



**Southwest Power Pool  
BOARD OF DIRECTORS/MEMBERS COMMITTEE MEETING**

**April 20, 2009**

**Teleconference**

**• A G E N D A •**

9:30 a.m. – 11:30 a.m. CDT

1. Call to Order..... Mr. Jim Eckelberger
  2. MOPC Report/Order 719 Compliance Filing.....Mr. John Olsen
- Adjourn



**Southwest Power Pool, Inc.**

**MARKETS AND OPERATIONS POLICY COMMITTEE**

**Recommendation to the Board of Directors**

**April 20, 2009**

**FERC Order No. 719 SPP Tariff Modifications and Compliance Filing**

**Background**

FERC issued a Final Rule in Docket Nos. RM07-19-000 and AD07-7-000, Order No. 719, Wholesale Competition in Regions With Organized Electric Markets ("Order 719") on October 17, 2008. The Order was published in the Federal Register on October 28, 2008 with an effective date of December 28, 2008. All RTOs and ISOs were ordered to file tariff revisions and explanation of current compliance on or before April 28, 2009.

Tariff revisions required by Order 719 are limited to the topics of demand response and market monitoring policies. This requires modifications primarily to Attachments AE, AF, and AG of the SPP Tariff. These are outlined below and the redlined Tariff sheets are attached. There are other modifications regarding demand response that are before FERC presently in Docket No. ER09-748 reflecting provisions set forth in PRR 176 (Approved by MOPC and the SPP Board of Directors in January 2009 meetings). In the Order 719 compliance filing letter, SPP will state that the February 24, 2009 filing in Docket No. ER09-748 by SPP reflects compliance with several demand response requirements required in Order 719. Tariff revisions to Attachment AF and AG are proposed to properly split the responsibilities of the internal and external market monitor functions. There are also some minor revisions to the SPP Bylaws that were required by Order 719 to comply with changes in the market monitoring policies. The revisions in the Bylaws were presented to the Corporate Governance Committee on March 5 and approval is pending by the Board of Directors.

Additionally, Order 719 addressed issues relating to long-term power contracting and RTO responsiveness. The Final Rule requires each RTO to dedicate a portion of its website to market participants to post offers to buy and sell power on a long term basis. There are no tariff revisions associated with this requirement. The RTOs and ISOs are working together as a group to propose for consideration to FERC a multi-RTO/ISO bulletin board that all RTOs and ISOs will link to for access by market participants for posting offers for long-term power contracting. There are no tariff revisions required to comply with Order 719 requirements for RTO responsiveness. There will be discussion of SPP's compliance with the RTO responsiveness section in the filing letter.

The Market Working Group discussed the tariff revisions relating to demand response and market monitoring and how the tariff currently complies with Order 719 in certain areas. The RTWG also reviewed the tariff revisions and approved those revisions on March 19, 2009 with 1 vote in opposition by Arkansas Electric Cooperative Corporation ("AECC"). A written statement was provided by Mr. Robert Shields to members of RTWG expressing concerns to Section 1.2.2(i) of Attachment AE. This email is attached herein.

**Analysis**

To comply with Order 719, changes to the following Tariff Sections are proposed:

In the main body of the Tariff:

Section: 1.18b – Market Participant (definition)

In Attachment AE to the OATT (Energy Imbalance Service Market)

- Section: 1.2.2 – Application and Asset Registration – new subsection (i)
- (new) 1.2.10 – Aggregation of Controllable Load as a Resource
- (new) 6 – Release of Offer Curve Data (insertion of new Section 6 necessitates renumbering and re-referencing remaining sections of Attachment AE)
- (renumbered) 8.4.5 Information Requests – subsection (e) new language added; new (g) inserted – Response to Tailored Request for Information from State Commissions; (h) renumbered from insertion above – Limitation on Disclosure Obligation

In Attachment AF to the OATT (Market Power Mitigation Plan)

- Section: Table of Contents for Attachment AF revised to reflect changes made below
1. Purpose and Objective
  - 2.2 (removed) subsequent subsections renumbered
  - 3.2.3 Reassessment of Affected Status
  - 3.2.4 Calculation of Offer Caps (subsections (a), (b), and (d))
  4. (removed)
  5. (removed) and subsequent sections and subsections renumbered
  - 4.1 (renumbered from above deletion) Rights and Remedies

In Attachment AG (Market Monitoring Plan)

- Section: 1.3 Mission Statement and Objectives of the Market Monitor (new name for section and proposed language)
- 1.5 (new subsection) Resolution of Conflicts
- 2.3 External Market Advisor (changed from “Monitor” to “Advisor”)
- 3.1 Staffing and Resources
- 3.2 Relationships and Notifications
- 3.3 Independence and Ethics Standards (added “and Ethics Standards” to title and added standards (a) through (g))
- 4.3 **Compliance with Market Behavior Rules and SPP Tariff** (bold text added to existing section title and the section was broken down into parts (a) and (b))
- 4.4 **Monitoring for Potential EIS Market Manipulation** (bold text added to existing section title)

- 4.5 Monitoring for Potential Transmission Market Power Activities
- 6.1 Compliance
- 6.2 Corrective Actions for Market Design
- 7. Periodic Reports and **Updates** to **SPP**, Government Agencies, and **Market Participants** (bold text added to section title)
  - 7.1 Reports **and Updates** to the Board of Directors (bold text added to the section title and new subsections created with new language)
  - 7.2 Reports to Government Agencies **and Market Participants** (bold text added to section title and new language added along with subsections 7.2.1, 7.2.2, and 7.2.3)
- 8.5 (new section) Data Created by Market Monitor

In Attachment AH (Form of Service Agreement for Market Participants Selling into the Energy Imbalance Service Market)

Section: 8. Added language to existing section

**Recommendation**

The MOPC recommends that the Board of Directors approve the proposed tariff language which reflects the revisions required by Order 719.

<b>Approved:</b>	Regional Tariff Working Group 25 For; 1 Against; 0 Abstained	March 19, 2009
	Markets and Operations Policy Group	Pending

**Action Requested:** Approve Recommendation

(b) Transmission Customers, (c) Network Customers, (d) Generation Interconnection Customers, ~~and~~ (e) any Eligible Customer offering Resources for sale into the EIS Market that executes the Service Agreement specified in Attachment AH, or on whose behalf an unexecuted Service Agreement has been filed at the Commission, and (f) any retail customer or eligible person that is not precluded under the laws or regulations of the relevant electric retail regulatory authority from participating in demand response programs and that is technically qualified to offer controllable load into the EIS Market or an aggregator of such retail customers that offers qualified controllable load into the EIS Market under Section 1.2.10 of Attachment AE.

**1.18c Market Protocols:** The protocols implementing this Attachment AE, as amended from time to time in accordance with the SPP Membership Agreement.

**1.18d Member:** A member of SPP.

**1.19 Native Load Customers:** The wholesale and retail power customers of the Transmission Owner(s) on whose behalf the Transmission Owner(s), by statute, franchise, regulatory requirement, or contract, has (have) undertaken an obligation to construct or operate the Transmission Owner's(s') system(s) to meet the reliable electric needs of such customers. In addition, Native Load Customers also may include the customers of the Federal Government on whose behalf the Government, by policy, statute, regulatory requirement, or contract, delivers Federal capacity and energy to meet all or a portion of the reliable electric needs of such customers.

**1.20 Network Customer:** An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

**1.21 Network Integration Transmission Service:** The transmission service provided under Part III of the Tariff.

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(i) A Market Participant wishing to offer controllable load as a resource in the EIS Market must include in its application and registration a certification that participation in the EIS Market by its controllable load resource is not precluded under the laws or regulations of the relevant electric retail regulatory authority. Controllable load resources must meet all application, registration and technical requirements applicable to other resources offering imbalance energy in the EIS Market. The Transmission Provider is not responsible for interpreting the laws or regulations of a relevant electric retail regulatory authority and shall be required only to verify that the Market Participant has included such a certification in its application materials. The Transmission Provider is not liable or responsible for Market Participants participating in the EIS Market in violation of any law or regulation of a relevant electric retail regulatory authority.

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Market Effective Date, Balancing Authorities' shall act as the meter agent for all Market Participant Resources and load within the Transmission Owners' zone unless mutually agreed upon by the Balancing Authority and Market Participant for another entity to perform the meter agent function. Subsequent to the first calendar year following the EIS Market Effective Date, a Market Participant may designate any qualified entity to perform the meter agent function or perform this function on its own behalf. Any entity performing the meter agent function for a Market Participant must execute the Meter Agent Agreement specified in Attachment AM prior to performing such function.

**1.2.9 Calculation of Real-Time Demand Response from Variable Demand Response Resources**

*The demand response provided by the Variable Demand Response Resource is sent directly to the Transmission Provider. This value will represent the actual net generation.*

**1.2.10 Aggregation of Controllable Load as a Resource**

An aggregator of retail customers ("ARC") may aggregate demand response of multiple end-use retail customers unless precluded by the laws or regulations of the relevant electric retail regulatory authority. An ARC wishing to offer demand response in the EIS Market must execute all agreements necessary to become a Market Participant and to participate in the EIS Market under the SPP Tariff and Attachment AE. ARCs shall be treated comparably to other Market Participants offering Resources in the EIS Market.

Aggregations pursuant to this section shall be subject to the following requirements:

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- (a) End-use customers aggregated into a single Resource must be located at the same physical and electrically equivalent withdrawal point from the Transmission System and must be served by the same retail provider; and
- (b) All end-use customers in an aggregation shall be specifically identified.

### **1.3 Transmission Provider Obligations**

#### **1.3.1 Market Protocols**

The Transmission Provider shall prepare, maintain and update the Market Protocols consistent with this Tariff. The Market Protocols shall be posted on the SPP website.

#### **1.3.2 Scheduling and Dispatch**

The Transmission Provider shall evaluate Resource Plans submitted by Market Participants during the Day-Ahead Period and the Hour-Ahead Period in accordance with Sections 2 and 3 of this Attachment.

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- (d) For each hour, each Market Participant's total Energy Imbalance Uplift Charge/Credit shall be equal to the sum of that Market Participant's Settlement Location specific Energy Imbalance Uplift Charge/Credit calculated under Section 5.6 (c).
- (e) For one year following the EIS Market Effective Date, the Transmission Provider shall post on its website on a monthly basis, by Operating Hour, the net of all Energy Imbalance Uplift Charges/Credits and each of the following charge types for that hour:
- (1) the net of all Net Energy Imbalance Service Charges/Credits;
  - (2) the sum of all Uninstructed Deviation Charges;
  - (3) the sum of all Over Scheduling Charges;
  - (4) the sum of all Under Scheduling Charges;
  - (5) the sum of all Recalculated LIP Credits; and
- (6) by charge type, the net of any other credits or charges not encompassed within (1) through (5).
- Information for a month shall be posted no later than the 15th day of the succeeding month and shall be posted in a programmatic interface format.

**6. Release of Offer Curve Data**

The Transmission Provider will release the hourly Offer Curves for Dispatchable Resources within three months. Such information released by the Transmission Provider will not include the identity of the Market Participant that submitted the Offer Curve.

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**67. Billing**

The Transmission Provider shall prepare a billing statement each billing cycle in accordance with this Section of Attachment AE. Such billing statements shall be prepared for each Market Participant in accordance with the charges and credits specified in Section 5 of this Attachment AE, and showing the net amount to be paid or received by the Market Participant. Billing statements shall provide sufficient detail, as specified in the Market Protocols, to allow verification of the billing amounts and completion of the Market Participant's internal accounting. Unresolved billing disputes shall be settled in accordance with procedures specified in Section 12 of this Tariff.

**67.1 Settlement Statements**

- (a) The Transmission Provider shall issue a preliminary settlement statement for an Operating Day no later than 7 Calendar Days following the applicable Operating Day unless the 7th day following the applicable Operating Day is not a Business Day, in which case, the preliminary settlement statement shall be issued on the first Business Day thereafter.
- (b) The Transmission Provider shall issue a final settlement statement for an Operating Day no later than 47 Calendar Days following the applicable Operating Day unless the 47th Calendar Day following the applicable Operating Day is not a Business Day, in which case, the final settlement statement shall be issued on the first Business Day thereafter.

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- (c) The Transmission Provider shall make corrections to the preliminary and final settlement statements for an Operating Day for data errors and settlement statement disputes that have been resolved. Settlement associated with a specific Operating Day shall be considered final at the end of the 365th Calendar Day following the applicable Operating Day.
- (d) To the extent that a Market Participant, or its designated meter agent, does not submit meter data representing that Market Participant's actual hourly Resource output and load consumption in accordance with the timelines specified in the Market Protocols, the Transmission Provider shall use estimated data for that Market Participant that is equal to that Market Participant's Scheduled Generation and Scheduled Load for the applicable hours for the purposes of calculating the preliminary statements specified under Sections 76.1(a). To the extent a Meter Agent does not submit data representing the Net Actual Interchange, the Transmission Provider will substitute hourly integrated Adjusted Net Scheduled Interchange. In the event that actual meter data is not submitted prior to the issuance of a final settlement statement, the Transmission Provider shall use the best available data, which may include estimated meter data as developed by the Transmission Provider, for the purposes of calculating final settlement statements.

## **67.2 Invoices**

- (a) The Transmission Provider shall issue an invoice detailing all charges and credits specified in Section 5 of this Attachment AE on a weekly basis in accordance with the invoice issue dates specified in the Market Protocols

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### **67.3 Invoice Disputes**

In the event that a dispute arises between the Market Participant and the Transmission Provider concerning any initial, final or Resettlement settlement statements contained within an invoice that cannot be resolved to the Market Participant's satisfaction, such disputes shall be resolved as follows:

- a) In the case of a dispute relating to an initial or final settlement statement, the Market Participant must notify the Transmission Provider within 90 Calendar Days following the issue date of the applicable invoice of the items that the Market Participant wishes to dispute. In the case of Resettlement statements, the Market Participant must notify the Transmission Provider within 30 Calendar Days following the issue date of the applicable invoice of the items contained in that statement that the Market Participant wishes to dispute, which issues must relate to incremental changes in data that occurred between issuance of the final settlement statement and the first Resettlement statement or between Resettlement statements.

The notice of dispute must contain the following minimum information:

- Statement type (initial, final, resettlement 1-11, ad hoc resettlement)
- Charge type
- Estimated dispute amount in dollars
- Operating Day
- Start interval
- End interval
- Statement ID
- Transmission Customer
- Settlement Location
- Long description
- Short description.

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- (b) If the Transmission Provider determines that additional information is required concerning a submitted notice of dispute, the Transmission Provider shall notify the Market Participant no later than 30 days following the date the notice of dispute was submitted to the Transmission Provider. The Market Participant must then submit additional information to the Transmission Provider within 30 days in order to have the notice of dispute considered valid.
- (c) The Transmission Provider shall use its best efforts to notify the Market Participant of approval or denial of the submitted notice of dispute within 20 Business Days following the close of the applicable 90 day or 30 day window specified under subsection ~~67~~.3(a) or subsection ~~67~~.3(b). If the Transmission Provider estimates that it will take longer than the 20 Business Day window to analyze a specific billing dispute, the Transmission Provider shall notify the Market Participant and provide an estimate of the amount of time required to complete the analysis.
- (d) If the Transmission Provider denies a Market Participant's notice of dispute or the Market Participant is not satisfied that it is receiving timely consideration of the dispute, the Market Participant may initiate the dispute resolution procedures specified under Section 12 of this Tariff.

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**67.4 Interest on Unpaid Balances**

Interest on any unpaid amounts shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. § 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the invoice to the date of payment.

**67.5 Customer Default**

Customer default will be handled in accordance with Attachment X (SPP Credit Policy).

**78. Confidentiality Provisions**

This Section ~~7-8~~ shall apply to Confidential Information disclosed by a Market Participant to SPP or by SPP to a Market Participant or its designee, the Market Monitor, the Commission, or an Authorized Requestor and shall only be applicable to Confidential Information referenced within this Attachment AE, Attachment AF and Attachment AG.

**78.1 Restrictions on Confidential Information Provided to Receiving Party**

SPP or any Market Participant ("Receiving Party") may not Disclose Confidential Information received from the other ("Disclosing Party") to any person, corporation, or any other entity except as specifically permitted in this Section ~~7-8~~ of Attachment AE.

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A Market Participant that is subject to a freedom of information or similar statute must, prior to receiving Confidential Information, provide the Transmission Provider a statement identifying and forwarding copies of the particular statute, rule or regulation, protective order, or practice that will allow that Market Participant to keep Confidential Information received by it hereunder confidential and non-public, and of limited distribution within the Market Participant as described above. In the event that such Market Participant receives a request pursuant to the applicable freedom of information or similar statute for information deemed confidential pursuant to this section, the Market Participant shall promptly notify the Disclosing Party of such request.

**78.1.1 Procedures for Confidential Information**

Receiving Party shall adopt procedures within its organization to maintain the confidentiality of all Confidential Information. Such procedures must provide that:

- (a) The Confidential Information will be Disclosed to Receiving Party's directors, officers, employees, representatives and agents only on a "need to know" basis;
- (b) Receiving Party shall make its directors, officers, employees, representatives and agents aware of Receiving Party's obligations under this Section 87;

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- (c) Receiving Party shall cause any copies of the Confidential Information that it creates or maintains, whether in hard copy, electronic format, or other form, to identify the Confidential Information as such; and to retain such confidential marking;
- (d) Before Disclosing Confidential Information to a representative or agent of Receiving Party, Receiving Party shall require a nondisclosure agreement with each such representative or agent. Such nondisclosure agreement shall contain confidentiality provisions substantially similar to the terms of this Section 78.

Any Receiving Party seeking to dispute the designation of information as confidential may challenge such designation through the SPP dispute resolution process as established in Section 12 of this Tariff, unless the Receiving Party has received Confidential Information in connection with a proceeding at the Commission or in connection with a state regulatory proceeding. Any challenge to the confidentiality of Confidential Information obtained in connection with an administrative or legal proceeding shall be presented for consideration to the appropriate court or tribunal.

#### **78.1.2 Exceptions**

Without violating the confidentiality provisions of this Section 78, a Receiving Party may disclose certain Confidential Information:

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- (a) As required by any law, regulation, or order, or expressly required or permitted by this Tariff, provided that the Receiving Party must make reasonable efforts to restrict public access to the Disclosed Confidential Information by protective order, by aggregating information, or otherwise if reasonably possible; or
- (b) If the Disclosing Party that supplied the Confidential Information to the Receiving Party has given its prior written consent to the Disclosure as set forth in Subsection 87.1.4(c), which consent may be given or withheld in Disclosing Party's sole discretion; or
- (c) If, before it is furnished to Receiving Party, the Confidential Information is in the public domain; or
- (d) If, after it is furnished to Receiving Party, the Confidential Information enters the public domain other than through a manner inconsistent with the provisions of this Section; or
- (e) If reasonably deemed by the Receiving Party to be required to be Disclosed in connection with a dispute between Receiving Party and Disclosing Party; provided that the Receiving Party must make reasonable efforts to restrict public access to the Disclosed Confidential Information by protective order, by aggregating information, or otherwise if reasonably possible; or
- (f) To a vendor or prospective vendor of goods and services to SPP so long as such vendor or prospective vendor: (i) is not a Market Participant and (ii) executes a confidentiality agreement with terms substantially similar to those in this Section 78.

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**78.1.3 Injunctive Relief and Specific Performance**

It may be impossible or very difficult to measure in terms of money the damages that would accrue due to any breach by Receiving Party of this Section 78, or any failure to perform any obligation contained in this Section 78, and, for that reason, among others, a Disclosing Party affected by a Disclosure or threatened Disclosure is entitled to injunctive relief, including specific performance, of this Section 78 (but is not hereby precluded from seeking other forms of relief). In the event that a Disclosing Party institutes any proceeding to enforce any part of this Section 78, the affected Receiving Party, by entering any agreement incorporating this Tariff, now waives any claim or defense that an adequate remedy at law exists for such a breach.

**78.1.4 Market Participant Access and SPP Use of Confidential Information**

- (a) No Market Participant shall have a right hereunder to receive or review any documents, data, or other information of another Market Participant, including documents, data, or other information provided to SPP, to the extent such documents, data, or information have been designated as Confidential Information under this Section 78; provided, however, a Market Participant may receive and review any composite documents, data, and other information that may be developed based on such Confidential

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Information if the composite does not, directly or by its nature, disclose any individual Market Participant's confidential data or information.

- (b) SPP shall collect and use Confidential Information only in connection with its authority under this Tariff and the retention of such information shall be in accordance with SPP's retention policies. Except as otherwise provided in Sections ~~78~~.1.2, ~~78~~.1.5, ~~78~~.2 and ~~78~~.3, SPP shall not disclose to Market Participants or to third parties, any Confidential Information of a Market Participant or a

Market Participant Applicant; provided that nothing contained herein shall prohibit SPP from providing Market Participant Confidential Information to NERC or any of its Regional Reliability Councils to the extent that: (i) the SPP determines, in its reasonable discretion, that the exchange of such information is required to enhance and/or maintain reliability within the SPP Region and its neighboring Control Areas; (ii) such receiving entity is bound by a written agreement to maintain such confidentiality; and (iii) the SPP has notified the affected Market Participant of its intention to release such information no less than five (5) Business Days prior to the release.

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**78.1.5 Required Disclosure**

- (a) Notwithstanding anything in this Section ~~7-8~~ to the contrary except Section ~~78.2~~, Section ~~78.3~~ and Section ~~78.4~~, if a Receiving Party is required by applicable law, or in the course of administrative or judicial proceedings, other than Commission or state regulatory proceedings or investigations, to Disclose to third parties, other than to the Commission or its staff, Confidential Information that is otherwise required to be maintained in confidence pursuant to this Tariff, the Receiving Party subject to such Disclosure requirement may Disclose such information; provided, however, that the Receiving Party shall not release the data until the affected Disclosing Party(ies) provide written consent or until the affected Disclosing Party's(ies') legal avenues to prevent the disclosure are exhausted.

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As soon as the Receiving Party learns of the Disclosure requirement and prior to making Disclosure, it shall notify the affected Disclosing Party(ies) of the requirement and the terms thereof and the date on which it may be required to Disclose the information. The affected Disclosing Party(ies) may direct, at their sole discretion and cost, any challenge to or defense against the Disclosure requirement. The Receiving Party shall cooperate with such affected Disclosing Party(ies) to the maximum extent practicable to minimize the Disclosure of the Confidential Information consistent with applicable law. To the extent reasonably possible, the confidentiality of Confidential Information subject to this Section 78.1.5 will be maintained with (a) a protective order, (b) other procedures available for protecting confidential data or (c) by aggregating data to prevent Disclosure of Confidential Information.

Each Receiving Party shall cooperate with the affected Disclosing Party(ies) to obtain proprietary or confidential treatment of such Confidential Information by the person to whom such information is Disclosed prior to any such Disclosure.

- (b) Section 78.1.5(a) does not apply to Disclosure of information to the Commission or its staff or to a state regulator or its staff.

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**78.1.6 Limitations**

Nothing contained in Section 78.1 through and including 78.1.5 shall require any Receiving Party to violate any law or file a lawsuit in order to prevent disclosure of Confidential Information.

**78.2 Confidentiality Provisions Applicable to the Market Monitor Reporting to the Board of Directors**

For the purposes of this Section 78.2, references to Market Monitor shall mean the Market Monitor that is an external contractor reporting to the Board of Directors as defined under Section 3.1 of Attachment AG.

- (a) Notwithstanding anything in this Section 7-8 to the contrary, in order to enable the Market Monitor to discharge its duties, SPP is authorized to provide Market Participant Confidential Information and any other information, data or materials that constitutes Confidential Information under this Tariff to the Market Monitor. For purposes of Confidential Information provided by SPP to the Market Monitor, the SPP will be considered to be a Disclosing Party, and for purposes of this Section 78.2, the Market Monitor will treat both the SPP and, if known to the Market Monitor, the Market Participant originally providing specific Confidential Information as Disclosing Parties in the event the Market Monitor receives a request for Confidential Information under this Section 78.2.
- (b) The Market Monitor shall use all reasonable procedures necessary to protect and preserve the confidentiality of all Confidential Information as defined in Section 78.1 received by it in connection with the discharge of its duties.

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- (c) Except as may be required by subpoena or other compulsory process or as set forth in Sections 78.4(a) and 78.4(b), the Market Monitor shall not Disclose Confidential Information to any person or entity except to the Commission or its staff or without prior written consent. Upon receipt of a subpoena or other compulsory process for the Disclosure of Confidential Information, the Market Monitor shall promptly notify the affected Disclosing Party(ies) that originally provided the data and shall provide all reasonable assistance requested by the affected Disclosing Party(ies) to prevent Disclosure, and if possible under the terms of the subpoena or other compulsory process shall not release the data until the affected Disclosing Party(ies) provide written consent or until the affected Disclosing Party(ies') legal avenues to prevent disclosure are exhausted. To the extent reasonably possible, the confidentiality of a Confidential Information subject to this Subsection 78.2(b) will be maintained with (i) a protective order, (ii) other procedures available or protecting confidential data or (iii) by aggregating data to prevent Disclosure of Confidential Information.

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**78.3 Disclosure to Commission**

- (a) Notwithstanding any provisions of this Section ~~7-8~~ to the contrary, if the Commission or its staff, during the course of an investigation or otherwise, requests Confidential Information from SPP and/or the Market Monitor that is otherwise required to be maintained in confidence pursuant to this Tariff, SPP and/or the Market Monitor, as applicable shall provide the requested information to the Commission or its staff, within the time provided for in the request for information. Should the SPP and/or the Market Monitor require additional time to provide the information requested due to logistical matters such as the volume of information requested or technical complexity involved, SPP and/or the Market Monitor will promptly communicate that need to the individual requesting the information and they shall establish the time for production of the requested information.
- (b) In providing the information to the Commission or its staff, SPP and the Market Monitor shall, consistent with 18 C.F.R. §§ 1b.20 and/or 388.112, request that the Confidential Information be treated as confidential and non-public by the Commission and its staff and that the Confidential Information be withheld from public disclosure. SPP and/or the Market Monitor shall promptly notify the affected Disclosing Party(ies) that originally submitted the requested Confidential Information when it receives from the Commission or its staff a request for Disclosure of Confidential Information.

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**87.4 Disclosure to Authorized Agencies**

**87.4.1 Basic Requirements for Disclosure**

For the purposes of this Section 78.4 Authorized Agency is a state regulatory commission which is authorized (or will be authorized upon satisfaction of the requirements herein) to receive confidential information pursuant to this section. The term Authorized Agency also includes state commissions acting jointly either through a regional state committee or otherwise. An Authorized Requestor is a representative of an Authorized Agency.

The Transmission Provider and/or Market Monitor shall only disclose Confidential Information, otherwise required to be maintained in confidence pursuant to Attachment AE of this Tariff, to an Authorized Requestor solely under the following conditions:

- (a) The Authorized Requestor has executed a non-disclosure agreement with the Transmission Provider, stating:
  - i. the position he or she holds within or the relationship he or she has with the Authorized Agency for which he or she will be an Authorized Requestor;
  - ii. that he or she is authorized to enter into and perform the obligations of the non-disclosure agreement;
  - iii. that the relevant Authorized Agency has practices or procedures adequate to protect against the unauthorized release of any Confidential Information received pursuant to the non-disclosure agreement;

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- (d) The certification from counsel for the Authorized Agency referred to in Subsection (c)(ii) above must affirmatively disclose any state law that will prohibit or prevent the Authorized Agency from defending against any disclosure of Confidential Information pursuant to any third party request as otherwise required by Subsection (c)(ii). In an instance where there is such a state law disclosed, such certification shall confirm that the Transmission Provider would have notice of the third party request and standing to pursue legal processes, including the obtaining of a protective order, before the forum in which state law prohibits or prevents the Authorized Agency from taking such actions itself.

#### **78.4.2 Schedule of Authorized Requestors**

The Transmission Provider shall maintain a schedule of all Authorized Requestors and the Authorized Agencies they represent, which shall be made available on its website or by written request. The schedule shall include phone numbers and e-mail addresses. Such schedule shall be compiled by the Transmission Provider, based on information provided by any Authorized Requestor and/or Authorized Agency. The Transmission Provider shall update the schedule promptly upon receipt of information from an Authorized Requestor or Authorized Agency, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the Transmission Provider in the compilation and/or maintenance of the schedule.

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### **78.4.3 Use of Confidential Information**

The Authorized Requestor shall use the Confidential Information solely for the purpose of assisting an Authorized Agency in discharging its duty, responsibility or authority in fulfillment of which it authorizes Authorized Requestors to make requests for Confidential Information and for no other purpose. Any and all Authorized Requestors sponsored by the same Authorized Agency may have access to the Confidential Information that is provided to the sponsoring Authorized Agency pursuant to an information request described in Section 78.4.5.

### **78.4.4 Limited Oral Disclosures**

- (a) The Transmission Provider or the Market Monitor may, in the course of discussions with an Authorized Requestor or Authorized Requestors in meetings or teleconferences, orally disclose information otherwise required to be maintained in confidence, without the need for a prior information request. Such oral disclosures shall provide enough information to enable the Authorized Requestors or their Authorized Agency to determine whether additional information requests are appropriate. The Transmission Provider or the Market Monitor will not make any written or electronic disclosures of Confidential Information to the Authorized Requestor pursuant to this section. In any such discussions, the Transmission Provider or the Market Monitor shall ensure that the individual or individuals receiving such

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Confidential Information are Authorized Requestors, orally designate Confidential Information that is disclosed, and refrain from identifying any specific affected Market Participant whose information is disclosed. The Transmission Provider or Market Monitor shall also be authorized to assist Authorized Requestors in interpreting Confidential Information that is disclosed.

- (b) The Transmission Provider or the Market Monitor shall provide any affected Market Participant with oral notice of any oral disclosure promptly, but not later than one (1) business day after the oral disclosure. Such oral notice to the affected Market Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Information of any other entity and must be received by the affected Market Participant before the name of the affected Market Participant is released to the Authorized Requestor; provided, however, the identity of the affected Market Participant must be made available to the Authorized Requestor within two (2) business days of the initial oral disclosure.

#### **78.4.5 Information Requests**

- (a) **Form:** Information requests to the Transmission Provider or the Market Monitor shall be in writing, and shall include electronic communications addressed to the Transmission Provider or to the Market ~~Monitor~~ Monitor as appropriate.

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- (d) **Disclosure:** Subject to the provisions of Section 78.4.5(f) and (g) below, the Transmission Provider or the Market Monitor shall supply the information sought to the Authorized Requestor in response to any information request within five (5) business days after the receipt of the information request, or within such longer period as may be specified by the information request, unless a timely objection has been made to the information request, or unless the requested information can only reasonably be made available within an extended time period.

To the extent that the Transmission Provider or the Market Monitor cannot reasonably prepare and deliver the requested information within the five (5) business day period or any longer period specified in the information request, it shall, within such period, hold discussions with the Authorized Requestor and provide the Authorized Requestor with a mutually agreed upon written schedule for the provision of such remaining information. Upon providing the requested information to the Authorized Requestor, the Transmission Provider or the Market Monitor shall provide a copy of the disclosed information to the Affected Participant(s), or provide a listing of the Confidential Information disclosed; provided, however, that the Transmission Provider or the Market Monitor shall not reveal any affected Market Participant's Confidential Information to any other Market Participant.

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(e) **Objection and Clarification:** Notwithstanding Section 78.4.5(d) above, should the Transmission Provider, the Market Monitor or an affected Market Participant object to an information request or any portion thereof, any of them or the Authorized Requestor may, within four (4) business days following the Transmission Provider's or the Market Monitor's receipt of the information request, request, in writing, a conference with the Authorized Agency, or the Authorized Agency's Authorized Requestor, to resolve differences concerning the scope or time period covered by the information request; provided, however, nothing herein shall require the Authorized Agency to participate in any conference.

Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then the Transmission Provider, the affected Market Participant or the Authorized Agency may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any participant refusing or terminating such conference. Any complaints filed at FERC objecting to a particular information request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding.

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If no FERC proceeding regarding the information request is commenced within such three-day period, the Transmission Provider or the Market Monitor shall respond to the Information Request within five (5) business days or any longer period that may be specified by the information request, counted from the expiration of such three-day period.

When an information request pertains to a Market Participant, the affected Market Participant may request that clarifying information be included in the response.

- (f) **Opportunity to Respond to Confidentiality Claims:** If the affected Market Participant, the Transmission Provider or the Market Monitor considers the information sought by the information request as Confidential Information, the Authorized Requestor shall be provided an opportunity to challenge the designation or classification of the requested information as Confidential Information.
- (g) **Response to Tailored Request for Information from State Commissions:** Market Monitor may respond to tailored requests for information from state commissions regarding general market trends and the performance of the wholesale market, but not for information designed to aid state enforcement actions. Granting or refusing such requests will be at the Market Monitor's discretion, based on agreements worked out between the Transmission Provider and the states, or otherwise based on time and resource availability.
- (h) **Limitation On Disclosure Obligation:** The Transmission Provider or the Market Monitor shall not be required to make disclosure in response to an information request: (i) in circumstances where an electronic data link, dedicated communication circuit or other hardware or third party services would be necessary to effectuate the disclosure.; ~~Nor shall the Transmission~~

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~~Provider or the Market Monitor be required to make disclosure in response to an information request (ii)~~ that is of a scope or extent materially similar to the flow of data from Market Participants to the Transmission Provider or from the Transmission Provider to the Market Monitor; ~~(iii) that is unduly burdensome; or (iv) that is not pertaining to general market trends or the performance of the Transmission Provider.~~

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**78.4.6 Limited Discussion of Confidential Information Among Authorized Requestors Sponsored By Different Authorized Agencies**

Authorized Requestors who are parties to non-disclosure agreements but who are sponsored by different Authorized Agencies may discuss Confidential Information with each other, provided that:

- (a) They have each requested and received from the Transmission Provider or the Market Monitor such Confidential Information;
- (b) At least one of such Authorized Requestors notifies the Transmission Provider in advance of the identity of the other Authorized Requestor(s) with whom such Confidential Information will be discussed; and
- (c) The Transmission Provider confirms that the Authorized Requestors who will participate in the discussion received the Confidential Information as provided in Subsection (a) above. The Transmission Provider shall respond to a notification under Subsection (b) above within two (2) business days from receipt of the notification.

The Transmission Provider shall provide an affected Market Participant with notice of the planned discussion within two (2) business days from receipt of notification of the planned discussion. Such discussion among Authorized Requestors shall not change the status of the Confidential Information. It shall remain Confidential Information.

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#### **78.4.7 Breach of Non-Disclosure Obligations**

In the event of any breach of a non-disclosure agreement:

- (a) The Authorized Requestors and/or their respective Authorized Agency shall promptly notify the Transmission Provider or the Market Monitor, who shall, in turn, promptly notify any affected Market Participant of any unauthorized release of Confidential Information provided pursuant to any non-disclosure agreement.

Upon notification, the Transmission Provider will cease disclosure to the Authorized Requestor pursuant to any information requests and will make no disclosure pursuant to any information request pending from the Authorized Requestor until it can be determined after consultation with the Authorized Requestor, his or her Authorized Agency and the affected Market Participant that an appropriate combination of the following factors justifies resumption of the Authorized Requestor's access to Confidential Information: (i) the unauthorized disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Requestor; (ii) there was no harm or economic damage suffered by the Affected Participant; (iii) there are now practices or procedures in place adequate to prevent a recurrence of the unauthorized disclosure; and/or (iv) similar good cause shown.

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However, nothing in this Section ~~78~~.4.7.c is intended to limit the liability of any person who is not an employee of or a member of an Authorized Agency, to the degree not granted limitations as to liability under applicable state law of the Authorized Agency's state, when such a person is under contract to perform services for the Authorized Agency, for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.

**~~78~~.5 Preservation of Rights**

Notwithstanding any provision in this Section ~~78~~, a Disclosing Party shall have the right to pursue all appropriate actions to prevent or contest any attempt to remove the confidential status or any order removing such confidential status of its Confidential Information.

**~~78~~.6 Notice**

Notwithstanding any provision in this Section ~~7-8~~ (except as detailed in Section ~~78~~.4), the Transmission Provider shall provide at least five business days notice to the Disclosing Party of its intent to provide Confidential Information to any other entity. The Transmission Provider shall not be required to provide such notice if such disclosure is prohibited by law or Order or required by law or Order prior to five business days.

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## **89. Liabilities Relating To Balancing Function Agreement**

This Section ~~8-9~~ applies to Balancing Authorities performing the balancing functions listed in the “Agreement Between Southwest Power Pool, Inc and the Southwest Power Pool Balancing Authorities Relating to Implementation of the EIS Market.” (“Balancing Function Agreement”) Each Balancing Authority which is a signatory to the Balancing Function Agreement will be eligible for the waiver of liabilities as set forth in Section ~~89~~.1. A Balancing Authority must be a signatory in order for this Section ~~8-9~~ to be applicable to them. In addition, certain third parties are eligible for the waiver of liability provision as set forth in Section ~~89~~.2.

### **~~89~~.1 Limitation of Liability**

The Transmission Provider shall not be liable for money damages or other compensation to any Transmission Customer or Users for actions or omissions by the Transmission Provider or Balancing Authority in performing its obligations under the Balancing Function Agreement, except to the extent such act or omission by the Transmission Provider is found to result from its gross negligence or intentional wrongdoing. A Balancing Authority shall not be liable for money damages or other compensation to any Transmission Customer or Users for actions or omissions by such Balancing Authority or Transmission Provider in performing its obligations under the Balancing Function Agreement,

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except to the extent such act or omission by such Balancing Authority is found to result from its gross negligence or intentional wrongdoing. The Transmission Customer or Users may not seek to enforce any claims against the directors, members, shareholders, officers, employees or agents of the Transmission Provider or a Balancing Authority or Affiliate of either solely by reason of their status as directors, members, shareholders, officers, employees or agents of the Transmission Provider or a Balancing Authority or Affiliate of either. In no event shall the Transmission Provider or a Balancing Authority be liable to any Transmission Customer for any incidental, consequential, punitive, special, exemplary or indirect damages, loss of revenues or profits, arising out of, or connected in any way with the performance or non-performance under the Balancing Function Agreement.

#### **89.2 Limitations of Liability For Third Parties**

The provisions set forth in Section 89.1 also shall apply to entities that take responsive action to implement or comply with the directives or needs of the Transmission Provider or Balancing Authority relating to the performance of this Balancing Function Agreement.

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## 1. Purpose and Objective

The Market Mitigation Measures (the “Measures”) contained within this Market Power Mitigation Plan provide for mitigation of the exercise of horizontal and vertical market power by Market Participants in certain specified circumstances. The ~~Market Monitor~~Transmission Provider shall implement the Market Power Mitigation Plan as defined in this Attachment AF.

## 2. Definitions

For purposes of this Plan, capitalized terms shall have the meanings specified below:

### 2.1 Generator-to-Load Distribution Factor

The simulated impact of incremental power output from a specific Resource ("source") on the loading of a specific flowgate based on delivery to a representation of the locational weighting of all loads within all Settlement Locations ("sink").

### ~~2.2 Initial Assessment~~

~~The assessment that the Market Monitor shall conduct prior to the start of the EIS Market for the purpose of identifying opportunities for Transmission/Generation Owners to exercise transmission market power and establishing parameters for monitoring such opportunities. No sanctions or penalties will be recommended for problems that are found and corrected through the assessment.~~

### 2.23 Measures

SPP’s Market Mitigation Measures set forth in this document.

### 2.34 Plan

SPP’s Market Power Mitigation Plan set forth in this Attachment AF.

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**2.45 Transmission/Generation Owners**

Any Market Participant owning or controlling both transmission and generation assets in the SPP Region.

**3. Economic Withholding – Energy Market Power**

**3.1 Principles**

There are two principles for mitigating Economic Withholding in the EIS Market operated by SPP.

**3.1.1 Mitigate Only During Transmission Constraints**

Mitigation will be applied only at the time of, and in places with, transmission constraints.

**3.1.2 Do Not Mitigate Below Long Run Marginal Cost of New Investment**

Mitigation should not create or exacerbate a supply shortage by capping prices below the level needed to attract investment that would relieve the shortage. This level shall be based on the long run marginal cost of the least-cost generation supply that could be developed within the shortest period of time, which is currently a new, natural gas-fired combustion turbine, peaking generation facility.

**3.2 Mitigation Measure**

When any transmission constraint is binding in the EIS Market, the Offer Curve prices associated with Resources with Generator-to-Load Distribution Factors that are greater than or equal to 5% that are located on the importing side of each constraint shall be no higher than the Offer Cap for each Resource.

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### 3.2.3 Reassessment of Affected Status

The ~~Market-Monitor~~Transmission Provider will reassess the status of Resources subject to Offer Caps when transmission and generation facility additions, outages, changes, or changes in ownership occur that may reasonably cause the

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Offer Capped status to change. In any event, the ~~Market~~ Monitor Transmission Provider will reassess the status of Offer Capped Resources on an annual basis.

#### **3.2.4 Calculation of Offer Caps**

The Offer Cap for each Resource subject to an Offer Cap will be calculated at least daily

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Offer Caps do not function as price caps on the EIS Market. Resources other than Resource identified under Section 3.2.2 are not subject to an Offer Cap. These resources may bid higher than, and set a price in the EIS Market that is above any Offer Cap.

During periods of constraint on flowgates, Market Participants with Resources subject to Offer Caps as identified under Section 3.2.2 are restricted to submitting Offer Curve prices at or below their respective Offer Caps. All Resources, including those Resources identified under Section 3.2.2, will be charged/compensated based upon the Locational Imbalance Price associated with each Resource.

(a) *Annual Fixed Cost*

The annual fixed cost of a new, natural gas-fired, combustion turbine peaking generation facility shall be based upon the calculated value of the annual carrying cost associated with the recovery of the total fixed costs to develop, build and finance such a facility plus the fixed operation and maintenance costs. Such costs shall be reviewed annually by the ~~Market Monitor~~ Transmission Provider with input from Market Participants ~~and SPP~~. Any changes to such costs, along with justification for the changes, shall be filed with the Commission for approval after such review. Such costs, along with any studies justifying the costs, shall be posted electronically by the Transmission Provider. For calendar year 2009, the Annual Fixed Cost shall be equal to \$79,230/Megawatt-year.

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(b) *Variable Non-Fuel O&M Adder*

The adder equal to the estimated non-fuel variable operation and maintenance costs of a new, natural gas-fired, combustion turbine peaking generation facility shall be based on the non-fuel operating and maintenance costs of such a facility not included in the calculation of annual fixed costs as described above. Such cost shall be reviewed annually by the ~~Transmission Provider Market Monitor~~ with input from Market Participants ~~and SPP~~. Any changes to such costs, along with justification for the changes, shall be filed with the Commission for approval after such review. Such costs, along with any studies justifying the costs, shall be posted electronically by the Transmission Provider. For calendar year 2009, the Variable Non-Fuel O&M Adder shall be equal to \$3.85/Megawatt-hour.

(c) *Annual Hours of Constraint*

The annual hours of constraint will be calculated individually for each affected Resource under Section 3.2.2 of a Market Participant and will be based on the most recent 365 days (366 days for a leap year) of total hours of constraint in the EIS Market for constrained flowgates affecting each Resource. In the event that multiple constraints simultaneously affect a Resource, overlapping hours of constraint will be eliminated from the Offer Cap calculation for such a Resource.

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(d) *Fuel Cost*

The fuel cost of a new, natural gas-fired, combustion turbine peaking generation facility shall be based on the estimated full-load heat rate of the facility multiplied by a fuel price index. The fuel price index for each Resource will be based on an industry accepted natural gas pricing index for the natural gas pricing point nearest to the Offer Capped Resource(s) of each Market Participant. The fuel price shall be further modified based on an estimate of the distribution cost for moving natural gas to the affected resource(s). Alternative pricing points and fuel price modifiers shall be evaluated annually by the ~~Market Monitor~~Transmission Provider with input from Market Participants ~~and SPP~~. The fuel price portion of each Offer Cap shall be recalculated daily for inclusion in each Offer Cap. As of the date that this Plan is accepted for filing by the Commission, the heat rate used in the Fuel Cost calculation shall be equal to 10,450 ~~btu~~Btu/kwh~~kWh~~.

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### 3.3 Imposition of Mitigation

Offer Caps will be imposed when any transmission constraint is binding in the EIS Market as determined by SPP's Market Operators through the TLR congestion management process and the EIS Market security constrained dispatch process. Offer Caps will only be applied to the Resources identified under Section 3.2.2.

#### 3.3.1 Exceptions

Market Participants with Offer Capped Resources may request an exception to an Offer Cap for a Resource. If the Transmission Provider after consultation with the Market Monitor determines that an exception is reasonable, the Transmission Provider shall submit a filing with the Commission. Market Participants also may submit a filing with the Commission seeking an exception.

#### ~~4. Physical Withholding Energy Market Power~~

~~No mitigation is necessary or warranted for Physical Withholding in the EIS Market as the market is voluntary. The Market Monitor will monitor participation to determine whether decisions to participate in the EIS Market have a significant adverse impact on market outcomes.~~

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~~5. Unavailability of Facilities-Energy Market Power~~

~~No mitigation is necessary or warranted for Unavailability of Facilities in the EIS Market, since participation in the market is voluntary. The Market Monitor will monitor for any potential instances of Unavailability of Facilities and shall report on any such instances.~~

**64. Miscellaneous Provisions**

**64.1 Rights and Remedies**

The Plan does not restrict ~~SPP~~ the Transmission Provider and Market Participants from asserting any rights they may have under state and federal regulation and laws, including initiating proceedings before the FERC regarding any matter which is subject to this Plan.

Except as otherwise stated in this Plan, disputes as to the implementation of, or compliance with, this Plan shall be subject to the dispute resolution procedures under this Tariff or the SPP Bylaws as applicable or may be raised with the FERC.

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## 1. Purpose and Objective

### 1.1 Purpose of the Plan

This Market Monitoring Plan (the “Plan”) is intended to provide for the monitoring of SPP’s Markets and Services and submissions of recommendations to the FERC and the SPP Board of Directors.

### 1.2 The Market Monitoring Plan

The Plan shall be developed, implemented and maintained by SPP’s Market Monitor. The Market Monitor has the responsibility for implementing the Plan by (a) continuously monitoring SPP’s Markets and Services, (b) ~~implementing market mitigation measures explicitly provided for in this tariff,~~ (c) recommending compliance and corrective actions per this tariff, ~~(cd)~~ collecting and retaining the data and information necessary for the performance of the Plan, ~~(ed)~~ recommending updates to the monitoring and mitigation plans contained within Attachments AG ~~and AF~~ to this Tariff, and ~~(fe)~~ periodically reporting on SPP’s Markets and Services.

### 1.3 Mission Statement and Objectives of the Market Monitor

#### 1.3.1 Mission Statement

The ~~objective-mission~~ of the Market Monitor is to (a) monitor and report on possible abuses of horizontal and vertical market power ~~and gaming~~ in SPP’s Markets and Services by any Market Participant (b) ~~monitor-identify market design flaws~~ and recommend any changes ~~with regard to their~~ design ~~and implementation of SPP’s Markets and Services~~ to improve the

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operation of ~~markets to~~SPP's Markets and Services for the benefit of consumers and Market Participants and (c) monitoring Market Participants' compliance with market rules.

### **1.3.2 Objectives**

The Market Monitor will work to ensure that its functions and activities are implemented fairly and consistently, and that it protects and fosters competition while minimizing interference with open and competitive markets. Making recommendations to improve the operation of markets and preventing the exercise of market power in advance rather than punishing offenders afterward shall be the preferred approach.

The Market Monitor will recognize that entities otherwise identified as having market power may engage in conduct giving the impression of market power but, after analysis by the Market Monitor, may prove to be pro-competitive and efficient. In making this distinction, the Market Monitor will generally focus on an analysis of the identified conduct and associated market impacts, rather than seeking to determine the intent of the Market Participant (e.g., conducting profitability analyses that would require comprehensive information on all the physical and final positions of a participant).

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#### **1.4 Independence of the Market Monitor**

The Market Monitor shall be independent from Market Participants to perform those activities necessary to provide impartial and effective market monitoring within the scope of the Plan. Notwithstanding the foregoing, in the normal course the Market Monitor shall verify information with affected Market Participants prior to making recommendations or reports.

#### **1.5 Resolution of Conflicts**

In the event there is a conflict between this Attachment AG and any other provision of this Tariff, this Attachment AG will control.

### **2. Definitions**

For purposes of this Plan, capitalized terms shall have the meanings specified below:

#### **2.1 Confidential Information**

The term defined under Attachment AE to this Tariff.

#### **2.2 Data and Information**

Writings, documents and records of every type, including audio recordings and electronic files.

#### **2.3 External Market ~~Monitor~~ Advisor**

The external contractor retained by SPP to perform certain market monitoring services as specified in Attachment AJ, its contract with SPP.

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#### **2.4 FERC Staff**

The responsible office within FERC designated to receive reports submitted by market monitors.

#### **2.5 Interested Government Agencies**

The FERC and any state regulatory commission or agency with regulatory oversight responsibilities for SPP Transmission Owners.

#### **2.6 Plan**

SPP's Market Monitoring Plan set forth in this Attachment AG.

### **3. Market Monitor**

The Market Monitor is responsible for implementing the Market Monitoring Plan as defined in this Tariff.

#### **3.1 Staffing and Resources**

The Market Monitor shall be an organization within SPP reporting to the Board of Directors, excluding any SPP management representatives serving on the Board of Directors. The Market Monitor shall be comprised of employees of SPP with the necessary experience and qualifications to perform the duties of the Market Monitor. The duties and responsibilities of the Market Monitor shall be assigned by the Board of Directors. However, the Market Monitor's duties and responsibilities will not include purely administrative matters (e.g., enforcement of late fees and the untimely submission of outage reports and meter data). SPP management representatives on the Board of Directors will be excluded from the Board of Directors' oversight of the Market Monitor. SPP shall establish and provide appropriate staffing and/or resources for the Market Monitor and shall ensure that the Market Monitor has such adequate employees, funding and/or other resources, access to required information, and the full cooperation of SPP Staff, Organizational Groups, and

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other persons, as necessary, for the effective functioning of the Market Monitor and implementation of this Plan. ~~SPP-The Market Monitor~~ shall have full responsibility for implementing Attachments AF and AG. ~~The SPP Board of Directors~~ may delegate certain responsibilities pursuant to a contract with an External Market ~~Monitor~~Advisor. SPP shall file such contract with the Commission.

### 3.2 Relationships and Notifications

As a general principle, the Market Monitor may obtain input from the SPP, FERC Staff, SPP Staff, the RSC, and affected state regulatory authorities for the purpose of executing its duties. However, in accordance with this tariff, the Market Monitor may at any time bring any matter to the attention of the Board of Directors, the officers of SPP, FERC, or other affected state regulatory authorities, as the Market Monitor may deem necessary or appropriate. After any initial investigation of market design/policies, the Market Monitor shall also provide notification to the Board of Directors, the President of SPP, and FERC Staff, and other interested entities such as relevant state regulatory commissions and Market Participants, as soon as practicable in the event it identifies a significant market problem that may require (a) further investigation, (b) a change to this Tariff, or (c) action by FERC. In the event the Market Monitor believes broader dissemination could lead to exploitation, it may limit distribution of its identifications and recommendations to the Board of Directors, the President of SPP, and FERC Staff with an explanation of why further dissemination should be avoided at that time.

The Market Monitor shall also interface with FERC Staff and other

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RTO and ISO market monitors in adjacent regions as needed for the purpose of addressing electricity market issues in a comprehensive manner. The Market Monitor shall promptly notify the President of SPP of all such notifications, communications or reports.

### 3.3 **Independence and Ethics Standards**

The Market Monitor shall abide by SPP's Standards of Conduct, which shall be appropriate for establishing the professional and financial independence of the Market Monitor.

Consistent with this requirement, the Market Monitor shall:

- (a) have no material affiliation with any Market Participant or any affiliate of a Market Participant;
- (b) not serve as an officer, employee, or partner of a Market Participant;
- (c) have no material financial interest in any Market Participant or any affiliate of a Market Participant (allowing for such potential exceptions as mutual funds and non-directed investments);
- (d) not engage in any market transactions other than the performance of their duties under this Tariff;
- (e) not be compensated, other than by SPP, for any expert witness testimony or other commercial services to SPP or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to SPP;
- (f) not accept anything of value from a Market Participant in excess of a de minimis amount;
- (g) advise their relevant supervisor (or, in the case of the Market Monitoring management, SPP's Board of Directors) in the event they seek employment with a Market Participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of such Market Participant.

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These restrictions are not exclusive of the other requirements specified in SPP's Standards of Conduct. In the event there is a conflict between this Attachment AG and SPP's Standards of Conduct, this Attachment AG will control.

The Market Monitor shall certify compliance with such policies to the President of SPP. The Market Monitor shall require any external consultants or experts to certify compliance with these policies.

#### **4. Market Monitoring**

##### **4.1 Markets to be Monitored**

The Market Monitor will monitor SPP's Markets and Services, which are the markets that are operated by, and the services provided by, SPP under this Tariff.

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- (c) The Market Monitor shall evaluate the effectiveness of SPP's Markets and Services in signaling the need for investment in new generation, transmission or demand response infrastructure and report on its findings at least annually.
- (d) The Market Monitor shall verify that Balancing Authorities activate the Reserve Sharing System on a non-discriminatory basis in accordance with Section 6.4.2 of the SPP Criteria.

**4.3 Compliance with Market Behavior Rules and SPP Tariff**

- (a) All suppliers with market-based rates are required to comply with the Market Behavior Rules defined in FERC Order No. 670 and the Conditions for Public Utility Market-Based Rate Authorization Holders defined in FERC Order No. 674, as they may be amended from time to time. Market Participants are required to abide by these Market Behavior Rules.
- (b) The Market Monitor shall monitor for violations of these rules or of SPP's Tariff and report any suspected violations by Market Participants or SPP to FERC Staff in accordance with the FERC's reporting protocols for market monitors in a timely manner. ~~Market Participants are required to abide by these market behavior rules.~~ Any such reports by the Market Monitor to FERC Staff shall be on a confidential basis, and all information and documents included in such reports will not be released to any other party except to the extent FERC directs or authorizes such release, unless such information and documents are already in the public domain.

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**4.4 Monitoring for Potential EIS Market Manipulation-**

The Market Monitor will monitor the EIS Market for potential instances of market manipulation. Such actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electric products are prohibited. As listed by the FERC, prohibited behavior includes (a) wash trades, (b) submission of false data, (c) actions to cause artificial congestion and (d) collusive acts. The Market Monitor will report any market manipulation in the EIS Market in a timely manner.

**4.5 Monitoring for Potential Transmission Market Power Activities**

The Market Monitor shall monitor SPP's Markets and Services for potential transmission market power activities by reviewing and analyzing data and information related to the availability of transmission facilities that impact access to services under this Tariff. The Market Monitor will monitor for activities particularly with respect to the withholding of transmission facilities or transmission capacity, including activities such as but not limited to, the following:

- (a) Physical withholding by Transmission Owners by providing improper information related to the availability of transmission, such as information related to the capability or other modeling data used by SPP for use in system operations;

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- (b) Economic withholding by Transmission Owners through the use of methods and data for estimating costs of interconnection and system upgrades that is not comparable for affiliates and non-affiliates;
- (c) Unavailability of transmission facilities through planned and unplanned maintenance outages that routinely exceed historical baselines.

The Market Monitor shall refer any instance(s) of potential transmission market power directly to FERC. Where appropriate, the Market Monitor shall also provide the FERC with an estimate of damages equal to (i) the effect on prices multiplied by (ii) the affected energy produced by the Transmission/Generation Owner. The Market Monitor may also request the FERC to impose additional sanctions and penalties, which may consist of a fixed dollar amount based on each instance, or an amount up to (i) the effect on prices multiplied by (ii) the affected energy produced by Market Participants other than the Transmission/Generation Owner. All such referrals by the Market Monitor to FERC will be on a confidential basis, and all information and documents included in such reports will not be released to any other party except to the extent FERC directs or authorizes such release.

For one year following the EIS Market Effective Date, the Market Monitor shall identify over and under-scheduling relative to the Market Participant's Reported Load when congestion occurs, and submit monthly reports to the Commission on the benefits gained by those Market Participants, the Over Scheduling Charges and Under Scheduling Charges made to Market Participants, and any other issues

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Monitor should not monitor or report on any complaint pertaining to issues not related to SPP's Markets and Services or activities not monitored and overseen by the Market Monitor.

Any requests by Market Participants and Interested Government Agencies to the Market Monitor may be made confidentially. The Market Monitor shall maintain the confidentiality to the extent practicable.

## 6. Compliance and Corrective Actions

### 6.1 Compliance

The Market Monitor shall administer SPP's ~~FERC-approved mitigation plan specified in~~Market Monitor Plan as described in this Attachment AFG and ~~remedy-report~~ any actual or potential abuse of market power or market design inefficiencies as part of its monitoring process. However, the Market Monitor's activities are limited to matters that (i) are expressly set forth in this Tariff; (ii) involve objectively-identifiable behavior; and (iii) do not subject the Market Participant to sanctions or other consequences other than those expressly approved by the Commission and set forth in this Tariff.

As part of the monitoring process, the Market Monitor may:

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~~(a) — Communicate with Market Participants to implement the mitigation and compliance measures of this tariff.~~

~~(b) — I~~ssue a demand letter requesting Market Participants causing the issue to arise to change actions as the Market Monitor deems proper to achieve ~~mitigation and/or~~ compliance; and

~~(c) — Implement any FERC approved, applicable mitigation measure with or without prior discussions or a demand letter, as appropriate.~~

The Market Monitor may also engage in discussions with persons or entities other than Market Participants as necessary as part of any investigatory or compliance process.

## 6.2 Corrective Actions for Market Design

If the Market Monitor discerns any weaknesses or failures in market design and market rules, including the determination that SPP's Markets and Services are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure, the Market Monitor shall advise the appropriate Organizational Group of SPP, the President of SPP, the RSC, appropriate state authorities, and FERC Staff, and relevant Market Participants. In the event the Market Monitor believes providing such information could lead to exploitation, it will restrict such notification to the President of SPP and FERC Staff, and will provide a justification for such limited notification.

—Should SPP not respond within 60 days, the Market Monitor may recommend changes in market design and market

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rules to the Board of Directors, FERC and the RSC as needed. If SPP responds, but does not recommend changes to market design and market rules that are acceptable to the Market Monitor, the Market Monitor shall report to the Board of Directors and the appropriate regulatory body or bodies as needed, and then SPP may file a petition or submission seeking appropriate action from FERC or any other appropriate enforcement agency. The Market Monitor shall make recommendations for changes to this Tariff as necessary to correct weaknesses or failures in SPP's Markets and Services.

In the event that any weaknesses or failures in market design require immediate corrective action to ensure just and reasonable prices, the Market Monitor may request the President of SPP to authorize an immediate FERC filing requesting implementation of a corrective action while the appropriate Organizational Group of SPP responds to the Market Monitor's notification as described above. The requested immediate corrective action should be the method least intrusive or disruptive to SPP's Markets and Services necessary to resolve the market weakness or failure as determined by the Market Monitor. Prior to making such a request to the President of SPP, the Market Monitor will make reasonable efforts to discuss with affected Market Participants and the staff of affected Interested Government Agencies the market weakness or failure potentially requiring immediate corrective action, unless the Market Monitor determines that such discussions would lead to exploitation.

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**7. Periodic Reports and Updates Reports to SPP, Government Agencies, and Market Participants**

**7.1 Reports and Updates to the Board of Directors**

The Market Monitor shall prepare and submit to the Board of Directors periodic reports at least on an annual basis (and any other reports required by the Board of Directors) relating to its activities. In such reports, the Market Monitor may make recommendations regarding any matter within its purview. The reports to the Board of Directors shall include recommendations as to whether changes are necessary to the Market Monitor, this Plan, this Tariff, the SPP Bylaws, agreements between SPP and its Members, or any other policies, procedures, and standards under the Market Monitor's purview. Any such reports may be subject to confidentiality provisions consistent with Section 8.1.

7.1.1 The Market Monitor shall also prepare and submit to the Board of Directors updates of the reports, at least quarterly, which will emphasize any issues of concern to the Market Monitor.

7.1.2 SPP and Market Participants may comment on any reports made pursuant to this section, through the appropriate stakeholder process. The Market Monitor shall be free to disregard suggestions with which it disagrees.

**7.2 Reports to Government Agencies and Market Participants**

The Market Monitor shall make available, as described below, the reports provided to the Board of Directors and other such reports as may be requested by the FERC Staff or such authorities subject to protection of confidential, proprietary and commercially sensitive information and the protection of the confidentiality of ongoing monitoring activities.

7.2.1 The Market Monitor shall submit such reports to the FERC Staff and other affected regulatory authorities, including the Regional State Committees, ~~the reports provided to the Board of Directors and other such reports either as may be~~

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~~requested by the FERC Staff or such authorities, subject to protection of  
confidential, proprietary and~~

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~~commercially sensitive information and the protection of the confidentiality of ongoing monitoring activities.~~

~~7.2.2 The Market Monitor reports shall be made available on the SPP Website.~~

~~7.2.3 Conference calls held by the Market Monitor related to the Market Monitor reports may be attended by SPP, the Board of Directors, FERC Staff and other affected regulatory authorities, Regional State Committee, and Market Participants.~~

## 8. Data Access, Collection and Retention

The Market Monitor shall regularly collect and maintain Data and Information necessary for monitoring SPP's Markets and Services and implementing mitigation protocols.

### 8.1 Confidentiality

SPP and Market Participants may designate Data and Information as Confidential Information consistent with the terms of SPP's Membership Agreement and Section ~~7-8~~ of Attachment AE. If the designation of Confidential Information appears to be unreasonable, the Market Monitor may challenge such designation of Confidential Information consistent with Section ~~7-8~~ of Attachment AE.

The Market Monitor shall provide Confidential Information to Interested Government Agencies consistent with the terms of Section ~~78.4~~ of Attachment AE.

### 8.2 Access to SPP Data and Information

The Market Monitor shall have access to all Data and Information gathered or generated by SPP in the course of its operations. This Data and Information shall include, but not be limited to, that listed in Section 4 of this Plan. All Data and Information listed in Section 4 of this Plan shall be retained by SPP for a minimum period of three years.

Issued by: Heather H. Starnes, Manager, Regulatory Policy

Issued on:

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Filed to comply with order of the Federal Energy Regulatory Commission, Docket Nos. RM07-19-000 and AD07-7-000, issued October 17, 2008, 125 FERC ¶ 61,071 (2008).

### **8.3 Access to Market Participant Data and Information**

Market Participants shall retain all Data and Information listed below, and in Section 4 of this Plan as applicable, that is in the custody and control of Market Participants, for a minimum of three years and will promptly provide any such Data and Information to the Market Monitor upon request.

Market Participants shall be capable of providing the Data and Information to the Market Monitor, upon request, in the Market Participant's native format along with a description of the native data format used. If necessary, due to proprietary format restrictions, the Market Participant shall be capable of providing the data to the Market Monitor in a non-proprietary format, such as CSV or XML format along with a description of the data format used. Any such request will be accompanied by an explanation of the need for such Data and Information. Market Participants may designate such Data and Information as Confidential Information, but such Data and Information may not be redacted or modified in any manner prior to delivery to the Market Monitor by the Market Participant.

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If the Market Monitor determines that the requested Data and Information has not or will not be provided in a timely manner, the Market Monitor may utilize (a) the dispute resolution procedures under this Tariff or under the SPP Bylaws as applicable or (b) a filing with the appropriate regulatory or enforcement agency to compel the production of the requested information.

#### **8.4 Certification and Auditing**

The Market Monitor shall, from time to time, audit Market Participants to ensure compliance with the data retention requirements established in this Plan. Market Participants shall cooperate with the Market Monitor in such audits. The Market Monitor will annually destroy, and certify such destruction to the Board of Directors, information in its possession which is no longer reasonably necessary.

#### **8.5 Data Created by Market Monitor**

Any data created by the Market Monitor, including any reconfiguration of Data and Information obtained from SPP or Market Participants, will remain within the Market Monitor's exclusive control. Such data may be shared with SPP and Market Participants at the Market Monitor's sole discretion and on a non-discriminatory basis, subject to the confidentiality provisions specified in this Attachment AG and Section 8 of Attachment AE.

### **9. Miscellaneous Provisions**

#### **9.1 Rights and Remedies**

This Plan does not restrict SPP and Market Participants from asserting any rights they may have under state and federal regulation and laws, including initiating proceedings before the FERC regarding any matter which is subject to this Plan.

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6. The Transmission Provider and the Customer agree that this Service Agreement shall be subject to, and shall incorporate by reference, all of the terms and conditions of the Transmission Provider's Tariff.
7. It is understood that, in accordance with the Transmission Provider's Tariff, the Transmission Provider may amend the terms and conditions of this Service Agreement by notifying the Customer in writing and making the appropriate filing with the Commission.
8. The Customer represents and warrants that:
  - (a) At any time it has registered one or more Resources that the Customer intends to offer for sale into the EIS Market in accordance with procedures specified in the Market Protocols, the participation of its Resource(s) in the EIS Market is not precluded under the laws or regulations of the relevant electric retail regulatory authority and it either (a) has on file with the Commission for each of such Resources market-based rate authority and/or other Commission-approved basis for setting prices in the EIS Market, or (b) is exempt from the requirement to have rates for services on file with the Commission;
  - (b) This Service Agreement, or any Transaction entered into pursuant to the Service Agreement, as applicable, has been duly authorized;
  - (c) This Service Agreement is the legal, valid, and binding obligation of the Customer enforceable in accordance with its terms, except as it may be rendered unenforceable by reason of bankruptcy or other similar laws affecting creditors' rights, or general principles of equity.

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From: Robert Shields [RShields@aecc.com]  
Sent: Friday, March 20, 2009 3:54 PM  
To: Gerrud Wallaert  
Cc: Reed, Dennis; Patti Kelly; Brian, David; Anderson, Gene  
Subject: Explanation of vote against Order 719 Compliance Language

I am sending this note as to why I voted against the 719 compliance language as requested by Dennis Reed. We have been against the certifying language for the aggregator because it is problematic. It is our interpretation right now that all the aggregator has to do is just certify that they are not precluded from aggregating certain loads. It makes it self regulating or in other words all they have to do is just vouch for themselves. Arkansas is not a retail access state. It puts members in the position of constantly monitoring any aggregation. The way it stands now we have to go to our commission to disqualify load. This seems backwards to us. You are fixing the mess on the back end instead of getting it right on the front end. It also puts us in a possible precedent setting case before our Commission when we should not have to be there in the first place. It allows the aggregator to bypass permission and instead ask for forgiveness. This is a very loose process as proposed. I have been told by others on the teleconferences that they do not want the SPP in the position of policing and interpreting state law. I understand that fact but also the SPP has asked the Arkansas State Public Service Commission to have the right to transact business as a utility in Arkansas. It was granted that right and therefore to me at the minimum they better be able to interpret Arkansas state law or they might be violating it as a utility in Arkansas. I also personally have fear and maybe it's unwarranted, but I could see a Federal Preemption come into play on such a contested case if we took an aggregated load to our Commission to disqualify it.

Thanks

Robert



## Order 719 Compliance

## Areas of Key Reforms in Order 719

- **Demand Response and Market Power Pricing During Periods of Operating Reserve Shortage**
- **Long-Term Power Contracting**
- **Market Monitoring Policies**
- **Responsiveness of RTOs and ISOs to their customers and other stakeholders, and ultimately customers who benefit from and pay for electricity services**

## Order 719 Requirements

- **Tariff changes primarily associated with:**
  - Demand response
  - Market monitoring
    - Responsibilities of the RTO: Attachment AF
    - Responsibilities of the Market Monitor: Attachment AG
- **RTO/ISO responsiveness to customers:**
  - The Commission outlined criteria that must be followed
- **No tariff changes need for long-term power contracting**
  - SPP must provide website for market participants to post offers to buy and sell power on long-term basis
- **SPP already complies with a number of the directives in the Final Rule. These are outlined in the filing letter.**

## Order No. 719 Compliance Filing

- **Proposed tariff revisions**
- **Filing letter will cover those issues SPP already complies with:**
  - Demand response
  - Market monitoring policies
  - RTO responsiveness
- **SPP's proposed Bulletin Board for market participants to post offers to buy or sell power on a long-term basis.**

## RTWG Vote

- **RTWG approved the proposed tariff revisions with one vote against by AECC**
  - **AECC takes issue with the proposed language regarding Aggregators of Retail Customers (“ARC”) and the ability of these ARCs to provide demand response into organized wholesale markets**
    - **Proposed Section 1.2.2(i) of Attachment AE (Original Sheet No. 995A in redlined tariff sheets attached)**
    - **AECC does not agree that the language goes far enough by just requiring the ARCs to “certify” that they are not precluded from aggregating certain demand response loads**

Full text of AECC’s argument is attached herein

## MWG Review

- **MWG was actively involved in assessing compliance of existing tariff language and assessing requirements for tariff revisions**
- **MWG reviewed the proposed tariff revisions on January 21 and February 19 prior to review and approval by RTWG on March 19**
- **MWG reviewed the final tariff changes approved by RTWG on March 20**

Recommendation:

**The MOPC approve the Order 719 Tariff Language Revisions**

**Tariff language revisions were approved by the RTWG on the March 19, 2009 conference call with one vote in opposition to one proposed revision.**