



Southwest Power Pool, Inc.
CORPORATE GOVERNANCE COMMITTEE MEETING
Executive Session
November 17, 2015
Kansas City Power & Light – Kansas City, MO

A G E N D A

8:00 a.m. – 3:00 p.m.

1. Call to Order and Administrative Items.....Nick Brown
2. Board Executive Search.....Nick Brown
3. Future Meetings
 TBD - Possible Meeting to discuss Surveys/Assessments/Rosters
 December 15-16, 2015 (Executive Session) Dallas, TX
 February 26, 2016 TBD
 August 25, 2016 TBD

Southwest Power Pool, Inc.

Board of Directors/Members Committee – Biographies

Board of Directors

James E. (Jim) Eckelberger, Chairman

Elected April 2000

Member, Strategic Planning Committee; Corporate Governance Committee

Jim is a supply chain expert and a change manager who iteratively tackles assignments requiring the rapid improvement of a broken supply chain. Most recently he worked for Huttig Building Products, a billion dollar distributor in the wood products industry, where his focus was cutting costs and improving pricing processes. Immediately prior to working for Huttig, Jim was the Chief Executive Officer of netMercury, a newly created, entrepreneurial company providing supply chain services in the semiconductor industry. Previously, Jim was Vice President, Global Integrated Logistics Operations Supply Chain Management for Compaq Computer Corporation. Since leaving the Navy Department in 1991, Jim has also been the Vice President for Logistics at Dal-Tile, BJ's Wholesale Club, and Pace Membership Warehouse. In each case, the requirement was to fix the process and leave behind a smoothly functioning operation. For over 30 years, Jim was a naval logistician, rising to rank of Rear Admiral, and the senior aviation logistician in the Navy. A highlight of his last year on active duty with the Navy was being responsible for the very effective support for all Navy and Marine aircraft in the first Gulf War. Jim has a BS in Business from Northwestern University and a MBA from Harvard Business School.

Harry I. Skilton, Vice Chairman

Elected April 2000

Chairman, Finance Committee

Member, Strategic Planning Committee

Harry most recently has been President and CEO of American Meter Company, which manufactures and markets metering and regulation equipment and systems for gas distribution companies (founded in the 1830s). Harry has over 25 years of senior executive and general management experience in Fortune 500 manufacturing companies. Specific industry experience in engineered products includes building components, material handling equipment/systems and electronic/computer components. He began his business career in financial management with Celanese Corporation becoming its Corporate Vice President and Treasurer. Harry has a BS in Mechanical Engineering from Cornell University and a MBA from Harvard Business School.

Nicholas A. (Nick) Brown, President and CEO

Effective January 2004

Chairman, Corporate Governance Committee

Nick was elected President and CEO of Southwest Power Pool, Inc. (SPP) in December 2003. In his current position he is responsible for ensuring that SPP achieves its mission and goals and serves on the Board of Directors. Prior to this position Nick served SPP members as Senior Vice President and Corporate Secretary from 1999- 2003, Vice President and Corporate Secretary from 1998-99, Director, Engineering and Operations from 1993-96, Manager, Engineering Services from 1989-93, and in several engineering positions since joining the SPP Staff in 1985. Nick began his career working as a planning engineer in the System Planning Section at Southwestern Electric Power Co. Nick received BS degrees in physics and math from Ouachita Baptist University in 1981 and in electrical engineering from Louisiana Tech University in 1982. He is a member of Tau Beta Pi and Eta Kappa Nu engineering honor societies, and IEEE and NSPE technical and professional societies. Nick is a registered Professional Engineer, a Master Electrician, and instrument rated private pilot.

Larry Altenbaumer

Elected July 2005

Member, Finance Committee; Oversight Committee

Larry retired in 2004 as President of Illinois Power, a regulated electric and natural gas delivery company with approximately 650,000 customers, and Executive Vice President of Regulated Energy Delivery for Dynegy. Subsequent to his retirement, Larry has provided business advisory and consulting services to several organizations both in and outside the energy industry. Larry is also a director of MYR Group, Inc., a leading specialty contractor serving the electrical infrastructure market in the United States and serves as Board Chair for Decatur Memorial Health Systems. Larry also provides consulting support for ArcLight Capital Partners, a leading energy investment firm with nearly \$7 billion of actively managed investments. Other current clients include the University of Illinois; previous clients include the former Magnum Coal Company and Potomac Edison Company. Larry also served as a judge for the Platts Global Energy Awards in 2006, 2007 and 2008. Larry received a B.S. degree in electrical engineering / computer science from the University of Illinois in 1970. He joined Illinois Power upon graduation, and in his nearly 34-year career there held various officer-level positions including Treasurer, Controller and Chief Financial Officer; Senior Vice President and Chief Financial Officer; and President. He was a 2003 recipient of the Distinguished Alumnus Award from the Electrical and Computer Engineering Alumni Association of the University of Illinois.

Phyllis E. Bernard

Elected October 2003

Member, Oversight Committee; Strategic Planning Committee

Phyllis is a Robert S. Kerr Jr. Distinguished Professor of Law and Director of the Center on Alternative Dispute Resolution at the Oklahoma City University School of Law. She is a frequent lecturer and presenter at academic and professional conferences throughout the nation. Phyllis's research and teaching interests in mediation derive from practical experience as a litigator, lobbyist and adjudicator in Washington, D.C. during the 1980s. Her scholarly work focuses on system design, ethics and cultural dynamics in dispute resolution. On the international level, Phyllis has served as a consultant to the U.N. World Health Organization, advising the Lao People's Democratic Republic on privatization of the health care system and development of a quality of care dispute resolution system. She has begun a continuing *pro bono* consultation with the International Federation of Women Lawyers in the Niger Delta, where she was asked to design an appropriate tribal peacemaking program, using the Early Settlement model. In the American Bar Association, Phyllis has served on the governing council of two sections: the Section of Administrative Law and Regulatory Practice and the Dispute Resolution Section. She is Dispute Resolution Section Liaison to the ABA Africa Law Initiative. Phyllis is a Fellow of the National Association of Administrative Law Judiciary. She holds a B.A. degree from Bryn Mawr College, an M.A. from Columbia University, and a J.D. from the University of Pennsylvania.

Julian Brix

Elected April 2008

Chairman, Human Resources Committee

Member, Markets and Operations Policy Committee

Brix has a long history in the electric utility industry, including serving as president, CEO, and COO of Georgia Transmission Corporation in Tucker, Georgia; general manager of Cooperative Power in Eden Prairie, Minnesota; and general manager of Central Electric Power Cooperative in Jefferson City, Missouri. A graduate of Northwestern University, Brix began his electrical engineering career at Line Material Industries as a test engineer in the design of utility switchgear. Most recently, Brix served as executive consultant for Brix International, an independent consulting company. In this role, he assisted clients in the development of merchant transmission projects and in the evaluation of transmission systems to accommodate generation acquisitions. Additionally, Brix served as board member and co-chairman for TRANSlink Management Development Corporation, a FERC-approved independent transmission company comprised of nine investor-owned, public power, and cooperative utilities.

Joshua W. Martin, III

Elected October 2003

Chairman, Oversight Committee

Member, Human Resources Committee

Joshua is currently a partner in the Potter Anderson & Corroon law firm. He joined the firm's Business Practices Group, which focuses on telecommunications and public utility issues, in March 2005. Prior to joining Potter Anderson & Corroon, Joshua served as President of Verizon Delaware Inc. and oversaw all aspects of Verizon's telecommunications business within Delaware. He first joined Verizon as Vice President, General Counsel and Secretary on January 2, 1990. Previously, Joshua was a Delaware Superior Court Judge for eight years. He served on the Delaware Public Service Commission from 1978 to 1982, including three years as Chairman. After obtaining his law degree, Joshua joined Hercules, Inc., where he was a Patent Attorney until 1982. He began his professional career as a Physicist at DuPont Company in 1966. Joshua is a leader in education as well as professional and community organizations. He holds honorary degrees from Widener University and Goldey Beacom College. He was nominated as Delawarean of the Century, in business, by Wilmington News Journal in November, 1999. He received the Arthur E. Armitage Sr., Distinguished Alumni Award from Rutgers School of Law in 1998 for service to the community and contributions to the legal profession. Born and raised in Columbia, S. Carolina, Joshua holds a bachelor's degree in physics from Case Institute of Technology, is a graduate of the Rutgers University School of Law, and completed the Wharton School Executive Development Program in 1996.

Requirements of and Limitations on SPP Board of Directors
Corporate Governance Committee
November 10, 2015

SUMMARY

The following is a non-exhaustive list of the requirements and limitations placed on the SPP Board (including, in parenthesis, the source of the requirement or limitation) by the Federal Power Act (“FPA”), Federal Energy Regulatory Commission (“FERC”) orders and regulations, the SPP Bylaws,¹ SPP Membership Agreement,² and SPP Standards of Conduct.³

- The SPP Board’s decision-making process must be independent of any market participant or class of market participants (Order No. 2000);
- The SPP Board must ensure that any customer or other stakeholder affected by the operation of SPP is permitted to communicate its views to the Board (Order No. 719);
- SPP Directors must be independent of any Member—an SPP Director must not be a director, officer, or employee of, and must have no direct business relationship, financial interest in, or other affiliation with, a Member or customer of services provided by SPP (Bylaws § 4.2.3);
- SPP Directors must have recent and relevant senior management expertise and experience in one or more of the following disciplines—finance, accounting, electric transmission or generation planning or operation, law and regulation, commercial markets, and trading and associated risk management (Bylaws § 4.2.2);
- SPP Directors may invest in accordance with the Bylaws and SPP’s Standards of Conduct (Bylaws § 4.2.3):
 - SPP Directors may not have a financial interest in any Third Party as that term is defined in the Standards of Conduct (see below) (Standards of Conduct § 6.2(a));
 - Neither SPP Directors nor their immediate family members may own securities issued by any Third Party (Standards of Conduct § 6.2(b));
 - SPP Directors may indirectly own securities issued by a Third Party through a mutual fund or similar arrangement under which the Director does not control the purchase or sale of such securities, except for any fund or arrangement specifically targeted toward the electric industry or the electric utility industry, or any segments thereof (Standards of Conduct § 6.2(d));

¹ SPP Bylaws, First Revised Volume No. 4 (“Bylaws”).

² SPP Membership Agreement, First Revised Volume No. 3 (“Membership Agreement”).

³ This document is based on the version of the Standards of Conduct applicable to SPP Directors.

- SPP Directors may participate in a pension plan of a Member or customer so long as the Member's or customer's financial performance has no material effect on such pension plan (Bylaws § 4.2.3);
- SPP Directors must agree to treat confidentially and limit disclosure of certain information received from Third Parties and SPP Transmission System information (Standards of Conduct §§ 2 & 3);
- SPP Directors shall not have any involvement in the purchase or sale of electric energy (wholesale or retail) (Standards of Conduct § 1.1);
- Directors of any public utility (including SPP Directors) must seek prior FERC authorization to hold the following interlocking positions—(1) officer or director of another public utility; (2) officer or director of a bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of security of a public utility; or (3) officer or director of a company supplying electrical equipment to a public utility (18 C.F.R. § 45.1);
- The SPP Board must consist of up to 10, but no less than 7, persons, one of whom being the President of SPP (Bylaws § 4.2.1);
- SPP Directors are not limited in the number of terms they may serve (Bylaws § 4.2.1);
- SPP Directors may resign or be removed for cause (Bylaws § 4.4);
- SPP Directors are bound by the SPP Standards of Conduct (Membership Agreement § 2.2.2), must annually execute the Standards of Conduct (Standards of Conduct § 8.1), and must report any possible violations in a timely fashion (Standards of Conduct § 8.3).

DISCUSSION

Rather than mandate specific RTO governance structures, FERC has articulated certain general standards, including: (1) requiring that RTO board decision-making processes be independent of market participants; and (2) prohibiting non-stakeholder directors from having financial interests in any market participant. Section 305 of the FPA, 16 U.S.C. § 825d, further limits the ability of individuals to serve as a director of more than one public utility or to serve on the boards of certain other entities that may provide services to the public utility. Judicial precedent has set limits on FERC's ability to dictate certain RTO governance decisions, including, for example, the specific composition of an RTO/ISO's board of directors, finding such matters to be beyond the scope of FERC's authority under the FPA to regulate matters "affecting" rates.⁴ However, this limitation does not restrict FERC's ability to impose requirements such as independence.

Below is a summary of the various authorities that impose requirements or limitations on RTO boards in general and SPP's Board specifically.

⁴ See *Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004) ("*CAISO v. FERC*"), discussed *infra*.

Interlocking Directorate Limitations

Section 305 of the FPA, which is reflected in Part 45 of FERC’s regulations, limits the ability of individuals that serve as a director of a public utility to serve on other boards.⁵ Absent a FERC order finding that neither public nor private interests will be adversely affected, FPA Section 305(b) prohibits a person from seeking to hold the following “interlocking” positions:

- (1) Officer or director of more than one public utility;
- (2) Officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of security of a public utility; or
- (3) Officer or director of a public utility and of any company supplying electrical equipment to a public utility.⁶

Any person seeking to hold any interlocking position described in Section 305(b) must apply for FERC authorization or, in certain limited circumstances, comply with the requirements for automatic authorization.⁷ Automatic authorization generally applies to applicants seeking to hold interlocking positions among affiliated utilities, and, thus, does not apply to service on the SPP Board.⁸

Order No. 2000 and SPP RTO Orders

In Order No. 2000, FERC set forth regulations for the formation of, and participation in, RTOs.⁹ Independence from market participants was among the minimum characteristics that FERC required for a transmission entity to qualify as an RTO.¹⁰ FERC identified the structure of the RTO’s governing board as one of the ways in which it could achieve this independence; however, FERC “decided not to impose any specific requirements on RTO governing boards other than the general requirement that they must satisfy the overall principle that their decisionmaking process should be independent of any market participant or class of participants.”¹¹ In other words, rather than “mandate detailed governance requirements for RTO

⁵ 16 U.S.C. § 825d; *see also* 18 C.F.R. §§ 45.1-45.9.

⁶ 16 U.S.C. § 825d(b)(1); *see also* 18 C.F.R. §§ 45.1(a), 45.3(a).

⁷ 18 C.F.R. § 45.1(b).

⁸ *See* 18 C.F.R. § 45.9. Automatic authorization requires only that the applicant file an informational report containing, among other things, an explanation of the corporate relationship between the applicable public utilities. *Id.*

⁹ *Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (“Order No. 2000”).

¹⁰ *Id.* at 30,993-94.

¹¹ *Id.* at 31,073.

boards[,]” FERC would judge RTO governance proposals “on a case-by-case basis against th[is] overarching standard.”¹² Nonetheless, FERC stated that, “[w]here there is a non-stakeholder board, . . . it is important that this board not become isolated” and added that “[b]oth formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board.”¹³

FERC’s Order No. 2000 implementing regulations are set forth in Section 35.34 of FERC’s regulations, 18 C.F.R. § 35.34. The regulations mandate (among other things) that RTOs must be independent of any market participant, which means that the RTO, its employees, and any non-stakeholder directors are prohibited from having “financial interests” in any market participant,¹⁴ and the RTO (which includes its board) must have a decision-making process that is independent of control by any market participant.¹⁵

In its order conditionally granting RTO status to SPP, FERC accepted SPP’s governance proposal, contained in its revised Bylaws, which required SPP to establish a seven member independent, non-stakeholder Board whose members cannot be a director, officer, or employee of, or have any direct business relationship, financial interest in, or affiliation with, an SPP Member or a customer.¹⁶ However, FERC directed certain changes to the structure of SPP’s Corporate Governance Committee and further directed SPP to codify in its Bylaws the process for selecting potential Board nominees.¹⁷ FERC also directed SPP to remove from the Bylaws provisions that required that Board meetings include the Members Committee and a Regional State Committee representative, because such requirements “create[d] a perception of undue influence from the stakeholders over the Board since it appears that the Board cannot hold a meeting or make a decision without the presence of stakeholders.”¹⁸ SPP complied with these directives in subsequent filings.¹⁹

¹² *Id.* at 31,073-74.

¹³ *Id.* at 31,074.

¹⁴ *See* 18 C.F.R. § 35.34(b)(2). The regulations define “market participant” to mean: (i) Any entity that, either directly through an affiliate, sells or brokers electric energy, or provides ancillary services to the Regional Transmission Organization, unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the Regional Transmission Organization’s actions or decisions; and (ii) Any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the Regional Transmission Organization’s actions or decisions.

¹⁵ 18 C.F.R. § 35.34(j). The regulations also require that the RTO have exclusive and independent authority under FPA section 205, 16 U.S.C. § 824d, to propose rates, terms, and conditions for transmission service provided over the facilities it operates, except that transmission owners retain the authority to seek recovery from the RTO of revenue requirements associated with the transmission facilities they own. *Id.* § 35.34(j)(iii).

¹⁶ *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at PP 18-19 (2004).

¹⁷ *Id.* at P 43.

¹⁸ *Id.* at P 44.

¹⁹ *See Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004).

Order No. 719 and SPP Compliance

In Order No. 719, FERC adopted requirements to enhance RTO and ISO responsiveness to stakeholders and to establish procedures for stakeholders to have direct access to the board of directors.²⁰ Specifically, FERC adopted four responsiveness criteria addressing: (i) inclusiveness; (ii) fairness in balancing diverse interests; (iii) representation of minority positions; and (iv) ongoing responsiveness.²¹ FERC explained that “RTO and ISO independence remains fundamental,” nonetheless “RTOs and ISOs must provide an avenue for customers and other stakeholders to present their views on RTO and ISO decision-making, and to have those views considered.”²² FERC again declined to require RTOs or ISOs to adopt a specific form of board structure, but held that the business practices and procedures of each RTO or ISO must ensure that any customer or other stakeholder affected by the operation of the RTO or ISO, or its representative, be permitted to communicate its views to that entity’s board of directors.²³

In finding that SPP is compliant with Order No. 719, FERC repeatedly referenced the fact that SPP’s Board meetings are open to all members, with any member entitled to express its views prior to the vote of the Board.²⁴ FERC also noted that SPP posts all Board meeting materials in advance of meetings and posts minutes after meetings, and provides contact information for all Board members on its website. FERC concluded that “[t]hese practices demonstrate that customers and other stakeholders have access to SPP’s Board to communicate their views.”²⁵

FERC Precedent Addressing Financial Independence

From time to time, FERC has provided guidance on the investment limitations imposed on RTO and ISO employees and directors. For example, prior to the issuance of Order No. 2000 and the establishment of RTOs, FERC rejected proposals to allow ISO employees (and by extension, directors) to hold even *de minimis* investments in securities issued by market participants, finding that such proposals would undermine the ISO’s independence.²⁶ FERC later clarified that mutual fund investments may be permissible (provided that the director or employee does not exercise control over the fund’s investment decisions and the fund does not specifically target investment in any segment of the electric utility industry),²⁷ and that

²⁰ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 2008-2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,281, at P 477 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh’g*, Order No. 719-A, 2008-2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (“Order No. 719”).

²¹ *Id.* at P 502.

²² *Id.* at P 503.

²³ 18 C.F.R. § 35.28(g)(6) (setting forth the Order No. 719 RTO responsiveness requirements).

²⁴ *Sw. Power Pool, Inc.*, 133 FERC ¶ 61,069, at PP 39, 44, 46 (2010).

²⁵ *Id.* at P 39.

²⁶ *See, e.g., New England Power Pool*, 79 FERC ¶ 61,374, at 62,586 (1997), *order on reh’g*, 85 FERC ¶ 61,242 (1998); *Pa.-N.J.-Md. Interconnection*, 81 FERC ¶ 61,257, at 62,266 & n.152 (1997).

²⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,152 (1998).

participation in defined benefit pension plans administered by market participants (e.g., for employees and directors that were formerly employed by such market participants) and holding investments in a blind trust may also be permissible.²⁸ FERC also has rejected an RTO's request to interpret FERC's regulations (or otherwise grant a waiver of the regulations) in such a manner as to allow employees and directors to hold financial interests in certain "non-traditional" (e.g., financial-only) market participants, finding that its regulations "permit[] the exemption of an entity from the definition of 'market participant' if *the Commission* finds that it does not have economic or commercial interests that would be significantly affected by the RTO's actions or decisions,"²⁹ and that "it would be inconsistent with [the regulations] to permit [the RTO] to make the determination."³⁰

More recently, FERC has, on a case-by-case basis, entertained proposals by RTO/ISOs to relax the absolute prohibition on investments by directors and employees in market participant securities. Both the New York Independent System Operator, Inc. ("NYISO") and the Midcontinent Independent System Operator, Inc. ("MISO") have obtained FERC approval to modify the prohibition on employee and director investments to include only "Prohibited Securities," which are securities that are issued by market participants or their affiliates if: (1) the market participant/affiliate is an "electric sector company" as determined by the North American Industry Classification System; (2) the market participant/affiliate's total activity in the RTO/ISO's market during a year is greater than or equal to 0.5 percent of its gross revenue during the same period; or (3) the market participant/affiliate's total activity in the RTO/ISO market during the year is greater than or equal to three percent of the total activity in the RTO/ISO market for the same time period.³¹

While these recent precedents have relaxed FERC's restrictions on investments to some degree in some RTO/ISOs, it is important to note that each order was based on the individual RTO/ISO's specific proposal. These orders do not broadly modify FERC's general investment prohibitions, nor do they apply to investments by SPP Directors or employees.

Federal Court Precedent

Federal courts have articulated limits on FERC's ability to dictate certain governance decisions of RTOs and ISOs. In *CAISO v. FERC*, the California Independent System Operator Corp. ("CAISO"), along with two other California state agencies, filed a petition for review of a

²⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,255, at P 3 (2006) (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 85 FERC ¶ 61,250 (1998)).

²⁹ *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,036, at P 19 (2011) (emphasis added). FERC expounded that the regulations authorize FERC to consider, on a case-by-case basis, whether an entity meets the definition of "market participant," but that "the Commission *itself* must make a finding of whether an entity qualifies for exemption from the definition." *Id.* at P 22 (emphasis added).

³⁰ *Id.* at P 20.

³¹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,265, at P 38 (2014) (accepting MISO's "Prohibited Investment" proposal) ("*MISO*"); *New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,294, at P 10 (2013) (accepting NYISO's "Prohibited Investment" proposal). MISO's Tariff also prohibits investments in companies that have been determined to be a "Qualified Transmission Developer" for purposes of MISO's Order No. 1000 competitive developer selection process *MISO* at P 40.

series of FERC orders purporting to replace the governing board of CAISO with a new board chosen through a method dictated by FERC. In the challenged FERC orders, FERC had found that the California legislation establishing CAISO, which directed a state oversight board to create procedures for selecting a board of directors composed exclusively of state residents, was unduly discriminatory.³² The United States Court of Appeals for the District of Columbia found that the FPA did not provide FERC with authority to replace the selection method or membership of the governing board of an ISO.³³ Specifically, the Court rejected FERC's argument that the composition of the utility's governing board and method of selection is a "practice . . . affecting [a] rate" under sections 205 and 206 of the FPA.³⁴

While this case limits FERC's authority to dictate the selection of RTO/ISO directors, it does not generally prohibit FERC's ability establish requirements for RTO boards such as independence and limitations on director investments in market participants.

SPP Bylaws & Membership Agreement

Many of the requirements and limitations on SPP's Board are set forth in SPP's Bylaws and Membership Agreement, which are on file with FERC. Through these documents (as well as SPP's Tariff), SPP has implemented the Commission's directives regarding RTO governance, including Board independence.

Section 4.2.1 of the SPP Bylaws requires that Directors be independent of any Member, and Section 4.2.3 further provides that "Directors shall not be a director, officer, or employee of, and shall have no direct business relationship, financial interest in, or other affiliation with, a Member or customer of services provided by SPP." Section 4.2.3 also states that "Directors may invest in accordance with SPP's Standards of Conduct," and that "[p]articipation in a pension plan of a Member or customer shall not be deemed to be a direct financial benefit if the Member's or customer's financial performance has no material effect on such pension plan."

Section 4.2.2 describes the qualifications for Directors, requiring that Directors "have recent and relevant senior management expertise and experience in one or more of the following disciplines: finance, accounting, electric transmission or generation planning or operation, law and regulation, commercial markets, and trading and associated risk management."

The Bylaws also specify that the Board may consist of up to 10 persons, but no less than seven persons (including the President of SPP (Bylaws § 4.2.1)³⁵). Directors serve three-year terms (Bylaws § 4.3), but are not limited in the number of terms they may serve (Bylaws § 4.2.1). Directors may resign or be removed for cause though a vote of the Membership (Bylaws § 4.4).

³² *CAISO v. FERC* at 397-98.

³³ *Id.* at 398.

³⁴ *Id.* at 399 (internal quotation marks omitted).

³⁵ The President of SPP is excluded from voting on matters related to the Office of President or the Market Monitor. Bylaws §§ 3.17 & 4.2.1. The President also may not serve as the Board Chairman. *Id.* § 4.6.2.

Section 2.2.2 of the Membership Agreement provides that all Directors must adhere to the Standards of Conduct.

SPP Standards of Conduct

As discussed above, Section 2.2.2 of the Membership Agreement specifies that SPP Directors must comply with the Standards of Conduct, and Section 4.2.3 of the Bylaws states that “Directors may invest in accordance with SPP’s Standards of Conduct.” Thus, SPP has implemented FERC’s RTO independence requirements, in part, through its Standards of Conduct, which each SPP Director is required to execute each year.³⁶

Section 1 of the Standards of Conduct prohibits Directors from having any involvement in the purchase or sale of electric energy at wholesale or resale except for the provision of services by SPP under its Tariff. Section 2 of the Standards of Conduct imposes on SPP Directors various confidentiality requirements regarding information obtained from “Third Parties,”³⁷ as further governed by the Tariff, Bylaws, and Membership Agreement. Section 2 also generally prohibits disclosure of confidential information unless the information is required to be placed on SPP’s Open Access Same-Time Information System (“OASIS”),³⁸ provides for disclosure of Third Party information as expressly permitted by the Tariff (including sharing of information with FERC and possibly other entities),³⁹ and limits access to confidential SPP Regional Entity information.⁴⁰ Section 3 of the Standards of Conduct imposes limitations on Director disclosure of SPP Transmission System Information. Section 5 of the Standards of Conduct generally obligates SPP Directors to enforce all provisions of the SPP Tariff, requires Directors to exercise the Board’s discretion in a fair, impartial, and nondiscriminatory manner, and prohibits SPP Directors from giving undue preference to any person in implementing the Tariff.

Section 6 of the Standards of Conduct:

- Prohibits SPP Directors from being employees, directors, consultants or contractors to any Third Party;⁴¹

³⁶ Standards of Conduct § 8.2.

³⁷ “Third Party” is defined in the first paragraph of the Standards of Conduct as: An entity including its representatives, agents, and employees (i) that is an owner, operator or user of the bulk power system in the SPP region, as defined in the Delegation Agreement between the North American Electric Reliability Corporation and SPP; (ii) that is a Transmission Customer as defined in the SPP [Tariff] or any other tariff that SPP administers; or, (iii) for which SPP provides services under contract, including, but not limited to, tariff administration services; or (iv) that engages in purchases or sales of wholesale or retail electric energy in the SPP Region.

³⁸ *Id.* § 2.1.

³⁹ *Id.* § 2.2.

⁴⁰ *Id.* § 2.3.

⁴¹ *Id.* § 6.1.

- Prohibits SPP Directors and their immediate family members from having any financial interest in or owning securities issued by Third Parties;⁴²
- Mandates that SPP Directors not place themselves in a position in which their personal interests might conflict with SPP’s interests or SPP’s ability to administer the Tariff, including limiting the acceptance of cash and non-cash gifts;⁴³ and
- Prohibits the use of SPP resources to support a political campaign.

Section 7 of the Standards of Conduct limits Directors’ relationships with other parties, including SPP members, vendors, and customers. Section 8 of the Standards of Conduct sets forth implementation and enforcement of the Standards of conduct, including: (1) requiring that each Director execute the Standards upon election and each calendar year thereafter;⁴⁴ (2) requiring that Directors follow the Standards of Conduct and promptly report possible violations;⁴⁵ and (3) setting forth potential actions in response to a violation, including reprimand, termination, or other action.⁴⁶ Section 8 also specifies that each of the following actions constitutes a violation of the Standards of Conduct: (1) actions that directly violate the Standards of Conduct; (2) requesting that another SPP Director, employee, or Regional Entity Trustee violate the Standards of Conduct; (3) failure to report a known or suspected violation promptly; (4) failure to cooperate in an SPP investigation of a possible violation; or (5) retaliation against another SPP Director, employee, or Regional Entity Trustee for reporting an alleged violation, a violation, or an ethical concern.⁴⁷

While SPP is not required to file its Standards of Conduct with FERC,⁴⁸ FERC nonetheless does review SPP’s compliance with the Standards of Conduct.⁴⁹

⁴² *Id.* § 6.2. “Immediate family members” include: spouses; minor children; or any person for whom the Employee has power of attorney or guardianship rights. *Id.* § 6.2(b). Securities are defined as “any equity or debt instruments issued by an entity, as well as any derivative instruments whose value is derived based on the value of any equity or debt instrument issued by an entity (e.g. option contracts).” *Id.* n.1.

⁴³ *Id.* §§ 6.3 & 6.4.

⁴⁴ *Id.* § 8.2.

⁴⁵ *Id.* § 8.3.

⁴⁶ *Id.* § 8.4.

⁴⁷ *Id.* §§ 8.4(a)-(e).

⁴⁸ *See* 18 C.F.R. § 358.1(c) (RTOs are not required to file standards of conduct with FERC).

⁴⁹ *See, e.g., Sw. Power Pool, Inc.*, 127 FERC ¶ 61,119, at PP 3-5 (2009) (directing SPP to assess whether a director’s association with a law firm that provided services to electric industry participants and the director’s membership in a company that insured nuclear power plants operated by SPP members violated the conflict of interest standards set forth in SPP’s Standards of Conduct).