



Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE MEETING
March 19, 2013
Hyatt Regency DFW Airport, Dallas, TX

• A G E N D A •

10:00 a.m. – 4:00 p.m. CDT

1. Call to Order and Administrative Items..... Nick Brown
2. Indemnification Review..... Paul Suskie/Mike Riley
3. Withdrawal Obligations..... Stacy Duckett/Matt Binette
4. Project Cost Working Group Charter..... Stacy Duckett
5. Future Meetings..... Nick Brown

2013

August 29

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

Southwest Power Pool
CORPORATE GOVERNANCE COMMITTEE MEETING
DFW Hyatt Regency, Dallas, TX

February 28, 2013

• M I N U T E S •

Agenda Item 1 – Administrative Items

Nick Brown called the meeting to order at 10:00 a.m. Other members in attendance or represented by proxy were: Rob Janssen (Dogwood), Cindy Holman (OMPA), Jim Eckelberger (Director), Mel Perkins (OG&E), and John McClure (NPPD). SPP Staff included Stacy Duckett, Mike Riley, Matt Harward and Paul Suskie. Others attending were Harry Skilton (Director); Bruce Cude and Bill Grant (Xcel); Bary Warren (Empire); Jeff Knottek and Heather Starnes (City Utilities of Springfield); Joe Lang (LES); Tom Hesterman (Sunflower); Kip Fox (AEP); John Rhea (OG&E); Matt Binette (Wright & Talisman); Harold Hadland and Dave D'Alessandro (NPPD); Doug Collins (OPPD); Radu Costinescu (BPU) and Dennis Reed (Westar).

Nick Brown asked for a motion to approve minutes from the December 11, 2012 meeting (Minutes 12/11/12 – Attachment 1). Mel Perkins moved to approve the minutes as presented; Rob Janssen seconded the motion, which passed unanimously.

Agenda Item 2 – Indemnification Review

Paul Suskie and Mike Riley presented details on the indemnification issue, following up on feedback from the December meeting as well as additional discussions with member companies' attorneys (Indemnification Review – Attachment 2). SPP's current carrier informed SPP that the Indemnification language as passed by MOPC is not insurable. SPP's carrier is researching other options. The group discussed how this is handled in other regions, and options. Mr. Suskie then reviewed two options for moving forward. The groups discussed in detail including development of a third option. Insurance options and costs will be obtained and circulated. A special meeting will be scheduled for March 19 at 10:00 a.m. to consider the additional information and seek to resolve the matter such that a recommendation can be made at the April Board meeting. Kip Fox requested a review of the allocation process to consider an approach that more evenly distributes expenses/costs among members, specifically less emphasis on load.

Agenda Item 6 – Withdrawal Obligations

Stacy Duckett noted that direction at the last meeting was to consider revisions that would capture the fact of an obligation to transmission expansion costs upon withdrawal, but no longer include detailed calculations (Withdrawal Obligations – Attachment 3). Matt Binette reviewed the revisions drafted for the Membership Agreement and Bylaws. The group discussed in detail. Another iteration will be prepared and distributed in advance of the March 19 meeting for review.

Agenda Item 5 – Project Cost Working Group Charter

Nick Brown presented the Project Cost Working Group (PCWG) Charter for consideration (PCWG Charter – Attachment 4). Jim Eckelberger had requested clarification of reporting of the group, specifically the role of the Markets and Operations Policy Committee (MOPC) and the Regional State Committee (RSC). The committee recommended edits to clarify the reporting relationship to MOPC as well as non-disclosure provisions. Rob Janssen moved to approve the PCWG Charter as amended; Cindy Holman seconded the motion, which passed unanimously.

Agenda Item 3 – Strategic Planning Committee Vacancy

Nick Brown noted a current vacancy on the Strategic Planning Committee (SPC). For reference, the committee reviewed a chart of companies currently represented on various committees (Company Representation on Committees – Attachment 5). Stacy Duckett advised candidates for consideration. Following discussion, Rob Janssen moved to recommend Bill Grant to fill this vacancy; Mel Perkins seconded the motion, which passed unanimously.

Agenda Item 4 – 2014 Nominations

Nick Brown reviewed terms expiring at the end of 2013 (2014 Nominations – Attachment 6). Discussion at this meeting focused on Directors and Regional Entity Trustee in case there is a need to engage a search firm. Following discussion, Mel Perkins moved to nominate John Meyer for election to a new three-year term; Cindy Holman seconded, which passed unanimously. John McClure moved to nominate Julian Brix for election to a new three-year term; Cindy Holman seconded, which passed unanimously. Rob Janssen moved to nominate Phyllis Bernard for election to a new three-year term; Cindy Holman seconded, which passed unanimously. The Members Committee positions will be discussed at the August meeting to finalize the ballot for the elections in October.

Agenda Item 7 – Annual Review of Director Compensation

Nick Brown reviewed the current compensation schedule for Directors, as well as meeting participation and fees paid during 2012 (Director Compensation Review – Attachment 7). He then reviewed various metrics versus other RTOs and NACD statistics for information. The committee determined to make no changes at this time.

Agenda Item 8 – Future Meetings

The next scheduled CGC meeting is March 19 at 10:00 a.m. in Dallas.

Adjournment

Nick Brown thanked everyone for participating and adjourned the meeting at 2:12 p.m.

Respectfully submitted,

Stacy Duckett, Secretary

Update: Consolidated Balancing Authority Contract and Indemnification

March 19, 2013

Paul Suskie
501.614.2535



Background of CBA - Indemnification Issue

- MOPC Action (October 16-17, 2012):
 - Passed CBA with SPP Indemnifying Parties to the CBA
- BODs Action (October 30, 2012):
 - Referred to CGC to review Governance Questions
- CGC Action (December 11, 2012):
 - CGC considered/discussed the policy issues
- Group of SPP & Member Attorneys Call (Feb. 19, 2013):
- CGC Meeting (February 28, 2013)
 - 3 Action Items
- DEADLINE: FERC Compliance Deadline: **June 30, 2013**:^{©SPP} | 2

February 28, 2013 CGC Action Items

New 3rd Option: Each party to the CBA Agreement is responsible for their own actions and/or omissions.

AEP Question: What options exist for SPP to allocate costs for indemnification claim? Non-parties to the CBA Agreement.

Insurance Questions: Response from Insurance Broker / Underwriter

Overview of Three (3) Options:

- Three Policy Issues Options for CGC to Consider for CBA Agreement Indemnification Issue.

Option 1: (MOPC LANGUAGE) SPP Indemnify Parties to the CBA Contract

Option 2: SPP Does Not Indemnify Parties to the CBA Contract

Option 3: Each Party to the CBA Agreement is responsible for their own actions and/or omissions

Action Item Responses

3rd Option Contract Language:

- CBA Contract §12.1
 - Each Party shall at all times indemnify, defend, and save harmless the other Party to this Agreement and its officers, shareholders, directors, agents, contractors, employees, and members (*i.e.*, cooperative members and municipal joint action agency members) from and against any and all damages, losses, claims, including without limitation claims and actions relating to injury to, or death of, any person, or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties or other Parties, arising out of or resulting from the Party's acts or omissions during performance of its obligations under this Agreement, except in cases of gross negligence or intentional misconduct by the other Party.

Action Item Responses

3rd Option Bylaw Changes:

- SPP Bylaws Proposed New Provisions:
- **3.15.5 Modification of Rights by Agreement.** Any provision of Section 3.15.1 may be waived or modified by express written agreement between SPP and Member. Such express written agreement shall apply solely to the subject matter of the agreement and is not intended to be a general waiver or modification of the rights provided in Section 3.15.1.
- **3.15.6 Procedural Rights Not Affected.** The limitations of liability provided in Section 3.15.1 shall not affect any procedural rights or obligation SPP or Member may have at law or equity.

Action Item Responses

AEP Question: What options exist for SPP to allocate costs for indemnification claim? Non-parties to the CBA Agreement.

- **Two Options:**
 - Option A: Member Assessment
 - Option B: Schedule 1A: SPP Tariff
- **Staff Recommendation:** Make indemnification cost allocation decision when and if the issue arises.

Action Item Responses

AEP Question: What options exist for SPP to allocate costs for indemnification claim? Non-parties to the CBA Agreement. Option A:

- **Member Assessment**
 - **Membership Agreement §3.8(a)** Member agrees to and will comply with and abide by the provisions of the SPP Bylaws and pay, when due, any dues, assessments, OATT charges, and other amounts owing to SPP.
 - **Bylaws §8.4** SPP will assess certain Members described herein on a monthly basis all costs not otherwise collected. Costs recovered under the assessment will include but are not limited to all operating costs, financing costs, debt repayment, and capital expenditures associated with the performance of SPP's functions as assigned by the Board of Directors. Significant among these are costs associated with regional reliability coordination and the provision of transmission service.

Action Item Responses

AEP Question: What options exist for SPP to allocate costs for indemnification claim? Non-parties to the CBA Agreement. Option B:

- Schedule 1A: SPP Tariff
 - **Section 1. Administrative Charge:** An administration charge shall be applied to all transmission service under this Tariff to cover the Transmission Provider's expenses related to administration of this Tariff.
- **Staff Recommendation:** Make indemnification cost allocation decision when and if the issue arises.

Action Item Responses

Insurance Questions: Response from Insurance Broker / Underwriter New Option was reviewed by Aegis, current underwriter. Aegis will only cover SPP's gross negligence

- Insurance Broker is soliciting coverage from other underwriters
- SPP will produce the results when they are received

Action Item Responses - Insurance

	<u>Aegis</u> Can SPP obtain Coverage to Indemnify CBA Parties for their Actions, Omissions, Negligence, etc.?	<u>Aegis</u> Can SPP obtain Coverage to Indemnify CBA Parties for SPP's Actions, Omissions, Negligence, etc.?	<u>Aegis</u> Can SPP obtain Coverage to Indemnify CBA Parties for SPP's Gross Negligence
Option 1: (MOPC) SPP Indemnifies CBA Parties	No	No	Yes
Option 2: SPP Does Not Indemnify CBA Parties	N/A	N/A	Yes
New Option 3: All Parties Indemnify One Another	N/A	No	Yes

Southwest Power Pool Bylaws

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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 Financial Obligations for Transmission Facilities

A Terminated Member shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date. Payments in fulfillment of any obligations related to transmission facilities approved prior to the termination date shall commence on the date that the costs of such transmission facilities are reflected in SPP's generally applicable rates, unless SPP and the Terminated Member agree to an alternate date. Rights, obligations, and payments applicable to time periods prior to the Termination Date shall be honored by SPP and the Terminated Member. Fulfillment and performance of such rights and obligations, and rights and obligations regarding the use of such transmission facilities, shall be negotiated between SPP and the Terminated Member, and any disputes involving such rights and obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws and Membership Agreement.

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 governmental or 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

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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. Upon receiving a Notice of intent to withdraw, SPP will no longer include the Member's load and facilities in the SPP planning process, unless the Member plans to continue to take transmission service to serve such load.

(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. 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.

4.3 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 included in the most recent SPP transmission plan approved by the SPP Board of Directors or any previously approved transmission plan for which SPP has issued a notification to construct to the Transmission Owner prior to the Termination Date ~~or promptly thereafter~~. If such obligations cannot be resolved through negotiations, they shall be resolved in accordance with the dispute resolution procedures in the Bylaws and Membership Agreement.

4.3.3A Financial Obligations for Transmission Facilities

A Terminated Member shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date. Payments in fulfillment of any obligations related to transmission facilities approved prior to the termination date shall commence on the date that the costs of such transmission facilities are reflected in SPP's generally applicable rates, unless SPP and the Terminated Member agree to an alternate date. Rights, obligations, and payments applicable to time periods prior to the Termination Date shall be honored by SPP and the Terminated Member. Fulfillment and performance of such rights and obligations, and rights and obligations regarding the use of such transmission facilities, shall be negotiated between SPP and the Terminated Member, and any disputes involving such rights and obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws and Membership Agreement.

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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

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), ~~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), ~~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), ~~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), ~~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), ~~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), ~~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), ~~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.



**Southwest Power Pool
Project Cost Working Group
Charter**

October 25, 2011

~~Redline Approved by PCWG 12/14/2012~~

~~REDLINE APPROVED BY CGC 2/28/13~~

~~(includes changes previously approved by PCWG 12/14/12)~~

~~Redline approved by PCWG 3/12/2013~~

~~(includes changes previously approved by CGC 2/28/13)~~

Purpose

To maintain the integrity of the SPP transmission project estimate process, a rigorous and transparent evaluation of cost estimate variances is required. The SPP project tracking process sets cost variance bandwidths and mandates justification and review for cost estimates that have changed outside these bandwidths.

The purpose of establishing the Project Cost Working Group (PCWG) is to create a group with stakeholder input, oversight, and accountability that can provide a transparent review of transmission cost variances. To ensure cost estimate variances are addressed in a timely manner, the PCWG will evaluate projects exceeding allowable variance levels on a monthly basis. On a quarterly basis, the PCWG will provide a report of their findings and comments to stakeholders.

The PCWG will also maintain the Study Estimate Design Guide (SEDG). The PCWG will notify MOPC if a trend is developing in cost estimates deviating from the SEDG. The MOPC is responsible for determining if a review of the SEDG is required. However, this does not preclude PCWG from suggesting to the MOPC any other changes to the SEDG.

Scope of Activities

In carrying out its purposes, the PCWG will:

1. Provide a monthly review of regionally funded projects that have been identified by the SPP project tracking process as having estimated costs that have exceeded allowable variance levels.
2. Provide recommendations for projects that exceed the allowable variance levels.
3. Provide a quarterly report to stakeholders.

Representation

The PCWG membership should consist of members who can collectively represent the interests of the SPP stakeholders. To ensure they have the expertise to make the recommendations required, these members should have experience in one or more of the following areas: transmission construction costs/estimating, project management, and/or ratemaking.

PCWG membership will consist of up to the following:

16 Voting members-

- 8 Transmission Owning
- 8 Transmission Using

Non-Voting member-

- 1 CAWG Liaison

**Duration**

Permanent

Reporting

The PCWG reports to the Markets and Operations Policy Committee.

Other Notes:

In light of FERC Orders 888 and 889 and the group composure of transmission and generation parties, the PCWG will have to observe the Standards of Conduct outlined in FERC Order 889. ~~As such,~~ Additionally, [SP1] there may be topics discussed by the PCWG that are privileged and confidential. Under such an event, appropriate measures will be taken to ensure that no Standards of Conduct are violated, including but not limited to Executive Sessions. Each member of the Regional State Committee (RSC) may designate a representative to participate in any such Executive Session. [SP2] To review information identified as confidential and protected, PCWG Members and any RSC designee(s) [SP3] will be required to execute a Nondisclosure Agreement.

Any materials provided during Executive Sessions containing information identified as confidential and protected and subject to a Nondisclosure Agreement will not be made publicly available.