



Southwest Power Pool

SPECIAL BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING

Teleconference

September 8, 2008

-SUMMARY OF ACTION ITEMS-

1. Approved SPP Membership Agreement amendments to accommodate provisions of the Nebraska Public Power District (NPPD) and Omaha Public Power District (OPPD) as state power agencies and for Lincoln Energy System (LES) as a municipal utility to join SPP.
2. Approved SPP Tariff modifications to enable SPP membership of the Nebraska Public Power District, Omaha Public Power District and Lincoln Energy System.

Southwest Power Pool
SPECIAL BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING
Teleconference
September 8, 2008

Agenda Item 1 – Administrative Items

Chair Mr. Jim Eckelberger called the meeting to order at 10:17 a.m. The following Board of Directors/Member Committee members were in attendance via teleconference or represented by proxy:

- Mr. Larry Altenbaumer, director
- Ms. Phyllis Bernard, director
- Mr. Julian Brix, director
- Mr. Nick Brown, director
- Mr. Jim Eckelberger, director
- Ms. Trudy Harper, Tenaska Power Services Company
- Mr. Tom Stuchlik, for Mr. Kelly Harrison, Westar Energy
- Mr. Rob Janssen, Redbud Energy
- Mr. Jeff Knottek, City Utilities of Springfield
- Mr. Joshua Martin, director
- Mr. Steve Parr, Kansas Electric Power Cooperative, Inc.
- Mr. Phil Crissup, for Mr. Mel Perkins, OG+E Electric Services
- Mr. Gary Roulet, Western Farmers Electric Cooperative
- Mr. Harry Skilton, director
- Mr. Stuart Solomon, American Electric Power
- Mr. Rick Wolfinger, Constellation Power Source

There were 43 persons in attendance via phone representing 12 members (Attendance List – Attachment 1). Mr. Brown reported proxies and a quorum was declared (Proxies – Attachment 2).

Agenda Item 2 – SPP Membership Agreement Amendments

Ms. Stacy Duckett provided a review of proposed amendments to the SPP Membership Agreement to accommodate provisions for Nebraska Public Power District (NPPD) and Omaha Public Power District (OPPD) as state power agencies and for Lincoln Energy System (LES) as a municipal utility to join SPP (Membership Agreement Amendments – Attachment 3). During a review of the proposed amendments at a Technical Conference held on August 26, it was suggested that some of these amendments should be incorporated into the SPP Membership Agreement for the benefit of all Members. The Corporate Governance Committee will review the amendments for the SPP Membership at large. Mr. Eckelberger asked for discussion or to entertain a motion. **Mr. Harry Skilton moved to approve the recommended SPP Membership Agreement amendments. Mr. Julian Brix seconded the motion. The Members Committee was in unanimous favor. The motion passed.**

Agenda Item 3 – Markets and Operations Policy committee Report/SPP Tariff Revisions

Mr. John Olsen provided the first of two sets of Tariff revisions to allow the Nebraska Entities to begin operation in SPP (Tariff Revisions – Attachment 4). The second set of Tariff revisions are expected to be submitted for review and approval at the regularly scheduled October 2008 meetings of the Markets and Operations Policy Committee and the Board of Directors/Members Committee. **Mr. Altenbaumer moved to approve language for the proposed Tariff revisions and Mr. Josh Martin seconded the motion. The Members Committee was in unanimous favor. The motion passed.**

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Adjournment

With no further business, Mr. Eckelberger thanked everyone for participating and adjourned the meeting at 10:35 a.m.

Stacy Duckett, Corporate Secretary



Southwest Power Pool
SPECIAL MEETING OF MEMBERS and
SPECIAL BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING

September 8, 2008

Teleconference

• A G E N D A •

10:00 a.m. – 11:30 a.m. CDT

SPECIAL MEETING OF MEMBERS

1. Call to Order..... Mr. Jim Eckelberger
2. SPP Bylaws Revision.....Mr. Nick Brown

SPECIAL BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING

1. Call to Order..... Mr. Jim Eckelberger
2. SPP Membership Agreement Amendments Ms. Stacy Duckett
 - a. Nebraska Public Power District/Omaha Public Power District
 - b. Lincoln Electric System
3. MOPC Report/SPP Tariff RevisionsMr. John Olsen

Adjourn



Southwest Power Pool
SPECIAL MEETING OF MEMBERS AND
BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING
September 8, 2008

• Attendance •

Jim Eckelberger	Director
Harry Skilton	Director
Nick Brown	Southwest Power Pool
Phyllis Bernard	Director
Joshua Martin	Director
Larry Altenbaumer	Director
Julian Brix	Director
Robert Janssen	Redbud Energy
Jeff Knottek	City Utilities of Springfield
Stuart Solomon	Public Service Company of Oklahoma
Rick Wolfinger	Constellation
Steve Parr	Kansas Electric Power Cooperative
Tom Stuchlik (proxy)	Westar Energy
Phil Crissup (proxy)	Oklahoma Gas & Electric
Gary Roulet	Western Farmers Electric Cooperative
Trudy Harper	Tenaska
Gary Newell (proxy)	Lafayette Utilities system
Bary Warren (proxy)	Empire
Patrick Clarey	Federal Energy Regulatory Commission
Doug Collins	Omaha Public Power District
Michael Desselle	Southwest Power Pool
Dennis Florum	Lincoln Electric System
Brett Leopold	ITC Great Plains
Paul Malone	Nebraska Public Power District
John Olsen	Westar Energy
Wendy Reed	Wright and Talisman
Dennis Reed	Westar Energy
David Ried	Omaha Public Power District
Cheryl Robertson	Southwest Power Pool



Richard Ross
Helen Shepherd
Patrick Smith
Barry Smitherman
John Stonebarger
Kevin Gaden
David Dietz
Chuck Langston
Jake Langthorn
Harold Hadland
Dave D'Alessandro
Carl Monroe
Stacy Duckett
Tom Dunn

American Electric Power
Federal Energy Regulatory Commission
Kansas Corporation Commission
Public Utility Commission of Texas
Western Area Power Administration
Municipal Energy Authority of Nebraska
Municipal Energy Authority of Nebraska
Municipal Energy Authority of Nebraska
Oklahoma Gas and Electric
Nebraska Public Power District
Nebraska Public Power District
Southwest Power Pool
Southwest Power Pool
Southwest Power Pool

From: Kelly.B.Harrison@westarenergy.com
[mailto:Kelly.B.Harrison@westarenergy.com]
Sent: Monday, September 08, 2008 7:37 AM
To: Nick Brown; Carl Monroe; Stacy Duckett; Les Dillahunty
Cc: Stuchlik, Tom
Subject: Proxy for special mtg today

Nick and Carl

By this e-mail, I am giving my proxy to Tom Stuchlik for the mtg special mtg today.

Kelly

Sent from my BlackBerry Handheld.

Cheryl Robertson

From: Perkins Jr, Mel [perkinmh@oge.com]
Sent: Friday, September 05, 2008 6:59 AM
To: Cheryl Robertson
Cc: Crissup, Phil
Subject: SPP BOD & Members Meeting

Cheryl-
I will not be able to participate Monday.
Phil Crissup has my proxy for both these meetings.
Mel



Southwest Power Pool, Inc.

SPP STAFF

Recommendation to the Board of Directors

September 8, 2008

Amendments to SPP Membership Agreement/Nebraska Entities

Background

Nebraska Public Power District (NPPD), Omaha Public Power District (OPPD) and Lincoln Electric System (LES), collectively the Nebraska Entities, plan to become Members of SPP. As part of this effort, they have requested certain amendments be attached to their respective Membership Agreements to accommodate provisions that are unique to each based upon their enabling legislation.

Analysis

NPPD and OPPD are state power agencies formed under the laws of Nebraska. As such, they have state law obligations that require explicit coverage and/or clarification regarding membership in SPP. The amendments proposed are designed to address these matters (attached). The Nebraska entities would each execute an SPP Membership Agreement; the appropriate amendments would be attached to the Agreement.

LES is a municipal utility. As such, they have municipal law obligations that require explicit coverage and/or clarification regarding membership in SPP. The amendments proposed are designed to address these matters. To facilitate review, the LES amendments are provided as edits of the NPPD/OPPD amendments (attached).

The Nebraska Entities hosted a Technical Conference on August 26 to review these amendments with SPP Members and respond to any questions or concerns. There have been no questions or concerns expressed by Members since the Technical Conference.

The proposed amendments do not materially impact existing SPP Members, and during review in the Technical Conference, it was suggested that some of these amendments should be incorporated into the SPP Membership Agreement for the benefit of all Members.

Recommendation

Approval of the amendments for Nebraska Entities as detailed in the attachments, and in response to discussion at the Technical Conference, direction to Staff and the Corporate Governance Committee to consider revisions to the SPP Membership Agreement that reflect these amendments, as appropriate.

Action Requested: Approve recommendation.

NPPD and OPPD Proposed Amendments to SPP Membership Agreement

1. Dispute Resolution

Notwithstanding any provisions in this Agreement to the contrary, any disputes relating to Member's determinations, decisions, conduct and actions taken by Member pursuant to its participation in SPP shall be subject to binding resolution only by the Member's governing board, and subject to review by the Nebraska state and/or federal courts.

2. Tax Matters and Bond Covenant and Financing Agreement Obligations

Nothing in this Agreement, nor Member's obligations and performance thereunder, shall affect, or require Member to take or refrain from taking any action that would affect the rights and obligations or enforceability of Member's present or future bond resolutions, tax exempt debt covenants and financing agreements. Member shall determine in its sole discretion and judgment, in accordance with advice and opinions from its legal counsel, what actions, conduct and performance it is permitted to or must take under its bond resolutions, tax exempt debt covenants and financing agreements. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

3. Compliance with State Law

Notwithstanding any other provision of this Agreement, Member 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 (a) Member is not permitted by the state law of Nebraska to undertake or that is prohibited in whole or in part by any state law or regulation of Nebraska applicable to Member; or (b) would require Member to violate a provision of such Nebraska state law or regulation in order to comply with this Agreement. Determination of compliance with and permissible action, conduct and obligations under this Section by Member shall be within the sole jurisdiction of the Member's governing board, subject to applicable state of Nebraska court review. Member shall not object to SPP's participation in any state proceedings that impact Member's ability to perform under this agreement or determinations regarding such impact. To the extent possible without violating state law, Member shall notify SPP in advance of any action that Member is required to take that Member believes would constitute a violation of Nebraska law, and Member and SPP promptly shall meet and confer regarding the matter. As necessary, Member 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 Member's Transmission Facilities as otherwise provided in the Agreement.

4. Governing Law and Venue

Except as provided under Section No.1, this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas, provided that any court or regulatory body applying Arkansas law shall give full effect to Section 3 of this document regarding Member's obligations under Nebraska law.

5. No Waiver of Jurisdictional Immunity

Member is not subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") as a public utility under the Federal Power Act. Member shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Member that does not otherwise exist. Any order, decision, rule or regulation issued by FERC to SPP or any other Members or Member of SPP relating to matters exempt from FERC jurisdiction under Section 201(f) of the Federal Power Act shall not apply directly or separately to Member. Without limiting the generality of the foregoing, Member shall not be bound or obligated by any FERC order, decision, rule or regulation requiring a change in the rates, terms or conditions for transmission service or compensation for utilizing the transmission facilities of Member, which conflicts with applicable state law, including any order requiring the suspension of the use of such rates, terms or conditions or the payment of refunds of rates or compensation previously collected or received. Member and SPP acknowledge that the FERC, in the context of its jurisdiction over SPP's rates, may review Member's revenue requirement and rates to the extent they comprise or affect the rates charged by SPP or other Members. If FERC does not accept Member's revenue requirement or rates, Member may terminate this Agreement pursuant to the withdrawal provisions of the Agreement and Section No. 6. In such event, Member and SPP agree to meet and confer prior to any termination of this Agreement. Nothing in this Agreement, or the participation of Member in SPP and its operations waives any objection to or otherwise constitutes a consent to, the jurisdiction by FERC that does not otherwise exist over Member or its transmission service, facilities and rates.

6. Withdrawal Rights

Member may terminate this Agreement at any time during the initial term or any extension thereof with less than the required twelve months notice, in the event that the state law governing Member changes, or any provisions of this Agreement or the provisions of SPP's OATT incorporated by reference in this Agreement are changed or modified in a manner that causes a conflict with the Members 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, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with state law.

7. Obligation to Build Conditions

The Member's governing board shall be considered to be a state regulatory authority with jurisdiction and discretionary authority to decide whether to provide regulatory approval for the construction of new transmission facilities.

8. Operational Authority Control Rights

Member reserves the right to exercise Operational Authority over Member's 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 Member's rights, duties and obligations regarding electric service to its retail and wholesale native load customers in Nebraska 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. Member will, as soon as reasonably practicable thereafter, notify SPP of such actions taken by Member. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

9. Revenue Requirements

Member shall have the right to submit to SPP for filing with FERC a fixed revenue requirement and supporting data or a rate formula template for its cost of service revenue requirements under the OATT which will be subject to periodic adjustment and approval by the governing board or agency with jurisdiction to regulate the rates of Member.

10. Grandfathered Agreements or Transactions

Grandfathered Agreements or Transactions include (1) agreements providing long term firm transmission service and Network Integration Transmission Service executed prior to the effective date of Member's membership in the SPP; (2) bundled wholesale contracts (that reserve transmission as part of the contract); (3) short-term firm and non-firm point-to-point transmission transactions which were accepted and confirmed prior to the effective date of Member's membership in the SPP; (4) existing contracts entered into by Member to serve any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from Member; and (5) new contracts entered into by Member to serve any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from Member to the extent that provision of service under the SPP OATT would not satisfy the public power district Member's obligation under state law. Member shall retain and perform any such agreements. A list of such agreements currently in effect as of the date of this Agreement is attached and may be amended by Member by providing the new agreements to SPP.

11. Transition to Network Service

The five-year Transition Period for purposes of application of Section 37 and Section 38 of the SPP OATT shall commence on the effective date of Member's membership in the SPP.

LES Proposed Amendments to SPP Membership Agreement

[Revisions of the NPPD/OPPD Amendments and some additional amendments]

1. Dispute Resolution

~~Notwithstanding any provisions in this Agreement to the contrary, any disputes relating to Member's determinations, decisions, conduct and actions taken by Member pursuant to its participation in SPP shall be subject to binding resolution only by the Member's governing board, and subject to review by the Nebraska state and/or federal courts.~~

2. Tax Matters and Bond Covenant and Financing Agreement Obligations

Nothing in this Agreement, nor Member's obligations and performance thereunder, shall affect, or require Member to take or refrain from taking any action that would affect the rights and obligations or enforceability of Member's present ~~or future~~ bond resolutions, tax exempt debt covenants and financing agreements. Member shall determine in its sole discretion and judgment, in accordance with advice and opinions from its legal bond counsel, which shall be a firm of attorneys specializing in the field of municipal finance law, what actions, conduct and performance it is permitted to or must take under its bond resolutions, tax exempt debt covenants and financing agreements. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

3. Compliance with State Law

Notwithstanding any other provision of this Agreement, Member 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 (a) Member is not permitted by the state or applicable municipal law of Nebraska to undertake or that is prohibited in whole or in part by any state or applicable municipal law or regulation of Nebraska applicable to Member; or (b) would require Member to violate a provision of such Nebraska state or municipal law or regulation in order to comply with this Agreement. ~~Determination of compliance with and permissible action, conduct and obligations under this Section by Member shall be within the sole jurisdiction of the Member's governing board, subject to applicable state of Nebraska court review.~~ Member shall not object to SPP's participation in any state proceedings that impact Member's ability to perform under this agreement or determinations regarding such impact. To the extent possible without violating state law, Member shall notify SPP in advance of any action that Member is required to take that Member believes would constitute a violation of Nebraska law, and Member and SPP promptly shall meet and confer regarding the matter. As necessary, Member 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 Member's Transmission Facilities as otherwise provided in the Agreement.

4. **Governing Law and Venue** **[LES requests one of the two alternatives provided here.]**

Except as provided under Section No.1, this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas, provided that any court or regulatory body applying Arkansas law shall give full effect to Section 3 of this document regarding Member's obligations under Nebraska law.

OR Amend SPP Membership Agreement Section 8.1 as follows:

8.1 Governing Law

This Agreement shall be interpreted, construed, and governed by the laws of the State of Arkansas, except to the extent preempted by the law and/or unless a court with jurisdiction rules otherwise, provided, however, that all matters relating to real property or any interest in realty shall be governed by the laws of the State wherein such real property or interest in realty is physically located **and provided further, that all matters relating to corporate authority of LES shall be governed exclusively by the laws of the State of Nebraska, including specifically the provisions of the Home Rule Charter and Municipal Code of the City of Lincoln.**

5. **No Waiver of Jurisdictional Immunity**

Member is not subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") as a public utility under the Federal Power Act. Member shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Member that does not otherwise exist. Any order, decision, rule or regulation issued by FERC to SPP or any other Members or Member of SPP relating to matters exempt from FERC jurisdiction under Section 201(f) of the Federal Power Act shall not apply directly or separately to Member. Without limiting the generality of the foregoing, Member shall not be bound or obligated by any FERC order, decision, rule or regulation requiring a change in the rates, terms or conditions for transmission service or compensation for utilizing the transmission facilities of Member, which conflicts with applicable state law, including any order requiring the suspension of the use of such rates, terms or conditions or the payment of refunds of rates or compensation previously collected or received. Member and SPP acknowledge that the FERC, in the context of its jurisdiction over SPP's rates, may review Member's revenue requirement and rates to the extent they comprise or affect the rates charged by SPP or other Members. If FERC does not accept Member's revenue requirement or rates, Member may terminate this Agreement pursuant to the withdrawal provisions of the Agreement and Section No. 6. In such event, Member and SPP agree to meet and confer prior to any termination of this Agreement. Nothing in this Agreement, or the participation of Member in SPP and its operations waives any objection to or otherwise constitutes a consent to, the jurisdiction by FERC that does not otherwise exist over Member or its transmission service, facilities and rates.

6. **Withdrawal Rights**

Member may terminate this Agreement at any time during the initial term or any extension thereof with less than the required twelve months notice, in the event that the state **or**

For Membership and Board of Directors/Members Committee Meetings Sept 8

municipal law governing Member changes, or any provisions of this Agreement or the provisions of SPP's OATT incorporated by reference in this Agreement are changed or modified in a manner that causes a conflict with the Members state or municipal 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, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure legal compliance ~~with state law~~.

7. Obligation to Build Conditions

~~The Member's governing board shall be considered to be a state regulatory authority with jurisdiction and discretionary authority to decide whether to provide regulatory approval for the construction of new transmission facilities.~~

8. Operational Authority Control Rights

~~Member reserves the right to exercise Operational Authority over Member's 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 Member's rights, duties and obligations regarding electric service to its retail and wholesale native load customers in Nebraska pursuant to its state law and consistent with NERC standards, 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. Member will as soon as reasonably practicable thereafter, notify SPP of such actions taken by Member. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.~~

9. Revenue Requirements

Member shall have the right to submit to SPP for filing with FERC a fixed revenue requirement and supporting data or a rate formula template for its cost of service revenue requirements under the OATT which will be subject to periodic adjustment and approval by the governing board or agency with jurisdiction to regulate the rates of Member.

10. Grandfathered Agreements or Transactions

~~Grandfathered Agreements or Transactions include (1) agreements providing long term firm transmission service and Network Integration Transmission Service executed prior to the effective date of Member's membership in the SPP; (2) bundled wholesale contracts (that reserve transmission as part of the contract); (3) short term firm and non firm point to point transmission transactions which were accepted and confirmed prior to the effective date of Member's membership in the SPP; (4) existing contracts entered into by Member to serve any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from Member; and (5) new contracts entered into by Member to serve any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from Member to the extent that provision of service under the SPP OATT would not satisfy the public power district Member's obligation under state law.~~

For Membership and Board of Directors/Members Committee Meetings Sept 8

~~Member shall retain and perform any such agreements. A list of such agreements currently in effect as of the date of this Agreement is attached and may be amended by Member by providing the new agreements to SPP.~~

11. Transition to Network Service

The five-year Transition Period for purposes of application of Section 37 and Section 38 of the SPP OATT shall commence on the effective date of Member's membership in the SPP.

12. Amend SPP Membership Agreement Section 2.3 (b) as follows:

Collecting and distributing revenues to Member in accordance with the Transmission Tariff and ~~any other applicable SPP~~ documents applicable to the Transmission Tariff and approved by the Members

13. Amend SPP Membership Agreement Section 4.3.2 (e) as follows:

The Member acknowledges and agrees that Existing Obligations include amounts that SPP expects to accrue and that will become payable by SPP ~~following between~~ the date of Member's Notice of Termination and the Member's Termination Date, and that no part of a payment of Existing Obligations shall be refundable to the Member under any circumstances, including (except as provided in this Sections with respect to mitigation) any reduction of the Financial Obligations. Any disagreement as to the calculation of Existing Obligations shall be resolved in accordance with the dispute resolution procedures in the Bylaws.

14. Amend SPP Membership Agreement Section 8.11 as follows:

This Agreement shall not be construed, interpreted, or applied in such a manner as to cause Member to be in material breach, anticipatory or otherwise, of any agreement (in effect on the later of the Effective Date of this Agreement or the date that it becomes a Member under this Agreement) between Member and one or more third parties who are not signatories (regardless of the inclusion of one or more other Members as parties to such agreement) for the joint transmission, operation, or maintenance of any electrical facilities covered by this Agreement or the OATT. ~~If such a conflict arises, Where Member has such a third party joint agreement, it shall discuss with advise the Board of Directors, but the resolution of such a conflict shall be and remains within the sole discretion of Member; provided, however, that Member shall, if otherwise unresolved, utilize the all available remedies and informal and formal dispute resolution procedures to resolve such conflict, including, but not limited to, submitting such conflict to FERC for resolution; and~~ provided, further, that in no event shall Member enter into a resolution of such conflict which would impair the reliability of the Electric Transmission System.



Southwest Power Pool, Inc.
MARKET AND OPERATIONS POLICY COMMITTEE
Recommendation to the Board of Directors
September 8, 2008
Nebraska Entities Proposed SPP Tariff Modifications

Organizational Roster

The following persons are members of the Regional Tariff Working Group:

Dennis Reed, WR (Chair)	Gene Anderson, OMPA
David Brian, ETEC (Vice-Chair)	Mark Foreman, Tenaska
Bill Dowling, Midwest Energy	Mike Wise, Golden Spread
David Kays, OGE	Charles Locke, KCPL
Robert Pennybaker, AEP	Steve Ferry, Sunflower
Bary Warren, EDE	Robert Shields, AECC
Mitch Williams, WFEC	Rob Bowser, KEPCo
Ron Gary, LAFA	Angela Easton, Calpine
Mike Proctor, MoPSC	Pat Bourne, SPP
Bernie Liu, Xcel	Gerrud Wallaert, SPP (Secretary)
Rob Janssen, Redbud	

The following stakeholders participated in group discussions:

Paul Malone, NPPD	Harold Hadland, NPPD
Dave D'Alessandro, NPPD	

Background

The Nebraska-SPP integration team has identified several changes to the SPP Tariff that are necessary to enable the proposed SPP membership of Nebraska Public Power District (NPPD), Omaha Public Power District (OPPD) and Lincoln Electric System (LES) (collectively "Nebraska Entities"). The need for tariff changes regarding Nebraska were discussed at the July 30 – 31, 2008 regularly scheduled Regional Tariff Working Group (RTWG) meeting. On August 18, 2008, the RTWG met by teleconference for the purpose of discussing the tariff revisions proposed by the Nebraska-SPP integration team. Further discussions were held at the RTWG's regularly scheduled August 28, 2008, meeting at which the attached Tariff revisions were approved as modified. The Nebraska Entities are requesting the approval of these proposed tariff revisions and its filing with FERC prior October 1, 2008. With a desired April 1, 2009 start date for operation of the Nebraska Entities under the SPP Tariff and in the SPP EIS Market, the Nebraska Entities must terminate their similar prior commitments by October 1, 2008. The filing of these provisions by that notice date is therefore necessary to accomplish the April 1, 2009 start date. This will be the first of two sets of tariff revisions to allow the Nebraska Entities to begin operation in SPP. The second set of tariff revisions are expected to be submitted for review and approval at the regularly scheduled October, 2008 meetings of the MOPC and Members/Board of Directors.

Analysis

Historically, SPP has grandfathered contract or service agreements providing for transmission service that were outstanding obligations of a new SPP transmission owner and in effect prior to the transition of the transmission owner's facilities to SPP's functional control. Additionally, NPPD, LES and OPPD as Public Power Entities under Nebraska law have state law obligations to provide transmission service to Nebraska utilities to the extent the service is not available under the SPP tariff. With regard to transition



language the Nebraska Entities desire a five (5) year transition period as originally provided in Section 37 of SPP's tariff to the initial transmission owners under the SPP tariff. The Nebraska Entities do not see a need for further transition related language in Section 38. Regarding proposed changes in Section 5, Local Furnishing Bonds, the FERC pro forma language in the SPP tariff does not recognize the specific sections of the IRS code under which the Nebraska Entities have financed their facilities. Accordingly additional language is proposed to recognize those sections of the IRS code applicable to the Nebraska Entities. Language has been added as Section 39a to address the possibility of differences between state law and federal regulations. The proposed language resolves the issue in a manner similar to, if not identical to, provisions accepted by FERC in prior cases, particularly those involving Translink and more recently MISO's Module F.

Areas of the Tariff where changes are proposed:

- Sections:
- 1.14a – Grandfathered Agreements or Transactions
 - 1.44a – Transition Period
 - 5.1 - Transmission Owners That Own Facilities Financed by Local Furnishing or that are Tax Exempt Entities
 - 5.2 - Alternative Procedures for Requesting Transmission Service
 - 38.2 – Applicability to All Retail Load Not Having Choice
 - 39a - Subject to State Laws and Regulations and Public Power Rate Schedules (New Section)

Highlighted changes to the Tariff are included as part of the MOPC Material.

In the MOPC discussion two issues were raised:

1. How and when the Nebraska Entities would enter Base Plan Funding. Richard Ross (AEP) suggested some tariff language changes to set the time based on 1.3j of the Tariff. An action item was given to the RTWG to consider the language for the second filing as described above.
2. When would revenue sharing begin for Point-to-Point service. Other entities have entered the tariff and the RTWG will review the way they were considered and expects to address this also in the second filing.

Recommendation

The recommendation of the Market and Operations Policy Committee is to approve the tariff language for the proposed tariff revisions.

Approved:	Regional Tariff Working Group	August 28, 2008
	Approved: Unanimously with 1 Abstention.	
	Market and Operations Policy Committee	September 3, 2008
	Approved: Approved with 1 No – PSO, 1 Abstention – Independence	

Action Requested: Approve Recommendation

Nebraska Entities' Proposed SPP Tariff Modifications

[highlights indicate proposed revisions]

Section 1.14a Grandfathered Agreements or Transactions

Grandfathered Agreements or Transactions: Grandfathered Agreements or Transactions include (1) agreements providing long term firm transmission service executed prior to April 1, 1999, and Network Integration Transmission Service executed prior to February 1, 2000; (2) bundled wholesale contracts (that reserve transmission as part of the contract); (3) short-term firm and non-firm point-to-point transmission transactions which were accepted and confirmed prior to the Effective Date; (4) existing or new contracts entered into by the Southwestern Power Administration on behalf of the United States for the use of transmission facilities of the Southwestern Power Administration that are constructed or acquired by purchase or other agreement, as authorized under Section 5 of the Flood Control Act of 1944, for the transmission of Federal Power; (5) contracts executed before the Effective Date, regardless of term, entered into by the Southwestern Power Administration on behalf of the United States for the transmission of power or energy across transmission facilities owned and operated by the Southwestern Power Administration; (6) contracts entered into by a Nebraska public-power entity prior to the transfer of functional control of its transmission facilities to the Transmission Provider; (7) existing contracts entered into by a Member which is a Nebraska public-power entity with any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from such Member; and (8) new contracts entered into by a Member which is a Nebraska public-power entity with any retail or wholesale electric utility customer that has a right under state law to obtain electric transmission service or energy service from the such Member to the extent that provision of service under the Tariff would not satisfy such Member's obligation under state law. These agreements are set forth on the list which is Attachment W to this Tariff. Umbrella service agreements are specifically not Grandfathered.

Section 1.44a

Transition Period: The period from the Effective Date of this Tariff for the provision of Network Integration Transmission Service to the last day of the fifth year thereafter. The transition period for a Member that is a Nebraska public-power entity shall be the period from the effective date of the transfer of functional control to the last day of the fifth year thereafter.

Section 38.2

Applicability to Retail Load Not Having Choice: Beginning at the end of the fifth year after the last day of the Transition Period, the Transmission Owner or in the case of a Nebraska Public-power entity beginning after the fifth year of the transfer of functional control of such entity's transmission facilities to the Transmission Provider, shall take Network Integration

Transmission Service or Point-To-Point Transmission Service from the Transmission Provider in accordance with this Tariff for sales to retail customers not having the right to choose a different power supplier.

Section 5.1 and Section 5.2

5.1 Transmission Owners That Own Facilities Financed by Local Furnishing or Other Tax-Exempt Bonds or that are Tax Exempt Entities: This provision is applicable only to Transmission Owners that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code ("local furnishing bonds") or facilities with other bonds the interest on which is excluded from gross income under Section 103 of the Internal Revenue Code ("other tax-exempt bonds"), or that are tax-exempt entities, described in Section 501(c) of the Internal Revenue Code. Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) or other tax-exempt bonds used to finance a Transmission Owner's facilities that would be used in providing such transmission service or would jeopardize the tax-exempt status of the tax-exempt entity.

5.2 Alternative Procedures for Requesting Transmission Service:

- (i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) or other tax-exempt bonds used to finance a Transmission Owner's facilities that would be used in providing such transmission service or would jeopardize the tax-exempt status of the Transmission Owner, the Transmission Provider shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.
- (ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider and the relevant Transmission Owner, within ten (10) days of receiving a copy of the Section 211 application, will waive any rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's and/or Transmission Owner's waiver of rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service over the affected Transmission Owner's facilities in accordance with the terms and conditions of this Tariff.

Insert as Section 39a in Part IV of SPP Tariff

39a Subject to State Laws and Regulations and Public Power Rate Schedules

The participation in this Tariff by a Transmission Owner that is not a public utility under the Federal Power Act, but rather is a public-power entity, is subject in all respects to the laws and regulations of the state of its creation and to rate schedules adopted by its governing board under state law. The Commission has exclusive jurisdiction to interpret the provisions of this Tariff and how the provisions apply to such public-power entity(ies).

However, in the event that the governing board of such public-power entity(ies), subject to state court review, determines that a conflict exists between the applicable state law, regulations, or rate schedules, and provisions of this Tariff as interpreted by the Commission, such state law, regulations, or rate schedules shall govern with respect to the application of this Tariff to such public power entity(ies). Should the governing board of such public-power entity(ies) determine that such a conflict exists, the public-power entity(ies) must file, with the Commission, such necessary documents notifying the Commission of the governing board determination of such a conflict and explaining both the conflict (including what state law, regulations, or rate schedules, and what Tariff provisions are at issue) and what actions the governing board is taking in response to that determination.