Allocation of Cost Associated with Reliability Penalty Assessments
ATTACHMENT AQ
Delivery Point Addition Process
ATTACHMENT AR
Screening Study

SCHEDULE 13
NETWORK SERVICE TERMINATION CHARGES

A Member that terminates or partially terminates its Membership Agreement with SPP (“Terminated Member”) shall be responsible for paying Network Service Termination Charges pursuant to this Schedule 13. Upon the effective date of the termination of the Member’s Membership Agreement (“Termination Date”), the Terminated Member shall continue to pay to SPP the Terminated Member’s share of the revenue requirements related to transmission facilities that were approved for inclusion in an SPP transmission plan prior to the Termination Date, as provided below.

SPP shall establish a list of the transmission facilities for which the Terminated Member is responsible to continue to pay after the Termination Date, which SPP shall file with the Commission as an Addendum to this Schedule 13. The list shall include only existing transmission facilities that have been placed into service or planned facilities that the Board of Directors has approved for inclusion in the SPP Transmission Expansion Plan pursuant to Attachment O of the Tariff as of the Termination Date that are:

- (1) Base Plan Upgrades allocated pursuant to Attachment J of the Tariff to the Base Plan Zonal Annual Transmission Revenue Requirement for each Zone in which the Terminated Member’s load was located prior to the Termination Date;
- (2) Base Plan Upgrades allocated on a Region-wide basis pursuant to Attachment J of the Tariff prior to the Termination Date; or
- (3) Transmission facilities that were directly allocated to the Terminated Member’s load.

The Terminated Member shall continue to pay its proportionate share of the Annual Transmission Revenue Requirement (“ATRR”) associated with each transmission facility in the list established by SPP until the costs of the transmission facilities have been fully amortized. Each Transmission Owner responsible for the construction and/or ownership of the transmission facilities in the list shall establish a Base Plan Zonal ATRR and/or Region-wide ATRR, as applicable, for each transmission facility in the list using the Transmission Owner’s ATRR calculation methodology set forth in Attachment H. The Base Plan Zonal ATRR and/or Region-

wide ATRR shall be set forth in the Addendum to this Schedule 13 that SPP files with the Commission.

The Terminated Member's proportionate share of the ATRR for each transmission facility shall be calculated as follows:

- (1) The Terminated Member's Base Plan Zonal Load Ratio Share (as calculated pursuant to Schedule 11 of this Tariff), determined and fixed as of the Termination Date, multiplied by the Base Plan Zonal ATRR for each transmission facility in the list; and
- (2) The Terminated Member's Region-wide Load Ratio Share (as calculated pursuant to Schedule 11 of this Tariff) , determined and fixed as of the Termination Date, multiplied by the Region-wide ATRR for each transmission facility in the list ; and
- (3) The ATRR for each transmission facility that was directly allocated to the Terminated Member's load.

In the event of a partial termination as defined in the Membership Agreement, the Terminated Member's Base Plan Zonal Load Ratio Share and Region-wide Load Ratio Share shall be calculated using the portion of the Terminated Member's load that is subject to the Partial Termination, determined and fixed as of the Termination Date.

The responsibility to pay Network Service Termination Charges and the methodology for calculating such charges may be subject to change pursuant to section 205 of the Federal Power Act if SPP's transmission cost allocation methodologies are modified.

ATTACHMENT H
ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR NETWORK
INTEGRATION TRANSMISSION SERVICE

SECTION I: General Requirements

1. The Zonal Annual Transmission Revenue Requirement within each Zone for purposes of determining the charges under Schedule 9, Network Integration Transmission Service, is specified in Column (3) of Table 1. The Base Plan Zonal Annual Transmission Revenue Requirement used to determine the zonal charges under Schedule 11 for Base Plan Upgrades issued a Notification to Construct (NTC) prior to June 19, 2010 is specified in Column (4) of Table 1. The Base Plan Zonal Annual Transmission Revenue Requirement used to determine the zonal charges under Schedule 11 for Base Plan Upgrades issued an NTC on or after June 19, 2010 is specified in Column (5) of Table 1. The amount of Zonal Annual Transmission Revenue Requirement and Base Plan Zonal Annual Transmission Revenue Requirement that is included in Columns (3), (4), and (5) and reallocated to the Region-wide Annual Transmission Revenue Requirement, in accordance with Attachment J, is specified in Column (6) of Table 1.

Table 1

(1) Zone	(2)	(3) Zonal ATRR	(4) Base Plan Zonal ATRR	(5) Base Plan Zonal ATRR after June 19, 2010	(6) ATRR Reallocated to Balanced Portfolio Region-wide ATRR
1	American Electric Power –West (Total)	\$133,978,649	\$22,019,168		\$0
	American Electric Power (Public Service Company of Oklahoma and Southwestern Electric Power Company) See Section II.3	\$129,472,718	\$21,870,984		
	East Texas Electric Cooperative, Inc.	\$2,733,879			
	Tex-La Electric Cooperative of	\$588,874			

	Texas, Inc.				
	Deep East Texas Electric Cooperative, Inc.	\$428,131			
	Oklahoma Municipal Power Authority	\$748,647			
	AEP West Transmission Companies (AEP Oklahoma Transmission Company, Inc and AEP Southwestern Transmission Company, Inc)	\$6,400	\$148,184		
2	Reserved for Future Use				
3	City Utilities of Springfield, Missouri	\$8,651,509	\$27,936		\$0
4	Empire District Electric Company	\$14,075,000	\$62,877		\$0
5	Grand River Dam Authority (Est.)	\$35,949,660	\$243,047		\$0
6	Kansas City Power & Light Company	\$29,341,593	\$2,882,669		\$0
7	Oklahoma Gas & Electric (Total)	\$85,769,264	\$5,438,608		\$0
	Oklahoma Gas & Electric	\$85,400,763			
	Oklahoma Municipal Power Authority	\$368,501			
8	Midwest Energy, Inc.	\$7,830,571	\$139,977		\$0
9	KCP&L Greater Missouri Operations Company	\$29,025,803	\$861,719		\$0
10	Southwestern Power Administration	\$13,107,700	\$0		\$0
11	Southwestern Public Service	\$101,879,336	\$5,741,648		\$0
12	Sunflower Electric Corporation	\$14,484,045	\$517,924		\$0
13	Western Farmers Electric Cooperative	\$20,719,639	\$3,113,019		\$0
14	Westar Energy, Inc. (Kansas Gas & Electric and Westar Energy) (Total)	\$122,022,353	\$16,104,197		\$0
14a	Westar Energy, Inc. (Kansas Gas & Electric and Westar Energy)	\$122,022,353			
14b	Prairie Wind Transmission, LLC.	\$0			
15	Mid-Kansas Electric Company (Total)	\$16,484,778	\$587,129		\$0
15a	Mid-Kansas Electric Company	\$15,142,441			
15b	ITC Great Plains	\$1,342,337			
15c	Prairie Wind Transmission, LLC.	\$0			
16	Lincoln Electric System	\$18,666,891	\$84,138		\$0
17	Nebraska Public Power District	\$42,351,258	\$12,618,219		\$0

18	Omaha Public Power District	\$40,663,008	\$1,980,644		\$0
19	Total				\$0

2. For the purposes of determining the Region-wide Charges under Schedule 11, the Region-wide Annual Transmission Revenue Requirement, as shown in Line 5 of Table 2, shall be the sum of (i) the Base Plan Region-wide Annual Transmission Revenue Requirement, and (ii) the total Balanced Portfolio Region-wide Annual Transmission Revenue Requirements.

Table 2

1	Base Plan Region-wide ATRR (NTC prior to June 19, 2010)	\$35,599,213
2	Base Plan Region-wide ATRR (NTC on or after June 19, 2010)	\$3,353,543
3	Total Balanced Portfolio Region-wide ATRR Total, Column (6), Table 1	\$0
4	Balanced Portfolio Region Wide ATRR	\$11,261,429
5	Region-wide ATRR (Line 1 + Line 2 + Line 3 + Line 4)	\$50,214,185

3. The revenue requirements stated in this Attachment H shall not be changed absent a filing with the Commission, accompanied by all necessary cost support.
4. New or amended revenue requirements in this Attachment H shall not be filed with the Commission by the Transmission Provider unless such revenue requirements have been provided by or for a Transmission Owner. Such revenue requirements shall have been accepted or approved by the applicable regulatory or governing authority except in the event of a simultaneous filing with the Commission by the Transmission Owner and Transmission Provider.
5. If a Transmission Owner has a Commission approved formula rate, the successful completion of its approved annual formula rate update procedures shall constitute regulatory acceptance sufficient to authorize the Transmission Provider to file with the Commission to update that Transmission Owner's revenue requirements. The Transmission Provider shall follow any special procedures related to updating a Transmission Owner's revenue requirements as outlined in Section II of this Attachment.
6. The Transmission Provider shall allocate the accepted or approved revenue requirement associated with a Base Plan Upgrade, in accordance with Attachment J to this Tariff, to the Base Plan Region-wide Annual Transmission Revenue Requirement in Table 2 above

and to the appropriate Base Plan Zonal Annual Transmission Revenue Requirements in Column (4) or (5) as appropriate of Table 1 above.

7. The Base Plan Region-wide ATRR shall also include applicable upgrade costs arising from SPP seams agreements negotiated with a former Member that has withdrawn pursuant to the Membership Agreement. Such costs shall be set forth in a separate row in Table 2 above.

ATTACHMENT L
Treatment of Revenues

NEW SECTIONS

VII. Payments Arising Under Seams Agreements

To the extent SPP has executed any seams agreements to address continuing rights and obligations of a former Transmission Owner that has terminated its membership in SPP, such former Transmission Owner shall be entitled to distribution of revenues to the extent specified in its seams agreement.

VIII. Distribution of Revenues Associated With Network Service Termination Charges

If SPP receives revenues associated with Network Service Termination Charges pursuant to Schedule 13 of this Tariff, SPP shall distribute the revenues to the Transmission Owner(s) that have or will have an ATRR associated with the transmission facilities for which the Network Service Termination Charges were paid in proportion to their ATRR for such transmission facilities.

ATTACHMENT AP
ALLOCATION OF COSTS ASSOCIATED WITH RELIABILITY PENALTY
ASSESSMENTS

Under the NERC Functional Model and NERC Rules of Procedure, the Transmission Provider may be assessed penalties for confirmed violations of the NERC Reliability Standards. The purpose of this Attachment is to provide notice to all Market Participants, ~~and~~ Members, and Terminated Members (as defined in this Attachment AP) that they may potentially be responsible for penalty costs assessed against the Transmission Provider for confirmed violations of any NERC Reliability Standard. Market Participants, ~~and~~ Members, and Terminated Members may be either directly assigned such penalty costs, if it is determined that they are responsible for or have directly contributed to the confirmed violations at issue, or may be assigned a portion of the costs, if the Transmission Provider is assessed a monetary penalty either due to its own confirmed violation or its status, as a Registered Entity under the NERC Functional Model and NERC Rules of Procedure.

This Attachment also provides for the recovery of costs associated with penalties assessed against the Transmission Provider for confirmed violations of NERC Reliability Standards resulting from a confirmed violation of NERC Reliability Standards by a Market Participant(s), Member(s), Terminated Member(s), the Transmission Provider, or another entity for whom Transmission Provider is assessed a penalty due to its status as a Registered Entity under the NERC Functional Model and NERC Rules of Procedure. Under this Attachment, the Transmission Provider may seek recovery of the costs associated with any monetary penalty by filing under section 205 of the Federal Power Act for direct recovery of penalty costs from one or more Market Participants, ~~or~~ Members, or Terminated Members and/or for an allocation of penalty costs among all Market Participants, ~~and~~ Members, and Terminated Members. Additionally, this Attachment provides for the participation of Market Participants, Members, and Terminated Members in the penalty assessment process with the Transmission Provider if

the Market Participant, Member, or Terminated Member is alleged to have been directly involved in the event causing the potential penalty.

1. Definitions

All defined terms in this Attachment shall have the meaning given to them in the Tariff unless otherwise stated below.

Compliance Monitoring and Enforcement Program – The program used by NERC and the Regional Entities to monitor, assess, and enforce compliance with Reliability Standards within the United States. This is accomplished through compliance monitoring and audits, as well as the conduct of investigations and the assessment of monetary and non-monetary penalties for violations.

Electric Reliability Organization or ERO – An organization certified by the Commission to develop and enforce mandatory reliability standards and assess penalties against users, owners and operators of the bulk power system that violate such standards.

North American Electric Reliability Corporation (“NERC”) – The organization designated as ERO by the Commission on July 20, 2006.

NERC Compliance Registry – The registry maintained by NERC that records which Registered Entity is responsible for performing the set of functions required to ensure compliance with each NERC Reliability Standard.

NERC Functional Model – The Model defining the set of functions that must be performed to ensure the reliability of the electric bulk power system. The NERC Reliability Standards establish the requirements of the responsible entities that perform the functions defined in the Functional Model.

NERC Reliability Standards – Standards developed by NERC and approved by the Commission to ensure reliability of the bulk power system, violation of which may result in the imposition of mitigation programs or monetary penalties.

NERC Rules of Procedure – The rules and procedures developed by NERC and approved by the Commission. These rules include the process by which a responsible entity, who is to perform a set of functions to ensure the reliability of the electric bulk power system, must register as a Registered Entity.

Registered Entity – The entity registered under the NERC Functional Model and NERC Rules of Procedures for the purpose of compliance with NERC Reliability Standards and responsible for carrying out the tasks within a NERC function without regard to whether a task(s) is performed by another entity pursuant to the terms of its governing documents.

Regional Entity (RE)– NERC has designated the Transmission Provider as “Regional Entity” in the SPP region and has delegated ERO functions to Transmission Provider in the region.

Terminated Member – An entity that was a Member of SPP at the time that the conduct giving rise to a reliability penalty occurred, but that has since terminated its SPP Membership.

2. Direct Assignment of Costs Where Violation Can Be Directly Assigned

The purpose of this section of this Attachment is to provide notice to all Market Participants, ~~and~~ Members, and Terminated Members that they may potentially be responsible for reliability penalty costs assessed in the event that the Market Participant's, ~~or~~ Member's, or Terminated Member's conduct or omission contributed to the violation(s) for which a monetary penalty was assessed to the Transmission Provider. This section provides for notification for the potential direct assignment of costs related to reliability violations that may be assessed to the Transmission Provider. The Transmission Provider shall notify, in writing, any potentially affected Member(s), ~~or~~ Market Participant(s), or Terminated Members of an alleged violation as

soon as possible after notifications by the RE or NERC of the commencement of procedures under the Compliance Monitoring and Enforcement Program. In addition, the Transmission Provider will invite the affected Member(s), ~~or~~ Market Participant(s), or Terminated Member(s) to fully participate in all discussions and/or proceedings under the Compliance Monitoring and Enforcement Program.

If there is i) an assessment of a monetary penalty against the Transmission Provider as the Registered Entity for a confirmed violation of a NERC Reliability Standard(s) and ii) as a result of proceedings under the Compliance Monitoring and Enforcement Program, it is determined that one or more Market Participants, Members, Terminated Members, or Registered Entities are deemed to have directly contributed to or found to have been a “root cause(s)” of such confirmed violation(s), such Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) may be assessed a portion of or all of the monetary penalty; provided that all of the following conditions have been satisfied:

(1) During the course of an investigation by NERC, the RE or the Commission regarding the possibility of a Transmission Provider alleged violation of a NERC Reliability Standard, if the Transmission Provider believes that a Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) may have contributed to the violation under investigation, the Transmission Provider will provide a) reasonable prior written notice to the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) that the Transmission Provider believes may have contributed to the violation and that it intends to seek to hold the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) responsible for a portion of or all of the monetary penalties that result; and b) the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) is provided the opportunity to fully participate in all discussions and/or proceedings under the Compliance Monitoring and Enforcement Program.

(2) In addition to the Transmission Provider providing sufficient notice to a Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) under Section 2(1) of this

Attachment, it will also provide notice to NERC, the RE and the Commission of its allegations that the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) may have contributed to the alleged violation and that the Transmission Provider intends to hold the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) responsible for a portion of or all of the monetary penalties that result from the investigation which determines to what extent the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) contributed to or was a “root cause(s)” of the confirmed violation; (3) If, as a result of proceedings under the Compliance Monitoring and Enforcement Program, it is determined that the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) cited by the Transmission Provider contributed to or was a “root cause(s)” of the alleged violation, the Transmission Provider will seek to hold the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) responsible for a portion of or all of the monetary penalty assessed as a result of the confirmed violation by making a filing with the Commission under section 205 of the Federal Power Act to assign a portion of or all of the costs of the monetary penalty directly to the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s);

(4) If the Commission accepts the filing, the Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) shall be responsible for its portion of the monetary penalty as determined by the Commission’s order on the section 205 filing.

3. Spreading of Costs Where Violation Cannot Be Directly Assigned

The purpose of this section of this Attachment is to provide notice to all Market Participants, ~~and~~ Members, and Terminated Members that they may potentially be responsible for reliability penalty costs assessed to the Transmission Provider that cannot be directly assigned under Section 2 of this Attachment. This section provides for a spreading of a portion of or all of such reliability penalty costs among all Market Participants, ~~and~~ Members, and Terminated Members where the Transmission Provider itself is responsible for a confirmed violation of a Reliability Standard or where the Transmission Provider is assessed a penalty

because of its status as a Registered Entity for a given Reliability Standard and the entity responsible for the violation cannot be assessed a penalty because of its status. The Transmission Provider shall notify, in writing, any potentially affected Market Participant(s), ~~or~~ Member(s), or Terminated Member(s) of an alleged or confirmed violation as soon as possible after notifications by the RE or NERC of the commencement of procedures under the Compliance Monitoring and Enforcement Program. In addition, the Transmission Provider will i) invite the affected Member(s), ~~or~~ Market Participant(s), or Terminated Member(s) to fully participate in all discussions and/or proceedings under the Compliance Monitoring and Enforcement Program and ii) timely report status and results of the findings and remedies to the Market Participants, Members, and Terminated Members.

If there is an assessment of a monetary penalty against the Transmission Provider as the Registered Entity for a confirmed violation of a NERC Reliability Standard(s), either: (1) as a result of the Transmission Provider's own conduct or omission that resulted in a confirmed violation; or (2) as a result of a violation by another entity for whom the Transmission Provider is the Registered Entity where the entity is not on the NERC Compliance Registry and therefore cannot be directly assessed a penalty because of its status; Market Participants, ~~and~~ Members, and Terminated Members may be assessed a portion of the monetary penalty providing the following conditions have been satisfied:

(1) The Transmission Provider has made a filing under section 205 of the Federal Power Act proposing a methodology to allocate a portion of or all of the costs of the monetary penalty among the Market Participants, ~~and~~ Members, and Terminated Members;

(2) If the Commission accepts the filing and finalizes such penalty allocations to the Market Participants, ~~and~~ Members, and Terminated Members.

Date: August 30, 2012

Memorandum to: Chairman Wellinghoff

From: Michael Bardee, General Counsel
Michael McLaughlin, Director, Office of Energy Market Regulation

Subject: Non-public utility participation in an Energy Imbalance Market (EIM)

Many non-public utilities have expressed reluctance to participate in initiatives to form an EIM in the West over concerns that their participation may subject them to Federal Energy Regulatory Commission (Commission) jurisdiction under the Federal Power Act.

A. Preserving Legal Status and Obligations of Non-public Utilities

First and foremost, non-public utilities appear to have a concern over a possibility that legal obligations and requirements arising from their participation in an EIM would create a conflict with their legal status and obligations under state law and subject their business operations to the Commission's jurisdiction.

The Commission has demonstrated a flexible attitude toward organized market proposals which include non-public utilities. For example, in Order No. 2000, the Commission acknowledged that public power entities face unique difficulties in RTO participation and indicated that it would be flexible and analyze proposals to include public power on a case-by-case basis.¹ Pursuant to this approach, the Commission accepted the Southwest Power Pool, Inc. (SPP) Membership Agreement, the SPP Tariff, and SPP Bylaws containing provisions that specifically address the Nebraska Entities'² non-public utility status and their state and municipal law obligations in order to facilitate membership of those non-public utilities in SPP and, specifically, their participation in the energy imbalance service market.³ The SPP order serves as an example of the Commission's consideration and acceptance of provisions that recognize and preserve the legal status and legal obligations of non-public utilities. In this regard, specific

¹ See *Regional Transmission Org.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,201 (1999).

² The Nebraska Entities included Nebraska PPD, Omaha Public Power District (Omaha PPD), two political subdivisions of the state of Nebraska, and Lincoln Electric System, a municipally-owned utility.

³ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,239 (2008) (*SPP*).

Commission-approved provisions in SPP’s membership agreement and tariff may help interested parties craft provisions to accommodate non-public utilities in the West.⁴ These provisions address, among other things, Commission jurisdiction, dispute resolution, conflicts with state laws, termination of the agreement with less than 12 months notice, and retention of operational authority under particular circumstances. The specific provisions accepted by the Commission for SPP are included in Attachment A.

Other Commission orders may also provide helpful guidance in this area. For example, to facilitate participation of the Nebraska Public Power District (NPPD) in the TRANSLink proposal, the Commission recognized and addressed NPPD’s non-public utility status.⁵ Additionally, in providing guidance to Bonneville Power Administration, PacifiCorp and Idaho Power Company (collectively, Petitioners) concerning a proposal to form Grid West, the Commission stated that the obligations of non-public utility participants in Grid West should be “accounted for within the [Grid West] framework” and invited the Petitioners to submit a list of specific provisions that they believed were essential to meeting their legal obligations or which may affect their ability to participate in Grid West in order for the Commission to better understand their obligations and how they could be accounted for within the framework proposed.⁶ The Commission also clarified that: (1) “mere membership in Grid West would not result in an otherwise non-jurisdictional utility becoming jurisdictional,”⁷ (2) “if a non-jurisdictional entity over which the Commission has only limited authority, allows its facilities to be used by Grid West for the provision of regional transmission service, that would not, by itself, cause such non-jurisdictional utility or limited jurisdictional entity to become a public utility subject to the full range of the Commission’s jurisdiction under Part II the Federal Power Act”⁸ and (3) generally, a non-jurisdictional entity’s purchase of transmission services would not, by itself, make that entity jurisdictional.⁹

⁴ *See id.*

⁵ *TRANSLink Develop. Co., LLC*, 101 FERC ¶ 61,140, at P 26 (2002).

⁶ *Bonneville Power Admin.*, 112 FERC ¶ 61,012 (2005) (*Grid West*). The Commission provided guidance in response to a petition for a declaratory order seeking guidance on certain issues identified as being of critical importance to the further development of Grid West, a proposed independent transmission provider.

⁷ *Id.* at P 30.

⁸ *Id.* at P 28.

⁹ *Id.* at P 29.

B. Review of Rates, Revenue Requirements under Sections 205 and 206

Non-public utilities have expressed the concern that their participation in an EIM may cause them to become subject to the rate filing and review requirements of Federal Power Act (FPA) sections 205 and 206.¹⁰

The Commission has a line of case precedent that requires the Commission to conduct a review of rates of non-public utilities to the extent that those rates impact rates charged by a jurisdictional public utility. The Commission, however, has discretion as to how to exercise its jurisdiction over such rates.

In *PG&E*,¹¹ the D.C. Circuit found that the Commission has discretion concerning the review of the City of Vernon’s transmission revenue requirement so long as the review “ensure[s] ... that the CAISO’s rates will ultimately be just and reasonable.”¹² In remanding the matter back to the Commission, the court emphasized that it was

not unmindful of the complexities underlying Order No. 2000 and FERC’s regional approach, and that FERC may wish to retain flexibility regarding the nature of its review of the TRRs of individual non-jurisdictional entities. . . . Nevertheless, while FERC has discretion in formulating its approach with respect to a nonjurisdictional entity, the choice it makes must ensure that the CAISO’s rates meet the just and reasonable standard of [section] 205.¹³

On remand, the Commission acknowledged that it had discretion to conduct “a less thorough review” of non-public utilities’ transmission revenue requirements.¹⁴ However, the Commission concluded that based on the facts of that particular case, it was appropriate for the Commission to use the same type of review for the City of Vernon’s transmission revenue requirements as the Commission used in setting the rates of the

¹⁰ The market rules established for a Western EIM, including rates, terms and conditions of service, are likely to be subject to Commission jurisdiction under FPA sections 205 and 206.

¹¹ *Pacific Gas & Electric Co. v. FERC*, 306 F 3d 1112 (D.C. Cir. 2002) (*PG&E*).

¹² *Id.* at 1116.

¹³ *Id.* at 1121 (citations omitted).

¹⁴ *City of Vernon*, 111 FERC ¶ 61,092, at P 35 (2005) (*Vernon*)

public utilities.¹⁵ The Commission explained that it had to apply a section 205 review because evidence in the record indicated that the Vernon City Council’s review of the transmission revenue requirements was not impartial and therefore could not be relied upon in determining the justness and reasonableness of the California ISO’s composite rate without separately reviewing the City of Vernon’s revenue requirements.¹⁶

The *Vernon* proceeding reflects a particular set of circumstances that led the Commission to exercise its discretion *not* to conduct “a less thorough review.”

The Commission revisited the issue of the applicable standard of review in *Basin* when it reviewed a proposed increase in rates for an integrated transmission system owned by public utilities and non-public utilities. The Commission again noted its discretion, pursuant to the *PG&E* decision, to conduct a “less thorough review” of the non-public utility’s revenue requirement. The Commission emphasized again that it would not establish a formal standard of review; and will decide on a case-by-case basis which standard of review to apply.¹⁷ This case did not shed more light on specific circumstances that would warrant application of a different standard of review, as the dispute subsequently settled.¹⁸

In *WestConnect*, the Commission explained that participation by non-public utilities in the WestConnect Regional Transmission Pricing Initiative did not, by itself, make their rates, transmission revenue requirements, or costs subject to review under FPA section 205 or 206.¹⁹ Unlike in the *Vernon* order, in *WestConnect*, the Commission did not employ a detailed review of rates of the non-public utilities participating in a two year experimental regional transmission pricing initiative (Tri-State Generation and Transmission Association, Southwest Transmission Cooperative, Inc., and Western Area Power Administration).²⁰ Instead, the Commission determined that the non-public

¹⁵ *Id.* at P 36.

¹⁶ *Id.* at P 39.

¹⁷ *Basin Electric Power Coop*, 113 FERC ¶ 61,079, at P 20 (2005) (*Basin*).

¹⁸ *Basin Electric Power Coop.*, 115 FERC ¶ 61,048 (2006).

¹⁹ *WestConnect*, 124 FERC ¶ 61,240 at P 18 (2008) (*WestConnect*).

²⁰ Under the pricing experiment, a transmission customer who purchases non-firm hourly transmission service over two or more transmission systems is charged a single rate equal to the highest rate for hourly non-firm transmission service of those participants of each transaction. Each participant then receives a *pro rata* share of

utilities' rates did not affect the WestConnect overall rates because the revenues of each public utility participant for the service they provide are capped at the OASIS-posted ceiling rate which the Commission had already found to be just and reasonable. Therefore, the Commission reasoned, participation by a non-public utility in the provision of coordinated service would never cause the rate charged by the public utility participants, in the form of allocated revenues, to be higher than their just and reasonable OATT rates.²¹ The WestConnect regional transmission pricing initiative was extended for two years effective July 1, 2011.²²

C. The Commission's Refund Authority under FPA Section 206(e)(2)

It may be noteworthy that as part of the Energy Policy Act of 2005,²³ the U.S. Congress enacted section 206(e)(2) of the Federal Power Act.²⁴ That section provides that if a non-public utility voluntarily makes a short-term sale of electric energy through an organized market and any aspect of the sale violates a Commission-approved tariff or Commission rules, the non-public utility is subject to Commission refund authority with respect to the violation.

D. Exit Provisions/Withdrawal Rights

Non-public utilities have also expressed concern over their ability to withdraw from the EIM after its start-up (*e.g.*, if the Commission or other EIM participants made decisions that a non-public utility didn't like).

The Commission has addressed similar issues in several orders. For example, in *SPP*,²⁵ the Commission accepted withdrawal provisions for the Nebraska Entities so that they can terminate their membership agreement with less than 12-months notice if state law or SPP rules change so as to conflict with each other and the parties cannot resolve the conflict. In addition, the Nebraska Entities may terminate their membership if the Commission does not accept their respective transmission revenue requirements or

revenue based on the ratio of the sum of posted OASIS ceiling rates for each transaction. *See WestConnect*, 126 FERC ¶ 61,105, at P 7 & 11 (2009).

²¹*Id.* at P 15, citing *WestConnect*, 124 FERC ¶ 61,240 at P 19.

²² *WestConnect*, 135 FERC ¶ 61,271 (2011).

²³ Pub. L. No. 109-58, 119 Stat. 594, § 1286 (2005).

²⁴ 16 U.S.C. § 824e(e)(2).

²⁵ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,239, at P 15 (2008) (*SPP*).

rates.²⁶ In *Midwest Independent System Operator*,²⁷ the Commission accepted a provision to permit any public power entity to terminate the agreement with notice shorter than 12 months if Midwest ISO's Tariff is amended in a way that could cause a conflict with state laws and regulations.

In *Grid West*, the Commission provided guidance to Bonneville regarding any decision to withdraw from Grid West under section 205 of the FPA. The order specifically stated that Bonneville would not need to seek prior Commission approval to withdraw from Grid West, noting however, that jurisdictional public utilities would be required to seek Commission authorization. Nevertheless, the order noted that the Petitioners (including Bonneville) expected to negotiate withdrawal terms with Grid West and upon the filing of its proposal, the Commission and interested parties would have the opportunity to review such provisions.²⁸

The WestConnect Pricing Initiative Participation Agreement allows any participant to withdraw from that pricing experiment proposal: (1) at any time before the proposal begins; (2) at any time as a result of adverse regulatory actions; or (3) after the first annual anniversary date, for any reason upon 90 days' prior notice.²⁹ In addition, withdrawals by any participant pursuant to these three provisions is allowed without Commission approval of the withdrawal.³⁰

E. Establish Known and Identifiable Stranded Costs

Establishing known and verifiable stranded cost exposure for non- public utilities who may seek to withdraw from the EIM within a specified period also may remove a barrier to non-public utilities' participation in an EIM. Market participants could address the stranded cost exposure concern by identifying the start-up costs for the EIM, clearly defining the allocation of costs to participants, and clearly defining the stranded cost exposure for any non-public utility in the event that an entity seeks to withdraw from the EIM within a specified period. Staff notes that in the context of failed efforts to launch

²⁶ *Id.*

²⁷ *Midwest Indep. Sys. Operator*, 123 FERC ¶ 61,265, at P 19 (2008).

²⁸ *Grid West* 112 FERC ¶ 61,012, at P 63 (2005)

²⁹ *See WestConnect*, 126 FERC ¶ 61,105 (2009).

³⁰ *Id.* at P 16. We note that the withdrawal provisions accepted for WestConnect are in the context of a temporary pricing experiment.

RTOs, the Commission and some state regulators have separately permitted utilities to recover a portion of start-up costs of those efforts in regulated rates.³¹

³¹ See *Idaho Power Co.*, 123 FERC ¶ 61,104, at P 10 (2008). See also, e.g., *Alliance Cos.*, 99 FERC ¶ 61,105 (2002); *Am. Elec. Power Serv. Corp.*, 104 FERC ¶ 61,013 (2003). *Duke Energy Carolinas, LLC.*, 137 FERC ¶ 61,058, at P 21 (2011). Additionally the record established in this proceeding indicates that the North Carolina and South Carolina state regulatory agencies approved the recovery of GridSouth costs in Duke Energy's 2007 and 2009 retail rate cases. See *Duke Energy Carolinas, LLC*, Response to July 5, 2011 Deficiency Letter, at 14, Docket No. ER11-2895-000, -001 (Aug. 22, 2011).

The Commission-approved provisions in the SPP governing documents addressed the following.³²

- By virtue of their membership in SPP, Nebraska PPD and Omaha PPD will not be subjected to the Commission's jurisdiction, except for the Commission's authority to review Nebraska PPD's or Omaha PPD's transmission revenue requirements and rates to the extent they affect the rates charged by SPP. Nebraska PPD or Omaha PPD also has the right to terminate the agreement if the Commission does not accept their transmission revenue requirements or rates.
- Dispute resolution would not be binding on Nebraska PPD and Omaha PPD unless approved by their governing boards, subject to Nebraska court review.
- Nebraska PPD or Omaha PPD are not required to engage or abstain from any actions that would affect their present or future bond resolutions, tax-exempt debt covenants, and financing agreements.
- Nebraska PPD or Omaha PPD are not required to do anything that conflicts with Nebraska state law or regulations, and any determination of conflict will be up to the Nebraska PPD or Omaha PPD governing board, subject to Nebraska state court review.
- Nebraska PPD or Omaha PPD can terminate the agreement with less than 12-months notice if state law or SPP rules change, so as to conflict with each other, and the parties are unable to resolve the conflict.
- Nebraska PPD's and Omaha PPD's governing boards will function as state regulatory authorities regarding construction of new transmission facilities and submission to SPP of fixed transmission revenue requirements and rates subject to approval of their boards, subject to court review.
- Nebraska PPD and Omaha PPD will retain operational authority if SPP's operational authority would endanger service or conflict with state law.

In addition, the Commission accepted the following revisions to the SPP Tariff to accommodate the Nebraska Entities:³³

- Nebraska Entities' existing contracts are grandfathered, and future contracts with any customer that has a right under state laws to obtain transmission or energy service, if service under the SPP Tariff would fail to satisfy the state law obligation, are also grandfathered.

³² *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,239 (2008).

³³ *See id.*

- Nebraska Entities are not required to provide transmission service if doing so would jeopardize their status as a tax-exempt entity or the tax-exempt status of the bonds used to finance the facility.
- In the event that one of the Nebraska Entities' governing boards sees a conflict between state law and the SPP Tariff, the entity can follow state law without jeopardizing its membership in SPP, though the governing board is required to file notice with the Commission, describing the conflict and the governing board's actions regarding the conflict.

SPP Risk Allocation Analysis

Executive Summary: During the course of negotiating an agreement among SPP and current Balancing Authorities (BA) in the SPP region for consolidated balancing authority services, the parties reached an impasse on how the risk of non-performance would be allocated between and among the parties. The Seams Steering Committee asked the MOPC for policy direction on whether SPP should indemnify parties to this contract for the negligent actions of SPP. The Board of Directors has assigned this matter to the Corporate Governance Committee to analyze in light of SPP's current risk profile.

Consolidation of the BA Functions:

SPP will be the sole registrant for all BA functions and will be solely responsible to SERC for any violation of the BA functions. Attachment AP of the tariff dictates how SPP is to seek recovery of any reliability violation penalties. The legacy balancing authorities will have very limited performance obligations in the CBA contract since SPP will be the sole registrant for all BA functions. The BA functions were previously described in Attachment AN, which was the only place in the tariff or other governing documents where SPP indemnified another party for its actions.

Current Risk Allocation: A full and complete analysis of the CBA risk allocation and of risk allocation in general will be presented during the December Corporate Governance Committee meeting. That analysis will describe SPP's current risk allocation methodology as addressed in the SPP Bylaws, Membership Agreement and Tariff. The analysis will include how liability for reliability violation penalties is allocated as between SPP and members. Also, the analysis will address how the risk of liability for money damages in the context of civil litigation is allocated between SPP and its members.

Comparison: The analysis will define how other RTOs and ISOs allocate similar risk. It will also identify the advantages and disadvantages of each allocation methodology and provide relevant FERC interpretive material in support of each.

Examples and Scenarios: The analysis will include examples to demonstrate the operation of contractual and tariff provisions and the applicability of each.