January 21, 2010

Amendments to the NERC-SPP Delegation Agreement to implement the performance of CMEP functions by SERC for the SPP Registered Functions

NERC-SPP Delegation Agreement

1. In **Exhibit A**, the following statement should be added:

   Within the SPP Region, compliance monitoring and enforcement functions with respect to reliability functions for which SPP is the registered entity are performed by SERC Reliability Corporation (SERC) pursuant to a contract between SPP and SERC dated as of [DATE].

2. In **Exhibit D**, Section 3.0, the current text ("SPP does not use any other decision-making bodies for its Compliance Monitoring and Enforcement Program.") would be deleted and replaced with:

   SPP RE has engaged the SERC Reliability Corporation (SERC) to oversee the compliance monitoring and enforcement responsibility within the SPP RE Region as related to SPP's compliance with Reliability Standards requirements that are applicable to the functions for which SPP is a Registered Entity.

3. In **Exhibit E**, Section 4, Application of Penalties, would be amended as follows:

   All penalty monies received by SPP RE ~~other than penalty monies received from an operational function or division of affiliated entity of SPP~~ shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. ~~Any penalty monies received from an operational function or division of affiliated entity of SPP RE shall be transmitted to or retained by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.~~

4. Section 8(k) of the NERC-SPP Delegation Agreement would be amended as follows (this amendment is necessary in addition to the amendment to **Exhibit E**, Sec. 4):

   (k) **Exhibit E** to this Agreement sets forth the mechanism through which SPP RE shall offset penalty monies it receives ~~(other than penalty monies received from an operational function or division or affiliated entity)~~ against its next year's annual budget for carrying out functions under this Agreement~~, and the mechanism by which SPP RE shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of SPP RE~~.

Southwest Power Pool

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Little Rock, AR 72205-3020
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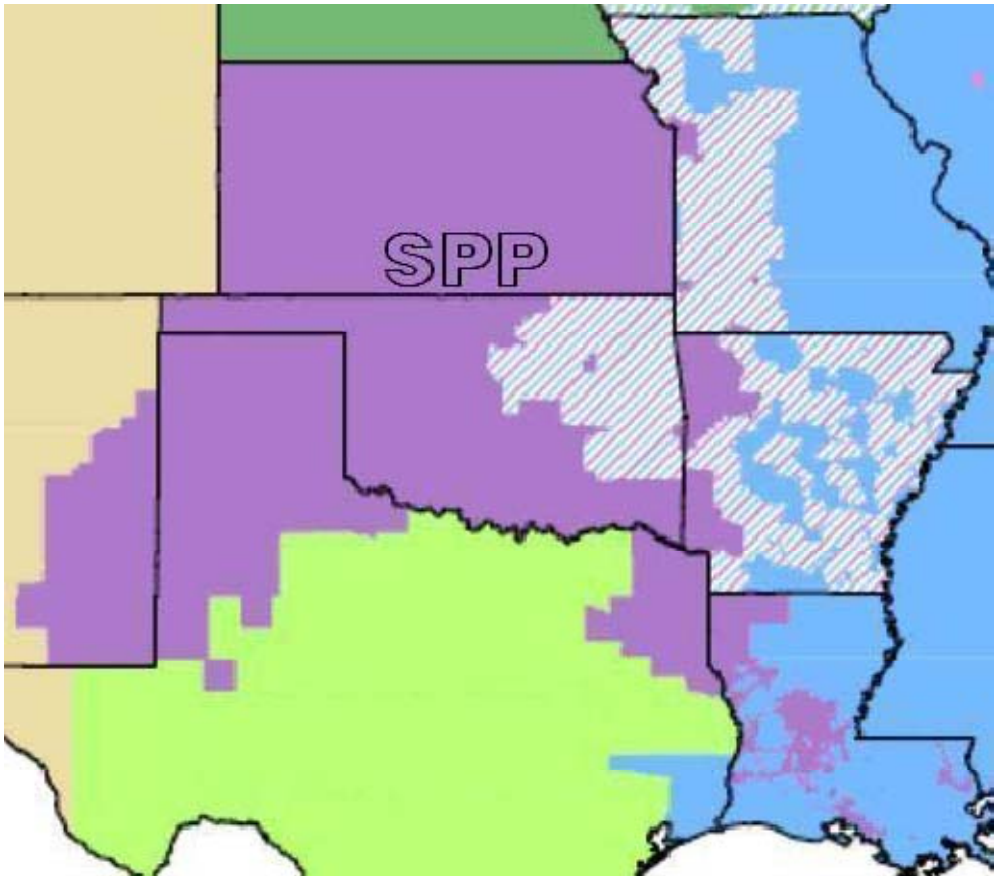
Regional Boundaries

Exhibit A
Regional Boundaries

The geographic boundaries of Southwest Power Pool (SPP) are determined by the service areas of its membership, comprised of investor-owned utilities, municipal, cooperative, state and federal systems, merchant electricity generators and power marketers.

SPP covers an area of approximately 255,000 square miles of service territory (purple region depicted below) in all or part of eight states: Arkansas, Kansas, Louisiana, New Mexico, Mississippi, Missouri, Oklahoma, and Texas.

Service provided by SPP members in areas which overlap with neighboring regions:
♦ The area in northeastern Oklahoma is served by Western Farmers Electric Cooperative, Oklahoma Gas & Electric Company, Oklahoma Municipal Power Authority, Grand River Dam Authority, and AEP West.
♦ The area in Arkansas is served by Arkansas Electric Cooperative Corporation, Oklahoma Gas & Electric Company, and AEP West.
♦ The area in western Missouri is served by Aquila, Empire District Electric Company, City Power & Light (Independence, MO), City Utilities (Springfield, MO), Grand River Dam Authority, Kansas City Power & Light Company, City Power & Light (Independence, MO), and Southwestern Power Administration.



Within the SPP Region, compliance monitoring and enforcement functions with respect to reliability functions for which SPP is the registered entity are performed by SERC Reliability Corporation (SERC) pursuant to a contract between SPP and SERC dated as of [DATE].

AMENDED AND RESTATED DELEGATION AGREEMENT BETWEEN NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION AND SOUTHWEST POWER POOL, INC.

AMENDED AND RESTATED DELEGATION AGREEMENT ("Agreement") made effective as of January 3, 2009, between the North American Electric Reliability Corporation ("NERC"), an organization certified by the Federal Energy Regulatory Commission ("Commission") pursuant to Section 215(c) of the Federal Power Act to establish and enforce Reliability Standards for the bulk power system, and the Southwest Power Pool, Inc. ("SPP"), an organization established to develop and enforce Reliability Standards within the geographic boundaries identified on **Exhibit A** to this Agreement, and for other purposes. NERC and SPP may be individually referred to herein as "Party" or collectively as "Parties."

WITNESSETH

WHEREAS, Subtitle A of the Electricity Modernization Act of 2005 added Section 215 to the Federal Power Act (16 U.S.C. § 824n) (hereafter "the Act") and, among other things, provides for the establishment of an electric reliability organization ("ERO") to develop and enforce Reliability Standards applicable to all owners, operators, and users of the bulk power system;

WHEREAS, the Commission has adopted regulations for the implementation of the Act set forth at Chapter I, Title 18, Code of Federal Regulations, Part 39, as adopted by Commission Order No. 672 in Docket No. RM05-30-000 on February 3, 2006 (114 FERC ¶ 61, 104; hereafter "Order 672");

WHEREAS, the Commission has certified NERC as the ERO that will, in accordance with the Act, establish and enforce Reliability Standards for the bulk power system, subject to certain delegation provisions described below;

WHEREAS, the Act recognizes the international interdependency of electric reliability within North America and envisions the ERO and such applicable Regional Entities as international organizations;

WHEREAS, the Act and Section 39.8 of the Commission's regulations provide for the delegation by the ERO of authority to propose and enforce Reliability Standards to regional entities such as SPP provided that:

(A) The Regional Entity is governed by —

(i) an independent board;

(ii) a balanced stakeholder board; or

(iii) a combination independent and balanced stakeholder board.

(B) The Regional Entity otherwise satisfies the provisions of Section 215(c)(1) and (2) of the Act; and

(C) The agreement promotes effective and efficient administration of bulk power system reliability;

WHEREAS, certain Regional Entities are organized on an Interconnection-wide basis and are therefore entitled to the presumption set forth in the Act that: "[t]he ERO and the Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk power system reliability and should be approved";

WHEREAS, the Act further provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest;

WHEREAS, SPP is not organized on an Interconnection-wide basis and therefore is not entitled to the rebuttable presumptions accorded such an entity;

WHEREAS, NERC will work through SPP to carry out certain of its activities in furtherance of its responsibilities as the electric reliability organization under the Act; and

WHEREAS, NERC has concluded that SPP meets all requirements of the Act, the Commission's regulations, and the NERC Rules of Procedure as approved by the Commission ("NERC Rules") necessary to qualify for delegation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, NERC and SPP, agree as follows:

1. Definitions. The capitalized terms used in this Agreement shall be defined as set forth in the Act, the Commission's regulations, or the NERC Rules or, if not so defined, shall be defined as follows:

(a) Breach means (i) the failure of a Party to perform or observe any material term, condition or covenant of the Agreement or (ii) a representation in Section 2 of the Agreement shall have become materially untrue.

(b) Cross-Border Regional Entity means a Regional Entity that encompasses a part of the United States and a part of Canada or Mexico.

(c) Delegated Authority means the authority delegated by NERC to SPP to propose and enforce Reliability Standards pursuant to the Act.

(d) SPP Rules means the bylaws, a rule of procedure or other organizational rule or protocol of SPP.

(e) Reliability Standard means a requirement approved by the Commission under Section 215 of the Federal Power Act to provide for reliable operation of the bulk power system. The term includes requirements for the operation of existing bulk power system facilities, including cyber security protection, and the design of planned additions or modifications to such facilities to the extent necessary for reliable operation of the bulk power system; but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

2. Representations.

(a) For purposes of its Delegated Authority, SPP hereby represents and warrants to NERC that:

(i) SPP is and shall remain during the term of this Agreement validly existing and in good standing pursuant to all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder. SPP is governed in accordance with its bylaws by an independent board. Pursuant to these bylaws, no two industry sectors can control any SPP decision and no single industry sector can veto any SPP decision. The relevant portions of such bylaws are attached hereto in **Exhibit B**[1], and as so attached are in full force and effect. No other such corporate governance documents are binding upon SPP.

(ii) As set forth in **Exhibit C** hereto[2], SPP has developed a standards development procedure, which provides the process that SPP may use to develop Regional Reliability Standards [and Regional Variances, if the regional entity is organized on an Interconnection-wide basis] that are proposed to NERC for adoption.

(iii) As set forth in **Exhibit D** hereto[3], SPP has developed a regional compliance enforcement program, which provides for the enforcement of Reliability Standards within its geographic boundaries.

(b) NERC hereby represents and warrants to SPP that:

(i) It is and shall remain during the term of this Agreement validly existing and in good standing pursuant all applicable laws relevant to this Agreement and that no applicable law, contract or other legal obligation prevents it from executing this Agreement and fulfilling its obligations hereunder; and

(ii) It has been certified as the ERO by the Commission pursuant to the Act.

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[1] The **Exhibit B** from each Regional Entity shall meet the requirements contained in **Exhibit B** to this pro forma Agreement.

[2] The **Exhibit C** from each Regional Entity shall meet the requirements contained in **Exhibit C** to this pro forma Agreement.

3. Covenants.

(a) During the term of this Agreement, SPP shall maintain and preserve its qualifications for delegation pursuant to the Act and shall not amend the SPP Rules without NERC's approval, which shall not be unreasonably withheld or delayed and which shall, in the case of a Regional Entity organized on an Interconnection-wide basis, be governed by the presumptions provided for in Section 215(d)(2) and (e)(4)(C) of the Act, and be subject to any required Commission approval.

(b) During the term of this agreement, NERC shall maintain its qualification and status as the ERO pursuant to the Act and, subject to the provisions of Sections 16 and 17 of this Agreement, NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations or programs of SPP under this Agreement without first obtaining the consent of SPP, which consent shall not be unreasonably withheld or delayed.

(c) During the term of this agreement, NERC and SPP shall adhere to and require that all participants in their respective activities under this Agreement follow and comply with the NERC Antitrust Compliance Guidelines.

4. Delegation of Authority.

(a) Based upon the representations, warranties and covenants of SPP in Sections 2 and 3 above, the corporate governance documents set forth in **Exhibit B**, the standards development process set forth in **Exhibit C**, and the regional compliance enforcement program set forth in **Exhibit D**, NERC hereby delegates authority, pursuant to Section 215(e)(4) of the Act, to SPP for the purpose of proposing Reliability Standards to NERC, as set forth in Section 5 of this Agreement, and enforcing Reliability Standards, as set forth in Section 6 of this Agreement, within the geographic boundaries set forth on **Exhibit A**. No further redelegation of authority or responsibility, in total or in part, under this Agreement is allowed without NERC's express consent.

(b) For Cross-Border Regional Entities, the authority delegated by this Agreement shall extend only to the portion of the region identified on **Exhibit A** that is within the United States. Any delegation of authority by governmental authorities in Canada or Mexico shall be

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[3] The **Exhibit D** from each Regional Entity shall meet the requirements contained in **Exhibit D** to this pro forma Agreement.

governed by a separate agreement and is outside the scope of this Agreement; provided, however, that both SPP and NERC shall endeavor to ensure that this Agreement and such separate agreements are compatible.

(c) As a condition to this delegation of authority and subject to the provisions of section 16 of this Agreement, SPP shall comply with the applicable provisions of NERC's Certificate of Incorporation, Bylaws, Rules of Procedure, and Reliability Standards, as from time to time adopted, approved, or amended.

5. Reliability Standards.

(a) In connection with its Delegated Authority, SPP shall be entitled to:

(i) propose Reliability Standards, Regional Variances, or modifications thereof to NERC, which shall be considered by NERC through an open and inclusive process for proposing and adopting Reliability Standards that affords SPP reasonable notice and opportunity to be heard; and

(ii) develop Regional Reliability Standards [and Regional Variances, if Regional Entity is organized on an Interconnection-wide basis] through SPP's process as set forth in **Exhibit C**. Proposals approved through SPP's process shall be reviewed by the NERC Board of Trustees after NERC provides notice and an opportunity for interested persons to comment. In the case of a proposal from a Regional Entity organized on an Interconnection-wide basis, comments shall be limited to the factors identified in NERC Rule 313, section 3.1 as it may be amended from time to time. The NERC board of trustees shall promptly thereafter consider such proposed Regional Reliability Standard or Regional Variance, applying the rebuttable presumption described in subsection 5(b) if the proposed Regional Reliability Standard or Regional Variance is from a Regional Entity organized on an Interconnection-wide basis, and either approve the proposed standard and submit it to the Commission for approval, or disapprove it in writing setting forth its reasons. SPP may appeal any disapproval of a proposed Regional Reliability Standard or Regional Variance to the Commission.

(b) Pursuant to Section 215(d)(3) of the Act, NERC shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Regional Reliability Standard or Regional Variance or modification thereof to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential,

and in the public interest. Any person challenging such proposal from the INTERCONNECTION-WIDE REGIONAL ENTITY shall have the burden of proof. NERC shall not find that this presumption has been rebutted except based upon substantial evidence that has been disclosed to, and been subject to comment by, the INTERCONNECTION-WIDE REGIONAL ENTITY during NERC's review of the proposal.

6. <u>Enforcement</u>.

(a) In connection with its delegated authority pursuant to this Agreement, SPP shall enforce Reliability Standards (including Regional Reliability Standards and Regional Variances) within the geographic boundaries set forth in **Exhibit A** through the compliance enforcement program set forth in **Exhibit D**. NERC and SPP agree that this program meets all applicable requirements of the Act, Order 672 and the Commission's regulations, including, *inter alia*, the requirement for an audit program pursuant to Section 39.7(a) of the Commission's regulations, the assessment of penalties pursuant to Section 39.7(c) through 39.7(g) of the Commission's regulations and the requirements for due process. SPP may not change its compliance enforcement program set forth in **Exhibit D** absent NERC's approval, which shall not be unreasonably withheld or delayed. Subject to the rights and limitations of Sections 16 and 17 of this Agreement, SPP agrees to comply with the NERC Rules in implementing this program.

(b) SPP shall report promptly to NERC any self-reported violation or investigation of a violation or an alleged violation of a Reliability Standard and its eventual disposition. Such report shall include the owner's, operator's, or user's name, which Reliability Standard or Reliability Standards were violated or allegedly violated, when the violation or alleged violation occurred, other pertinent facts about the violation including circumstances surrounding the violation with any known risk to the bulk power system, when the violation was or will be mitigated, the name of a person knowledgeable about the violation or alleged violation to serve as a point of contact with the Commission, and any other information required by NERC compliance program procedures. NERC shall promptly forward such report to the Commission. NERC and SPP shall cooperate in filing such periodic summary reports as the Commission shall from time to time direct on violations of Reliability Standards and summary analyses of such violations.

(c) Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the owner, operator, or user of the bulk power system violated a Reliability Standard or by a settlement or other negotiated disposition. The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the bulk power system if publicly disclosed shall be nonpublic unless the Commission directs otherwise.

(d) All appeals of penalties imposed by SPP shall be filed with NERC, in accordance with the NERC Rules.

(e) SPP shall maintain the capability to conduct investigations of potential violations of Reliability Standards and to conduct such investigations in a confidential manner.

(f) SPP shall maintain a program of proactive enforcement audits including procedures for spot-checks of self-reported compliance and periodic audits of all responsible entities as defined in **Exhibit D**.

(g) As part of its compliance enforcement program, SPP shall maintain a conflict of interest policy that assures the integrity of such program and the independence of the compliance program staff from those subject to enforcement actions.

(h) As often as NERC deems necessary, but no less than every three years, NERC shall review SPP's compliance enforcement program to ensure that: (i) the program meets all applicable legal requirements; (ii) actual practices reflect the requirements; and (iii) the program administered pursuant to the Delegated Authority promotes consistent interpretations across North America of Reliability Standards and comparable levels of sanctions and penalties to violations of Reliability Standards constituting comparable levels of threat to reliability of the bulk power system.

(i) SPP shall modify its compliance enforcement program as needed to reflect additions to, deletions from, or modifications of Reliability Standards and, subject to the rights and limitations of Sections 16 and 17 of this Agreement, shall modify its compliance enforcement program as needed: (i) to reflect amendments to the NERC Rules; (ii) to comply with NERC directives resulting from the review of compliance enforcement programs as provided in Section 6(h) of this Agreement; or (iii) to resolve a conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission.

(j) NERC shall conduct a review with the Regional Entities that provides for the exchange of information on practices, experiences, and lessons learned in the implementation of compliance enforcement programs.

7. **Delegation-Related Services.** NERC will engage SPP on its behalf to carry out certain of its activities that are in furtherance of its responsibilities as the ERO under the Act or in support of delegated functions, as specified in the NERC Rules and listed on **Exhibit E**.

8. **Funding.** SPP and NERC shall ensure that the delegated functions and related activities listed on **Exhibit E** have reasonable and adequate funding and resources by undertaking the following:

(a) NERC shall fund SPP activities necessary for SPP to carry out its Delegated Authority under this Agreement, including the functions listed on **Exhibit E**, and shall not impose any obligation or requirement regarding Delegated Authority upon SPP without providing appropriate funding to carry out such mandates;

(b) SPP and NERC agree that costs of carrying out SPP's responsibilities under the Delegation Agreement will be equitably allocated among end users within the geographic boundaries described in **Exhibit A** and recovered through a formula based on net energy for load, or through such other formula as is proposed by SPP and approved by NERC and the Commission. If SPP proposes to use a formula other than net energy for load beginning in the following year, SPP shall submit the proposed formula to NERC in sufficient time that NERC may review and approve the proposed formula and file it with the Commission for approval by May 15, and the proposed formula shall be effective for the following year if approved by the Commission on or before the date the Commission approves the annual business plan and budget submitted by NERC and SPP to the Commission pursuant to 18 C.F.R. §39.4 for such year;

(c) NERC will ensure that the costs for its responsibilities are first allocated fairly among the interconnections and regions according to the applicability of this work to those interconnections and regions, and then equitably among the end users of the applicable interconnections and regions as appropriate. Allocation on a net energy for load basis will be presumed to satisfy this equitability requirement.

(d) NERC shall provide SPP with the form for budget submittal no later than April 30 of the prior year.

(e) SPP shall submit its annual budget for carrying out its Delegated Authority functions and related activities listed on **Exhibit E**, as well as all other SPP activities and funding to NERC no later than June 1 of the prior fiscal year such that NERC may submit its budget to the Commission 130 days in advance of the beginning of each fiscal year. The SPP budget submission shall include supporting materials, including SPP's complete business plan and organization chart, explaining the proposed collection of all dues, fees and charges, and the proposed expenditure of funds collected in sufficient detail to justify the requested funding collection and budget expenditures. NERC shall develop, in consultation with the Regional Entities, a reasonable and consistent system of accounts, with a level of detail and record keeping comparable to the Commission's Uniform System of Accounts and sufficient to allow the Commission to compare each Commission-approved NERC fiscal year budget with the actual results at the NERC and Regional Entity level. SPP shall follow NERC's prescribed system of accounts except to the extent that NERC permits a departure from the prescribed system of accounts. NERC shall make an informational filing with the Commission describing any such waiver it permits and providing an explanation supporting the permitted departure.

(f) SPP's funding system shall include reasonable reserve funding for unforeseen and extraordinary expenses and other contingencies, consistent with generally accepted accounting principles.

(g) NERC shall review and approve SPP's budget for meeting its responsibilities under the Delegation Agreement.

(h) SPP shall submit unaudited quarterly interim financial statements in form provided by NERC no later than 20 days after the end of the fiscal quarter (March 31, June 30, September 30, and December 31).

(i) SPP shall submit audited financial statements annually including supporting materials in a form provided by NERC no later than 150 days after the end of the fiscal year.

(j) NERC shall have the right to review from time to time, in reasonable intervals but no less than every three years, the financial records of SPP in order to ensure that the documentation fairly represents in all material respects appropriate funding under this Agreement.

(k) **Exhibit E** to this Agreement sets forth the mechanism through which SPP RE shall offset penalty monies it receives ~~(other than penalty monies received from an operational function or division or affiliated entity)~~ against its next year's annual budget for carrying out functions under this Agreement~~, and the mechanism by which SPP shall transmit to NERC any penalty monies received from an operational function or division or affiliated entity of SPP RE~~.

9. **Assignment**. This Agreement may be assigned by either Party only with the prior written consent of the other, which consent shall be granted or withheld in such non-assigning Party's sole discretion, subject to approval by the Commission. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. SPP may not delegate in whole or in part its Delegated Authority to any other entity; provided, however, that nothing in this provision shall prohibit SPP from contracting with other entities to assist it in carrying out its Delegated Authority, provided SPP retains control and responsibility for such Delegated Authority.

10. **Default and Cure**. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party (the "Default Notice"). Subject to a suspension of the following deadlines as specified below, the breaching Party shall have thirty (30) calendar days from receipt of the Default Notice within which to cure such Breach; provided however, that if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default Notice; and, if cured within such time, the Breach specified in such notice shall cease to exist. Subject to the limitation specified in the following sentence, if a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the nonbreaching Party shall have the right to declare a default and terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder. The deadlines for cure and the right to declare a default and terminate this Agreement shall be suspended during the pendency of any efforts or proceedings in accordance with Section 17 of this Agreement to resolve a dispute as to whether a Breach has occurred. The provisions of this article will survive termination of this Agreement.

11. <u>Term and Termination</u>.

(a) This Agreement is effective as of January 3, 2009 pursuant to the December 19, 2008 order of the Federal Energy Regulatory Commission (125 FERC ¶61,330).

(b) The initial term of the Agreement shall be three (3) years from the original effective date of May 2, 2007, prior to which time NERC shall conduct an audit pursuant to subsections 6(e) and 7(i) to ensure that SPP continues to meet all applicable statutory and regulatory requirements necessary to maintain its eligibility for delegation. If SPP meets such requirements, this Agreement may be renewed for another five (5) year term. If this Agreement is not renewed or becomes subject to termination for any reason, the Parties shall work to ensure a transition of SPP's Delegated Authority to NERC or to another eligible entity. The termination of this Agreement shall not take effect until such transition has been effected, unless the transition period exceeds one year, at which time SPP may unilaterally terminate.

(c) If any provision of this Agreement, or the application thereof to any person, entity or circumstance, is held by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, or if a modification or condition to this Agreement is imposed by a regulatory authority exercising jurisdiction over this Agreement, the Parties shall endeavor in good faith to negotiate such amendment or amendments to this Agreement as will restore the relative benefits and obligations of the signatories under this Agreement immediately prior to such holding, modification or condition. If either Party finds such holding, modification or condition unacceptable and the Parties are unable to renegotiate a mutually acceptable resolution, either Party may unilaterally terminate this Agreement. Such termination shall be effective one year following written notice by either Party to the other Party and to the Commission, or at such other time as may be mutually agreed by SPP and NERC.

(d) Notwithstanding any termination of this Agreement, provisions contained in Limitation of Liability (Section 12), No Third Party Beneficiaries (Section 13) and Confidentiality (Section 14) shall survive this Agreement in accordance with their terms until sixty (60) days following the expiration of any applicable statute of limitations.

12. <u>Limitation of Liability</u>. SPP and NERC agree not to sue each other or their directors, officers, employees, and persons serving on their committees and subgroups based on any act or

omission of any of the foregoing in the performance of duties pursuant to this Agreement or in conducting activities under the authority of Section 215 of the Act, other than seeking a review of such action or inaction by the Commission. NERC and SPP shall not be liable to one another for any damages whatsoever, including without limitation, direct, indirect, incidental, special, multiple, consequential (including attorneys' fees and litigation costs), exemplary, or punitive damages arising out of or resulting from any act or omission associated with the performance of the SPP's or NERC's responsibilities under this Agreement or in conducting activities under the authority of Section 215 of the Act, except to the extent that the SPP or NERC is found liable for gross negligence or intentional misconduct, in which case SPP or NERC shall not be liable for any indirect, incidental, special, multiple, consequential (including without limitation attorneys' fees and litigation costs), exemplary, or punitive damages.

13. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

14. **Confidentiality**. During the course of the Parties' performance under this Agreement, a Party may receive Confidential Information, as defined in Section 1500 of NERC's Rules of Procedure. Except as set forth herein, the Parties agree to keep in confidence and not to copy, disclose, or distribute any Confidential Information or any part thereof, without the prior written permission of the issuing Party, unless disclosure is required by subpoena, law, or other directive of a court, administrative agency, or arbitration panel, in which event the recipient hereby agrees to provide the Party that provided the Confidential Information with prompt notice of such request or requirement in order to enable such issuing Party to (a) seek an appropriate protective order or other remedy, (b) consult with the recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (c) waive compliance, in whole or in part, with the terms of this Section. In the event a protective order or other remedy is not obtained or the issuing Party waives compliance with the provisions, the recipient agrees to furnish only that portion of the Confidential Information which the recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. In addition, each Party shall ensure that its officers, trustees, directors, employees, subcontractors and

subcontractors' employees, and agents to whom Confidential Information is exposed are under obligations of confidentiality that are at least as restrictive as those contained herein. This confidentiality provision does not prohibit reporting and disclosure as directed by NERC, as set forth in Section 6 of this Agreement.

15. **Amendment**. Neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed with and approved by the Commission.

16. **Amendments to the NERC Rules.** NERC shall not adopt amendments to the NERC Rules that conflict with the rights, obligations, or programs of SPP under this Agreement without first obtaining the consent of SPP, which consent shall not be unreasonably withheld or delayed. To the extent SPP does not consent, NERC shall have the right to invoke the dispute resolution provisions of Section 17 and, if such effort fails to resolve the dispute, to petition the Commission to adopt the amendment to the NERC Rules. To the extent that the Commission issues an order amending or materially affecting the rights or obligations of SPP under this Agreement, SPP shall have the option, exercisable no later than 60 days after issuance of such order, to terminate this Agreement. Such termination shall be effective one year following written notice by SPP to NERC and the Commission, or at such other time as may be mutually agreed by SPP and NERC.

17. **Dispute Resolution**. In the event a dispute arises under this Agreement between NERC and SPP, representatives of the Parties with authority to settle the dispute shall meet and confer in good faith in an effort to resolve the dispute in a timely manner. In the event the designated representatives are unable to resolve the dispute within thirty (30) days or such other period as the Parties may agree upon, each Party shall have all rights to pursue all remedies, except as expressly limited by the terms of this Agreement. Neither Party shall have the right to pursue other remedies until the Dispute Resolution procedures of this Section 17 have been exhausted. This Section 17 shall not apply to enforcement actions against individual entities.

18. **Notice**. Whether expressly so stated or not, all notices, demands, requests, and other communications required or permitted by or provided for in this Agreement shall be given in writing to a Party at the address set forth below, or at such other address as a Party shall designate for itself in writing in accordance with this Section, and shall be delivered by hand or reputable overnight courier:

If to NERC:	If to SPP:
North American Electric Reliability Corporation 116-390 Village Blvd. Princeton, NJ 08540-5721 Attn: David Nevius Facsimile: (609) 452-9550	Southwest Power Pool, Inc. 415 N. McKinley Suite 140 Little Rock, AR 72205 Attn: Michael Desselle Facsimile: (501) 664-9553

19. **Governing Law.** When not in conflict with or preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of New Jersey without giving effect to the conflict of law principles thereof. The Parties recognize and agree not to contest the exclusive or primary jurisdiction of the Commission to interpret and apply this Agreement; provided however that if the Commission declines to exercise or is precluded from exercising jurisdiction of any action arising out of or concerning this Agreement, such action shall be brought in any state or federal court of competent jurisdiction in New Jersey. All Parties hereby consent to the jurisdiction of any state or federal court of competent jurisdiction in New Jersey for the purpose of hearing and determining any action not heard and determined by the Commission.

20. **Headings.** The headings and captions in this Agreement are for convenience of reference only and shall not define, limit, or otherwise affect any of the terms or provisions hereof.

21. **Savings Clause**. Nothing in this Agreement shall be construed to preempt or limit any authority that SPP may have to adopt reliability requirements or take other actions to ensure reliability of the bulk power system within the geographic boundaries described in **Exhibit A** that are outside the authority delegated from NERC, as long as such reliability requirements and actions are not inconsistent with Reliability Standards applicable to the region described in

Exhibit A and do not result in a lessening of reliability outside the region described in **Exhibit A**.

22. **Entire Agreement.** This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

23. **Execution of Counterparts**. This Agreement may be executed in counterparts and each shall have the same force and effect as the original.

NOW THEREFORE, the parties have caused this Agreement to be executed by its duly authorized representatives, effective as of the date first above written.

NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION	SOUTHWEST POWER POOL, INC.
By: _____	By: _____
Name: David A. Whiteley	Name: Nicholas A. Brown
Title: Executive Vice President	Title: President
Date: _____, 2009	Date: _____, 2009

EXHIBIT D – COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.0 REGIONAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM

1.1 Obligations of SPP

SPP will implement the NERC Compliance Monitoring and Enforcement Program (Appendix 4C to the NERC Rules of Procedure) to monitor and enforce compliance with Reliability Standards by the owners, operators, and users within **SPP's** geographic boundaries set forth on **Exhibit A** of this Agreement, subject to any deviations from the NERC Compliance Monitoring and Enforcement Program described in Section 1.2 below (the "Compliance Program").

1.2 Deviations from the NERC Compliance Monitoring and Enforcement Program

SPP's Compliance Monitoring and Enforcement Program has no deviations from the NERC Compliance Monitoring and Enforcement Program.

2.0 REGIONAL HEARING OF COMPLIANCE MATTERS

SPP shall establish and maintain a hearing body with authority to conduct and render decisions in compliance hearings in which a Registered Entity may contest a finding of alleged violation, proposed penalty or sanction, or a proposed mitigation plan, which shall be **SPP's** Regional Entity Trustees.

3.0 OTHER DECISION-MAKING BODIES

SPP RE has engaged the SERC Reliability Corporation (SERC) to oversee the compliance monitoring and enforcement responsibility within the SPP RE Region as related to SPP's compliance with Reliability Standards requirements that are applicable to the functions for which SPP is a Registered Entity.

Exhibit E — Funding

1. Scope of activities funded through the ERO funding mechanism

SPP shall include in its annual budget submission to NERC amounts for costs it will incur in support of delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in the NERC Rules. These activities shall include:

- Reliability Standard Development (Section 300)
- Compliance Enforcement (Section 400)
- Organization Registration and Certification (Section 500)
- Reliability Readiness Evaluation and Improvement (Section 700)
- Reliability Assessment and Performance Analysis (Section 800) (including necessary data gathering activities)
- Training and Education (Section 900)
- Situational Awareness and Infrastructure Security (Section 1000)

2. Allocation of Costs

SPP shall allocate its dues, fees and other charges for its activities pursuant to the delegation agreement among all load-serving entities on the basis of net-energy-for load, unless a different method(s) of allocating and calculating such dues, fees and charges has been submitted to and approved by NERC and the Commission in accordance with Section 8(b) of the delegation agreement. SPP shall submit to NERC annually at the same time its submits its budget request a list of the load-serving entities within its geographic boundaries and their proportionate net energy for load, and such other data and information as is necessary to allocate and calculate SPP's dues, fees and charges under any such different method(s) of allocation and calculation that will be used.

3. Collection of Funding

(a) NERC shall submit invoices to the load-serving entities identified by SPP covering the NERC and SPP budgets approved for collection.

NERC shall pursue any non-payments and shall request assistance from applicable governmental authorities as necessary to secure collection.

(b) Upon approval of the annual funding requirements by applicable governmental authorities, NERC shall fund SPP's costs identified in Section 1 of this Exhibit E in four equal quarterly payments.

4. Application of Penalties

All penalty monies received by SPP RE, ~~other than penalty monies received from an operational function or division or affiliated entity of SPP~~ shall be applied as a general offset to the entity's budget requirements for U.S.-related activities under this Agreement for the

subsequent fiscal year. Funds from financial penalties shall not be directly applied to any program maintained by the investigating entity. ~~Any penalty monies received from an operational function or division or affiliated entity of SPP shall be transmitted to or retained by NERC and shall be used by NERC as a general offset to NERC's budget for its activities as the ERO under the Act for the following year.~~

5. Budget and Funding for SPP's Non-Statutory Activities

In addition to SPP's delegated activities and activities that are in furtherance of NERC's responsibilities as the ERO under the Act, as specified in Section 1 of this **Exhibit E** (such functions and activities referred to in this Section 5 as "statutory activities"), SPP performs the following other functions and activities (such other functions and activities being referred to herein as "non-statutory activities"):

SPP's performs non-statutory activities as a Regional Transmission Organization ("RTO"). As a RTO, SPP is mandated by the Commission to ensure reliable supplies of power, adequate transmission infrastructure, and competitive wholesale prices of electricity. In furtherance of this mandate, SPP's specific non-statutory activities are the following primary services:

1. Tariff Administration: Independent administration of the Open Access Transmission Tariff that provides one-stop shopping for regional transmission service with consistent rates and terms.

2. Reliability Coordination: SPP monitors power flow throughout our footprint. We anticipate problems and take preemptive action to mitigate operating limit violations. SPP coordinates regional response in emergency situations or blackouts.

3. Regional Scheduling: SPP ensures that the amount of power sent is coordinated and matched with power received. SPP's regional scheduling service reduces the number of entities with which SPP members and customers have to coordinate.

4. Market Operations: SPP administers an Energy Imbalance Marketplace, monitors resource/load balance and ensures that less expensive power is used to serve load before expensive power, all while ensuring system reliability is met.

5. Expansion Planning: SPP's planning process seeks to identify system limitations and develop transmission upgrades for increased capacity.

6. Contract Services: SPP provides reliability, tariff administration, and scheduling for non-members on a contract basis.

SPP shall employ the following methods and procedures to (i) keep its funding mechanisms for its statutory activities separate from its funding mechanisms for its non-statutory activities and (ii) record the costs it incurs in the performance of its non-statutory activities separate from the costs it incurs in the performance of its statutory activities:

(i) Separation of funding sources for statutory activities and non-statutory activities. As a RTO, SPP is a public utility under the Federal Power Act, and is required to submit its budget to the Commission. The Commission already has approved SPP's RTO activities and has ordered that SPP's budgets be filed with the Commission.

SPP's non-statutory activities are funded separately from its Regional Entity statutory activities through the imposition of a Commission-approved Tariff Administration Fee charged by SPP to all load under the SPP Open Access Tariff, except for Contract Services activities, which are funded by contract fees. Additionally, SPP's members are assessed an annual membership fee.

SPP shall provide its budget for such non-statutory activities to NERC at the same time that SPP submits its annual budget to FERC. SPP agrees that no costs of non-statutory activities are to be included in the calculation of SPP's dues, fees, and other charges for its statutory activities.

As provided in section 3(b) of this Exhibit E, on a quarterly basis, SPP will invoice NERC, an amount equal to one-fourth of the current year approved annual funding amount for SPP's statutory activities. Upon receipt of payment from NERC, SPP will deposit these funds into an account established solely to receive and hold funding received from NERC pursuant to SPP's performance of statutory activities under the Delegation Agreement. On a monthly basis, all expenses incurred by SPP for statutory activities and for non-statutory activities are recorded and paid from the SPP operating account. Throughout the year, as expenses incurred for SPP statutory activities are paid from the SPP operating account, transfers are made from the account established solely to receive and hold funding received from NERC to the SPP operating account in the amounts of payments made for expenses incurred for SPP statutory activities.

(ii) Separation of costs of statutory activities and non-statutory activities. All employees performing functions directly attributed to SPP's delegated responsibilities who also perform functions related to SPP's non-statutory activities will utilize a time tracking system to accurately reflect their time spent on statutory activities. Periodically, but no less frequently than annually, SPP will input the time associated with its direct function staff performing statutory activities into a cost calculation model. Specific, direct costs attributable to the direct function staff performing statutory activities are salary, SPP-paid medical insurance, Medicare and Social Security taxes, and other SPP-paid benefits. These costs are then combined with other directly assignable costs of statutory activities, such as travel, meetings, contractors, professional services, fees and expenses of Regional Entity independent trustees, and other direct administrative expenses, and reported on the NERC Statement of Activities (formerly the NERC Treasurer's Report).

In addition, an allocation of SPP overhead costs to statutory activities is calculated and the allocated overhead costs are recorded on the NERC Statement of Activities. These overhead costs are shared throughout the SPP organization and include costs for payroll and accounts payable processing, human resources and benefits management, accounting, information technology, executive leadership, corporate affairs and communications, office costs and

other support services and expenditures. This allocation is calculated using a standard hourly rate multiplied by the number of SPP staff hours spent directly performing SPP's statutory activities. The hourly rate for allocated overhead costs is developed using SPP's current year operating budget, by separating SPP's shared services support costs which support all of SPP's functions (*i.e.*, the costs for the activities identified in the second sentence of this paragraph) from SPP's operational resource pool. The total shared services support costs are then divided by estimated total annual available work hours for SPP's operational resource pool. The average annual employee utilization rate assumes each employee works an eight-hour work day with adjustments to reflect SPP's employment policies related to vacation allotment, SPP holidays and other non-productive leave.

The total expenses for statutory activities in a month as recorded on the NERC Statement of Activities are used to determine the amount of transfer to be made to the SPP operating account to reimburse the SPP operating account for the payment of expenses of SPP's statutory activities.