

November 4, 2009

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

RE: *Southwest Power Pool, Inc.*, Docket No. ER10-_____
Submission of Transmission Interconnection Agreement

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and in accordance with Article 12.1 of the Agreement submitted herein,¹ Southwest Power Pool, Inc. (“SPP”) encloses for filing an executed Transmission Interconnection Agreement (“WTMPA Agreement”) between the West Texas Municipal Power Agency (“WTMPA”)² (WTMPA Members and WTMPA may be referred to individually or collectively as the “Customer”), Southwestern Public Service Company (“SPS” or “Interconnection Provider”) (SPS, WTMPA, and WTMPA Members collectively referred to as “the Parties”), and SPP. The WTMPA Agreement is designated as Service Agreement No. 1773. SPP requests the proposed WTMPA Agreement be approved by the Commission effective January 1, 2010, and SPP requests any waiver necessary for the Commission to accept the WTMPA Agreement for filing on the date requested. In support, SPP states the following:

¹ See WTMPA Agreement at Article 12.1 (“It is the intention of the Parties that this Agreement shall be filed with FERC by SPP as a service agreement designated under the [SPP Open Access Transmission] Tariff (‘SPP Tariff’).”).

² WTMPA comprises: (a) the City of Lubbock, Texas, by and through its municipally owned electric utility, Lubbock Power & Light (“Lubbock Power & Light”); (b) the City of Floydada, Texas; (c) the City of Brownfield, Texas; and (d) the City of Tulia, Texas (collectively the “WTMPA Members”).

I. Background

SPP is a Regional Transmission Organization (“RTO”) with 54 current members. SPP is responsible for providing independent transmission services over the transmission facilities its members have placed under the SPP Tariff. SPP is a transmission service provider to the WTMPA Members under the SPP Tariff.

WTMPA is a non-profit political subdivision of the State of Texas. The WTMPA Members own and operate municipal electric systems with a combined peak load of approximately 345 MW on a coincident basis and 368 MW on a non-coincident basis.

SPS is a wholly owned subsidiary of Xcel Energy, Inc. SPS provides electric service through an interconnected system to approximately one million people in a 52,000 square-mile area of the Panhandle and south plains of Texas, eastern and southeastern New Mexico. SPS also owns transmission facilities in the Oklahoma Panhandle and southwestern Kansas. Xcel Energy Services, Inc. is the service company for Xcel Energy, Inc. and has executed the WTMPA Agreement as authorized agent for SPS.

As discussed in the Recitals of the WTMPA Agreement, WTMPA’s and SPS’s electrical transmission systems are currently interconnected under an agreement known as the “Prior Interconnection Agreement.” WTMPA and SPS are the only parties to the Prior Interconnection Agreement, which the Federal Energy Regulatory Commission (“Commission”) accepted without comment on May 26, 2000, in Docket No. ER00-2371-000.³ The Prior Interconnection Agreement provided that it would be effective for a term ending December 31, 2004, and then the Prior Interconnection Agreement would continue year-to-year thereafter unless terminated by WTMPA or SPS with one year’s written notice. On March 29, 2002, WTMPA and SPS amended the Prior Interconnection Agreement to make it effective until December 31, 2005, continuing year-to-year thereafter.⁴ Since December 31, 2005, the Prior Interconnection Agreement has continued on a year-to-year basis.

After roughly five years of negotiations, the Parties entered into the WTMPA Agreements to govern the interconnection of the Parties’ transmission systems and to supersede and replace the Prior Interconnection Agreement.⁵ The Parties intend for the

³ See *Southwestern Public Serv. Co.*, Letter Order, Docket No. ER00-2371-000 (May 26, 2000).

⁴ The December 31, 2005 date is reflected in the WTMPA Agreement. See WTMPA Agreement at Recitals.

⁵ In addition, the Parties are parties to several other agreements that pre-date the WTMPA Agreement. *Id.* at Recitals. WTMPA and SPS (in its separate capacity
(continued . . .)

WTMPA Agreement to reflect changing responsibilities and circumstances since the Prior Interconnection Agreement was executed. Additionally, the Parties make SPP a signatory to the WTMPA Agreement, consistent with Commission precedent.⁶

To effectuate the WTMPA Agreement superseding the Prior Interconnection Agreement,⁷ SPS is filing concurrently with this filing a notice of cancellation terminating the Prior Interconnection Agreement rate schedule effective at midnight on

(. . . continued)

as a wholesale merchant – “SPS-M”) executed an Amended Master Power Purchase and Sale Agreement and a related Transaction Agreement, dated June 30, 2004. SPS-M and Lubbock Power & Light are parties to an Amended Master Power Purchase and Sales Agreement and two related Transaction Agreements, dated June 30, 2004, under which SPS-M purchases unit contingent power from Lubbock Power & Light. WTMPA and the WTMPA Members are parties to a Power Sales Agreement dated July 1, 1985, amended April 1, 1998, under which WTMPA Members purchase wholesale electric energy and capacity from WTMPA. SPP and SPS-M are parties to a Service Agreement for Network Integration Transmission Service (“Service Agreement”), and corresponding Network Operating Agreement (“NOA”) for the City of Lubbock, and SPP and SPS-M are parties to a Service Agreement and NOA for the Cities of Brownfield, Floydada and Tulia. The aforementioned agreements were accepted by the Commission in the following orders: *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,041 (2004); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER04-1088-001, et al. (Aug. 25, 2005); *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,001 (2008) (consolidating the docket with similar dockets, accepting the service agreement, and establishing hearing and settlement judge procedures); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,002 (2004).

⁶ SPS has turned over functional control of its transmission system to SPP as the RTO. WTMPA takes transmission service under the SPP Tariff. Therefore, consistent with Commission precedent, because SPP is the RTO with “operational and planning responsibility” for the SPS transmission system, SPP is included as a signatory to the Agreement. *See Am. Elec. Power Serv. Corp.*, 110 FERC ¶ 61,276, at P 8, *order on reh’g*, 112 FERC ¶ 61,128, at PP 10-14 (2005); *Cinergy Servs., Inc.*, 107 FERC ¶ 61,260, at P 12-16 (2004).

⁷ *See* WTMPA Agreement at Article 3.1.3. *See also id.* at Article 1.3.4, which provides that “[u]pon satisfaction of the conditions precedent . . . the Transmission Owners agree that all other terms and conditions of the Prior Interconnection Agreement are hereby superseded and cancelled for all purposes by this [WTMPA] Agreement and such Prior Interconnection Agreement will be automatically terminated and of no effect.”

December 31, 2009. Therefore, SPP asks that the WTMPA Agreement become effective on January 1, 2010, to coincide with the effective date of the notice of cancellation of the Prior Interconnection Agreement.

II. Description of the WTMPA Agreement

The WTMPA Agreement is necessary to enable the Parties to continue the operation of their transmission-to-transmission interconnections upon expiration of the Prior Interconnection Agreement. While there is no *pro forma* form for a transmission interconnection agreement in the SPP Tariff, many of the provisions in the WTMPA Agreement are similar in scope and application to other utility-to-utility transmission interconnection agreements previously accepted by the Commission.⁸ Below is a brief summary of the Articles of the WTMPA Agreement.

Article 1 provides a list of definitions for terms used throughout the WTMPA Agreement.⁹ Article 2 provides that the scope of the WTMPA Agreement is limited to terms and conditions of Interconnection Service between the Parties, and any other services must be separately arranged.¹⁰ Further, the scope of the WTMPA Agreement is based on WTMPA's and the WTMPA Members' descriptions of their facilities. Any modifications to these facilities will result in a modification to the WTMPA Agreement.¹¹ Article 3 provides that the initial term of the WTMPA Agreement is fifteen years ("Initial Period") and will continue thereafter from year to year, subject to termination six months prior to the end of the Initial Period and/or anniversary date.¹² Article 3 also includes a procedure for early termination.¹³ Article 4 specifies the Parties' procedures for

⁸ See, e.g., *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER09-1081-000 (June 16, 2009); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER08-1546-000 (Nov. 7, 2008); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER08-496-000 (Mar. 19, 2008); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER07-200-000 (Jan. 8, 2007); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER06-1060-000 (July 26, 2006); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER06-766-000 (May 15, 2006); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER06-447-000 (Feb. 16, 2006).

⁹ See WTMPA Agreement at Article 1.

¹⁰ See *id.* at Article 2.

¹¹ See *id.* at Article 2.2 and Exhibit "A".

¹² See *id.* at Article 3.2.

¹³ See *id.* at Article 3.3.

ownership, operation, and maintenance of their respective systems.¹⁴ Article 5 specifies that the service will commence under this WTMPA Agreement upon the effective date of the WTMPA Agreement, which is requested to be January 1, 2010.¹⁵ Article 6 provides other provisions detailing the Parties' operations and maintenance pertaining to the Parties' respective systems.¹⁶ The Parties intentionally omitted Article 7.¹⁷

Article 8 includes metering provisions.¹⁸ Article 9 provides the billing and payment provisions in the event that Customer requests SPS' assistance for repair or service on Customer's interconnection facilities.¹⁹ Article 10 contains notice provisions between the Parties for administrative matters.²⁰ Article 10 also sets forth provisions regarding the Operating Committee and the Parties' representatives that comprise the Operating Committee.²¹ Article 12 contains rules for the filing of the WTMPA Agreement and for any future modification to the WTMPA Agreement.²² Articles 11 and 13 contain provisions on force majeure and insurance, respectively.²³ Articles 14 and 15 contain provisions on the Parties' breach, cure, and/or default, as well as certain alternative dispute resolution procedures.²⁴ Article 16 includes language wherein each Party agrees to defend, indemnify, and hold each other harmless from all claims, demands, losses, liabilities, and expenses, including those arising out of another Party's negligence.²⁵ Article 16 also includes a provision granting a limitation on liability for SPP, and clarifying that SPP's involvement is limited to the sections of the WTMPA Agreement that may affect or involve SPP transmission service or SPP's role as a

¹⁴ See WTMPA Agreement at Article 4.

¹⁵ See *id.* at Article 5.

¹⁶ See *id.* at Article 6.

¹⁷ See *id.* at Article 7.

¹⁸ See *id.* at Article 8.

¹⁹ See *id.* at Article 9.

²⁰ See *id.* at Article 10.

²¹ See *id.*

²² See *id.* at Article 12.

²³ See *id.* at Article 11 and 13.

²⁴ See *id.* at Article 14 and 15.

²⁵ See *id.* at Article 16.1.

Commission-approved RTO.²⁶ Article 17 details the events whereby this WTMPA Agreement can be assigned by a Party.²⁷ Article 18 contains a list of miscellaneous provisions.²⁸

Finally, Exhibit A provides descriptions of the WTMPA Agreement's interconnections, as well as one-line diagrams illustrating the points of interconnection.²⁹

III. Effective Date and Request for Waiver

SPP requests an effective date of January 1, 2010, for the WTMPA Agreement. Pursuant to section 35.11 of the Commission's rules and regulations, 18 C.F.R. § 35.11, SPP requests waiver of the Commission's 60-day notice requirement set forth at 18 C.F.R. § 35.3. As indicated above, the Prior Interconnection Agreement includes a December 31st termination date, with a year-to-year rollover provision, and SPS is filing a notice of cancellation for the Prior Interconnection Agreement to be effective December 31, 2009. SPP attempted to work with SPS and WTMPA to submit the WTMPA Agreement at least sixty days prior to January 1, 2010, but the parties were unable to submit the filing by November 2, 2009, due to a press of other regulatory filings. Since SPS and WTMPA both support the effective date, and intend to terminate the Prior Interconnection Agreement, effective December 31, 2009, no party will be prejudiced by the proposed effective date for the WTMPA Agreement. Furthermore, good cause exists to grant waiver so that there will be no gap between the termination of the Prior Interconnection Agreement and the commencement of the WTMPA Agreement. Finally, waiver is appropriate because the WTMPA Agreement does not establish rates or charges for any jurisdictional services.³⁰

²⁶ See WTMPA Agreement at Article 16.5.

²⁷ See *id.* at Article 17.1.

²⁸ See *id.* at Article 18.

²⁹ See *id.* at Exhibit "A".

³⁰ See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992) ("*Central Hudson*") (stating that the Commission will generally grant waiver of the 60-day prior notice requirement for uncontested filings that do not change rates); see also *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (interpreting *Central Hudson* to mean "waiver of notice generally will be appropriate when an uncontested filing has no rate impact"). SPP notes that the WTMPA Agreement does contain language providing for the reimbursement of actual expenses for potential repair and maintenance work by the Parties, but that no such payments have been made under the WTMPA Agreement. See WTMPA Agreement at Article 9.

IV. Service, Notice, and Communication

SPP requests that all correspondence and communications with respect to this filing should be sent to, and that the Secretary include on the official service list, the following:

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V. Additional Information

A. Information Required by Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13:³¹

(1) Documents submitted with this filing:

In addition to this transmittal letter, SPP submits a clean version of the WTMPA Agreement as Exhibit I.

(2) Effective Date:

As noted above, SPP requests that the Commission grant an effective date of January 1, 2010.

³¹ Because the WTMPA Agreement does not involve any change in rates, the use of the abbreviated filing procedures as set forth in 18 C.F.R. § 35.13(a)(2)(iii) is appropriate.

(3) Requisite Agreements:

SPP and the Parties have all executed the WTMPA Agreement. No other agreements are necessary.

(4) Specifically Assignable Facilities Installed or Modified:

There are none.

VI. Conclusion

Accordingly, SPP requests that the Commission accept the WTMPA Agreement submitted herein, effective as of January 1, 2010.

Respectfully submitted,



Wendy N. Reed
Matthew K. Segers
Tyler R. Brown

**Attorneys for Southwest Power
Pool, Inc.**

EXHIBIT I

**TRANSMISSION
INTERCONNECTION AGREEMENT**

BETWEEN

**CITY OF LUBBOCK, TEXAS BY AND THROUGH ITS MUNICIPALLY
OWNED ELECTRIC UTILITY, LUBBOCK POWER & LIGHT; CITY OF
FLOYDADA, TEXAS; CITY OF BROWNFIELD, TEXAS; CITY OF TULIA,
TEXAS; THE WEST TEXAS MUNICIPAL POWER AGENCY**

AND

SOUTHWESTERN PUBLIC SERVICE COMPANY

AND

SOUTHWEST POWER POOL, INC.

Dated as of

September 24, 2009

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TRANSMISSION INTERCONNECTION AGREEMENT

This Transmission Interconnection Agreement ("Agreement"), dated as of September 24 2009, and to become effective as of satisfaction of the conditions precedent set forth in Section 3.1 hereof, is entered into by and between the CITY OF LUBBOCK, TEXAS BY AND THROUGH ITS MUNICIPALLY OWNED ELECTRIC UTILITY, LUBBOCK POWER & LIGHT; CITY OF FLOYDADA, TEXAS; CITY OF BROWNFIELD, TEXAS; CITY OF TULIA, TEXAS (collectively the "WTMPA Members"); the WEST TEXAS MUNICIPAL POWER AGENCY a Texas Municipal Corporation, ("WTMPA") (the WTMPA Members and WTMPA sometimes individually or collectively referred to as the "Customer"); SOUTHWESTERN PUBLIC SERVICE COMPANY, a New Mexico corporation (sometimes referred to as "Interconnection Provider" or "SPS") and it is acknowledged by SOUTHWEST POWER POOL, INC. ("SPP"), an Arkansas not-for-profit corporation and transmission service provider to WTMPA. WTMPA, each of the WTMPA Members, and the Interconnection Provider may hereinafter be referred to individually as a "Party" and collectively as the "Parties". WTMPA, the WTMPA Members and Interconnection Provider are sometimes collectively referred to as the "Transmission Owners".

RECITALS

WHEREAS, the Interconnection Provider is the transmission function of Southwestern Public Service Company which, *inter alia*, owns transmission assets in the State of Texas, subject to the regulatory jurisdiction of FERC; and

WHEREAS, the use of the Interconnection Provider's transmission assets is governed by applicable open access transmission tariffs on file with FERC; and

WHEREAS, the WTMPA Members are all engaged in the business of distributing and selling electric power and energy to retail consumers in their service areas respectively and the WTMPA Members have authorized WTMPA to control any and all bulk power system facilities owned or controlled by the WTMPA Members necessary to allow WTMPA to control the Customers' Interconnection Facilities; and

WHEREAS, the electrical transmission systems of the Transmission Owners are currently interconnected under the Prior Interconnection Agreement, which expired December 31, 2005, subject to extensions as herein provided, ratified and confirmed; and

WHEREAS, WTMPA and the separate SPS wholesale merchant function capacity as a supplier of electric energy and capacity (such separate merchant function herein after referred to as "SPS-M") are parties to an Amended Master Power Purchase and Sale Agreement and a related Transaction Agreement dated June 30, 2004, under which SPS-M provides total requirements wholesale service for the WTMPA Members (such Transaction Agreement hereinafter referred to as the "WTMPA Transaction Agreement"); and

WHEREAS, SPS-M and the City of Lubbock, Texas, through its Lubbock Power & Light Company, are parties to an Amended Master Power Purchase and Sales Agreement and two related Transaction Agreements, also all dated June 30, 2004, under which SPS-M purchases unit contingent power from the City of Lubbock; and

WHEREAS, WTMPA and the WTMPA Members are parties to a Power Sales Agreement dated July 1, 1985, amended April 1, 1998, under which WTMPA Members purchase wholesale electric energy and capacity from WTMPA; and

WHEREAS, the Transmission Owners desire to continue the operation of their transmission-to-transmission interconnections pursuant to the terms of this Agreement upon expiration of the Prior Interconnection Agreement; and

WHEREAS, SPP is a FERC-approved regional transmission organization and is a transmission service provider to WTMPA pursuant to a Service Agreement for Network Integration Transmission Service for delivery to the WTMPA Members under the SPP Tariff in effect and accepted for filing by FERC; and

WHEREAS, SPP and SPS-M are parties to a Service Agreement for Network Integration Transmission Service, originally dated July 15, 2004, amended on July 15, 2005, and amended on July 6, 2008 for the City of Lubbock; as well as a Service Agreement for Network Integration Transmission Service, originally dated July 8, 2004, amended on July 8, 2005, and amended on July 6, 2008 for the Cities of Brownfield, Floydada, and Tulia; and SPP, SPS-M, and Interconnection Provider are parties to concurrent Network Operating Agreements with respect to system operations for the WTMPA Members' load.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 – DEFINITIONS

1.1 **Rules of Construction.** The capitalized terms listed in this Article shall have the meanings set forth herein, whether in the singular or the plural or in the present or past tense. Other terms not listed in this Article shall have meanings as commonly used in the English language and, where applicable, in Good Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

1.2 **Good Faith and Fair Dealing.** The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement in light of the Tariff. Unless expressly provided otherwise in this Agreement or in the Tariff, (a) where the consent, approval, or similar action is required by any Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever any Party has the right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

1.3 **Other Agreements.** The Parties recognize and agree that this Agreement is entered into pursuant to and in accordance with Interconnection Provider's obligations as a transmission owner under the SPP Tariff and that Interconnection Provider is acting in such capacity in entering into this Agreement.

1.3.1 In the event and to the extent this Agreement is found to be inconsistent with the Tariff, the Tariff shall control.

1.3.2 In the event WTMPA or any of the WTMPA Members enter into any agreements with SPS or its affiliates that are not in SPS' capacity as a transmission owner under the SPP Tariff or with SPS-M in its capacity as a power marketer (e.g., power purchase, power sales, or retail service agreements), the Parties acknowledge and agree that such agreements shall be deemed to be separate and free-standing contracts that do not alter the terms of this Agreement. Customer expressly recognizes that, for purposes of this Agreement, the Interconnection Provider and SPS-M are functionally separate and SPS-M shall be deemed to be a separate contracting party for purposes of any other contracts entered into between any Customer and SPS-M.

1.3.3 This Agreement shall not be construed to create any rights between any Customer and Interconnection Provider for any purpose other than providing Interconnection Service.

1.3.4 The Transmission Owners recognize and agree that Service Schedule A to the Prior Interconnection Agreement is superseded and cancelled pursuant to the terms of the WTMPA Transaction Agreement. Upon satisfaction of the conditions precedent set forth in Section 3.1 hereof, the Transmission Owners agree that all other terms and conditions of the Prior Interconnection Agreement are hereby superseded and cancelled for all purposes by this Agreement and such Prior Interconnection Agreement will be automatically terminated and of no effect. Prior to the satisfaction of such conditions precedent, the terms of the Prior Interconnection Agreement shall remain in force and effect except for Service Schedule A thereof.

1.4 WTMPA Members Obligations and Consents. The Parties recognize that each WTMPA Member owns their own Interconnection Facilities as shown on Exhibit A.

1.4.1 WTMPA and each WTMPA Member covenants and agrees that WTMPA has obtained all rights necessary to (i) control, operate and maintain the WTMPA Member's Interconnection Facilities; and (ii) perform all of the Customer obligations under this Agreement without any requirement for WTMPA to seek or obtain subsequent authorization from any WTMPA Member.

1.4.2 Subject to satisfying the conditions precedent set forth in Section 3.1 hereof, the WTMPA Members covenant and agree that they have assigned or otherwise provided to WTMPA all authority necessary for WTMPA to (i) control, operate and maintain the Customer Interconnection Facilities; and (ii) perform all of the Customer obligations under this Agreement without any requirement for WTMPA to seek or obtain subsequent authorization from any WTMPA Member.

1.4.3 WTMPA and the WTMPA Members hereby consent to and concur with the filing of a notice of termination by Interconnection Provider with FERC for the Prior Interconnection Agreement to permit Interconnection Provider to fulfill the conditions precedent in Section 3.1.3.

1.5 Definitions. Each of the following terms shall have the meanings set forth below:

"Agreement" means this Transmission Interconnection Agreement dated as of September 4, 2009 when it becomes effective upon satisfaction of the conditions precedent specified in Section 3.1 hereof.

"Confidential Information" means a) any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, drawing, list, concept, customer information, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential Information by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise or b) any Critical Energy Infrastructure Information. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party on a confidential basis prior to the execution of this Agreement. Confidential Information shall not include information that the receiving Party can demonstrate: (i) is generally available to the public other than as a result of a disclosure by the receiving Party; (ii) was in the lawful possession of the receiving Party on a non confidential basis before receiving it from the disclosing Party; (iii) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, was under no obligation to the other Party to keep such information confidential; (iv) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; or (v) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Agreement, or (vi) is required to be disclosed by any federal or state government or agency or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement held in a court or agency of competent jurisdiction; provided that (y) the Parties have entered into a protective order approved by such court or agency or (z) a binding nondisclosure agreement is in effect with the proposed recipient of any Critical Energy Infrastructure Information. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as Confidential Information notifies the other Parties that such information no longer is confidential. Finally, for the purposes of this Agreement, information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential, provided, however, that this requirement shall not apply to information that is governed by FERC's Critical Energy Infrastructure Information or Standards of Conduct rules and regulations.

"Commission(s)" means any of the state or federal regulatory agencies having jurisdiction over WTMPA, and WTMPA Member and/or the Interconnection Provider, including FERC and the Public Utilities Commission of Texas ("PUCT") for services provided under this Agreement.

"Critical Energy Infrastructure Information" means information which is classified as critical energy infrastructure information under Part 388 of FERC's rules and regulations.

"Customer" shall have the meaning given in the Preambles.

"Customer Interconnection Facilities" means the transmission interconnection facilities and related equipment owned by a WTMPA Member or WTMPA or controlled and operated by WTMPA or any WTMPA Member, on the Customer's side of the Interconnection Point necessary to establish a physical interconnection between a Customer's existing electrical system and the Interconnection Provider's Interconnection Facilities, including but not limited to breakers, lines, bus work, land easements, relays, metering, communications circuits, and associated equipment and any replacement, upgrades, modification or additional equipment that any Customer may install due to equipment failure or to meet changed industry standards.