

December 18, 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. ER12-1179-003, -004, -005, -006, -008, -009, -011, and
ER13-1173-000**
Submission of Offer of Settlement Resolving Treatment of Grandfathered
Agreement No. 494 in SPP's Integrated Marketplace

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, Southwest Power Pool, Inc. ("SPP"), on behalf of itself and the Nebraska Public Power District ("NPPD"), Basin Electric Power Cooperative ("Basin Electric"), and Tri-State Generation and Transmission Association, Inc. ("Tri-State") (together the "Settling Parties"), submits this Settlement Agreement and Offer of Settlement ("Settlement Agreement") resolving issues associated with whether Grandfathered Agreement ("GFA") No. 494 ("GFA 494")¹ should be included in Schedule 1 of the settlement the Commission conditionally approved on September 30, 2013 in this proceeding ("General GFA Settlement").² Because this Settlement Agreement resolves issues relating to various Settling Parties' activities within or relating to SPP's Integrated Marketplace, which is planned to commence on March 1, 2014, **SPP requests that the Commission approve the Settlement Agreement by February 28, 2014.**

This proceeding is pending before Settlement Judge Steven L. Sterner. The Settling Parties request that the Secretary transmit this letter, the Settlement Agreement, and the documents attached thereto, to the Settlement Judge.

¹ GFA 494 is the Western Nebraska Joint Transmission Agreement between NPPD and Tri-State dated June 8, 1984.

² *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013) ("September 30 Order"). Schedule 1 of the General GFA Settlement sets forth the GFAs that SPP will treat as eligible for carve out from the Integrated Marketplace.

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As required, SPP has included with this Settlement Agreement an Explanatory Statement and a proposed draft Commission letter order accepting the Settlement Agreement. SPP also is including a single attachment to the Settlement Agreement, Attachment A, a letter relating to the Settlement Agreement executed by the Western Area Power Administration, Basin Electric, and Tri-State.

The Settlement Agreement has been agreed to, and is executed by, all Settling Parties, and is supported or not opposed by all the participants in the captioned proceeding. Copies of this transmittal letter, Settlement Agreement, and related documents are being served on all participants in this proceeding, as well as upon all SPP customers, members, and state regulatory commissions in accordance with 18 C.F.R. § 385.602(d)(1).

In accordance with Rule 602(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(d), SPP hereby notifies all participants and persons interested in this proceeding that comments on this Settlement Agreement are due by January 7, 2014, and reply comments are due by January 17, 2014. SPP specifically directs the attention of all persons served with this Settlement Agreement to Commission Rule 602(f)(3), 18 C.F.R. § 385.602(f)(3), which provides that a failure to file a comment on the Settlement Agreement constitutes a waiver of all objections to the Settlement Agreement. If no adverse comments are filed by the initial comment date, SPP respectfully requests that the Settlement Judge certify the Settlement Agreement to the Commission as an uncontested settlement without waiting for reply comments.

Sincerely,

/s/ Barry S. Spector

Barry S. Spector

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

Southwest Power Pool, Inc.)	Docket Nos. ER12-1179-003
)	ER12-1179-004
)	ER12-1179-005
)	ER12-1179-006
)	ER12-1179-008
)	ER12-1179-009
)	ER12-1179-011
)	ER13-1173-001

EXPLANATORY STATEMENT

To Settlement Judge Steven L. Sterner

Pursuant to Rule 602(c)(ii) of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.602(c)(ii), Southwest Power Pool, Inc. (“SPP”), on behalf of itself and the Nebraska Public Power District (“NPPD”), Basin Electric Power Cooperative (“Basin Electric”), and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) (together the “Settling Parties”), submits this Explanatory Statement in support of the accompanying Settlement Agreement and Offer of Settlement (“Settlement Agreement”) resolving issues associated with whether Grandfathered Agreement (“GFA”) No. 494 (“GFA 494”)¹ should be included in Schedule 1 of the settlement the Commission conditionally approved on September 30, 2013, in this proceeding (“General GFA Settlement”).² This Explanatory

¹ GFA 494 is the Western Nebraska Joint Transmission Agreement between NPPD and Tri-State dated June 8, 1984.

² *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013) (“September 30 Order”). Schedule 1 of the General GFA Settlement sets forth the GFAs that SPP will treat as eligible for carve-out from the Integrated Marketplace.

Statement summarizes the key terms of the Settlement Agreement and is not intended to alter any of the provisions of the Settlement Agreement. In the event of a potential conflict between this Explanatory Statement and the Settlement Agreement, the latter shall control.

Article 1 of the Settlement Agreement summarizes the relevant procedural history of the captioned proceeding and describes the scope of the Settlement Agreement. In particular, this section briefly describes the Commission proceedings and negotiations regarding the treatment of GFAs, including GFA 494, that led to the filing of the Settlement Agreement.

Article 2 of the Settlement Agreement explains that, unless otherwise defined in the Settlement Agreement, initially capitalized defined terms in the Settlement Agreement have the meanings ascribed to them in the General GFA Settlement, or if they are not defined there, the SPP FERC Electric Tariff, Sixth Revised Volume No. 1 (“SPP Tariff”).

Article 3 of the Settlement Agreement provides that GFA 494 will be carved-out from the Integrated Marketplace, and will remain listed on Schedule 1 of the General GFA Settlement.

Article 4 addresses Basin Electric’s continuing participation in SPP. It provides that upon approval of the Settlement Agreement, Basin Electric will revoke its intention to withdraw as a Market Participant for the Tri-State load upon the inception of the Integrated Marketplace. It also provides that Basin Electric will continue to operate as the Market Participant and GFA Responsible Entity for the Tri-State load under GFA 494, and will submit schedules to SPP to allow for the administration of GFA 494 as a Carved-Out GFA.

Article 5 sets out the applicability of SPP congestion charges to GFA 494. It provides that GFA 494 generally will not incur any congestion costs, marginal losses costs, or other Integrated Marketplace charges either directly or in the form of congestion cost or marginal loss uplift payments, but that the Market Participant for the GFA 494 load will be responsible for Energy Imbalance Service charges and all revenue neutrality uplift charges under the SPP Tariff associated with make-whole payments to generators and other similar uplift items, assessed on the entire registered Tri-State load. Section 5.3 provides that if Basin Electric and the Western Area Power Administration (“WAPA”) cease to supply sufficient reserves to cover the Tri-State load under their Network Integrated Transmission Service Agreement (“NITSA”), or if that NITSA ceases to be in effect, thereafter Schedules 5 and 6 and Attachment AE of the SPP Tariff will apply to the provision of reserves for the Tri-State load.

Article 6 sets forth certain other charges that will apply to GFA 494 under the SPP Tariff, including charges pursuant to Schedules 2 and 3 of the SPP Tariff and sixty percent (60%) of the Schedule 1A Tariff Administration charge, and provides that if Basin Electric regularly makes energy purchases, other than imbalance energy, from the Integrated Marketplace to serve the Tri-State load under GFA 494, Basin Electric will pay one-hundred percent (100%) of the Schedule 1A charge. Article 6 also sets forth certain charges that will be assessed on any non-firm service provided for the imbalance energy supplied to the Tri-State load, including non-firm point-to-point hourly transmission charges under Schedule 8 of the SPP Tariff and Schedule 12 of the SPP Tariff.

Sections 5.4 and 6.3 together provide that if GFA 494 integrates into the Integrated Marketplace, Articles 5 and 6 will terminate and all applicable SPP Tariff charges will apply.

Article 7 provides that to the extent that either Basin Electric or Tri-State purchases in the future any SPP network or point-to-point transmission service, Basin Electric or Tri-State will be subject to all applicable SPP transmission service charges in connection with such service.

Article 8 provides that NPPD will withdraw both its request for rehearing filed on October 21, 2013, in Docket Nos. ER12-1179-009 and ER13-1173-001,³ and its motion for clarification or in the alternative application for rehearing filed on October 30, 2013, in Docket No. ER12-1179-011, upon the Commission's approval or acceptance of the Settlement Agreement.⁴

³ The October 21, 2013 request for rehearing challenged the Commission's September 20, 2013 order in Docket Nos. ER12-1179-003, -004, -005, and ER13-1173-000 ("September 20 Order"), which accepted SPP's April 19, 2013, compliance filing in ER12-1179-005, and accepted in part and rejected in part SPP's February 15, 2013 compliance filing in ER12-1179-003 ("February 2013 Compliance Filing"), March 25, 2015 informational filing in ER12-1179-004 ("Readiness and Reversion Plans Filing"), and March 28, 2013 submission of tariff revisions to implement the Integrated Marketplace in Docket No. ER13-1173-001 ("March 2013 Filing"). Although this Settlement Agreement resolves NPPD's October 21, 2013 rehearing request, other issues remain pending in these dockets.

⁴ NPPD also filed, in Docket No. ER12-1179-006, a motion for clarification or in the alternative rehearing of the Commission's June 6, 2013 order issued in Docket Nos. ER12-1179-000 and ER12-1179-001, which the General GFA Settlement resolved.

Article 9 provides that the Settlement Agreement will become effective upon issuance of a Commission order approving it, and provides that the Settlement Agreement must become effective no later than March 1, 2014.

Article 10 sets forth certain reservations. Section 10.1 states that the Settlement Agreement does not affect the provisions of, or the rights, obligations, or responsibilities applicable to Settling Parties under, GFA 494, the SPP Tariff, the SPP Membership Agreement, or the SPP Bylaws. Section 10.2 states that the Settlement Agreement does not affect Tri-State's current practice of purchasing its full requirements from Basin Electric using the facilities of NPPD and Tri-State in accordance with GFA 494 and the Tri-State tariff. Section 10.3 states that the Settlement Agreement shall be subject to review if WAPA, Basin Electric, or Tri-State joins SPP. Sections 10.4 through 10.11 contain typical reservations regarding no disputed facts, privilege, no prejudice, reservation of rights, non-severability, conflicts, no establishment of settled practice, no waivers of rights in the event the Settlement Agreement does not become effective, and standard of review.

Pursuant to the directive of the Chief Administrative Law Judge concerning additional information to be submitted with proposed settlements,⁵ SPP, on behalf of itself and the other Settling Parties, submits the following: (1) the Settlement Agreement resolves all issues regarding whether GFA 494 should be included in Schedule 1 of the General GFA Settlement; (2) the Settlement Agreement does not raise any policy implications; (3) the Settlement Agreement does not affect any other pending cases; (4)

⁵ *Information to Be Provided with Settlement Agreements*, FERC (Oct. 15, 2003), www.ferc.gov/legal/admin-lit/rev-errata.pdf (as corrected on Oct. 23, 2003).

the Settlement Agreement does not involve any issues of first impression or previous reversals on the issues involved; and (5) the standard of review for changes to the Settlement Agreement is the just and reasonable standard for third parties, the Commission acting *sua sponte*, and for any changes by the Settling Parties made pursuant to Section 10.3 of the Settlement Agreement, and the “public interest” standard as to changes proposed by a Settling Party except as provided under Section 10.3.

Respectfully submitted,

/s/ Barry S. Spector

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

Southwest Power Pool, Inc.)	Docket Nos. ER12-1179-003
)	ER12-1179-004
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)	ER13-1173-001

SETTLEMENT AGREEMENT AND OFFER OF SETTLEMENT

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 Settlement Agreement and Offer of Settlement (“Settlement Agreement”) among SPP, the Nebraska Public Power District (“NPPD”), Basin Electric Power Cooperative (“Basin Electric”), and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) (together the “Settling Parties”) to resolve issues associated with whether Grandfathered Agreement (“GFA”) No. 494 (“GFA 494”)¹ should be included in Schedule 1 of the settlement the Commission conditionally approved on September 30, 2013, in this proceeding (“General GFA Settlement”).² The Settling Parties seek all necessary authorizations under the Federal Power Act (“FPA”)

¹ GFA 494 is the Western Nebraska Joint Transmission Agreement between NPPD and Tri-State dated June 8, 1984.

² *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013) (“September 30 Order”). Schedule 1 of the General GFA Settlement sets forth the GFAs that SPP will treat as eligible for carve-out from the Integrated Marketplace.

and the Commission's Rules and Regulations thereunder as may be necessary in order to implement fully the Settlement Agreement.

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 Auction Revenue Rights ("ARRs") and associated Transmission Congestion Rights ("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 ARR. 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.³ In response to protests, the Commission directed SPP "to address all GFAs within the Integrated Marketplace construct" before market launch.⁴ The Commission instructed SPP to negotiate with protesting GFA parties to attempt to resolve issues concerning integration of their GFAs into the new market,

³ *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) ("October 18 Order"), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013).

⁴ October 18 Order at P 309.

noting that if such negotiations failed, “a carve-out could be consistent with Commission precedent.”⁵

Following the October 18 Order, negotiations with protesting GFA parties ensued. These negotiations were documented in status reports filed by SPP on January 16, March 15, and May 15, 2013.⁶ Pursuant to settlement judge procedures instituted on June 6, 2013,⁷ and expanded on June 24, 2013, to involve all protesting GFA parties,⁸ in July 2013, SPP, NPPD, and other parties participated in negotiations that addressed all outstanding GFAs and involved the participation of all parties to the protested GFAs. As a result of those negotiations, on July 31, 2013, SPP filed the General GFA Settlement to settle outstanding issues regarding the treatment of GFAs in the Integrated Marketplace.

In the September 30 Order, the Commission conditionally approved the General GFA Settlement, but severed the issue of whether GFA 494 should be included in Schedule 1 of that settlement and set the issue for settlement judge procedures and, in the event a settlement of the GFA 494 issues was not reached, a trial-type evidentiary hearing to resolve the issues.⁹ On October 7, 2013, the Chief Administrative Law Judge

⁵ *Id.* at P 314.

⁶ Status Report of Southwest Power Pool, Inc., Docket Nos. ER12-1179-000, -001 (Jan. 16, 2013); Second Status Report of Southwest Power Pool, Inc., Docket Nos. ER12-1179-000, -001 (Mar. 15, 2013) (“Second Status Report”); Third Status Report of Southwest Power Pool, Inc., Docket Nos. ER12-1179-000, -001 (May 15, 2013).

⁷ *Sw. Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013).

⁸ *Sw. Power Pool, Inc.*, 143 FERC ¶ 63,016 (2013).

⁹ September 30 Order at PP 15–17.

appointed Judge Steven L. Sterner as settlement judge in the GFA 494 matter,¹⁰ and Settling Parties attended settlement conferences on October 10, October 16, and November 5, 2013.¹¹ On November 6, 2013, Judge Sterner filed a status report indicating the parties may have reached a settlement agreement in principle, and recommending that settlement proceedings continue.¹² This Settlement Agreement is the result of the settlement judge procedures ordered in and undergone pursuant to the September 30 Order.

Article 2 **Definitions**

Unless otherwise defined in this Settlement Agreement, an initially capitalized defined term shall have the meanings ascribed to it in the General GFA Settlement, or if it is not defined there, the SPP FERC Electric Tariff, Sixth Revised Volume No. 1 (“SPP Tariff”).

Article 3 **Carve-Out of GFA 494**

3.1 Eligibility for Carve-Out of GFA 494. GFA 494 shall be deemed eligible for carve-out from the Integrated Marketplace under the Carve-Out Eligibility Criteria set forth in Section 2.3 of the General GFA Settlement. GFA 494 is listed and identified on

¹⁰ Order of Chief Judge Designating Settlement Judge and Scheduling Settlement Conference, Docket No. ER12-1179-008 (Oct. 7, 2013).

¹¹ Status Report, Docket No. ER12-1179-008 (Nov. 6, 2013) (“November 6 Status Report”); Notice of Upcoming Settlement Conference, Docket No. ER12-1179-008 (Oct. 17, 2013); Status Report and Notice of Upcoming Settlement Conference, Docket No. ER12-1179-008 (Oct. 11, 2013).

¹² November 6 Status Report at PP 1–2.

Schedule 1 of the General GFA Settlement as a GFA eligible for carve-out from the Integrated Marketplace and, as a result of this Settlement Agreement, shall remain so listed in accordance with the terms hereof.

3.2. Carve-Out Election of GFA 494. Pursuant to Section 2.16 of Attachment AE of the SPP Tariff, NPPD, in consultation with Basin Electric and Tri-State, hereby elects to carve out GFA 494 from the Integrated Marketplace. GFA 494 shall be considered a Carved-Out GFA as defined in Section 2.1 of the General GFA Settlement.

Article 4 **Basin Electric's Continuing Participation in SPP**

4.1 Revocation of Basin Electric's Intention to Withdraw from SPP. Upon issuance of a Commission order approving this Settlement Agreement without conditions or modifications, Basin Electric will revoke, in writing, its June 14, 2013 letter to SPP indicating its intention to withdraw as the Market Participant for the Tri-State load upon the inception of the Integrated Marketplace, and it shall serve NPPD and Tri-State with a copy of said revocation.

4.2 Basin Electric's Responsibilities as SPP Market Participant. Basin Electric will retain responsibility as the Market Participant and the GFA Responsible Entity for the Tri-State load under GFA 494. As the Market Participant, Basin Electric will submit schedules to SPP to allow for the administration of GFA 494 as a Carved-Out GFA.

Article 5 **Applicability of Congestion Charges to GFA 494**

5.1 Integrated Marketplace Charges Generally Inapplicable. Except as stated in Section 5.2 and the last two sentences of Section 5.3 below, upon commencement of SPP's Integrated Marketplace and so long as GFA 494 is in effect and is carved out of the

Integrated Marketplace, neither Basin Electric, nor Tri-State, nor any other designated Market Participant for the Tri-State load under GFA 494 will, directly or indirectly, incur any congestion costs, marginal losses costs, or other Integrated Marketplace charges either directly or in the form of congestion cost or marginal loss uplift payments.

5.2 Applicability of Certain Integrated Marketplace Charges. The Market Participant for the load served under GFA 494 will be responsible for the following charges in the Integrated Marketplace: (a) Energy Imbalance Service charges under Schedule 4 of the SPP Tariff, which will include the nodal price of energy, including congestion and losses on the energy imbalance, pursuant to Attachment AE of the SPP Tariff; and (b) all revenue neutrality uplift charges under the SPP Tariff associated with make-whole payments to generators and other similar uplift items, assessed on the entire registered Tri-State load.

5.3 Reserves. Basin Electric self-supplies Schedule 5, Spinning Reserve Service, and Schedule 6, Supplemental Reserve Service, for the Tri-State load under GFA 494. This self-supply arrangement is documented in a Network Integrated Transmission Service Agreement (“NITSA”) between Basin Electric and the Western Area Power Administration (“WAPA”) and further confirmed in a letter in which WAPA states that it is the Balancing Authority Area that is responsible for (1) Operating Reserve – Spinning Reserve Service and (2) Operating Reserve – Supplemental Reserve Service for the Tri-State load served under GFA 494 (“WAPA Letter”). The WAPA Letter is attached hereto as Attachment A. If Basin Electric and WAPA cease to supply sufficient reserves to cover the Tri-State load, Schedules 5 and 6 and Attachment AE of the SPP Tariff thereafter will apply to the provision of reserves for the Tri-State load. If the NITSA between Basin Electric and WAPA ceases to be in effect, Schedules 5 and 6 and

Attachment AE of the SPP Tariff thereafter will apply to the provision of reserves for the Tri-State load.

5.4 Integration of GFA 494. Subject to Section 10.3, upon any integration of GFA 494 into the Integrated Marketplace, this Article 5 shall terminate and all applicable SPP Tariff charges shall apply.

Article 6
Other Charges under the SPP Tariff

Basin Electric, as Market Participant for the load served under GFA 494, will be responsible for the following charges pursuant to the SPP Tariff:

6.1 Charges Applicable to Entire Registered Tri-State Load. The following charges shall be assessed on the entire registered Tri-State load:

- (a) sixty percent (60%) of the Schedule 1A Tariff Administration charge;
- (b) charges pursuant to Schedule 2 of the SPP Tariff, Reactive Supply and Voltage Control from Generation or Other Sources Service; and
- (c) charges pursuant to Schedule 3 of the SPP Tariff, Regulation and Frequency Response Service.

If Basin Electric, as Market Participant for the load served under GFA 494, regularly makes energy purchases from the SPP Integrated Marketplace, exclusive of imbalance energy, to serve the Tri-State load under GFA 494, Basin Electric, or the Market Participant, will pay 100% of the Schedule 1A charge for the entire Tri-State load.

6.2 Charges Applicable to Non-Firm Imbalance Service. The following charges shall be assessed on the megawatt-hours of non-firm service provided for the imbalance energy supplied to the Tri-State load:

- (a) non-firm point-to-point hourly transmission charges pursuant to Schedule 8 of the SPP Tariff; and
- (b) the charges described in Schedule 12 of the SPP Tariff.

6.3. Integration of GFA 494. Subject to Section 10.3, upon any integration of GFA 494 into the Integrated Marketplace, this Article 6 shall terminate and all applicable SPP Tariff charges shall apply.

Article 7
Future Use of Network or Point-to-Point Service

To the extent that either Basin Electric or Tri-State purchases in the future any SPP network or point-to-point transmission service, Basin Electric or Tri-State shall be subject to all applicable SPP transmission service charges in connection with such service, including, but not limited to, those set forth in Schedules 7, 8, 9, and 11 of the SPP Tariff.

Article 8
Withdrawal of Rehearing Requests

Upon Commission approval or acceptance of this Settlement Agreement without conditions, or modifications, NPPD agrees to withdraw its request for rehearing filed on October 21, 2013, in Docket Nos. ER12-1179-009 and ER13-1173-001, and its motion for clarification or in the alternative application for rehearing filed on October 30, 2013, in Docket No. ER12-1179-011.

Article 9
Effective Date

The Settlement Agreement shall become effective upon issuance of a Commission order approving the Settlement Agreement, but in no event later than March 1, 2014.

SPP shall request the Commission to act on this Settlement Agreement before March 1, 2014, and no Settling Party shall oppose this request.

Article 10
Reservations

10.1 No Effect on Other Obligations. Nothing in this Settlement Agreement affects: (a) any of the provisions of, or rights, obligations, or responsibilities of NPPD and Tri-State under, GFA 494; or (b) any of the provisions of, or rights, obligations, or responsibilities of NPPD and SPP under, the SPP Tariff, SPP Membership Agreement (including the provisions of Paragraph 10 of the Amendments to SPP Membership Agreement for Nebraska Public Power District defining GFAs), or SPP Bylaws.

10.2 No Effect on GFA 494 Full Requirements Practices. Nothing in this Settlement Agreement affects Tri-State's current practice of purchasing its full requirements from Basin Electric and using the facilities of NPPD and Tri-State in accordance with GFA 494 and the Tri-State tariff for the delivery of such requirements to Tri-State load. Except as may be provided by GFA 494 and this Settlement Agreement, neither NPPD nor SPP is required to provide any other services for Tri-State's load.

10.3 Review Due to Change in Membership Status. This Settlement Agreement shall be subject to review if WAPA, Basin Electric, or Tri-State joins SPP. If any or all of these entities propose to join SPP, Basin Electric, Tri-State, NPPD, and SPP shall meet to discuss the impact of such new membership(s) on the provisions of this Settlement Agreement and negotiate in good faith to determine the appropriate arrangements to support the Tri-State load in the SPP Balancing Authority Area. In the absence of agreement to appropriate arrangements to support the Tri-State load in the SPP Balancing Authority Area following such new membership(s), SPP may unilaterally

file pursuant to section 205 of the Federal Power Act to terminate or revise the terms of this Settlement Agreement.

10.4 No Disputed Facts. Settling Parties agree that the Settlement Agreement: (a) raises no disputed issues of material fact; (b) is supported by all Settling Parties; and (c) should be approved as fair and reasonable, and in the public interest.

10.5 Applicability of Rule 602 Privileges. The Settlement Agreement 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 9 hereof, the Settlement Agreement shall be privileged and shall not be admissible in evidence in any proceeding for use against any party.

10.6 No waiver of rights. The Settlement Agreement 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 the Commission, its Staff, the Settling Parties, nor any other party or person shall be prejudiced or bound hereby in any proceeding except as specifically provided herein. Neither the Commission, its Staff, the Settling Parties, 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 Agreement does not become effective.

10.7 Non-severability. It is specifically understood and agreed that the Settlement Agreement 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 Agreement becomes effective pursuant to the terms of Article 9 hereof.

10.8 Conflicts. In the event that terms contained in this Settlement Agreement conflict with those of the Explanatory Statement attached hereto pursuant to Rule 602(c) of the Commission’s Rules of Practice and Procedure,¹³ the terms of this Settlement Agreement shall control.

10.9 Limitations. Except as otherwise provided by this Settlement Agreement, nothing herein is intended to limit, supersede, or otherwise affect the resolution of issues not expressly resolved hereby. Commission approval of this Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or 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*.¹⁴

10.10 Standard of Review. The standard of review to be applied by the Commission in considering any change to this Settlement Agreement pursuant to Section 10.3 hereof shall be the “just and reasonable” standard. Otherwise, the standard of review to be applied by the Commission in considering any change to this Settlement Agreement shall be the “public interest” standard set forth in *United Gas Pipe Line Co. v.*

¹³ 18 C.F.R. § 385.602(c).

¹⁴ 642 F.2d 1335 (D.C. Cir. 1980).

*Mobile Gas Service Corp.*¹⁵ and *FPC v. Sierra Pacific Power Co.*¹⁶ if such change is proposed by any of the Settling Parties, and the “just and reasonable” standard if such change is proposed by third parties or the Commission acting *sua sponte*.

¹⁵ 350 U.S. 332 (1956).

¹⁶ 350 U.S. 348 (1956).

10.11 Descriptive Headings. The descriptive headings of this GFA 494 Settlement Agreement are inserted for convenience only and do not constitute a part of the Settlement Agreement. Unless otherwise indicated, any article, paragraph, attachment, or other section references made in this Settlement Agreement refer to an article, paragraph, attachment, or other section of the Settlement Agreement.

Respectfully submitted,

/s/ David D'Alessandro

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ATTACHMENT A



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December 13, 2013

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Western Area Power Administration
Operations Manager
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Re: Supply of Reserves for the Tri-State Load Under GFA 494

Dear Mr. Linke:

I am writing on behalf of our clients Basin Electric Cooperative (“Basin Electric”) and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) to seek Western Area Power Administration’s (“Western”) confirmation regarding the arrangement concerning the supply of reserves to Tri-State’s load located in the Nebraska Public Power District (“NPPD”) BAA, which will become the Southwest Power Pool (“SPP”) BAA upon the commencement of the SPP Integrated Marketplace.

Basin Electric currently serves as the authorized agent and Market Participant for Tri-State’s load under a 1984 Joint Transmission Agreement (the “Tri-State NETS load”) between Tri-State and the Nebraska Public Power District (“NPPD”). The Agreement is listed as GFA No. 494 under SPP’s Open Access Transmission Tariff. As the Market Participant, Basin Electric self-supplies Spinning and Supplemental Reserve Services to the Tri-State NETS load. The self-supply arrangement to the Tri-State NETS load is documented in the Network Integrated Transmission Service Agreement (“NITSA”) between Basin Electric and Western. Basin Electric will continue self-supplying reserves to the Tri-State NETS load upon the commencement of the SPP Integrated Marketplace pursuant to its NITSA with Western.

It is Basin Electric’s and Tri-State’s understanding that Western reports the Tri-State GFA 494 load to SPP, and SPP uses that load information in determining the load ratio share of (1) Operating Reserve – Spinning Reserve Service and (2) Operating Reserve – Supplemental Reserve Service for which Western is responsible as the Balancing Authority under its reserve sharing agreement with SPP. Based on the arrangements described in the second paragraph above, Western’s Balancing Authority is responsible for carrying reserves for the Tri-State NETS load in accordance with SPP’s allocation of reserve responsibility.

Lloyd Linke
December 13, 2013
Page 2

Please signify your concurrence with the statements in this letter by executing it and returning it to my attention.

Very truly yours,

/s/ Laura R. Chipkin

Laura R. Chipkin
Counsel for Basin Electric Power
Cooperative and
Tri-State Generation and Transmission
Association, Inc.

WESTERN AREA POWER ADMINISTRATION

By: */s/ Lloyd L. Linke*
(Signature)

Name: Lloyd A. Linke

Title: Operations Manager

DRAFT ORDER

___ FERC ¶ ___

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

_____, 201_

In Reply Refer To:
Southwest Power Pool, Inc.
Docket Nos. ER12-1179-003
ER12-1179-004
ER12-1179-005
ER12-1179-006
ER12-1179-008
ER12-1179-009
ER12-1179-011
ER13-1173-001

Barry S. Spector
Wright & Talisman, P.C.
1200 G Street N.W. Suite 600
Washington, D.C. 20005

Dear Mr. Spector:

1. On December 18, 2013, you submitted a Settlement Agreement and Offer of Settlement (“Settlement Agreement”) on behalf of Southwest Power Pool, Inc. (“SPP”), Nebraska Public Power District (“NPPD”), Basin Electric Power Cooperative (“Basin Electric”), and Tri-State Generation and Transmission Association, Inc. (“Tri-State”) (together the “Settling Parties”) in the captioned proceedings, which resolves all issues set for hearing. On ___, 2013, parties filed Initial Comments in support of the Settlement. No Reply Comments were filed. On ___, 2013, the Presiding Administrative Law Judge certified the Settlement Agreement as uncontested to the Commission.

2. Article 1 of the Settlement Agreement summarizes the relevant procedural history of the captioned proceeding and describes the scope of the Settlement Agreement, briefly describing the Commission proceedings and negotiations regarding the treatment of grandfathered agreements (“GFAs”), including GFA No. 494 (“GFA 494”), that led to the filing of the Settlement Agreement.

3. Article 3 of the Settlement Agreement provides that GFA 494 will be carved-out from the Integrated Marketplace, and will remain listed on Schedule 1 of the settlement

the Commission conditionally approved on September 30, 2013, in this proceeding.²²

4. Article 4 provides that upon approval of the Settlement Agreement, Basin Electric will revoke its intention to withdraw as a Market Participant for the Tri-State load upon the inception of the Integrated Marketplace, and will continue to operate as the Market Participant and GFA Responsible Entity for the Tri-State load under GFA 494, and will submit schedules to SPP to allow for the administration of GFA 494 as a Carved-Out GFA.

5. Article 5 provides that GFA 494 generally will not incur any congestion costs, marginal losses costs, or other Integrated Marketplace charges either directly or in the form of congestion cost or marginal loss uplift payments, but that the Market Participant for the GFA 494 load will be responsible for Energy Imbalance Service charges and all revenue neutrality uplift charges under the SPP Tariff associated with make-whole payments to generators and other similar uplift items that are assessed on the entire registered Tri-State load. Section 5.3 provides that if Basin Electric and the Western Area Power Administration (“WAPA”) cease to supply sufficient reserves to cover the Tri-State load under their Network Integrated Transmission Service Agreement (“NITSA”), or if that NITSA ceases to be in effect, thereafter Schedules 5 and 6 and Attachment AE of the SPP Tariff will apply to the provision of reserves for the Tri-State load.

6. Article 6 sets forth certain other charges that will apply to GFA 494 under the SPP Tariff, including charges pursuant to Schedules 2 and 3 of the SPP Tariff and sixty percent (60%) of the Schedule 1A Tariff Administration charge, and provides that if Basin Electric regularly makes energy purchases, other than imbalance energy, from the Integrated Marketplace to serve the Tri-State load under GFA 494, Basin Electric will pay one-hundred percent (100%) of the Schedule 1A charge. Article 6 also sets forth certain charges that will be assessed on any non-firm service provided for the imbalance energy supplied to the Tri-State load, including non-firm point-to-point hourly transmission charges under Schedule 8 of the SPP Tariff and charges under Schedule 12 of the SPP Tariff.

7. Article 7 provides that to the extent that either Basin Electric or Tri-State purchases in the future any SPP network or point-to-point transmission service, Basin Electric or Tri-State will be subject to all applicable SPP transmission service charges in connection with such service.

8. Article 8 provides that NPPD will withdraw its request for rehearing filed on October 21, 2013, in Docket Nos. ER12-1179-009 and ER13-1173-001, and its motion

²² *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,254 (2013) (“September 30 Order”). Schedule 1 of the General GFA Settlement sets forth the GFAs that SPP will treat as eligible for carve-out from the Integrated Marketplace.

for clarification or in the alternative application for rehearing filed on October 30, 2013, in Docket No. ER12-1179-011, upon the Commission's approval or acceptance of the Settlement Agreement.

9. Article 9 provides that the Settlement Agreement will become effective upon issuance of a Commission order approving it, and provides that the Settlement Agreement must become effective no later than March 1, 2014.

10. Article 10 sets forth certain reservations. Section 10.1 states that the Settlement Agreement does not affect the provisions of, or the rights, obligations, or responsibilities applicable to Settling Parties under, GFA 494, the SPP Tariff, the SPP Membership Agreement, or the SPP Bylaws. Section 10.2 states that the Settlement Agreement does not affect Tri-State's current practice of purchasing its full requirements from Basin Electric using the facilities of NPPD and Tri-State in accordance with GFA 494 and the Tri-State tariff. Section 10.3 states that the Settlement Agreement shall be subject to review if WAPA, Basin Electric, or Tri-State joins SPP. Sections 10.4 through 10.11 contain typical reservations regarding no disputed facts, privilege, no prejudice, reservation of rights, non-severability, conflicts, no establishment of settled practice, no waivers of rights in the event the Settlement Agreement does not become effective, and standard of review.

11. Section 10.10 provides that the standard of review for changes to the Settlement Agreement is the just and reasonable standard for third parties, the Commission acting *sua sponte*, and for any changes by the Settling Parties made pursuant to Section 10.3 of the Settlement Agreement; and the "public interest" standard as to changes proposed by a Settling Party except as provided under Section 10.3.

12. The Commission finds that the Settlement Agreement is just and reasonable and in the public interest, and it is hereby approved. The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. This letter terminates the settlement judge and hearing procedures ordered on September 30, 2013, in Docket No. ER12-1179-008.

By direction of the Commission.

Secretary

cc: All Parties

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding, as well as upon all Southwest Power Pool, Inc. customers, members, and state regulatory commissions.

Dated at Washington, D.C., this 18th day of December, 2013.

/s/ Victoria M. Lauterbach
Victoria M. Lauterbach
WRIGHT & TALISMAN, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200

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