

October 30, 2013

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

**Re: *Southwest Power Pool, Inc.*, Docket Nos. ER12-1179-000, -001, -006**  
Revision and Re-Submission of Offer of Settlement Resolving Treatment  
of Grandfathered Agreements in SPP's Integrated Marketplace

In an order issued on September 30, 2013, the Commission conditionally approved in part the Offer of Settlement filed on July 31, 2013 by Southwest Power Pool, Inc. ("SPP"), and required SPP to file within 30 days a revised Offer of Settlement modifying the standard of review for the Settlement so that it does not impose, absent compelling circumstances, the *Mobile-Sierra* "public interest" standard of review on future changes to the Offer of Settlement sought by the Commission, acting *sua sponte*, or by non-settling third parties.<sup>1</sup> Attached to this letter is a revised Offer of Settlement, including a marked version of the document that reflects the requested changes, as well as a clean version of the same.

Respectfully submitted,

/s/ Barry S. Spector

Barry S. Spector  
Jeffrey G. DiSciullo  
Matthew J. Binette  
WRIGHT & TALISMAN, P.C.  
1200 G Street, N.W., Suite 600  
Washington, DC 20005-3802  
Telephone: (202) 393-1200  
Fax: (202) 393-1240

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

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<sup>1</sup> *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,254, at PP 22–23 (2013).

cc: Penny Murrell  
Michael Donnini  
John Rogers  
Patrick Clarey  
Laura Vallance

# Offer of Settlement

## Marked Version

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

Southwest Power Pool, Inc. ) Docket No. ER12-1179-000

**OFFER OF SETTLEMENT**

**To the Commission:**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602, Southwest Power Pool, Inc. ("SPP"), submits this Offer of Settlement ("Settlement") to resolve issues associated with the treatment of grandfathered agreements, or "GFAs," in the context of SPP's Integrated Marketplace. SPP seeks all necessary authorizations under the Federal Power Act ("FPA") and the Commission's Rules and Regulations thereunder, as well as any waivers of such Rules and Regulations, as may be necessary in order to implement fully the Settlement. Resolution of the GFA issues is critical to SPP's ability to administer initial Auction Revenue Rights ("ARRs") allocations and Transmission Congestion Rights ("TCRs") auctions.

**Article 1**

**Procedural Background and Scope of Settlement**

On February 29, 2012, SPP submitted to the Commission proposed tariff revisions to implement the SPP Integrated Marketplace in March 2014. As proposed, the Integrated Marketplace includes Day-Ahead and Real-Time Energy and Operating Reserve Markets and the distribution of ARRs and associated TCRs.

In designing the Integrated Marketplace, SPP proposed to treat GFAs comparable to other firm reservations by extending to all firm transmission service – whether conventional tariff service or service subject to a GFA – the same right to receive ARRs. Thus, under SPP’s as-filed proposal, Market Participants with GFAs are able to receive and convert the ARRs associated with their transmission service to TCRs in the same manner as other Market Participants.

In an order issued October 18, 2012, the Commission conditionally accepted SPP’s proposed treatment of GFAs.<sup>1</sup> However, in response to protests, the Commission directed SPP “to address all GFAs within the Integrated Marketplace construct” before market launch.<sup>2</sup> The Commission instructed SPP to negotiate with protesting GFA parties to attempt to resolve issues concerning integration of their GFAs into the new market, noting that if such negotiations failed, “a carve-out could be consistent with Commission precedent.”<sup>3</sup> The Commission observed that “[t]he situation here is similar to the situation in the MISO energy markets proceeding. There the Commission

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<sup>1</sup> *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (“October 18 Order”).

<sup>2</sup> *Id.* at P 309.

<sup>3</sup> *Id.* at P 314. The following GFA parties filed protests concerning the integration of GFAs within the Integrated Marketplace: Omaha Public Power District (“OPPD”), Nebraska Public Power District (“NPPD”), and Basin. Missouri River Energy Services & Heartland Consumers Power District also filed a protest but are not parties to any GFA with a source or sink within the SPP footprint. SPP understands that LES did not protest SPP’s Integrated Marketplace filing because LES’s GFAs are associated with the GFAs listed in NPPD’s protest. LES subsequently contacted SPP directly regarding the treatment of certain GFAs to which it is a party and participated in the GFA settlement proceedings resulting in this Settlement.

encouraged the MISO parties with GFAs to settle their differences in order to facilitate integration of GFAs into the energy market.”<sup>4</sup> The Commission ordered SPP “to file an informational report due 90 days after the issuance of this order explaining the status of the negotiations and identifying the remaining GFAs that are not integrated into the market.”<sup>5</sup> The Commission also stated SPP “may commence a stakeholder process to finalize the carve-out proposal for the GFAs that have not been integrated and which merit a carve out.”<sup>6</sup>

Following the October 18 Order, negotiations with protesting GFA parties ensued. These negotiations were documented in status reports filed by SPP on January 16, 2013, March 15, 2013, and May 15, 2013. Among other things, SPP reported continuing progress in negotiations to resolve issues involving the NPPD GFAs, but advised the Commission (in the March 15, 2013 status report) that negotiations with OPPD had terminated based on SPP’s position that the OPPD GFAs represented partial path reservations that were not eligible for ARRs, as requested by OPPD.

On June 6, 2013, the Commission granted a request by OPPD to establish settlement judge procedures to provide a forum for OPPD and SPP to try to resolve issues related to OPPD’s GFAs.<sup>7</sup> The Commission recognized that OPPD’s GFA issues “must

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be resolved prior to the start of the Integrated Marketplace initial ARR allocation and TCR process, scheduled to commence October 28, 2013.”<sup>8</sup>

On June 19, 2013, SPP moved to expand the settlement judge proceedings to include consideration of all GFAs, in addition to the OPPD GFAs. The Chief Administrative Law Judge granted SPP’s motion on June 24, 2013.<sup>9</sup> Judge Stephen Sterner was designated to preside as Settlement Judge. Pursuant to a series of notices issued during the month of July 2013, settlement conferences were held weekly, beginning July 9, and continuing through July 24.

In accordance with the June 6 Order, settlement proceedings were scheduled to run only through August 1, 2013. If the parties were unable to reach a resolution by that date, then the settlement judge was to file a report with the Chief Judge on or before August 6, 2013 and SPP was required to submit a proposal by August 8, 2013 either to “carve-out [] the OPPD GFAs or . . . integrat[e] the OPPD GFAs into the Integrated Marketplace.”<sup>10</sup>

By virtue of the Chief Judge’s June 24 Order expanding the scope of the settlement proceedings, the negotiations held during July 2013, covered all outstanding GFAs and involved the participation of all parties to the protested GFAs.

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<sup>8</sup> *Id.* at 17.

<sup>9</sup> *Sw. Power Pool, Inc.*, 143 FERC ¶ 63,016 (2013) (“June 24 Order”).

<sup>10</sup> June 6 Order at P 21.

The Settlement establishes criteria governing eligibility for carve-out of certain GFAs by, *inter alia*, defining the meaning of a “Carved-Out GFA;” specifying the criteria used to determine carve-out eligibility; and, identifying the specific GFAs that qualify under such criteria. The Settlement does not address issues related to the development of a carve-out proposal in the SPP stakeholder process. In addition, the Settlement addresses the treatment of OPPD’s “partial path” GFAs by providing that, for a five-year term beginning on the commencement date of the SPP Integrated Marketplace, these “partial path” GFAs will be eligible for nomination by OPPD to receive ARRs in SPP’s Integrated Marketplace.

**Article 2**  
**Provisions Governing Eligibility for Carve-Out of Certain GFAs**

This Article sets forth the criteria governing the eligibility for “carve-out” treatment for GFAs that will not be integrated into SPP’s Integrated Marketplace and identifies the GFAs eligible for “carve-out” treatment.

2.1 Definition of “Carved-Out GFAs.” For purposes of the Settlement, a “Carved-Out GFA” is an agreement with respect to which congestion and marginal loss charges will not be assessed for the transmission of energy under the GFA. Nothing in the Settlement affects the assessment or allocation of any other SPP charges to “Carved-Out GFAs.” “Carved-Out GFAs” must meet the eligibility criteria under Article 2.3 of the Settlement and must comply with all applicable tariff and protocol provisions regarding the reporting of energy transactions under the GFA. A holder of a transmission reservation under a “Carved-Out GFA” shall be ineligible to nominate or receive ARRs in SPP’s Integrated Marketplace for such reservation.



2.2 Limited and Exclusive List of GFAs Eligible for Carve-Out. GFAs identified in Schedule 1 hereto have been determined to meet the Carve-Out Eligibility Criteria under Article 2.3 and are therefore eligible to qualify as “Carved-Out GFAs.” Schedule 1 constitutes the exclusive list of eligible “Carved-Out GFAs,” meaning that only those agreements and the megawatts associated with them identified on Schedule 1 are eligible for carve-out treatment in SPP’s Integrated Marketplace.

2.3 Carve-Out Eligibility Criteria. In order to qualify as a “Carved-Out GFA,” the GFA must meet two criteria. First, the GFA is a “fixed rate” agreement, meaning that the agreement’s rate terms are not subject to unilateral change by the party providing service under the agreement. Second, the GFA is “non-jurisdictional,” meaning that the party providing service under the agreement is not a “public utility” within the meaning of the Federal Power Act.

2.4 Carve-Out Status. A GFA identified on Schedule 1 shall be treated as a “Carved-Out GFA” unless SPP is notified that a GFA will not be treated as a “Carved-Out GFA” in accordance with the SPP Tariff. If the GFA will not be treated as a “Carved-Out GFA” at the commencement of the Integrated Marketplace, such notification must be received by SPP no later than the date that the process associated with SPP’s initial ARR allocation is scheduled to commence (currently October 18, 2013).

2.5 Offset of Loss Revenues. Nothing in this Settlement shall be deemed to preclude an amendment to the SPP Tariff to require that any loss revenues received by the GFA Transmission Owner under the provisions of a “Carved-Out GFA” shall be used to offset any marginal loss charges related to the “Carve-Out GFA” that are included in

any GFA carve-out uplift distribution in the manner and to the extent required by the SPP Tariff.

**Article 3**  
**Resolution of OPPD “Partial Path” GFAs**

Separate and apart from the resolution of the Carved-Out GFAs, the Settlement resolves all issues associated with OPPD’s so-called “partial path” GFAs. The “partial path” GFAs covered by the Settlement are identified on Schedule 2, hereto.

3.1 Background of “Partial Path” Issues. Prior to becoming an SPP member, OPPD reserved and scheduled transmission capacity on its own system in order to move energy to its border with SPP for delivery and sale to Westar and Missouri Public Service, which then transmitted the energy to their loads using separate SPP transmission service. OPPD’s “partial path” GFAs represent transmission agreements with transmission paths that originated at generation resources within OPPD, moved across OPPD’s system, and ended at then-existing interfaces, i.e., border points, between OPPD and SPP, designated by SPP as OPPD.WR (Westar) and OPPD.MPS (Missouri Public Service). Once OPPD joined SPP, the former border points OPPD.WR and OPPD.MPS became internal points within SPP’s system. The subject transmission reservations were identified by OPPD as GFAs when OPPD joined SPP and are identified on Attachment W of the SPP Tariff.

SPP and OPPD disagreed whether OPPD’s “partial path” GFAs qualify for ARRAs. As explained in Article 1, OPPD filed a motion with the Commission that ultimately led to the initiation of the settlement proceedings that produced this Settlement.

3.2 Settlement of “Partial Path” Issues. The Settlement memorializes the terms by which OPPD’s partial path issues are resolved. The Settlement accommodates the unique circumstances presented by the OPPD partial path reservations and is expressly limited in scope to the specific GFAs and reservations identified in Schedule 2. To that end, SPP shall recognize OPPD’s right to nominate and receive ARRs (which may be converted to TCRs in accordance with the SPP Tariff) for the reservations identified in Schedule 2 for a nonrenewable five (5) year period commencing with the initial start-date of SPP’s Integrated Marketplace. The nomination and allocation of ARRs with respect to the reservations identified in Schedule 2 shall be subject to all SPP market rules (including, but not limited to, rules regarding ARR pro-rations), as specified in the SPP Tariff and protocols concerning ARR nominations and allocations, with the exception that any rules prohibiting nomination and allocation of ARRs on partial paths shall not apply. At the end of such five-year period, OPPD’s partial path GFAs shall no longer be eligible for nomination by OPPD to receive ARRs. At any time, including at the end of the five-year period, OPPD may apply for transmission service on a complete transmission path under the SPP Tariff and to the extent OPPD obtains such complete path transmission service, it may nominate and receive ARRs in accordance with the SPP Tariff.

3.2.1 OPPD Reservations Eligible for ARRs. Schedule 2 identifies, by SPP Attachment W reference number, the OPPD GFAs subject to this Settlement. Schedule 2 further identifies the SPP OASIS reservation numbers associated with the OPPD transmission reservations that are covered

by the Settlement. As shown on Schedule 2, OPPD's transmission reservations total 515 MW.

3.2.2 Establishment of Proxy Settlement Locations for OPPD Reservations. For the purpose of ARR nominations and allocations with respect to the OPPD GFAs and reservations identified on Schedule 2, the Settlement provides for the establishment of two proxy Settlement Locations representing the sink of the OPPD transmission reservations to the former border between OPPD and Westar and OPPD and Missouri Public Service. The proxy Settlement Locations consist of nodal locations (i.e., price nodes) that, on a weighted basis, fairly reflect power flows under the GFAs and reservations shown on Schedule 2. The selected price nodes fairly reflect congestion to the former border between OPPD and Westar and OPPD and Missouri Public Service and do not reflect congestion beyond the border to sinks within Westar or Missouri Public Service.

Accordingly, for the GFA associated with the OPPD (Nebraska City)-to-OPPD.WR reservation, totaling 315 MWs, the “OPPD.WR Proxy SL” is represented by the following pricing nodes, weighted using the percentages shown below:

<b><u>Pricing Node</u></b>	<b><u>Weighting</u></b>
<b>LES_ROKEBY_1</b>	<b>21.4%</b>
<b>SARPY_1</b>	<b>13.3%</b>
<b>MEC.OPPD</b>	<b>8.8%</b>
<b>Flat_Water</b>	<b>7.1%</b>
<b>AECI</b>	<b><u>49.4%</u></b>
	<b>100.0%</b>

For the GFAs associated with the OPPD (Cass County)-to-OPPD.MPS reservations, totaling 200 MWs, the “OPPD.MPS Proxy SL” is represented by the following pricing nodes, weighted using the percentages shown below:

<b><u>Pricing Node</u></b>	<b><u>Weighting</u></b>
<b>LES_ROKEBY_1</b>	<b>24.1%</b>
<b>MEC.OPPD</b>	<b>32.6%</b>
<b>AECI</b>	<b><u>43.3%</u></b>
	<b>100.0%</b>

With regard to the OPPD GFAs for ARR purposes, the sink locations shall be OPPD.WR Proxy SL and OPPD.MPS Proxy SL. These GFAs shall be subject to the same ARR allocation rules as any other GFA candidate for ARRs under the SPP Tariff.

**Article 4**  
**Effective Date**

The Settlement shall become effective upon issuance of a Commission order approving the Settlement.

**Article 5**  
**Reservations**

5.1 Applicability of Rule 602 Privileges. The Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, and it is agreed that unless it becomes effective in accordance with Article 4 hereof, the Settlement shall be privileged and shall not be admissible in evidence in any proceeding for use against any party.

5.2 No waiver of rights. It is specifically understood and agreed that the Settlement represents a compromise resolution with respect to the various matters addressed herein, for the sole purpose of the resolution of the matters agreed to herein. Neither SPP, the Commission, its Staff, nor any other party or person shall be prejudiced or bound hereby in any proceeding except as specifically provided herein. Neither SPP, the Commission, its Staff, nor any other party or person shall be deemed to have approved, accepted, agreed or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein. No party is waiving its litigation rights and positions in the event the Settlement does not become effective.

5.3 Non-severability. It is specifically understood and agreed that the Settlement is an integrated settlement and that the various parts hereof are not severable without upsetting the balance of consideration achieved among the parties. SPP and the

parties shall not be bound to any undertaking herein unless this Settlement becomes effective pursuant to the terms of Article 4 hereof.

5.4 Limitations. Except as otherwise provided by this Settlement, nothing herein is intended to limit, supersede, or otherwise affect the resolution of issues not expressly resolved hereby. FERC approval of this Settlement Agreement shall not constitute approval of, or precedent regarding, any principle of issue in this proceeding. Nothing herein shall be deemed a “settled practice” as the Court interpreted that term in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

5.5 Standard of Review. After the Settlement becomes effective as provided in Article 4, the standard of review to be applied by the Commission in considering any change to any then-effective provision of this Settlement shall be, as to settling parties, the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and as to non-settling parties, the most stringent standard permissible under applicable law.

Respectfully submitted,

/s/ Barry S. Spector

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1200 G Street, N.W., Suite 600

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Telephone: (202) 393-1200

Fax: (202) 393-1240

**Attorneys for  
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Offer of Settlement  
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**Article 1**

**Procedural Background and Scope of Settlement**

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**Article 2**  
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2.2 Limited and Exclusive List of GFAs Eligible for Carve-Out. GFAs identified in Schedule 1 hereto have been determined to meet the Carve-Out Eligibility Criteria under Article 2.3 and are therefore eligible to qualify as “Carved-Out GFAs.” Schedule 1 constitutes the exclusive list of eligible “Carved-Out GFAs,” meaning that only those agreements and the megawatts associated with them identified on Schedule 1 are eligible for carve-out treatment in SPP’s Integrated Marketplace.

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2.5 Offset of Loss Revenues. Nothing in this Settlement shall be deemed to preclude an amendment to the SPP Tariff to require that any loss revenues received by the GFA Transmission Owner under the provisions of a “Carved-Out GFA” shall be used to offset any marginal loss charges related to the “Carve-Out GFA” that are included in

any GFA carve-out uplift distribution in the manner and to the extent required by the SPP Tariff.

**Article 3**  
**Resolution of OPPD “Partial Path” GFAs**

Separate and apart from the resolution of the Carved-Out GFAs, the Settlement resolves all issues associated with OPPD’s so-called “partial path” GFAs. The “partial path” GFAs covered by the Settlement are identified on Schedule 2, hereto.

3.1 Background of “Partial Path” Issues. Prior to becoming an SPP member, OPPD reserved and scheduled transmission capacity on its own system in order to move energy to its border with SPP for delivery and sale to Westar and Missouri Public Service, which then transmitted the energy to their loads using separate SPP transmission service. OPPD’s “partial path” GFAs represent transmission agreements with transmission paths that originated at generation resources within OPPD, moved across OPPD’s system, and ended at then-existing interfaces, i.e., border points, between OPPD and SPP, designated by SPP as OPPD.WR (Westar) and OPPD.MPS (Missouri Public Service). Once OPPD joined SPP, the former border points OPPD.WR and OPPD.MPS became internal points within SPP’s system. The subject transmission reservations were identified by OPPD as GFAs when OPPD joined SPP and are identified on Attachment W of the SPP Tariff.

SPP and OPPD disagreed whether OPPD’s “partial path” GFAs qualify for ARRs. As explained in Article 1, OPPD filed a motion with the Commission that ultimately led to the initiation of the settlement proceedings that produced this Settlement.

3.2 Settlement of “Partial Path” Issues. The Settlement memorializes the terms by which OPPD’s partial path issues are resolved. The Settlement accommodates the unique circumstances presented by the OPPD partial path reservations and is expressly limited in scope to the specific GFAs and reservations identified in Schedule 2. To that end, SPP shall recognize OPPD’s right to nominate and receive ARRs (which may be converted to TCRs in accordance with the SPP Tariff) for the reservations identified in Schedule 2 for a nonrenewable five (5) year period commencing with the initial start-date of SPP’s Integrated Marketplace. The nomination and allocation of ARRs with respect to the reservations identified in Schedule 2 shall be subject to all SPP market rules (including, but not limited to, rules regarding ARR pro-rations), as specified in the SPP Tariff and protocols concerning ARR nominations and allocations, with the exception that any rules prohibiting nomination and allocation of ARRs on partial paths shall not apply. At the end of such five-year period, OPPD’s partial path GFAs shall no longer be eligible for nomination by OPPD to receive ARRs. At any time, including at the end of the five-year period, OPPD may apply for transmission service on a complete transmission path under the SPP Tariff and to the extent OPPD obtains such complete path transmission service, it may nominate and receive ARRs in accordance with the SPP Tariff.

3.2.1 OPPD Reservations Eligible for ARRs. Schedule 2 identifies, by SPP Attachment W reference number, the OPPD GFAs subject to this Settlement. Schedule 2 further identifies the SPP OASIS reservation numbers associated with the OPPD transmission reservations that are covered



by the Settlement. As shown on Schedule 2, OPPD's transmission reservations total 515 MW.

3.2.2 Establishment of Proxy Settlement Locations for OPPD Reservations. For the purpose of ARR nominations and allocations with respect to the OPPD GFAs and reservations identified on Schedule 2, the Settlement provides for the establishment of two proxy Settlement Locations representing the sink of the OPPD transmission reservations to the former border between OPPD and Westar and OPPD and Missouri Public Service. The proxy Settlement Locations consist of nodal locations (i.e., price nodes) that, on a weighted basis, fairly reflect power flows under the GFAs and reservations shown on Schedule 2. The selected price nodes fairly reflect congestion to the former border between OPPD and Westar and OPPD and Missouri Public Service and do not reflect congestion beyond the border to sinks within Westar or Missouri Public Service.

Accordingly, for the GFA associated with the OPPD (Nebraska City)-to-OPPD.WR reservation, totaling 315 MWs, the “OPPD.WR Proxy SL” is represented by the following pricing nodes, weighted using the percentages shown below:

<b><u>Pricing Node</u></b>	<b><u>Weighting</u></b>
<b>LES_ROKEBY_1</b>	<b>21.4%</b>
<b>SARPY_1</b>	<b>13.3%</b>
<b>MEC.OPPD</b>	<b>8.8%</b>
<b>Flat_Water</b>	<b>7.1%</b>
<b>AECI</b>	<b><u>49.4%</u></b>
	<b>100.0%</b>

For the GFAs associated with the OPPD (Cass County)-to-OPPD.MPS reservations, totaling 200 MWs, the “OPPD.MPS Proxy SL” is represented by the following pricing nodes, weighted using the percentages shown below:

<b><u>Pricing Node</u></b>	<b><u>Weighting</u></b>
<b>LES_ROKEBY_1</b>	<b>24.1%</b>
<b>MEC.OPPD</b>	<b>32.6%</b>
<b>AECI</b>	<b><u>43.3%</u></b>
	<b>100.0%</b>

With regard to the OPPD GFAs for ARR purposes, the sink locations shall be OPPD.WR Proxy SL and OPPD.MPS Proxy SL. These GFAs shall be subject to the same ARR allocation rules as any other GFA candidate for ARRs under the SPP Tariff.

**Article 4**  
**Effective Date**

The Settlement shall become effective upon issuance of a Commission order approving the Settlement.

**Article 5**  
**Reservations**

5.1 Applicability of Rule 602 Privileges. The Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, and it is agreed that unless it becomes effective in accordance with Article 4 hereof, the Settlement shall be privileged and shall not be admissible in evidence in any proceeding for use against any party.

5.2 No waiver of rights. It is specifically understood and agreed that the Settlement represents a compromise resolution with respect to the various matters addressed herein, for the sole purpose of the resolution of the matters agreed to herein. Neither SPP, the Commission, its Staff, nor any other party or person shall be prejudiced or bound hereby in any proceeding except as specifically provided herein. Neither SPP, the Commission, its Staff, nor any other party or person shall be deemed to have approved, accepted, agreed or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein. No party is waiving its litigation rights and positions in the event the Settlement does not become effective.

5.3 Non-severability. It is specifically understood and agreed that the Settlement is an integrated settlement and that the various parts hereof are not severable without upsetting the balance of consideration achieved among the parties. SPP and the

parties shall not be bound to any undertaking herein unless this Settlement becomes effective pursuant to the terms of Article 4 hereof.

5.4 Limitations. Except as otherwise provided by this Settlement, nothing herein is intended to limit, supersede, or otherwise affect the resolution of issues not expressly resolved hereby. FERC approval of this Settlement Agreement shall not constitute approval of, or precedent regarding, any principle of issue in this proceeding. Nothing herein shall be deemed a “settled practice” as the Court interpreted that term in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

5.5 Standard of Review. After the Settlement becomes effective as provided in Article 4, the standard of review to be applied by the Commission in considering any change to any then-effective provision of this Settlement shall be, as to settling parties, the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and as to non-settling parties, the most stringent standard permissible under applicable law.

Respectfully submitted,

/s/ Barry S. Spector

Barry S. Spector

Jeffrey G. DiSciullo

Matthew J. Binette

WRIGHT & TALISMAN, P.C.

1200 G Street, N.W., Suite 600

Washington, DC 20005-3802

Telephone: (202) 393-1200

Fax: (202) 393-1240

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties required to be so served, including each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of October, 2013.

/s/ Jeffrey G. DiSciullo

Jeffrey G. DiSciullo  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005  
(202) 393-1200

*Attorney for  
Southwest Power Pool, Inc.*