



to negotiate with protesting GFA parties “to address all GFAs within the Integrated Marketplace construct” before market launch,<sup>4</sup> noting that if such negotiations failed, “a carve-out could be consistent with Commission precedent.”<sup>5</sup>

On June 6, 2013, the Commission established settlement judge procedures to provide a forum for Omaha Public Power District (“OPPD”) and SPP to resolve issues related to OPPD’s GFAs,<sup>6</sup> and on June 24, 2013, the Chief Administrative Law Judge expanded the settlement judge proceedings to include consideration of all GFAs.<sup>7</sup> In accordance with the June 6 Order, settlement proceedings were scheduled to run only through August 1, 2013. If the parties were unable to reach a resolution by that date, then the settlement judge was to file a report with the Chief Judge on or before August 6, 2013 and SPP was required to propose by August 8, 2013 either to “carve-out [] the . . . GFAs or . . . integrat[e] . . . the . . . GFAs into the Integrated Marketplace.”<sup>8</sup>

On July 31, 2013, SPP submitted the Offer of Settlement, which establishes criteria governing eligibility for carve-out of certain GFAs by, *inter alia*, defining the meaning of a “Carved-Out GFA;” specifying the criteria used to determine carve-out eligibility; and identifying the specific GFAs that qualify under such criteria. The Offer of Settlement does not address issues related to the treatment of a GFA once it has been carved out from the Integrated Marketplace; these issues are addressed separately in tariff revisions filed and pending in Docket No. ER13-2078-000.

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<sup>4</sup> October 18 Order at P 309.

<sup>5</sup> *Id.* at P 314.

<sup>6</sup> *Sw. Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013) (“June 6 Order”).

<sup>7</sup> *Sw. Power Pool, Inc.*, 143 FERC ¶ 63,016 (2013) (“June 24 Order”).

<sup>8</sup> June 6 Order at P 21.

Anticipating potential objections regarding GFA 494, SPP noted in the Explanatory Statement to the Offer of Settlement that “[c]ertain parties contend that GFA 494 . . . should be treated as outside of the Integrated Marketplace rather than a GFA eligible for carve-out from the Integrated Marketplace.” Accordingly, as the June 6 Order directed, on August 8, 2013, SPP filed a report indicating that the parties were unable to reach complete agreement by August 1, 2013 regarding the treatment of GFA 494, but that SPP’s Offer of Settlement, in proposing to carve out GFA 494, nonetheless provides the specific relief the parties to GFA 494 had previously requested. As the report explains, “SPP’s recently-filed Offer of Settlement proposes a carve out of GFA 494, consistent with the June 6 Order’s direction to SPP to ‘submit to the Commission a proposal to address the unresolved . . . GFA issues by proposing either a carve-out of the . . . GFAs or a proposal for the integration of the . . . GFAs into the Integrated Marketplace.’ SPP’s proposal to carve out GFA 494 provides the relief that parties to the GFA sought in their protests to the Integrated Marketplace filing, where they sought ‘carve out’ of the GFA.”<sup>9</sup> As the August 8 Report further indicates, “[b]ecause SPP’s proposal provides for the requested carve-out treatment, it fully address[es] the issues identified in the Commission’s October Order, as directed in the June 6 Order.”<sup>10</sup>

On August 20, 2013, Staff, NPPD, and Cooperatives filed comments on the Offer of Settlement. Staff supports the Offer of Settlement and urges that it be approved, as filed. NPPD also supports the Offer of Settlement. However, NPPD requests clarification that “neither NPPD or [sic] Tri-State will be held responsible for Integrated

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<sup>9</sup> Proposed “Carve-Out” of GFA 494 of Southwest Power Pool, Inc., Docket No. ER12-1179-000, at 2 (Aug. 8, 2013) (“August 8 Report”).

<sup>10</sup> *Id.* at 2.

Marketplace costs related to Tri-State load,” and in the absence of such clarification, that “GFA 494 remains eligible for treatment as a ‘Carved-Out GFA.’”<sup>11</sup> Likewise, the Cooperatives only object to the Offer of Settlement as it pertains to GFA 494. Regarding GFA 494, Cooperatives request that the Commission remove the references to GFA 494 in the Offer of Settlement, determine that GFA 494 is “out of market” and not susceptible to transmission-related charges associated with the Integrated Marketplace, and direct SPP to enter into contract negotiations with NPPD and the Cooperatives to set forth terms and conditions of a Balancing Authority Area service agreement that will apply to the service that SPP will provide to Tri-State’s NPPD/Tri-State Electric Transmission System (“NETS”) load.<sup>12</sup> For the reasons set forth below, the Commission should deny NPPD’s request for clarification and reject the Cooperatives’ requests.

## **II. REPLY COMMENTS**

### **A. GFA 494 Is Not an “Out of Market” Agreement.**

GFA 494 is the Western Nebraska Joint Transmission Agreement between NPPD and Tri-State, commonly referred to as the “NETS Agreement.” It provides for the individual ownership and operation of transmission facilities by NPPD and Tri-State that

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<sup>11</sup> Comments of Nebraska Public Power District in Support of Offer of Settlement, ER12-1179-000, at 10 (Aug. 20, 2013) (“NPPD Comments”). NPPD also argues that the August 8 Report proposes to carve out GFA 494, and that the Commission “should ignore this proposal, as it is unnecessary.” But the Commission specifically directed SPP to file a proposal either to carve-out or integrate any GFA that remained unresolved. The Offer of Settlement’s proposed carve out treatment of GFA 494 meets this compliance directive while providing the specific relief that the parties to GFA 494 originally requested. *See* August 8 Report at 2.

<sup>12</sup> Initial Comments of Basin Electric Power Cooperative and Tri-State Generation and Transmission Ass’n, Inc. Opposing Offer of Settlement of Southwest Power Pool, Inc., Docket Nos. ER12-1179-000, -001, at 12 (Aug. 20, 2013) (“Cooperatives Comments”).

together make up the NETS.<sup>13</sup> Each party, NPPD and Tri-State, permits the other to use its transmission facilities to deliver power to its loads. In other words, under this GFA, each party provides transmission service to the other. In 2009, when it joined SPP and ceded functional control of its transmission facilities, NPPD properly designated the agreement as a GFA because it provides grandfathered transmission service to Tri-State over NPPD facilities.

Despite the Cooperatives' position, GFA 494 is not an "out of market" agreement. There is no dispute that the NPPD transmission facilities over which power is delivered to Tri-State lie entirely with the current NPPD Balancing Authority Area ("NPPD BAA") and, when the Integrated Marketplace commences, will lie entirely within the SPP Balancing Authority Area ("SPP BAA"). Likewise, all of Tri-State's loads served by these facilities lie entirely within the NPPD BAA today and will lie entirely within the SPP BAA upon commencement of the Integrated Marketplace. The transmission service Tri-State receives under GFA 494 therefore uses the SPP transmission system and is not "out of market."<sup>14</sup>

Cooperatives nonetheless claim that Tri-State does not receive transmission service from NPPD and, therefore, does not receive transmission service from SPP pursuant to GFA 494. But precedent considering analogous facts contradicts this assertion. The Commission has long held that joint transmission ownership agreements

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<sup>13</sup> *See Id.* at Attachment C.

<sup>14</sup> *Cf.* Addition of Rate Zone and Formula Rate Template to SPP Tariff for New Member: Nebraska Public Power District of Southwest Power Pool, Inc., Docket No. ER09-255-000, at Exhibit No. NPP-2 (Nov. 7, 2008) (showing transmission facilities NPPD transferred to SPP); August 8 Report, Attachment 1 at Exhibit B (listing NPPD-owned facilities that are part of the NETS). NPPD plainly has transferred control of its NETS facilities to SPP.

like GFA 494 constitute transmission service agreements. As the Commission explained, “[w]hen two utilities own undivided ownership interests in the same facilities, every power flow will involve the use of facilities owned by both parties, and the two utilities will consequently provide each other with transmission service.”<sup>15</sup> Although NPPD and Tri-State retain ownership of their individual facilities on the NETS, Cooperatives concede that the rights of NPPD and Tri-State to the NETS are equivalent to those of undivided ownership. Cooperatives state that GFA 494 “provides that NPPD and Tri-State have equal rights to use the entirety of the NETS as if they owned it. Consequently, both parties have rights on the NETS that are equivalent to the rights of owners of the entire system because each party has transferred to the other the right to serve its load on its share of the NETS facilities.”<sup>16</sup> Accordingly, Tri-State’s use of GFA 494 constitutes the provision of transmission service by NPPD to Tri-State.

The Cooperatives nonetheless insist that GFA 494 is “out of market” because “the NETS Agreement gives Tri-State a contract path, as a joint owner of the NETS, to its loads on the NETS facilities.”<sup>17</sup> That does not make this grandfathered transmission service unique. All GFA customers, like Tri-State, receive transmission service on a “contract path” under their particular GFAs. That is what a GFA represents. The only difference here is that the transmission service is by way of an agreement that covers both the ownership of facilities and transmission service across such facilities. If a GFA customer were able to obtain “out-of-market” treatment on the grounds that it receives

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<sup>15</sup> *Resale Power Grp. of Iowa, Inc. v. IES Utils., Inc.*, 85 FERC ¶ 61,424, at 62,599 (1998).

<sup>16</sup> Cooperatives Comments at 4.

<sup>17</sup> *Id.* at 8.

service based on a pre-existing transmission “contract path” under a GFA, all GFAs would be considered “out of market.” The use of a pre-existing contract path under a GFA simply describes what a GFA is.

Cooperatives erroneously claim that the “situation presented by the NETS Agreement is the same as that presented by MRES’s loads that are served under GFA No. 496,”<sup>18</sup> a contract that is not subject to the Integrated Marketplace. GFA 496 and the MRES reservation under GFA 494 are vastly different. As SPP previously has explained, MRES’s reservation under GFA 496 involves transmission that “does not flow through, into, or out of the SPP region,” “is designated only on NPPD’s OASIS, not on SPP’s OASIS,” and “sources and sinks entirely within the WAPA Balancing Authority.”<sup>19</sup> In contrast, Tri-State’s transmission service under GFA 494 flows on NPPD facilities that are under the control of SPP and within the SPP footprint, uses SPP imbalance and other load-support services, and sinks entirely within the NPPD BAA today and will sink entirely within the SPP BAA in the Integrated Marketplace. MRES has no generation or load inside the SPP BAA, while all of Tri-States’ loads receiving transmission service under GFA 494 are entirely within the SPP BAA. Cooperatives acknowledge these facts.<sup>20</sup>

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<sup>18</sup> *Id.* at 10.

<sup>19</sup> Motion for Leave to Answer and Answer of Southwest Power Pool, Inc. to Pleadings Concerning Proposed Integrated Marketplace, ER12-1179-000, at 5 (June 26, 2012).

<sup>20</sup> Cooperatives Comments at 10. The Cooperatives specifically identify factors that distinguish the MRES situation from the NETS arrangements: “The Cooperatives acknowledge that Tri-State’s load on the NETS is different from MRES’s load under GFA 496 in that MRES’s load is not located in the SPP [BAA], but Tri-State’s load is in the SPP BAA.” *Id.* at 10–11.

Cooperatives also assert that the impacts on SPP’s transmission system that result from the NETS facilities are “no different”<sup>21</sup> from the impacts from Midcontinent Independent System Operator, Inc. (“MISO”), which is a system outside the SPP market. This claim has no merit whatsoever. MISO is located entirely outside of SPP’s footprint, while the NETS transmission facilities are entirely within the SPP footprint. MISO exists entirely outside of SPP’s BAA, while the NETS transmission facilities are within the NPPD BAA today and will be within the SPP BAA upon commencement of the Integrated Marketplace. MISO has no loads within the SPP BAA, while Tri-State’s loads served by GFA 494 are entirely within the SPP BAA. MISO has no GFAs within the SPP footprint; Tri-State has a GFA with NPPD providing for transmission service specifically within the NPPD BAA today and the SPP BAA upon commencement of the Integrated Marketplace.

It is also simply not accurate for the Cooperatives to claim that Tri-State’s loads do not cause congestion and marginal losses on the SPP system. When there is congestion on NPPD’s facilities, generation in the SPP footprint will be re-dispatched to ensure deliveries to the Tri-State load under GFA 494. Someone must pay for that generation re-dispatch – whether through integrating GFA 494 into the Integrated Marketplace and paying locational marginal prices (and receiving corresponding ARR/TCRs) or through the carve-out of GFA 494 and uplift to others as SPP proposes in the Offer of Settlement. Cooperatives nowhere explain how their generation from outside the SPP BAA delivered to loads inside the SPP BAA can be delivered without losses and without the re-dispatch required when there is congestion in the SPP BAA.

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<sup>21</sup> *Id.* at 10.

Cooperatives wrongly claim that SPP is somehow modifying GFA 494 in contravention of Commission precedent by allowing NPPD to elect or not elect carve-out treatment for GFA 494. The Integrated Marketplace rules provide that the SPP Transmission Owner (here NPPD) makes the carve-out election because it is the GFA party with which SPP has a contractual relationship. Indeed, the very decision Cooperatives cite for the proposition that the “Commission lacks authority to modify GFAs with non-jurisdictional transmission-owning counterparties” supports SPP’s Offer of Settlement.<sup>22</sup> In that decision, the Commission, in *requiring* a carve-out of GFAs, noted its lack of authority to modify GFAs, but explained that the Commission “does have jurisdiction over the service that the Transmission Owners must take under the [MISO] Tariff to meet their obligations under the GFAs.”<sup>23</sup> By allowing the Transmission Owner to elect carve-out treatment, SPP complies with the MISO precedent.<sup>24</sup>

SPP has complied with the Commission’s directives. The Commission stated that SPP was to propose either a carve-out or integration of all GFAs. For GFA 494, it has

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<sup>22</sup> *Id.* at 7 n.18.

<sup>23</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236, at P 150 (2004), *order on reh’g*, 111 FERC ¶ 61,042, *order on reh’g*, 112 FERC ¶ 61,311 (2005), *aff’d sub nom. Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

<sup>24</sup> In truth, SPP is largely indifferent on the issue of whether NPPD or Tri-State should have the right to elect, or not, carve-out treatment, but because SPP’s contractual relationship is with NPPD, SPP’s tariff vests the decision with NPPD. How the parties to GFA 494 choose to allocate any costs that may result from carve-out or integration into the Integrated Marketplace is a matter for the parties to GFA 494 and is not within SPP’s purview or control. If the Commission prefers, it could simply direct that GFA 494 be carved out.

proposed a carve-out. The Commission should approve the Offer of Settlement, proposing to carve out GFA 494.

**B. GFA 494 Is Not “Non-Participating Embedded Load.”**

For similar reasons, GFA 494 should *not* be treated as “non-participating embedded load,” as NPPD requests.<sup>25</sup> As discussed above, the transmission services provided to Tri-State using NPPD’s facilities, which are under SPP’s control, are within the SPP footprint. What is more, along with obtaining transmission service under GFA 494, Tri-State today separately takes imbalance and other ancillary services from SPP, through its agent Basin, with respect to the Tri-State load in question. Basin, Tri-State, and NPPD concede that Tri-State is using these SPP services today.<sup>26</sup> As NPPD states, Basin “is the Market Participant under SPP’s Energy Imbalance Service (EIS) market and acts as Tri-State’s agent for purposes of obtaining certain balancing and ancillary services *needed to support* the . . . transmission used to serve the Tri State load.”<sup>27</sup> Similarly, Cooperatives concede that “Tri-State *takes . . . Energy Imbalance Service* from SPP” today.<sup>28</sup> It states: “*SPP’s generators provide energy imbalance to the Tri-State loads from time to time.*”<sup>29</sup> Further, “Cooperatives also acknowledge that Tri-State’s load in the SPP BAA also takes Reactive Power Service and Regulation and Frequency Response Service from SPP.”<sup>30</sup> Tri-State could not receive these services if its loads

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<sup>25</sup> See NPPD Comments at 10 (characterizing Tri-State as non-participating load).

<sup>26</sup> Cooperatives Comments at 10–11; NPPD Comments at 8.

<sup>27</sup> NPPD Comments at 8 (emphasis added).

<sup>28</sup> Cooperatives Comments at 11 (emphasis added).

<sup>29</sup> *Id.* at 5 (emphasis added).

<sup>30</sup> *Id.* at 11.

were not connected directly to the SPP system. It could not receive these services if its loads were “out of market.” This is “participation” in SPP market services, and therefore Tri-State can hardly be considered “non-participating embedded load.”<sup>31</sup>

### III. CONCLUSION

For the reasons set forth below, SPP respectfully requests that the Commission accept the Offer of Settlement, deny NPPD’s request for clarification, and reject the Cooperatives’ requests regarding the treatment of GFA 494.

Respectfully submitted,

/s/ Barry S. Spector

Barry S. Spector  
Jeffrey G. DiSciullo  
Victoria M. Lauterbach  
WRIGHT & TALISMAN, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005-3802  
Telephone: (202) 393-1200  
Fax: (202) 393-1240  
[spector@wrightlaw.com](mailto:spector@wrightlaw.com)  
[disciullo@wrightlaw.com](mailto:disciullo@wrightlaw.com)  
[lauterbach@wrightlaw.com](mailto:lauterbach@wrightlaw.com)

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

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<sup>31</sup> In its comments, NPPD raises the issue of whether SPP’s Integrated Marketplace rules, as filed in compliance with the October 18 Order, comply with paragraph 333 of the October 18 Order. NPPD Comments at 8–10. To this point, SPP states only that all issues regarding SPP’s compliance with paragraph 333 have been joined and remain pending, and are not before the Commission in the Offer of Settlement. Moreover, SPP’s Offer of Settlement is fully consistent with NPPD’s desire that NPPD not be responsible for congestion associated with non-participating load, because, as discussed in these reply comments, Tri-State’s load *is* participating.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of August, 2013.

/s/ Victoria M. Lauterbach

Victoria M. Lauterbach  
WRIGHT & TALISMAN, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005-3802  
(202) 393-1200

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