

**Southwest Power Pool, Inc.**

**STAFF**

**Recommendation to the Corporate Governance Committee**

**June 1, 2018**

***De Minimis Investments***

**Background**

In addition to Agenda Item No. 4 (Standards of Conduct – De Minimis Investments), staff recommends incorporating the proposed *de minimis* investment methodology into Bylaws sections 3.11 – Staff Independence and Support (for employees) and 4.2.3 - [Board of Directors] – Conflicts of Interest (for directors) -- along with the existing Standards of Conduct prohibition on an employee/director serving as an employee, director, consultant or contractor of any Third Party – for Commission approval to ensure compliance with the Commission’s regulations on RTO independence.

**Analysis**

The Federal Energy Regulatory Commission’s (“Commission”) regulations (specifically Orders No. 888 and 2000) require that Independent System Operators (“ISOs”) and Regional Transmission Organizations (“RTOs”), their employees, and any non-stakeholder directors not have financial interests in any market participant and maintain independence from “any entity whose economic or commercial interests could be significantly affected by the RTO’s actions or decisions.”<sup>1</sup> The term “market participant” is defined in the Commission’s regulations as:

- (i) Any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the [RTO], unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the [RTO]’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 [RTO]’s actions or decisions.<sup>2</sup>

Per Order No. 2000 Commission approval is required to incorporate the *de minimis* investment methodology into SPP’s Bylaws.

**Recommendation**

SPP staff recommends to clarify in SPP’s Bylaws the concept of a financial interest in principle with the methodology accepted by the Commission for other ISOs/RTOs to allow SPP directors and employees to invest in companies that have a *de minimis* relationship with SPP and the electric sector and requests authorization to proceed with those actions required to implement such changes.

---

<sup>1</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>2</sup> 18 C.F.R. §35.34(b)(2) (emphasis added).



**Action Requested:** Approve Recommendation

**Attachments:** SPP Bylaws Sections 3.11 and 4.2.3 (Redline)

### **3.11 Staff Independence and Support**

Employees shall not be an employee, director, consultant or contractor of, and shall have no interest in any Third Party, or any of its Affiliates, which shall be deemed to include ownership (outside of a mutual fund, blind trust, or similar arrangement as permitted herein) by an employee or his/her immediate family members of Prohibited Securities. For purposes of this section:

“Affiliates” include any two or more entities of which one controls the other or they are under common control. “Control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of an entity. Ownership of publicly-traded equity securities of another entity shall not result in control or affiliation for purposes of these Standards if the securities are held as an investment, the holder owns (in its name or via intermediaries) less than 10% of the outstanding securities of the entity, the holder does not have representation on the entity's board of directors (or equivalent managing entity) or vice versa, and the holder does not in fact exercise influence over day-to-day management decisions. Unless the contrary is demonstrated to the satisfaction of the Corporate Governance Committee, control shall be presumed to arise from the ownership of or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.

“Immediate family members” include spouses, minor children, or any person for whom the employee has power of attorney or guardianship rights.

“Prohibited Securities” include the securities of a Third Party that has been engaged or qualified to engage in activities or transactions under the SPP OATT in the previous 12 months or the securities of its Affiliates, if:

(i) the primary business purpose of the Third Party, or its Affiliates, is to buy, sell or schedule energy, power, capacity, ancillary services or transmission services as indicated by an industry code within the “Electric Power Generation, Transmission, and Distribution” industry group under the North American Industry Classification System (NAICS) or otherwise determined by SPP;

(ii) the Third Party has been pre-qualified as eligible to be a Qualified RFP Participant pursuant to Attachment Y to the SPP OATT;

(iii) the total (gross) financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that SPP administers under the SPP OATT for all Third Parties affiliated with the publicly-traded entity at issue during its most recently completed fiscal year is equal to or greater than 0.5% of its gross revenues for the same time period; or

(iv) the total (gross) financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that SPP administers under the SPP OATT for all Third Parties affiliated with the publicly-traded entity at issue during the prior calendar year is equal to or greater than 3% of the total transactions for which the Integrated Marketplace Counterparty is a counterparty pursuant to Attachment AE to the SPP OATT for the same time period.

“Securities” shall mean negotiable or non-negotiable investment of financing instruments that can be sold and bought. Securities include bonds, stocks, debentures, notes, and options.

“Third Party” shall mean a Member; a customer of services provided by SPP under the SPP OATT or any other tariff that SPP administers; an entity for which SPP provides services under contract, including, but not limited to, tariff administration services; or an entity that has been pre-qualified as eligible to be a Qualified RFP Participant pursuant to Attachment Y to the SPP OATT.

If an SPP employee owns Prohibited Securities, he/she must dispose of them within six months of:

- (i) the commencement of employment at SPP;
- (ii) notification of a new Third Party conducting business with SPP; or
- (iii) the date of receipt of a gift or inheritance or other taking of legal control of those Prohibited Securities.

SPP employees may indirectly own publicly-traded Prohibited Securities through a mutual fund, blind trust, or similar arrangement under which the SPP employee does not control the purchase or sale of such Prohibited Securities, except for any fund or arrangement specifically targeted towards the electric utility industry, or any segments thereof.

SPP will maintain a listing of Third Party entities and publicly-traded Prohibited Securities for SPP employees' reference.

SPP Staff members will be required to execute the SPP Standards of Conduct upon employment and annually thereafter. The Standards of Conduct outline the independence requirements for employees of SPP. The President shall assign to each Organizational Group an SPP Staff member, who shall attend all meetings and act as secretary to the Organizational Group and any ad hoc task forces of that group. Staff secretaries of all Organizational Groups and task forces shall be non-voting. Minutes shall be kept of pertinent discussion, business transacted, decisions reached, and actions taken at each meeting of SPP Organizational Groups or task forces by the secretary. Minutes shall be published within seven calendar days following a meeting but in any event in advance of the next meeting, and considered final documents upon their approval by the Organizational Group or task force.

## 4.2 Composition and Qualifications

### 4.2.1 Composition

The Board of Directors shall consist of up to ten persons, but no less than seven persons. The directors shall be independent of any Member; one director shall be the President of SPP. A Director shall not be limited in the number of terms he/she may serve. The President shall be excluded from voting on business related to the office of President or the incumbent of that office. No other Staff member shall be permitted to serve as a director

### 4.2.2 Qualifications

Directors shall 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.

### 4.2.3 Conflicts of Interest

Directors shall not be an employee, director, ~~officer, or employee consultant or contractor~~ of, and shall have no ~~direct business relationship, financial interest in, or other affiliation with,~~ any Third Party, or any of its Affiliates ~~Member or customer of services provided by SPP, which shall be deemed to include ownership (outside of a mutual fund, blind trust, or similar arrangement as permitted herein) by a Director or his/her immediate family members of Prohibited Securities.~~

For purposes of this section: – \_\_\_\_\_

“Affiliates” include any two or more entities of which one controls the other or they are under common control. “Control” shall mean the possession, directly or indirectly, of the power to direct the management or policies of an entity. Ownership of publicly-traded equity securities of another entity shall not result in control or affiliation for purposes of these Standards if the securities are held as an investment, the holder owns (in its name or via intermediaries) less than 10% of the outstanding securities of the entity, the holder does not have representation on the entity's board of directors (or equivalent managing entity) or vice versa, and

the holder does not in fact exercise influence over day-to-day management decisions. Unless the contrary is demonstrated to the satisfaction of the Corporate Governance Committee, control shall be presumed to arise from the ownership of or the power to vote, directly or indirectly, 10% or more of the voting securities of such entity.

“Immediate family members” include spouses, minor children, or any person for whom the Director has power of attorney or guardianship rights.

“Prohibited Securities” include the securities of a Third Party that has been engaged or qualified to engage in activities or transactions under the SPP OATT in the previous 12 months or the securities of its Affiliates, if:

- (i) the primary business purpose of the Third Party, or its Affiliates, is to buy, sell or schedule energy, power, capacity, ancillary services or transmission services as indicated by an industry code within the “Electric Power Generation, Transmission, and Distribution” industry group under the North American Industry Classification System (NAICS) or otherwise determined by SPP;
- (ii) the Third Party has been pre-qualified as eligible to be a Qualified RFP Participant pursuant to Attachment Y to the SPP OATT;
- (iii) the total (gross) financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that SPP administers under the SPP OATT for all Third Parties affiliated with the publicly-traded entity at issue during its most recently completed fiscal year is equal to or greater than 0.5% of its gross revenues for the same time period; or
- (iv) the total (gross) financial settlements regarding the use of transmission capacity of the Transmission System and/or transactions in the centralized markets that SPP administers under the SPP OATT for all Third Parties affiliated with the publicly-traded entity at issue during the prior calendar year is equal to or greater than 3% of the total transactions for which the Integrated Marketplace Counterparty is a counterparty pursuant to Attachment AE to the SPP OATT for the same time period.

“Securities” shall mean negotiable or non-negotiable investment of financing instruments that can be sold and bought. Securities include bonds, stocks, debentures, notes, and options.

If an SPP Director owns Prohibited Securities, he/she must dispose of them within six months of:

- (i) the commencement of engagement at SPP;
- (ii) notification of a new Third Party conducting business with SPP; or
- (iii) the date of receipt of a gift or inheritance or other taking of legal control of those Prohibited Securities.

“Third Party” shall mean a Member; a customer of services provided by SPP under the SPP OATT or any other tariff that SPP administers; an entity for which SPP provides services under contract, including, but not limited to, tariff administration services; or an entity that has been pre-qualified as eligible to be a Qualified RFP Participant pursuant to Attachment Y to the SPP OATT.

SPP Directors may indirectly own publicly-traded Prohibited Securities through a mutual fund, blind trust, or similar arrangement under which the SPP Director does not control the purchase or sale of such Prohibited Securities, except for any fund or arrangement specifically targeted towards the electric utility industry, or any segments thereof.

SPP will maintain a listing of Third Party entities and publicly-traded Prohibited Securities for SPP Directors’ reference.

~~Directors may invest in accordance with SPP’s Standards of Conduct. Participation 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.~~