

## ATTACHMENT AN

### AGREEMENT BETWEEN SOUTHWEST POWER POOL, INC. AND SOUTHWEST POWER POOL BALANCING AUTHORITY PARTICIPANTS RELATING TO THE IMPLEMENTATION OF THE SOUTHWEST POWER POOL BALANCING AUTHORITY

Southwest Power Pool, Inc. and the SPP BA Participants in the SPP Balancing Authority (as such terms are defined below) agree to the following terms.

#### 1. RECITALS

- 1.1 In its May 1, 2007 Order in *Southwest Power Pool, Inc.*, Docket No. ER06-451-020, the FERC approved the EIS Agreement which provided for the performance of Balancing Authority responsibilities relating to implementation of the EIS Market through the SPP Open Access Transmission Tariff.
- 1.2 Through the EIS Agreement the Parties set out in detail the division and transfer of certain responsibilities between those entities identified as SPP Balancing Authorities in the EIS Agreement, and SPP relating to implementation of the EIS Market through the SPP OATT.
- 1.3 The Parties are replacing the EIS Agreement to accommodate the development and implementation of the SPP Integrated Marketplace and SPP becoming the Balancing Authority for the entire consolidated SPP Balancing Authority Area.
- 1.4 The Parties believe that this Agreement is in the public interest.

#### 2. DEFINITIONS

- 2.01 **ACTUAL INTERCHANGE.** The metered interchange over a specific interconnection, including pseudo-ties, between two directly interconnected BAs.
- 2.02 **ADJACENT BALANCING AUTHORITY.** As defined in the NERC Glossary of Terms.
- 2.03 **AGREEMENT.** This “Agreement Between Southwest Power Pool, Inc. And Southwest Power Pool Balancing Authority Participants Relating To The Implementation Of The Southwest Power Pool Balancing Authority.”
- 2.04 **AREA CONTROL ERROR (ACE).** As defined in the NERC Glossary of Terms.
- 2.05 **AUTOMATIC GENERATION CONTROL (AGC).** As defined in the NERC Glossary of Terms.

- 2.06 **BALANCING AUTHORITY (BA).** As defined in the NERC Glossary of Terms.
- 2.07 **BA OPERATING PROTOCOLS.** The operating protocols entitled “BA Operating Protocols of the Participants and SPP” that are developed by the SPP BA, as may be amended from time to time, to describe in more detail the obligations of the Parties to implement this Agreement.
- 2.08 **BULK ELECTRIC SYSTEM.** As defined in the NERC Glossary of Terms.
- 2.09 **DYNAMIC SCHEDULE.** As defined in the NERC Glossary of Terms.
- 2.10 **EFFECTIVE DATE.** The effective date of this Agreement as specified in Section 16.2 of this Agreement.
- 2.11 **EIS AGREEMENT.** The “Agreement Between Southwest Power Pool, Inc. And Southwest Power Pool Balancing Authorities Relating To Implementation Of The EIS Market.”
- 2.12 **ERO.** The Electric Reliability Organization approved by FERC.
- 2.13 **ERO BALANCING AUTHORITY RELIABILITY STANDARDS.** Those reliability standards and requirements applicable to Balancing Authorities as those standards and requirements exist or are hereafter modified or adopted by the ERO.
- 2.14 **ERO RELIABILITY STANDARDS.** Standards developed by the ERO and approved by the Commission to ensure reliability of the Bulk Power System, violation of which may result in the imposition of mitigation programs or monetary penalties.
- 2.15 **FERC or the COMMISSION.** The Federal Energy Regulatory Commission or any successor agency.
- 2.16 **GENERATOR OPERATOR (GOP).** As defined in the NERC Glossary of Terms.
- 2.17 **GENERATOR OWNER (GO).** As defined in the NERC Glossary of Terms.
- 2.18 **GOOD UTILITY PRACTICE.** Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to the acceptable practices, methods, or acts generally accepted in the region.

- 2.19 **GOVERNING DOCUMENTS.** The following documents as may be amended from time to time: (a) Southwest Power Pool, Inc. OATT; (b) Southwest Power Pool, Inc. Membership Agreement; (c) Southwest Power Pool, Inc. Bylaws; (d) Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc.; (e) Joint Operating Agreement Among And Between Southwest Power Pool, Inc. and Associated Electric Cooperative Inc.; (f) Seams Agreement Between Entergy Services, Inc. and Southwest Power Pool, Inc.; (g) Joint Operating Agreement among and between Southwest Power Pool, Inc. and Western Area Power Administration; and (h) any joint operating agreements or seams agreements executed by SPP after the filing of this Agreement with the FERC.
- 2.20 **INTEGRATED MARKETPLACE.** The Day-Ahead Market, the Real-Time Balancing Market, the Transmission Congestion Rights Market and the Reliability Unit Commitment processes.
- 2.21 **INTERCONNECTION.** The Eastern Interconnection as defined by the NERC Glossary of Terms.
- 2.22 **LOAD SERVING ENTITY (LSE).** As defined in the NERC Glossary of Terms.
- 2.23 **MARKET MONITOR.** The entity that is responsible for performing the monitoring and mitigation activities described in Attachments AF and AG to the SPP OATT.
- 2.24 **MARKET PARTICIPANT.** As defined in the SPP OATT.
- 2.25 **MEMBERSHIP AGREEMENT.** The Membership Agreement of the Southwest Power Pool, Inc., an Arkansas non-profit corporation.
- 2.26 **NET ACTUAL INTERCHANGE.** As defined in the NERC Glossary of Terms.
- 2.27 **NET SCHEDULED INTERCHANGE.** As defined in the NERC Glossary of Terms.
- 2.28 **NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION (NERC).** The North American Electric Reliability Corporation or its successor organization.
- 2.29 **OPEN ACCESS TRANSMISSION TARIFF (OATT).** FERC approved Pro-Forma Open Access Transmission Tariff.
- 2.30 **OPERATING COMMITTEE.** A committee comprised of one member and an alternate from each of the Parties to this Agreement and which shall perform the duties identified in Section 18.4.
- 2.31 **PARTIES.** The SPP BA Participant and SPP that have executed this Agreement. SPP and SPP BA Participant may be individually referred to as a “Party.”

- 2.32 **PURCHASING AND SELLING ENTITY (PSE).** As defined in the NERC Glossary of Terms.
- 2.33 **RESOURCE PLAN.** A Market Participant's plan to meet its energy obligations including specification of resource operating characteristics.
- 2.34 **SOUTHWEST POWER POOL (SPP).** Southwest Power Pool, Inc., or any successor organization, that is designated as the SPP BAA under this Agreement.
- 2.35 **SPP BALANCING AUTHORITY (SPP BA).** The responsible entity registered with the ERO as the BA, and that performs all the functions of the BA in the SPP BAA on behalf of the Parties to this Agreement.
- 2.36 **SPP BALANCING AUTHORITY AREA (SPP BAA).** The SPP BAA consists of the transmission system, load and generation resources interconnected to the SPP Transmission System, as defined under the SPP OATT, that: (a) function as a centrally coordinated system and (b) operate subject to the single set of dispatch instructions determined and issued by the SPP BA. The SPP BA maintains load-resource balance within its SPP BAA.
- 2.37 **SPP BA PARTICIPANT.** An operational entity, which is: (a) a Party to this Agreement, excluding SPP, and (b) shown in Appendix A to this Agreement. For purposes of this Agreement, an SPP BA Participant may have previously been registered as a BA under the EIS Agreement.
- 2.38 **SPP BA PARTICIPANT AREA.** The collection of generation, transmission, and loads that are within the metered boundaries of the SPP BA Participant.
- 2.39 **SPP OPERATING CRITERIA.** SPP's approved operating criteria.
- 2.40 **TIE LINE.** As defined in the NERC Glossary of Terms.
- 2.41 **TRANSMISSION OPERATOR (TOP).** As defined in the NERC Glossary of Terms.
- 2.42 **TRANSMISSION OWNER (TO).** As defined in the NERC Glossary of Terms.

### **3. GENERAL**

- 3.1 **PURPOSE.** The purpose of this Agreement is to delineate the responsibilities between SPP, as the SPP BA, and the SPP BA Participants to establish the SPP BAA that facilitates the Integrated Marketplace to be implemented under the SPP OATT.
- 3.2 **OBLIGATIONS.** In carrying out obligations under this Agreement, SPP and the SPP BA Participants shall (a) follow Good Utility Practice, (b) comply with applicable policies, standards and requirements of the ERO Reliability Standards

and SPP Criteria and their successors, and (c) follow applicable laws, regulations, and orders.

- 3.3. REGISTRATION AND CERTIFICATION. SPP shall be the SPP BA. The SPP BA will comply with the ERO's applicable BA registration and certification requirements. SPP BA Participants shall support those functions consistent with the tasks and responsibilities assigned under this Agreement.
- 3.4. RELATIONSHIP TO MEMBERSHIP AGREEMENT. Nothing in this Agreement shall be construed or intended to cause or effect a modification to the Membership Agreement. This Agreement is intended to be separate from the Membership Agreement. All rights and obligations currently existing under the Membership Agreement remain.
- 3.5. RELATIONSHIP TO EIS AGREEMENT. This Agreement shall supersede the EIS Agreement upon the effective date specified in the Agreement; provided, however, this shall not eliminate any rights or obligations relating to prior actions, which shall survive the EIS Agreement including, but not limited to, rights or obligations arising under the following provisions: (a) indemnification; (b) waivers of liability; (c) no agreement to jurisdiction; (d) default; (e) cost recovery; and (f) obligations upon termination by entities that terminated their participation in the EIS Agreement without executing this Agreement. Notwithstanding the foregoing in this Section 3.5, the SPP and the SPP BA Participants shall maintain the functionality necessary to comply with the EIS Agreement for a transition period after Integrated Marketplace start-up as determined by the Operating Committee.

#### **4. SPP RESPONSIBILITIES.**

4.1 SPP BA. SPP shall perform all tasks necessary to fulfill the role as the SPP BA, including adherence to all applicable ERO BA Reliability Standards and requirements except as delineated in Section 5 of this Agreement.

##### **4.2 SPP NORMAL OPERATIONS**

4.2.1 SPP shall be responsible for the identification of its critical assets and related critical cyber assets necessary to support reliable operation of the Bulk Electric System. SPP shall have no responsibility to identify critical assets or related critical cyber assets of any SPP BA Participant.

4.2.2 SPP shall be responsible for maintaining its internal telecommunications facilities in an adequate and reliable manner for the exchange of interconnection and operating information necessary to maintain reliability within its respective scope of operations. SPP shall have no responsibility for maintaining any SPP BA Participant's internal telecommunications facilities for the exchange of interconnection and operating information of any SPP BA Participant.

#### **5. SPP BA PARTICIPANT RESPONSIBILITIES**

5.1 TIE LINE METERING AND TELEMETRY. Each SPP BA Participant that has or is taking actions to have, one or more Tie Line(s) with an Adjacent Balancing Authority shall have, or cause to have, the Tie Line metering and telemetry responsibilities as set forth in this Section 5.1.

5.1.1 Each SPP BA Participant having one or more Tie Line(s) with an Adjacent Balancing Authority shall provide all Tie Line flows to the SPP BA.

5.1.1.1 Each SPP BA Participant shall ensure that the Tie Line megawatt (MW) metering is telemetered to the SPP control center.

Such SPP BA Participant shall maintain and provide to SPP suitable documentation (i.e. prints, equipment specifications, records) that verifies Tie Line MW metering physical location and actual metering point

The SPP BA Participant shall operate such that the MW-hour data is telemetered or reported to the SPP BA at the end of each hour.

5.1.1.2 Each SPP BA Participant shall ensure the power flow measurements transmitted to SPP from the Tie Line meters are not filtered prior to transmission, except anti-aliasing Filters of Tie Lines.

5.1.1.3 Each SPP BA Participant shall ensure the installation of common metering equipment where Dynamic Schedules or pseudo-ties are implemented between SPP and an Adjacent Balancing Authority where applicable to account for the delivery of the output of units located external to the SPP BAA or to serve remote load physically external to the SPP BAA.

5.1.1.4 Each SPP BA Participant shall operate such that its sampling rate of data is compatible with the SPP's sampling rate of data, as specified by SPP.

5.1.1.5 Each SPP BA Participant shall provide SPP an inventory of all Tie Line(s) with Adjacent Balancing Authority(ies), including maps, prints, electrical drawings and diagrams, equipment descriptions as requested by SPP.

5.1.1.6 The SPP BA Participant shall timely inform SPP of any modifications, changes, status, and operability of the Tie Line metering equipment.

5.1.1.7 SPP and SPP BA Participant shall agree on the specific Tie Line (including pseudo ties), surrounding the SPP BAA.

5.1.1.8 Each SPP BA Participant shall maintain, re-calibrate and otherwise insure proper operation and accuracy of the Tie Line metering

equipment at a frequency determined by SPP and documented in applicable SPP policies, procedures, and/or documents. Documents verifying such actions shall be provided to SPP as requested by SPP.

5.1.1.9 If SPP suspects inaccuracies or malfunction of Tie Line metering, SPP shall inform the SPP BA Participant. The SPP BA Participant shall take action necessary to verify timely Tie Line metering equipment accuracy and/or performance of the suspect Tie Line metering and take actions to restore data accuracy.

5.1.2 The addition of a Party or the withdrawal of a Party may result in the designation of an existing line as a Tie Line with an Adjacent Balancing Authority or result in an existing Tie Line with an Adjacent Balancing Authority to be no longer a Tie Line. If either event should occur, SPP shall so notify the affected SPP BA Participant. SPP and the impacted Party(ies) shall determine actions to be taken by SPP and/or the Party(ies) to conform to this Agreement in a timely manner.

5.2 FREQUENCY MEASUREMENTS. As may be reasonably requested by SPP, SPP BA Participants may be requested to supply SPP with frequency measurements from locations agreed to by the Parties. SPP BA Participants that are designated to provide frequency measurements to SPP shall provide accurate frequency measurements from these location(s) with measurement quality indication.

SPP BA Participants shall perform annually, against a common reference, checks and calibrations of its time error and frequency devices used to supply SPP with data used by SPP to perform BA functions (“Actions”). For purposes of this section, “annually” shall mean “within a calendar year, with the calendar year beginning on January 1 and ending on December 31;” however, the period between subsequent annual checks and calibrations under this section shall not exceed fifteen (15) months. Documents verifying such Actions shall be provided to SPP BA as requested by SPP.

## **6. IMPLEMENTATION OF EMERGENCY OPERATING PLANS**

6.1 SPP and each SPP BA Participant shall coordinate preparation and implementation of respective emergency operating plans. This coordination shall include, but not be limited to,

6.1.1 SPP BA Participant actions to interruption of load and/or exports as directed by SPP associated with capacity deficiencies; and,

6.1.2 SPP BA Participant actions to implement public appeals, voltage reductions, curtailment of interruptible and/or firm load as directed by SPP associated with capacity deficiencies.

**7. BA OPERATING PROTOCOLS AND SPECIFIC ERO REQUIREMENT ASSIGNMENT**

7.1 INITIAL ASSIGNMENT OF TASKS. Sections 4 and 5 of this Agreement set forth the tasks and responsibilities of the Parties to establish the single BA for the SPP BAA.

7.2 NEW OR MODIFIED RESPONSIBILITIES. When new and/or modified applicable responsibilities are required including those that might be initiated by the ERO, the Parties will negotiate in good faith to determine whether SPP and/or the SPP BA Participants shall ensure the performance of the new or modified responsibilities, and will amend this Agreement accordingly, pursuant to Section 17.4.

7.3 BA OPERATING PROTOCOLS. The SPP BA shall develop and maintain BA Operating Protocols that provide for operational requirements under this Agreement.

**8. DATA EXCHANGE**

8.1 PARTIES' DATA EXCHANGE. Each SPP BA Participant and SPP shall provide the information and data that a Party reasonably believes it needs and requests in order to carry out its responsibilities under this Agreement.

8.2 CONFIDENTIALITY. All data provided under this Section shall be considered information subject to the confidentiality provisions of Section 13 herein.

**9. SPP BA PARTICIPANT COST RESPONSIBILITY.** Each SPP BA Participant shall be responsible for all costs incurred by it to implement the provisions of this Agreement.

**10. SANCTIONS, INQUIRIES AND ALLOWED ACTIONS**

10.1 SANCTIONS. In the event the ERO assesses a monetary penalty against SPP as the Registered Entity BA for a violation of a Reliability Standard, SPP shall seek to recover the costs associated with the sanctions and/or monetary penalties pursuant to Attachment AP of the SPP OATT. For purposes of clarification, the term "Transmission Provider" as contained in Attachment AP shall mean SPP and the term "Member" in Attachment AP shall mean SPP BA Participants under this Agreement.

10.2 INQUIRIES. To the extent an SPP BA Participant's actions implementing SPP actions or directives pursuant to this Agreement are questioned, investigated or sanctioned by the ERO, the Market Monitor, or by an applicable regulatory agency, SPP shall aid the SPP BA Participant in responding to the inquiry, investigation, or sanctions.

10.3 ALLOWED ACTIONS. To the extent that the ERO, FERC or applicable regulatory agency determines that an SPP BA Participant's actions taken pursuant



to this Agreement were inappropriate, SPP shall not require the SPP BA Participant to take such actions in the future. If the ERO, FERC or applicable regulatory agency requires that an SPP BA Participant take action inconsistent with this Agreement, SPP will allow such actions.

## **11. LIMITATIONS ON SPP ACTIONS**

11.1 GOVERNING DOCUMENTS. Without limiting the generality of obligations provided in Section 3.2, SPP shall not issue any orders to any Party pursuant to this Agreement or take any action pursuant to this Agreement that SPP knows or should know is not in accordance with the Governing Documents.

11.2 APPLICABLE LAWS. SPP shall not issue any order to any other Party pursuant to this Agreement or take any action pursuant to this Agreement that SPP knows or should have known would cause a violation of applicable laws or tariffs.

## **12. INDEMNIFICATION, LIABILITIES, INSURANCE**

12.1 INDEMNIFICATION FOR THIRD PARTY CLAIMS. Subject to Sections 12.1.1 and 12.1.2 hereof, each Party shall at all times indemnify, defend, and save harmless each other Party to this Agreement and its officers, shareholders, directors, agents, contractors, employees, and members (*i.e.*, cooperative members and municipal joint action agency members) from and against any and all damages, losses, claims, including without limitation claims and actions relating to injury to, or death of, any person, or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties or other Parties (each, a “Claim”), but only to the extent caused by the Indemnifying Party’s (as defined below) acts or omissions during performance of its obligations under this Agreement. The term Claim shall not include civil penalties, fines, assessments or any other charges levied against a Party and recovered pursuant to Section 10 of this Agreement.

12.1.1 SOVEREIGN IMMUNITY. Notwithstanding anything to the contrary in this Agreement, no Party which has been granted sovereign tort immunity under applicable law shall have any indemnification obligation in connection with any Claim that would be subject to such immunity if brought against that Party, and nothing contained in this Agreement shall be construed as a waiver by any Party of its sovereign tort immunity.

12.1.2 NOTICE. Upon obtaining knowledge of any Claim, a Party with a right to be indemnified (“Indemnified Party”) shall promptly notify each Party who has an obligation to indemnify (“Indemnifying Party”) in writing of such Claim, provided however, that failure of the Indemnified Party timely to give notice to the Indemnifying Party shall not release the Indemnifying Party from its indemnity obligations set forth in this Agreement except to the extent that the Indemnifying Party has been actually prejudiced by such failure. Following receipt of such notice, and unless counsel to the Indemnified Party shall have determined in good faith that the assumption of such defense by the Indemnifying Party would be inappropriate due to a conflict of interest, the Indemnifying Party

shall have the option, at its cost and expense, to assume the defense of such matter and to retain counsel (not reasonably objected to by the Indemnified Party) to defend any such Claim, and the Indemnifying Party shall not be liable to the Indemnified Party for any fees of other counsel or any other expenses (except as expressly provided to the contrary herein) with respect to the defense of such Claim, other than reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. The Indemnified Party shall have the option of joining the defense of such Claim with its own counsel (which shall be at the sole cost and expense of the Indemnified Party) and counsel for each of the Indemnified and Indemnifying Party shall cooperate with each other to the extent consistent with such counsel's professional responsibilities. In effecting the settlement or compromise of, or consenting to the entry of any judgment with respect to, any such Claim ("Settlement"), the Indemnifying Party, or the Indemnified Party, as the case may be, shall act in good faith and shall consult with the other Party. The Indemnified Party shall enter into only such Settlement as the Indemnifying Party shall consent to, such prior written consent not to be unreasonably withheld, conditioned or delayed. An Indemnifying Party shall not be liable for any Settlement not made in accordance with the preceding sentence. An Indemnifying Party shall notify the Indemnified Party reasonably in advance of entering into any Settlement of a Claim for which the Indemnifying Party has assumed the defense, and shall obtain the Indemnified Party's prior written consent thereto, not to be unreasonably withheld, conditioned or delayed, if such Settlement (i) imposes any obligation on the Indemnified Party other than, or in addition to, an obligation to pay money which the Indemnifying Party has assumed, (ii) involves any admission of wrongdoing, fault or liability on behalf of the Indemnified Party, whether express or implied, or (iii) does not fully and unconditionally release the Indemnified Party from all liability in connection with such Claim, which release shall be in form and substance reasonably satisfactory to the Indemnified Party.

12.1.3 NOTICE TO OTHER PARTIES. In the event an Indemnified Party provides notice to an Indemnifying Party pursuant to Section 12.1.2, an Indemnifying Party shall timely provide all other Parties the same notice the Indemnifying Party receives from the Indemnified Party.

12.2 LIABILITY LIMITATION FOR INTER-PARTY CLAIMS. No Party shall be liable to the SPP for any damages whatsoever, including, without limitation, direct, indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission in any way associated with the performance of the Party's responsibilities under this Agreement, except to the extent, and only to the extent, that the Party is found liable for gross negligence or intentional misconduct, in which case the Party shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary or punitive damages. The SPP shall not be liable to any Party for any indirect,

incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary or punitive damages.

12.3 INSURANCE. Each Party shall be self-insured and/or obtain adequate insurance coverage to cover liabilities, if any, under this Agreement to be effective as of the effective date of this Agreement.

### **13. STANDARDS OF CONDUCT, INFORMATION SHARING, CONFIDENTIALITY**

13.1 SPP BA PARTICIPANTS. This Agreement does not require any SPP BA Participant to separate SPP BA Participant personnel from marketing personnel; nor does this Agreement waive any requirement of the Commission's Standards of Conduct or exempt any public utility SPP BA Participant from the Standards of Conduct. This Section 13.1 applies to both the public utility SPP BA Participants and the non-public utility SPP BA Participants that are signatories to this Agreement.

13.1.1 In general, personnel of an SPP BA Participant performing functions under this Agreement shall keep all information received from SPP or other entities relating to its performance under this Agreement confidential and shall not disclose such information to Market Participants (including marketing personnel that are part of the same company as the SPP BA Participant) or entities which it reasonably believes may become Market Participants. Notwithstanding the foregoing, and subject to subparagraph (b) below, an SPP BA Participant with personnel who perform both SPP BA Participant and market functions may disclose information received from the SPP or other entities to its personnel.

13.1.2 SPP shall have the right to limit the sharing of market sensitive information related to non-affiliated Market Participants to an SPP BA Participant with personnel who perform both functions under this agreement and market functions; except when:

- (a) no other Market Participant under the Integrated Marketplace with registered resource(s) controls generation connected to a Party's facilities, or
- (b) the SPP BA Participant is a signatory to the North American Electric Reliability Council Confidentiality Agreement for Electric System Operating Reliability Data and Annex 1 thereto (Limited Operating Reliability Data Agreement for Small Bundled Entities). Each SPP BA Participant with personnel performing such dual functions shall notify SPP of that fact, and, to the extent permitted by law, the SPP BA Participant shall not disclose confidential information to third party Market Participants or third parties which it reasonably believes may become Market Participants.

13.1.3 Notwithstanding the above, SPP shall provide, to the extent necessary, information to allow the SPP BA Participant to perform its functions under this Agreement and to comply with ERO and regional reliability requirements.

13.1.4 There shall be no requirement to keep information confidential if such information is in the public domain or subject to open records laws. In addition, if the ERO requires that the SPP BA Participant provide information required to be confidential under this provision, the SPP BA Participant may provide such information to the requesting entity, provided that the SPP BA Participant shall make a good faith attempt to maintain the confidentiality of the information, notwithstanding the information request, and provided further that, in the case of a request by a state regulatory agency for confidential information, the SPP BA Participant may provide confidential information to such state regulatory agency as necessary to satisfy state regulatory responsibilities and, subject to applicable law, only to the extent that the state regulatory agency executes a non-disclosure agreement.

13.2 SOUTHWEST POWER POOL. SPP, its directors, officers, employees, contractors, and agents shall adhere to the SPP Standards of Conduct with regard to all activities related to this Agreement.

#### **14. DISPUTE RESOLUTION**

14.1 GENERAL. These procedures are established for the equitable, efficient and expeditious resolution of disputes consistent with SPP's Bylaws. These procedures are intended to cover disputes between any two or more SPP BA Participants, or between SPP and any SPP BA Participant(s). SPP and SPP BA Participant(s) are strongly encouraged to take part in the complete process herein described prior to litigation or the utilization of other dispute resolution processes. SPP administrative involvement in the proceeding is to coordinate with an appropriate firm or panel to facilitate the resolution of the dispute and to provide meeting coordination and facilities. These procedures do not apply to disputes that are covered by the dispute resolution procedures of the SPP OATT.

14.2 INSTIGATION. Any SPP BA Participant may begin these dispute resolution procedures by notifying the SPP President in writing. The SPP President will inform the SPP Board of Directors of the initiation of any dispute resolution proceedings. This written notification must contain the authorized signatures of all Parties to the dispute. The notification must contain: (a) a statement of the issues in dispute; (b) the positions of each of the Parties relating to each of the issues; (c) the specific dispute resolution procedure desired; and (d) any agreed-upon modifications or specific additions to the proceedings described in this Agreement by which the dispute may be resolved.

### 14.3 DISPUTE RESOLUTION PROCESS.

14.3.1 In the event SPP is a party to the dispute, the parties shall engage a firm specializing in alternative dispute resolution to administer the dispute resolution process. The firm will be mutually determined by the parties and the process will be administered in accordance with this Agreement and such other SPP governing documents as may be relevant to the proceeding. In the event the parties cannot mutually agree to the engagement of a firm, the dispute resolution process will be abandoned and other available means for resolution will be pursued.

14.3.2 In the event SPP is not a party to the dispute, the parties to the dispute may engage a firm specializing in alternative dispute resolution to administer the dispute resolution process. The firm will be mutually determined by the parties and the process will be administered in accordance with this Agreement and such other SPP governing documents as may be relevant to the proceeding. In the event the parties cannot mutually agree to the engagement of a firm, and do not determine some other mutually acceptable procedure, the President of SPP shall provide to each party to the dispute a list of candidates to be used in forming a three-person dispute resolution panel. The candidates shall be persons meeting the requirements for the SPP Board of Directors. The President shall then call a telephone conference meeting during which each party shall alternate striking names from the list until those remaining constitute the dispute resolution panel. This panel shall select a chair from its membership. Should any candidate decline to serve or resign from a current appointment for any reason, the candidate whose name was last struck from the list shall be contacted to serve. The President shall assign a Staff representative to assist the panel as secretary. The President shall manage the panel selection process to ensure its timely completion.

14.4 RESOLUTION PROCEDURES. The types of proceedings available for the resolution of disputes are:

- (a) an advisory proceeding to assist each party through discussion and advice, on a separate and individual basis without active participation in the joint discussions and negotiations, to resolve the dispute informally by mutual agreement;
- (b) a mediation proceeding to assist the parties through active participation in the joint discussions and negotiations (including specific recommendations of the issues in dispute) through which the parties indirectly attempt to resolve the dispute informally by mutual agreement;
- (c) a non-binding dispute resolution proceeding to hear formal evidence on factual matters related to the issues submitted, make written findings and conclusions of fact, and issue specific written recommendations for resolution of each issue in dispute;
- (d) a binding dispute resolution proceeding, provided the parties to the dispute agree to the proceeding, to hear formal evidence on factual matters related

to the issues submitted, make written findings and conclusions of fact, and issue directives and awards for resolution of each issue in dispute.

The panel chair or representatives of the alternative dispute resolution firm (the “Facilitator”) shall determine meeting arrangements and format necessary to efficiently expedite the resolution of the dispute, and the SPP staff secretary shall notify the parties of these details. Each party to the dispute must have at least one representative present at all related meetings with full authority to resolve the dispute. Upon conclusion of this process, the Facilitator shall notify the SPP President of its outcome. After consultation with the parties to the dispute and the Facilitator to determine the completion of the process as described herein, and/or as modified by the parties, the SPP President shall discharge the panel or firm, and notify the SPP Board of Directors of the results. The parties to the dispute agree to complete the process within 90 days from selection of the panel or firm. The SPP staff secretary shall maintain minutes of the panel meetings, which shall become part of SPP’s historical records.

14.5 EXPENSES. The parties to the dispute shall share equally all reasonable charges for the meeting location, administrative costs, and related travel expenses of panel members. The parties to the dispute shall also share equally all reasonable compensation for time and service of panel members and related incremental expenses of the SPP staff. The President shall determine reasonableness of time and service costs for panel members prior to process implementation. The SPP staff secretary shall account for these expenses. Each party to the dispute shall be responsible for their respective associated expenses.

14.6 LIABILITY. The parties to any dispute which is the subject of these dispute resolution procedures shall hold harmless SPP, its Members, Organizational Groups and each of their directors, officers, agents, employees or other representatives, and the panel members from any liabilities, claims, or damages resulting from any agreement or lack of agreement as a result of the dispute resolution proceedings. The foregoing hold harmless right shall not be extended to the parties to any given dispute or to their directors, officers, agents, employees, or other representatives.

## **15. NON-PERFORMANCE AND DEFAULT**

15.1 NON-PERFORMANCE. Except as provided in Section 18.9, any failure to carry out any term of this Agreement shall be considered non-performance. A Party alleging non-performance shall provide written notice of such non-performance within seven calendar days to the alleged non-performing Party. The alleged non-performing Party then shall have seven calendar days (or some other time period agreed to by the Parties) to correct the non-performance or to dispute the non-performance pursuant to the provisions of Section 14. Each Party shall designate a person to receive notice and provide such designation to the other Parties.

- 15.2 **DEFAULT.** If a Party fails to correct the non-performance or fails to dispute the allegation of non-performance as provided in Section 14, or the Party is found to be a non-performing Party through the dispute resolution provisions in Section 14 and fails to take adequate corrective action, then the Party shall be considered to be in Default.
- 15.3 **REMEDY FOR DEFAULT.** One or more Parties, individually or collectively, may seek appropriate remedies in court, including, but not limited to, specific performance and equitable relief, in the event of a Default by another Party.

**16. TERM, TERMINATION, EFFECTIVENESS, WITHDRAWAL**

- 16.1 **EFFECTIVE DATE AND TERM.** This Agreement shall commence on the Effective Date of this Agreement as provided in Section 16.2. This Agreement shall remain in effect for two (2) years from the Effective Date and shall remain in effect from year to year thereafter unless either: (a) SPP or (b) three-fourths of the SPP BA Participants then subject to this Agreement give one year advance notice in writing that they wish to terminate this Agreement. Termination of this Agreement is subject to approval by a regulatory agency with proper jurisdiction, including, but not limited to, FERC.
- 16.2 **DETERMINATION AND LIMIT OF EFFECTIVENESS.** The Agreement shall become effective on the date the Integrated Marketplace begins operations provided that the following events have occurred: (a) the ERO has certified, including on a conditional basis, that SPP can begin operations as the BA of the SPP BAA to comply with the ERO Balancing Authority Reliability Standards; (b) FERC accepts or approves the Agreement; and (c) any modifications ordered by FERC are accepted consistent with Sections 17.2 and 17.4 of this Agreement.
- 16.3 **FILING.** SPP has concluded that this Agreement must be filed with FERC under the Federal Power Act and its implementing regulations. Should FERC require any modification to this Agreement that adversely affects the rights or obligations of a Party, the Party may withdraw its participation in this Agreement consistent with the provisions of Section 16.5.
- 16.4 **TERMINATION BY SPP.** In the event SPP gives notice to terminate this Agreement, such termination shall not be effective until suitable arrangements for the provisions of its BA responsibilities are in place. Suitability of the arrangements will be determined by the BA Committee.
- 16.5 **WITHDRAWAL.** An SPP BA Participant may withdraw from this Agreement if: (a) the SPP BA Participant or entity of which SPP BA Participant is a part withdraws from SPP membership under the withdrawal provisions of the Membership Agreement; or (b) the SPP BA Participant or the entity of which SPP BA Participant is a part removes its transmission facilities from the SPP OATT subject to any applicable regulatory requirements; or (c) the SPP BA Participant unilaterally terminates its participation in the Agreement in its sole discretion. The SPP BA Participant shall provide at least one hundred eighty (180) days notice (or

shorter time period if required by a regulatory authority with jurisdiction, or by law, or as agreed to by SPP) to SPP of such withdrawal, which withdrawal may not be effective any earlier than the date upon which the applicable conditions set forth in Section 16.5 are fully satisfied.

- 16.6 CONTINUING OBLIGATIONS. An SPP BA Participant and SPP shall be subject to the rights and responsibilities under this Agreement for any actions or inactions occurring prior to the effective date of the SPP BA Participants withdrawal or termination of this Agreement.
- 16.7 SURVIVABILITY. The provisions of this Agreement related to any indemnification obligation or any continuing obligation under Section 16 shall survive the termination of this Agreement under Section 16 or the withdrawal of a Party under Section 16 to the full extent necessary for their enforcement and the protection of the Party in whose favor they run with regard to actions or inactions occurring prior to the effective date of the termination or withdrawal, except that in the case of withdrawal of an SPP BA Participant, no action or claim against that Participant related to this Agreement shall commence more than three years from the effective date of the withdrawal.

## **17. MODIFICATIONS AND AMENDMENTS**

- 17.1 RESERVED.
- 17.2 OTHER MODIFICATIONS OR CONDITIONS. Except as provided in Section 17.4, the Parties intend that there will be no other modifications or conditions to this Agreement absent the agreement of the Parties. Notwithstanding anything to the contrary in this Agreement, in the event of any changes in ERO, Commission, Regional Entity, or Integrated Marketplace requirements, which materially affect this Agreement, the Parties will negotiate in good faith appropriate changes to this Agreement and will make written modifications hereto. If the Parties do not mutually agree to such changes in writing, then they will refer the issues to dispute resolution under Section 14.
- 17.3 MOBILE-SIERRA STANDARD. Absent a filing with the Commission to reflect the agreement of the Parties as detailed in Section 17.4, the standard of review for changes or conditions to this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “*Mobile-Sierra*” doctrine). Notwithstanding the foregoing in this Section 17.3, if the Commission changes its policy (in existence at the time of execution) and imposes a standard different than the Mobile-Sierra presumption set forth in this provision, then the Parties shall modify this Agreement to reflect the new standard. Any changes to this Agreement shall be prospective only. The Commission’s action on the initial filing of this Agreement shall be under the just and reasonable standard.



17.4 VOTING FOR ACCEPTANCE OF MODIFICATIONS OR CONDITIONS. This Agreement may be modified or conditioned only by at least a two-thirds affirmative vote of the SPP BA Participants (each SPP BA Participant receiving one vote regardless of size) with the assent of SPP; provided, however, no such modification or condition may be imposed on a Party that does not agree to the modification or condition to the extent that the modification or condition will cause the Party to no longer be in compliance with ERO or Regional Entity requirements. SPP shall file with the Commission any modifications to this Agreement resulting from this Section 17.4, which filing will be subject to the just and reasonable standard of review. Once the Commission accepts such modifications, then such modifications shall be considered as being part of this Agreement and all applicable terms of the Agreement, including Section 17.3, shall apply to the modifications.

## **18. MISCELLANEOUS PROVISIONS**

18.1 ASSIGNMENT. Each SPP BA Participant may assign its rights and obligations under this Agreement to another entity subject to receiving the approval of SPP; such approval shall not be unreasonably withheld.

18.2 NO AGREEMENT TO JURISDICTION. By entering into this Agreement, which shall be filed with the Commission and notwithstanding any provision in this Agreement, the SPP BA Participants are not in any way agreeing individually or collectively that their activities under this Agreement are subject to Commission jurisdiction. In addition, nothing in this Agreement shall be construed (a) to confer Commission jurisdiction over SPP BA Participants that are not public utilities as defined by the Federal Power Act, or (b) as a consent or waiver with respect to such jurisdiction, or (c) to cause a non-public utility to take any action or participate in any filing or appeal that would confer Commission jurisdiction over a non-public utility or require a non-public utility to comply with any Order or Rule issued by the Commission. A Party's actions, decisions, and performance under this Agreement, including without limitation the exercise of its rights to withdraw from or terminate this Agreement, shall not be subject to Commission approval.

18.3 RESERVATION OF RIGHTS. Nothing in this Agreement shall affect a Party's rights to argue issues that are not resolved pursuant to this Agreement in proceedings at the Commission and in the courts.

18.4 OPERATING COMMITTEE. As soon as practicable after the Effective Date, the SPP BA Participants shall form an Operating Committee. The function of the Operating Committee shall be: (a) to review performance under this Agreement, (b) to discuss issues that may arise related to such performance, (c) to review BA Operating Protocols, and, (d) if necessary or advisable, to propose amendments to this Agreement for the Parties' consideration and/or vote pursuant to Section 17.4. The Operating Committee shall be comprised of a member and an alternate for each SPP BA Participant, who has authority to bind the respective SPP BA Participant. The Operating Committee shall meet at least once each year on dates

to be determined by SPP after consultation with the committee members. SPP shall facilitate such meetings and shall give reasonable written notice thereof to all Parties. At its first meeting, the Operating Committee shall, with the approval of at least two thirds of the Parties, establish procedures to govern its actions consistent with the terms of this Agreement.

- 18.5 CONSOLIDATION OF PARTICIPANTS. The Parties agree that any consolidations of SPP BA Participants shall be accommodated under this Agreement. This Agreement shall not be construed as inhibiting the consolidation of Participant Areas.
- 18.6 ADDITIONAL BALANCING AUTHORITIES. The Parties agree that any ERO certified BA or other entity that is not a signatory to this Agreement may become a signatory to this Agreement, subject to SPP approval, so long as the BA or other entity agrees to be bound by the provisions of this Agreement as an SPP BA Participant within the SPP BAA and ceases to be a BA.
- 18.7 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of Arkansas.

18.7.1 Compliance with State Law.

Notwithstanding any other provision of this Agreement, a non-jurisdictional SPP BA Participant shall not be required to take any action or do any other thing with respect to rates, charges, terms or conditions of service, the resolution of disputes under this Agreement or any other matter regarding its obligations and performance under this Agreement, that (i) the non-jurisdictional SPP BA Participant is not permitted by state law to undertake or that is prohibited in whole or in part by any state law or regulation applicable to the non-jurisdictional SPP BA Participant; or (ii) would require the non-jurisdictional SPP BA Participant to violate a provision of such state law or regulation in order to comply with this Agreement. Determination of compliance with and permissible action, conduct or obligations by a non-jurisdictional SPP BA Participant shall be within the sole jurisdiction of the non-jurisdictional SPP BA Participant's governing board, subject to applicable state court review. A non-jurisdictional SPP BA Participant shall not object to SPP's participation in any state proceedings that impact the non-jurisdictional SPP BA Participant's ability to perform under this Agreement or determinations regarding such impact. To the extent possible without violating state law, a non-jurisdictional SPP BA Participant shall notify SPP in advance of any action that the non-jurisdictional SPP BA Participant is required to take that the non-jurisdictional SPP BA Participant believes would constitute a violation of state law, and the non-jurisdictional SPP BA Participant and SPP promptly shall meet and confer regarding the matter. As necessary, the non-jurisdictional SPP BA Participant and SPP agree to negotiate in good faith to modify the Agreement as consistent as possible with the original intent to allow SPP to exercise operational authority over the non-

jurisdictional SPP BA Participant's Tariff Facilities as otherwise provided in the Agreement. If the non-jurisdictional SPP BA Participant and SPP are unable to resolve the matter, the non-jurisdictional SPP BA Participant may terminate this Agreement pursuant to the withdrawal provisions of the Agreement.

#### 18.7.2 Termination on Less Than Required Notice.

SPP BA Participant may terminate this Agreement with less than the required notice, in the event that the state law governing SPP BA Participant changes, or any provisions of this Agreement are changed or modified in a manner that causes a conflict with the SPP BA Participant's state law, regulations, or rate schedules, and the internal dispute resolution process described in Section 12 of the OATT is unable to resolve such conflict. In such event, SPP BA Participant and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with state law.

#### 18.7.3 Operational Authority.

A non-jurisdictional SPP BA Participant reserves the right to exercise operational authority over its tariff facilities (1) to protect public safety and the safety of its workers, to prevent damage to equipment, and to preserve reliability in compliance with NERC standards, and (2) as necessary to preserve a non-jurisdictional SPP BA Participant's rights, duties and obligations regarding electric service to its retail and wholesale native load customers pursuant to its state law and consistent with NERC standards, if SPP's exercise of operational authority over the tariff facilities would endanger said electric service or is contrary to or would curtail, surrender or delegate such state law rights, duties and obligations. A non-jurisdictional SPP BA Participant will, as soon as reasonably practicable thereafter, notify SPP of such actions taken by a non-jurisdictional SPP BA Participant. A non-jurisdictional SPP BA Participant and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

18.8 COMPLETE AGREEMENT. This Agreement shall constitute the complete agreement of the Parties on the subject matters covered herein.

18.9 FORCE MAJEURE. No Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations, other than a payment obligation, is due to an "Uncontrollable Force." The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance is not within the reasonable control of, or the result of the negligence or intentional wrongdoing of, the claiming Party, and which by the exercise of due diligence, or Good Utility Practice, the claiming Party is unable to avoid, cause to be avoided, or overcome.

Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give immediate notice of such fact to the other Parties and shall exercise due diligence to remove such inability within a reasonable time period. If a Party is unable to perform actions under this Agreement due to the actions of an independent third party (e.g. not a consultant or affiliate of the Party), that shall be considered an Uncontrollable Force. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement.

- 18.10 NO AGENCY RELATIONSHIP. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between or among the Parties, or any of the Parties, or to impose any partnership obligation or partnership liability upon any of the Parties. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or act as, or be, an agent or representative of, or otherwise bind, any other Party. Responsibilities undertaken or transferred to a Party shall be independently performed by that Party.
- 18.11 REPRESENTATIONS AND WARRANTIES. Each Party warrants that it possesses the necessary authority to enter into and agree to this Agreement.
- 18.12 EXECUTION BY COUNTERPARTS. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument as if all Parties had signed the same instrument.
- 18.13 NO THIRD PARTY BENEFICIARIES. Except as otherwise provided herein, this Agreement is not intended to, and does not create, any rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.
- 18.14 NO MARKET PARTICIPANT. The performance of functions described in this Agreement shall not cause a Party to become a Market Participant.
- 18.15 NOTICE. Each Party shall designate an individual to receive notice under this Agreement by providing the individual's name, address, phone number, and email address to the Operating Committee. The Operating Committee shall maintain the list of individuals to receive notice. It shall be the responsibility of each individual Party to update its notice information when necessary.
- 18.16. ACCESS TO BOOKS AND RECORDS.
- 18.16.1 Upon request, SPP shall provide SPP BA Participant with access to the SPP BA's books, records, facilities, and procedures required of the BA under the ERO Reliability Standards which are reasonably necessary to determine SPP's compliance with this Agreement and/or to support the SPP BA Participant's compliance with

applicable ERO Reliability Standards in the SPP BA Participant's registered roles as TO, TOP, GO, GOP, LSE, and/or PSE. Such access shall be upon reasonable notice, at reasonable times, and under reasonable conditions.

18.16.2 Upon request, each SPP BA Participant shall provide SPP with access to SPP BA Participant's books, records, facilities, and procedures as necessary to allow SPP to determine SPP BA Participant's adherence to this Agreement and/or to support SPP's compliance as a BA. Such access shall be upon reasonable notice, at reasonable times, and under reasonable conditions. Each Party shall be responsible for its own expenses related to any such request for information.

IN WITNESS WHEREOF, the signatories have caused this Agreement Between Southwest Power Pool, Inc. and SPP BA Participant Relating to Implementation of the Southwest Power Pool Balancing Authority to be executed by their duly authorized representatives as of the dates set forth under their respective signatures.

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Name:

Company:

Date:

## **APPENDIX A TO ATTACHMENT AN**

### **List of SPP BA Participants**

American Electric Power

Board of Public Utilities of Kansas City, Kansas

City of Independence, Missouri

City Utilities of Springfield

The Empire District Electric Company

Grand River Dam Authority

Kansas City Power & Light Company

KCP&L Greater Missouri Operations Company

Lincoln Electric System

Nebraska Public Power District

Oklahoma Gas and Electric Company

Omaha Public Power District

Southwestern Public Service Company

Sunflower Electric Power Corporation

Westar Energy, Inc.

Western Farmers Electric Cooperative

Western Area Upper East