

March 21, 2014

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

RE: *Southwest Power Pool, Inc.*, Docket No. ER14-____
Submission of Meter Agent Services Agreement

Dear Secretary Bose:

In accordance with the terms of Southwest Power Pool, Inc.'s ("SPP") Open Access Transmission Tariff ("SPP Tariff"),¹ SPP encloses for filing an executed Meter Agent Services Agreement ("Meter Agent Agreement") between Basin Electric Power Cooperative ("Basin") as the Market Participant and Western Area Power Administration - UGPR ("WAPA") as the Meter Agent ("Basin Meter Agent Agreement").² SPP is submitting this filing because the Basin Meter Agent Agreement includes terms and conditions that do not conform to the standard form of the Meter Agent Agreement that is in the SPP Tariff.³

I. Background and General Justification for Non-Conforming Provisions

Basin is a not-for-profit generation and transmission cooperative that provides supplemental power to a consortium of rural electric cooperatives in nine states. Basin serves 2.8 million electric consumers through its 136 member cooperative systems.

WAPA is one of four Federal Power Marketing Administrations within the Department of Energy. WAPA was created in 1977 by section 302(a)(1) of the Department of Energy Organization Act, 42 U.S.C. § 7152, to perform the power marketing and transmission functions from multi-use water projects.

¹ Southwest Power Pool, Inc., FERC Electric Tariff, Sixth Revised Volume No. 1.

² Basin and WAPA are referred to collectively as the "Parties." SPP designated the Basin Meter Agent Agreement as Original Service Agreement No. 2804.

³ See SPP Tariff at Attachment AM ("*pro forma* Meter Agent Agreement").

The Parties entered into the Basin Meter Agent Agreement to facilitate Basin's decision to have WAPA serve as the Meter Agent for Market Participant resources and load. However, WAPA's status as a federal agency requires that certain non-conforming terms and provisions be included in the Basin Meter Agent Agreement. As detailed below, WAPA requested that many of the non-conforming modifications be added because the modifications are required by federal statute, and the non-conforming language is similar to the language of the relevant federal statute. In addition, several non-conforming provisions were taken from the "General Power Contract Provisions" that are included in WAPA's standard power marketing contract.⁴ The non-conforming language included in the Basin Meter Agent Agreement is similar to the non-conforming language in the Meter Agent Agreement between Basin and WAPA for Basin's participation in SPP's Energy Imbalance Services Market which was previously accepted by the Commission.⁵

II. Description and Justifications for Non-Conforming Provisions

The Basin Meter Agent Agreement, which is attached to this submittal, conforms to the *pro forma* Meter Agent Agreement, except for the language described below.

A. Non-conforming language required due to WAPA's status as a federal agency

- 1) Article 2.2 – Extended Term: Language has been added clarifying that the extended term of the Basin Meter Agent Agreement will not extend beyond January 31, 2040. WAPA stated this modification is necessary because federal law only permits WAPA to enter into contracts with terms of no more than 40 years.⁶ As a result, the Basin Meter Agent Agreement required a fixed expiration date to comply with federal law.

⁴ See Western Area Power Administration General Power Contract Provisions, available at <http://www.wapa.gov/powerm/pmgpcp.htm> (hereinafter the "WAPA General Power Contract").

⁵ See *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER10-578-000 (Mar. 3, 2010) ("March 2010 Letter Order").

⁶ See 43 U.S.C. § 485h(c).

- 2) Article 3.1 – Force Majeure: WAPA revised the “Force Majeure” provisions in Article 3.1 to be more consistent with the “Uncontrollable Forces” provisions in the WAPA General Power Contract. The non-conforming language retains many of the same terms from Article 3.1 of the *pro forma* Meter Agent Agreement, with additional phrases from the WAPA General Power Contract.
- 3) Article 3.2.1 – Liability:⁷ The “Indemnification” provisions in Article 3.2.1 of the *pro forma* Meter Agent Agreement have been revised to clarify that Basin agrees to indemnify and hold harmless WAPA for certain claims, but that WAPA cannot agree to indemnify Basin for the same claims. WAPA required this modification because federal law prohibits WAPA from obligating or spending money that it does not already have in an appropriation or fund.⁸ Therefore, WAPA asserts it is prohibited from obligating itself to indemnify others when the amount for such indemnification is indefinite and potentially unlimited.

⁷ Article 3.2 of the *pro forma* Meter Agent Agreement is titled “Indemnification,” but the Parties changed the title of Article 3.2 in the Basin Meter Agent Agreement to “Liability.”

⁸ 31 U.S.C. § 1341(a)(1)(A)-(B) (“Anti-Deficiency Act”) (“An officer or employee of the United States Government or of the District of Columbia government may not (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law”).

- 4) Article 3.2.2: A new Article 3.2.2 has been added clarifying that the liability for negligence of the United States and WAPA is limited by the Federal Tort Claims Act,⁹ which governs the liability of federal agencies in cases of negligence.
- 5) Article 3.9¹⁰ – Participation by the United States: WAPA added a new Article 3.9 providing that participation by the United States, through WAPA, in the SPP Tariff is subject to acts of Congress and to regulations and rate schedules promulgated by the Secretary of Energy.¹¹ Article 3.9 also provides that the Secretary of Energy may submit disputes arising under the SPP Tariff to arbitration. Finally, in the event of a conflict between the “federal participation provisions” (*i.e.*, Articles 3.9.1-3.9.6 of the Basin Meter Agent Agreement) and any other provisions of the SPP Tariff, the federal participation provisions will govern. WAPA added this language to clarify that, due to the Supremacy Clause of the United States Constitution,¹² WAPA is bound by federal law, and when federal law conflicts with other regulations, federal law will control. This language is consistent with the language accepted by the Commission in Docket No. ER14-1204-000.¹³

⁹ While the Basin Meter Agent Agreement cites the following provisions as the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, and 2674-2680, the Basin Meter Agent Agreement also makes clear that WAPA is subject to additional provisions of the Federal Tort Claims Act “as amended or supplemented.” *See* Basin Meter Agent Agreement at Article 3.2.2.

¹⁰ Article 1.2.1 contains non-conforming language referencing Article 3.9.

¹¹ *See* Basin Meter Agent Agreement at Article 3.9.

¹² *See* U.S. Const. art. VI, cl. 2.

¹³ *See Sw. Power Pool, Inc.*, Letter Order, Docket No. ER14-1204-000 (Mar. 14, 2014).

- a. Article 3.9.1 – Contingent Upon Appropriations and Authorization: A new Article 3.9.1.a has been added to the Basin Meter Agent Agreement indicating that WAPA’s activities and expenditures are contingent upon Congress making the required appropriations. Article 3.9.1.a provides that, if such appropriations are not made, Basin agrees to release WAPA from its contractual obligations and from all liability under the Basin Meter Agent Agreement. A new Article 3.9.1.b also has been added to the Basin Meter Agent Agreement clarifying that WAPA may require authorization to receive and expend funds advanced from Basin, and that if such authorization is not received, Basin will release WAPA from its contractual obligations and all liability. WAPA required these new provisions because the Anti-Deficiency Act prohibits WAPA from committing to future obligations for payment or a monetary expense that has not been appropriated by Congress.¹⁴

¹⁴

See *supra* note 8.

- b. WAPA required each of the following federal participation provisions because they are required to be included in federal contracts:
- i. Article 3.9.2 – Covenant Against Contingent Fees: Article 3.9.2 has been added to clarify that no person or selling agency was retained by Basin to secure the Basin Meter Agent Agreement. Article 3.6.2 further provides that if Basin violates this warranty, WAPA will have the right to annul the Basin Meter Agent Agreement. WAPA required Article 3.9.2 because the Basin Meter Agent Agreement was “awarded after using procedures other than sealed-bid procedures.”¹⁵
 - ii. Article 3.9.3 – Contract Work Hours and Safety Standards: The Parties added a new Article 3.9.3 subjecting the Basin Meter Agent Agreement to the provisions of the Contract Work Hours and Safety Standards Act (“Contract Work Hours Act”), 40 U.S.C. § 3701, *et seq.*, to the extent that the Basin Meter Agent Agreement is of a character specified in the Contract Work Hours Act. WAPA requested that Article 3.9.3 be added because it is a standard provision in federal contracts. The Commission has accepted similar language in other agreements submitted to FERC with WAPA as a party,¹⁶ and similar language is part of the WAPA General Power Contract.¹⁷

¹⁵ See 41 U.S.C. § 254(a) (“Every contract awarded after using procedures other than sealed-bid procedures shall contain a suitable warranty, as determined by the agency head, by the contractor that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business, for the breach or violation of which warranty the Government shall have the right to annul such contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.”).

¹⁶ See March 2010 Letter Order; See also *Otter Tail Power Co.*, Letter Order, Docket Nos. ER06-992-001 and -002 (Nov. 16, 2006) (accepting a Contract for Interconnection and Load Control Boundary among WAPA, the Midwest ISO, (continued . . .)

- iii. Article 3.9.4 – Equal Opportunity Employment Practices: A new Article 3.9.4 incorporates by reference Section 202 of Executive Order No. 11,246,¹⁸ which prohibits Basin from discriminating against any employee or applicant for employment because of race, color, religion, sex, or national origin. WAPA requested the inclusion of the language in Article 3.9.4 as it is required by federal law.¹⁹ The Commission has accepted similar language in other agreements submitted to FERC with WAPA as a party,²⁰ and similar language is part of the WAPA General Power Contract.²¹

(. . . continued)

and Otter Tail Power Company which contained similar provisions regarding contract work hours and safety standards).

¹⁷ WAPA General Power Contract at Article 43.

¹⁸ Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (Sept. 24, 1965), *as amended in* Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (Oct. 5, 1978).

¹⁹ *See* Exec. Order No. 11,246, 30 Fed. Reg. 12,319 at Section 202 (providing that all government contracting agencies shall include the language from Section 202 in every applicable government contract).

²⁰ *See supra* note 16.

²¹ WAPA General Power Contract at Article 44.

- iv. Article 3.9.5 – Use of Convict Labor: A new Article 3.9.5 prohibits Basin from employing any person undergoing sentence of imprisonment in performing the contract, except as provided by federal statute²² and Executive Order.²³ Because federal law requires federal contracts to include provisions like that in Article 3.9.5, WAPA requested inclusion of the language.²⁴ The Commission has accepted similar language in other agreements submitted to FERC with WAPA as a party,²⁵ and similar language is part of the WAPA General Power Contract.²⁶
- v. Article 3.9.6 – Enforcement Authority: WAPA added a new Article 3.9.6 providing that:

By entering into a Transaction under the SPP Tariff, [WAPA] shall not be construed as having or will be deemed to have consented to the jurisdiction of any enforcement authority (such as FERC, NERC, WECC, or similar entity), conceded that any enforcement authority may exercise authority over it or its operations, waived or conceded any defense

²² See 18 U.S.C. § 3622(c).

²³ Exec. Order No. 11,755, 39 Fed. Reg. 779 (Dec. 29, 1973), *as amended in* Exec. Order No. 12,608, 52 Fed. Reg. 34,617 (Sept. 9, 1987), *and* Exec. Order 12,943, 59 Fed. Reg. 64,553 (Dec. 13, 1994).

²⁴ *See id.* (“All contracts involving the use of appropriated funds which shall hereafter be entered into by any department or agency of the executive branch for performance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands shall, unless otherwise provided by law, contain a stipulation forbidding in the performance of such contracts, the employment of persons undergoing sentences of imprisonment which have been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.”).

²⁵ See *supra* note 16.

²⁶ WAPA General Power Contract at Article 45.

it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction, accepted any liability, responsibility, or obligation to pay any penalty imposed by an enforcement authority to which it would not have been subject in the absence of the SPP Tariff, or accepted or assumed any obligation to act, or refrain from acting, in a manner that would violate, or exceed the authority conferred on it by, any applicable statute, regulation, or lawfully promulgated court or regulatory order.²⁷

WAPA asserted that Article 3.9.6 is necessary because WAPA maintains that, as a federal agency, it is not subject to the jurisdiction of an enforcement authority unless it is found to have waived its sovereign immunity and/or intergovernmental immunity. While stating that similar language does not bind any party to any particular outcome, the Commission has accepted agreements containing similar language and stated the Commission's acceptance is not an endorsement of WAPA's position.²⁸

B. Additional non-conforming language

In addition to the non-conforming language discussed above, Section 2.1 of the Basin Meter Agent Agreement has been modified to provide that the term will be from March 1, 2014 through the date the Integrated System effectively integrates into SPP or January 1, 2016, whichever occurs first. This revision is necessary to state the term of the Basin Meter Agent Agreement the Parties desire.

III. Effective Date and Waiver

SPP requests an effective date of March 1, 2014, for the Basin Meter Agent Agreement. Pursuant to Section 35.11 of the Commission's rules and regulations, 18

²⁷ Basin Meter Agent Agreement at Article 3.9.6.

²⁸ *See Xcel Energy Operating Cos., et al.*, 129 FERC ¶ 61,203, at P 55 (2009) (The Commission accepted a Contract for Interconnection, Load Control Boundary and Maintenance, with WAPA as a party, that contained language indicating that WAPA maintains it is not subject to any monetary civil penalties that may arise from FERC, NERC, Midwest ISO, MRO or a successor Regional Entity's standards or rules).

C.F.R. § 35.11, SPP requests a waiver of the Commission's 60-day notice requirement set forth at 18 C.F.R. § 35.3. Waiver is appropriate because the Basin Meter Agent Agreement is being filed no later than thirty days after the commencement of service.²⁹

IV. Service and Communications

Copies of this filing have been served upon all Parties to the Basin Meter Agent Agreement. Any correspondence regarding this matter should be directed to:

Tessie Kentner
Attorney
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223
Telephone: (501) 688-1782
tkentner@spp.org

Nicole Wagner
Manager - Regulatory Policy
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223
Telephone: (501) 688-1642
jwagner@spp.org

V. Conclusion

For the foregoing stated reasons, SPP requests that the Commission accept the Basin Meter Agent Agreement with an effective date of March 1, 2014.

Respectfully submitted,

/s/ Tessie Kentner

Tessie Kentner
Southwest Power Pool, Inc.

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

²⁹ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (stating the Commission will grant waiver of the 60-day prior notice requirement "if service agreements are filed within 30 days after service commences."); see also 18 C.F.R. § 35.3(a)(2).

**Southwest Power Pool, Inc.
Original Service Agreement No. 2804**

METER AGENT SERVICES AGREEMENT

FOR

SPP MARKET

BETWEEN

**Basin Electric Power Cooperative
AS MARKET PARTICIPANT**

AND

**Western Area Power Administration - UGPR
AS METER AGENT**

March 1, 2014

This Agreement made and entered this 1st day of March, 2014, is between Basin Electric Power Cooperative (“Market Participant”) and Western Area Power Administration – UGPR (“Meter Agent”). Market Participant and Meter Agent are each sometimes referred to in the Agreement as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Market Participant and Meter Agent are registered entities of the Integrated Marketplace.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, the parties hereto mutually agree as follows:

ARTICLE I

Responsibilities of the Parties

1.1 Market Participant Responsibilities:

1. **Governing Documents:** In addition to this Agreement, Market Participant agrees that it will comply with the provisions of the SPP Open Access Transmission Tariff (“OATT”) and Market Protocols as they may be amended from time to time which relate to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern.
2. **Data Communications:** Market Participant shall provide or arrange for communication of meter data in a mutually acceptable format to the Meter Agent.
3. **Meter Data Submittal Location:** Market Participant shall provide in Exhibit A the meter(s) and calculations used to calculate the Meter Data Submittal Location value.
4. **Notice of Meter Changes:** Market Participant shall inform the Meter Agent of any additions, deletions, and modifications of metering that will impact the market data.
 - a. Market Participant shall provide full details of the meter information to the Meter Agent a minimum of sixty (60) days prior to the implementation of the change, except when the meter equipment is changed or replaced due to equipment failure in which case notice of change will be provided as soon as possible. This information to be provided shall include the following:
 1. Information relating to retrieval of the meter data from the data source. This includes the method of doing so, communications, and full description of the meter.
 2. Information relating to the data and the processing of such data that will be applied for the new or modified Meter Data Submittal Location and the impact to other existing Meter Data Submittal Location or tie-line flow between Settlement Areas.
 3. Completing the SPP Market registration required, which includes real-time data exchange and modeling coordination with SPP.
 4. Updating of Exhibit A.
 - b. In addition, Market Participant shall be responsible for developing and testing a complete system for submission of data under this Agreement.
 - c. Market Participant shall notify Meter Agent of any significant metering issues related to the data provided to the Meter Agent within twenty four (24) hours after the issue is identified. This includes change out of a meter, meter failures, real-time data failures, etc.

5. **Meter Data Submittal Location Notification:** Market Participant shall notify any other Market Participant affected by the change in the Meter Data Submittal Location at least seven (7) days prior to the change.
6. **Data Exchange and Data Quality:** Market Participant shall provide meter data for each Meter identified in Exhibit A to the Meter Agent in a timely manner.
 - a. Data shall be provided to the Meter Agent at least one (1) full business day prior to SPP's deadline for submission of meter data, as specified in Appendix D of the Market Protocols.
 - b. Upon notification to or upon discovery by the Market Participant that the data exchange has failed or data quality is questionable, the Market Participant will resolve the issue at its source.
 - c. In the absence of actual values for data required for settlement, it is the Market Participant's responsibility to provide estimated values for such data to the Meter Agent; however, if the Market Participant fails to provide the actual or estimated meter data in a timely manner, the Meter Agent will estimate the data for submission to SPP by the appropriate deadline. The Meter Agent will be held harmless as set forth in section 3.2.
7. **Submission Failures:** If the Meter Agent fails to submit the meter data, including Settlement Area tie-line meter data by the Final Settlement Statement data cutoff, the Market Participant is responsible for initiating and pursuing the SPP OATT Dispute process. The Meter Agent must provide to SPP any data it has available to help resolve the dispute.

1.2 **Meter Agent Responsibilities:**

1. **Governing Documents:** In addition to complying with this Agreement, Meter Agent shall provide services on behalf of the Market Participant in accordance with SPP's OATT and Market Protocols as they may be amended from time to time related to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern, subject to section 3.9 below.
2. **Meter Agent Registration:** Meter Agent shall be a registered Meter Agent with the Integrated Marketplace.
3. **Meter Data Submittal Location Development:** Meter Agent shall provide all settlement data required for the Meter Data Submittal Locations designated by the Market Participant in Exhibit A.
4. **Data Communications:** Meter Agent and the Market Participant shall mutually agree upon a format and method of exchange of settlement data required to be provided by the Market Participant.

5. Meter Data Submittal Location Values

Meter Agent shall determine the Meter Value for each of the Meter Data Submittal Location identified in Exhibit A by applying all parameters as identified therein.

6. Data Issue Notifications:

- a. Meter Agent will notify the Market Participant, as soon as practicable, of any data exchange issues with the meter data source.
- b. Upon failure to receive meter data from the Market Participant by the data submission deadline, the Meter Agent will notify the Market Participant as soon as practicable and, if necessary, the Meter Agent will estimate the data pursuant to 1.1 6. c. of this agreement.

7. Data Submission: Meter Agent shall submit Meter Data Submittal Location Meter Values to the Transmission Provider by the deadlines outlined in Section 4.5.13 of the Market Protocols.

ARTICLE II

Term and Termination

- 2.1 **Initial Term:** This Agreement shall become effective on March 1, 2014 and shall continue until the Date the Integrated System effectively Integrates into SPP or January 1, 2016, whichever occurs first.
- 2.2 **Extended Term:** This Agreement shall continue on a year to year basis at the conclusion of its Initial Term, unless terminated as specified in the Agreement. Provided however, such term shall not extend beyond January 31, 2040.
- 2.3 **Termination:** This Agreement may be terminated at any time by mutual agreement of the Market Participant and Meter Agent. Either the Market Participant or the Meter Agent may terminate the Agreement after the Initial Term, upon giving sixty (60) calendar days written notice to the other Party.

ARTICLE III

Miscellaneous

3.1 **Force Majeure:** Neither Party to the Agreement shall be considered to be in default in performance of any of its obligations under the Agreement when a failure of performance shall be due to an uncontrollable force (Force Majeure). An event of Force Majeure means any cause beyond the control of the party affected, including but not restricted to, labor disturbance, labor or material shortage, sabotage, war, civil disturbance or disobedience, fire, storm, earthquake, lightning, epidemic, flood, failure or threat of failure of facilities, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorization or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. A Party whose performance under this Agreement is prevented or delayed by Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement, and shall exercise due diligence to eliminate the cause with all reasonable dispatch; however, neither Party shall be required to settle or resolve labor disturbances or strikes. The affected Party, as soon as reasonably possible, shall give notice of Force Majeure to the other Party.

3.2 **Liability:**

1. The Market Participant hereby agrees to indemnify and hold harmless the Meter Agent, its officers, directors, agents and employees from and against any and all claims for death or injury to persons or destruction of or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorneys fees, and all other obligations by or to third parties (collectively "liabilities"), arising out of or resulting directly or indirectly from the Meter Agent's performance of its obligations under this Agreement on behalf of the Market Participant, except to the extent any such liability arises, directly or indirectly, from the Meter Agent's gross negligence or intentional wrongdoing. For example, the provisions of this section 3.2 could apply in circumstances where equipment malfunction (or other inadvertent error not involving gross negligence or intentional wrongdoing) causes imbalance information to be inaccurately reported, resulting in billing errors.
2. The United States is liable only for negligence on the part of its officers, and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

3.3 **Successors and Assignment:** This Agreement shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assignable by either Party except with the prior written consent of the other Party which shall not be unreasonably withheld.

- 3.4 **Good Utility Practices:** The Parties shall conduct their affairs under this Agreement in accordance with Good Utility Practices. Good Utility Practices shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result as a reasonable cost consistent with good business practices, safety, and expedition. Good Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts, generally accepted by the region.
- 3.5 **No third party beneficiaries.** There shall be no third party beneficiaries to this Agreement.
- 3.6 **Amendment:** The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by each of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 3.7 **Modification by the Parties:** The Parties may by mutual agreement amend Exhibit A of this Agreement by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 3.8 **Notification to SPP:** The initial Agreement and any amendments thereto shall be provided to SPP upon execution.
- 3.9 **Participation by the United States.** The participation by the United States through the Western Area Power Administration, or other Federal entity, in the SPP Tariff is subject in all respects to acts of Congress and to regulations of the Secretary of Energy established thereunder, and to rate schedules promulgated by the Secretary of Energy. This reservation includes, but is not limited to, the statutory limitations upon the authority of the Secretary of Energy to submit disputes arising under the SPP Tariff to arbitration. In the event of a conflict between these Federal participation provisions and any other provision of the SPP Tariff, these Federal participation provisions shall have precedence with respect to the application of the SPP Tariff to the United States.
1. Contingent Upon Appropriations and Authorization.
- a. Where activities provided for in the Agreement extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the Agreement. In case such appropriation is not made, the Market Participant hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

- b. In order to receive and expend funds advanced from the Market Participant necessary for the continued performance of the obligations of the United States under the Agreement, additional authorization may be required. In case such authorization is not received, the Market Participant hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.
2. **Covenant Against Contingent Fees.** The Market Participant warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Market Participant for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the Agreement without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.
3. **Contract Work Hours and Safety Standards.** The Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.
4. **Equal Opportunity Employment Practices.** Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Market Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.
5. **Use of Convict Labor.** The Market Participant agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.
6. **Enforcement Authority:** By entering into a Transaction under the SPP Tariff, the Western Area Power Administration shall not be construed as having or will be deemed to have consented to the jurisdiction of any enforcement authority (such as FERC, NERC, WECC, or similar entity), conceded that any enforcement authority may exercise authority over it or its operations, waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction, accepted any liability, responsibility, or obligation to pay any penalty imposed by an enforcement authority to which it would not have been subject in the absence of the SPP Tariff, or accepted or assumed any obligation to act, or refrain from acting, in a manner that would violate, or exceed the authority conferred on it by, any applicable statute, regulation, or lawfully promulgated court or regulatory order.

ARTICLE IV

Notices

4.1 **Agreement Notices:** Any notice, demand or request required or authorized by this Agreement shall be deemed properly made, given to, or served on the party to whom it is directed when sent by written notification addressed as follows:

Market Participant:	Meter Agent:
Name: <u>Kim Badenhop</u>	Name: <u>Mark Messerli</u>
Title: <u>Project Coordinator</u>	Title: <u>Energy Management and Marketing Specialist</u>
Company: <u>Basin Electric Power Cooperative</u>	Company: <u>Western Area Power Administration</u>
Address: <u>1717 East Interstate Ave</u>	Address: <u>1330 41st St SE, PO Box 790</u>
City, State, Zip: <u>Bismarck, ND 58503</u>	City, State, Zip: <u>Watertown, SD 57201-0790</u>
Email: <u>kbadenhop@becp.com</u>	Email: <u>Messerli@wapa.gov</u>

Notice of change in the above addresses shall be given in the manner specified above.

ARTICLE V

Complete Agreement

5.1 Complete Agreement: This Agreement represents the Parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by either Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their duly authorized officers as of the day and year first above stated.

Market Participant:

Meter Agent:

Basin Electric Power Cooperative

Western Area Power Administration - UGPR

By: /s/ Becky Kern

By: /s/ Robert J. Harris

Printed Name: Becky Kern

Printed Name: Robert J. Harris

Title: Acting VP Cooperative Planning

Title: Regional Manager

Date: 2/28/2014

Date: 2-28-2014

Exhibit A

Market Participant Meter Data Submittal Location Definitions

Resource Meter Locations:

#	Meter Data Submittal Location Name	Meter	Physical Location	Voltage Level	Losses	Operand

Gross Generation output is negative, auxiliary use is positive. MWh received by the Transmission System is negative.

Load Meter Data Submittal Locations: (Name of Location)

#	Meter Data Submittal Location Name	Meter	Physical Location	Voltage Level	Distrib. Losses	* Transm. Losses	Operand
	NPPD_TRISTATE	See Attachment					
	BASINRUSH_NPPD	See Attachment					

* SPP OATT Attachment M Losses

** Engineered Adjustment with Assumption – reference SPP Protocols Appendix C and D

Residual Load Meter Data Submittal Locations:

#	Meter Data Submittal Location Name	Meter	Operand

Assumes sign of other Meter Data Submittal Location data used is in polarity required for submission to SPP Market.

Tie-Line Meter data between Settlement Areas:

#	Tie-Line Meter Name	Meter	Operand

Exhibit A:

Attachment AM Meter Agent Service Agreement for SPP Market Between Basin Electric Power Cooperative as Market Participant and Western Area Power Administration - UGPR as Meter Agent.

Load Meter Data Submittal Locations: (Name of Location)

#	Meter Data Submittal Location Name	Meter	Physical Location	Voltage Level	Transformer / Offsite Loss Factors - Demand	Transformer / Offsite Loss Factors - Energy	2014 JTS Transmission Loss Factors	Operand
0659421	BEPM_RM_NPPD	Harmony	Nebraska	115,000	1.02000	1.02000	N/A	ADD
6602R1	BEPM_RM_NPPD	Niobrara Cherry-Todd	Nebraska	24,900	1.04000	1.04000	N/A	ADD
6605R1	BEPM_RM_NPPD	Niobrara LaCreek	Nebraska	24,900	1.04000	1.04000	N/A	ADD
0661301	BEPM_RM_NPPD	St Francis	Nebraska	115,000	1.01500	1.01500	N/A	ADD
3905R1	BEPM_TS_NPPD	Lodgepole	Nebraska	12,500	1.04244	1.04244	1.00500	DEDUCT
6502R2	BEPM_TS_NPPD	Hemingford	Nebraska	2,400	1.01000	1.01000	1.00000	DEDUCT
6813R1	BEPM_TS_NPPD	Paxton Tap	Nebraska	7,200	1.06000	1.06000	1.00000	DEDUCT
7401R1	BEPM_TS_NPPD	Brandon	Nebraska	12,500	1.03800	1.03700	1.00000	DEDUCT
7402R1	BEPM_TS_NPPD	Madrid	Nebraska	12,500	1.03800	1.03700	1.00000	DEDUCT
7404R1	BEPM_TS_NPPD	Grant City South	Nebraska	12,500	1.03600	1.03600	1.00000	DEDUCT
7413	BEPM_TS_NPPD	Madrid	Nebraska	12,500	1.01800	1.01800	1.00000	DEDUCT
7702R2 - Channel 2	BEPM_TS_NPPD	Lewellen Tap	Nebraska	34,500	1.02877	1.02581	1.00000	DEDUCT
7702R2 - Channel 4	BEPM_TS_NPPD	Lewellen Tap	Nebraska	34,500	1.00000	1.00000	1.00000	ADD
7703R1 - Channel 2	BEPM_TS_NPPD	Oshkosh	Nebraska	34,500	1.03703	1.03122	1.00000	ADD
7703R1 - Channel 4	BEPM_TS_NPPD	Oshkosh	Nebraska	34,500	1.00000	1.00000	1.00000	DEDUCT
ALLIANCE_1_2	BEPM_TS_NPPD	Alliance	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
ALLIANCE_5	BEPM_TS_NPPD	Alliance	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
BLUE_CREEK	BEPM_TS_NPPD	Blue Creek	Nebraska	34,500	1.02000	1.02000	1.00000	ADD
BOX_BUTTE	BEPM_TS_NPPD	Box Butte	Nebraska	12,500	1.02000	1.02000	1.00000	ADD
BRULE1_115KV	BEPM_TS_NPPD	Brule	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
BRULE2_34_5K	BEPM_TS_NPPD	Brule	Nebraska	34,500	1.02000	1.02000	1.00000	DEDUCT

CHADRON	BEPM_TS_NPPD	Chadron	Nebraska	115,000	1.00800	1.01400	1.00500	ADD
CHAPPELL_WBT	BEPM_TS_NPPD	Chappell	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
COLTON	BEPM_TS_NPPD	Colton	Nebraska	12,500	1.02000	1.02000	1.00000	ADD
COVALT_TAP	BEPM_TS_NPPD	Covalt	Nebraska	24,900	1.02000	1.02000	1.00000	ADD
CRETE	BEPM_TS_NPPD	Crete	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
CROW_BUTTE	BEPM_TS_NPPD	Crow Butte	Nebraska	24,900	1.01300	1.01400	1.00500	ADD
DUNLAP	BEPM_TS_NPPD	Dunlap	Nebraska	69,000	1.00000	1.00000	1.00000	ADD
ELSIE_TAP	BEPM_TS_NPPD	Elsie Tap	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
GORDON	BEPM_TS_NPPD	Gordon	Nebraska	34,500	1.01600	1.01200	1.00500	ADD
GRANT	BEPM_TS_NPPD	Grant	Nebraska	69,000	1.00000	1.00000	1.00000	ADD
HEMINGFORD	BEPM_TS_NPPD	Hemingford	Nebraska	34,500	1.00000	1.00000	1.00000	ADD
INTERSTATE	BEPM_TS_NPPD	Interstate	Colorado	115,000	1.00000	1.00000	1.00000	ADD
JULES_HEA	BEPM_TS_NPPD	Julesburg	Colorado	12,500	1.00000	1.00000	1.00000	ADD
LAMAR	BEPM_TS_NPPD	Lamar	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
LYNN	BEPM_TS_NPPD	Lynn	Nebraska	24,900	1.02000	1.02000	1.00000	ADD
MORRILL_CT_1	BEPM_TS_NPPD	Morrill County #13	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
MORRILL_CT_2	BEPM_TS_NPPD	Morrill County #13	Nebraska	34,500	1.00000	1.00000	1.00000	ADD
OGALL_MIDRE	BEPM_TS_NPPD	Ogallala	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
OGALLALA	BEPM_TS_NPPD	Ogallala	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
PAXTON	BEPM_TS_NPPD	Paxton	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
ROSCOE	BEPM_TS_NPPD	Roscoe	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
RUSH_CREEK	BEPM_TS_NPPD	Rush Creek	Nebraska	34,500	1.01300	1.01300	1.00500	ADD
SPRING_CREEK	BEPM_TS_NPPD	Spring Creek	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
WHITNEY_7_2	BEPM_TS_NPPD	Whitney	Nebraska	12,500	1.03200	1.02800	1.00500	ADD
WILDHORSE	BEPM_TS_NPPD	Wildhorse	Nebraska	115,000	1.00000	1.00000	1.00000	ADD

DO NOT HAVE THIS REVENUE METER DATA

6502R2 - channel 25	BEPM_TS_NPPD	Hemingford	Nebraska	2,400	1.01000	1.01000	1.00000	DEDUCT
z-ALLIANCE S.S. - Manual	BEPM_TS_NPPD	Alliance	Nebraska	240	1.00000	1.00000	1.00500	ADD
z-MORRILL CT S.S. - Manual	BEPM_TS_NPPD	Morrill County #13	Nebraska	240	1.00000	1.00000	1.00000	ADD
z-OGALLALA S.S. - Manual	BEPM_TS_NPPD	Ogallala	Nebraska	120	1.00000	1.00000	1.00500	ADD
z-SIDNEY S.S. - Manual	BEPM_TS_NPPD	Sidney	Nebraska	240	1.01600	1.01600	1.00500	ADD

**Southwest Power Pool, Inc.
Original Service Agreement No. 2804**

METER AGENT SERVICES AGREEMENT

FOR

SPP MARKET

BETWEEN

**Basin Electric Power Cooperative
AS MARKET PARTICIPANT**

AND

**Western Area Power Administration - UGPR
AS METER AGENT**

March 1, 2014

This Agreement made and entered this 1st day of March, 2014, is between Basin Electric Power Cooperative (“Market Participant”) and Western Area Power Administration – UGPR (“Meter Agent”). Market Participant and Meter Agent are each sometimes referred to in the Agreement as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Market Participant and Meter Agent are registered entities of the Integrated Marketplace.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements hereinafter set forth, the parties hereto mutually agree as follows:

ARTICLE I

Responsibilities of the Parties

1.1 Market Participant Responsibilities:

1. **Governing Documents:** In addition to this Agreement, Market Participant agrees that it will comply with the provisions of the SPP Open Access Transmission Tariff (“OATT”) and Market Protocols as they may be amended from time to time which relate to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern.
2. **Data Communications:** Market Participant shall provide or arrange for communication of meter data in a mutually acceptable format to the Meter Agent.
3. **Meter Data Submittal Location:** Market Participant shall provide in Exhibit A the meter(s) and calculations used to calculate the Meter Data Submittal Location value.
4. **Notice of Meter Changes:** Market Participant shall inform the Meter Agent of any additions, deletions, and modifications of metering that will impact the market data.
 - a. Market Participant shall provide full details of the meter information to the Meter Agent a minimum of sixty (60) days prior to the implementation of the change, except when the meter equipment is changed or replaced due to equipment failure in which case notice of change will be provided as soon as possible. This information to be provided shall include the following:
 1. Information relating to retrieval of the meter data from the data source. This includes the method of doing so, communications, and full description of the meter.
 2. Information relating to the data and the processing of such data that will be applied for the new or modified Meter Data Submittal Location and the impact to other existing Meter Data Submittal Location or tie-line flow between Settlement Areas.
 3. Completing the SPP Market registration required, which includes real-time data exchange and modeling coordination with SPP.
 4. Updating of Exhibit A.
 - b. In addition, Market Participant shall be responsible for developing and testing a complete system for submission of data under this Agreement.
 - c. Market Participant shall notify Meter Agent of any significant metering issues related to the data provided to the Meter Agent within twenty four (24) hours after the issue is identified. This includes change out of a meter, meter failures, real-time data failures, etc.

5. **Meter Data Submittal Location Notification:** Market Participant shall notify any other Market Participant affected by the change in the Meter Data Submittal Location at least seven (7) days prior to the change.
6. **Data Exchange and Data Quality:** Market Participant shall provide meter data for each Meter identified in Exhibit A to the Meter Agent in a timely manner.
 - a. Data shall be provided to the Meter Agent at least one (1) full business day prior to SPP's deadline for submission of meter data, as specified in Appendix D of the Market Protocols.
 - b. Upon notification to or upon discovery by the Market Participant that the data exchange has failed or data quality is questionable, the Market Participant will resolve the issue at its source.
 - c. In the absence of actual values for data required for settlement, it is the Market Participant's responsibility to provide estimated values for such data to the Meter Agent; however, if the Market Participant fails to provide the actual or estimated meter data in a timely manner, the Meter Agent will estimate the data for submission to SPP by the appropriate deadline. The Meter Agent will be held harmless as set forth in section 3.2.
7. **Submission Failures:** If the Meter Agent fails to submit the meter data, including Settlement Area tie-line meter data by the Final Settlement Statement data cutoff, the Market Participant is responsible for initiating and pursuing the SPP OATT Dispute process. The Meter Agent must provide to SPP any data it has available to help resolve the dispute.

1.2 **Meter Agent Responsibilities:**

1. **Governing Documents:** In addition to complying with this Agreement, Meter Agent shall provide services on behalf of the Market Participant in accordance with SPP's OATT and Market Protocols as they may be amended from time to time related to implementation of this Agreement. In the event there is a conflict between this agreement and the SPP OATT, the OATT shall govern, [subject to section 3.9 below](#).
2. **Meter Agent Registration:** Meter Agent shall be a registered Meter Agent with the Integrated Marketplace.
3. **Meter Data Submittal Location Development:** Meter Agent shall provide all settlement data required for the Meter Data Submittal Locations designated by the Market Participant in Exhibit A.
4. **Data Communications:** Meter Agent and the Market Participant shall mutually agree upon a format and method of exchange of settlement data required to be provided by the Market Participant.

5. Meter Data Submittal Location Values

Meter Agent shall determine the Meter Value for each of the Meter Data Submittal Location identified in Exhibit A by applying all parameters as identified therein.

6. Data Issue Notifications:

- a. Meter Agent will notify the Market Participant, as soon as practicable, of any data exchange issues with the meter data source.
- b. Upon failure to receive meter data from the Market Participant by the data submission deadline, the Meter Agent will notify the Market Participant as soon as practicable and, if necessary, the Meter Agent will estimate the data pursuant to 1.1 6. c. of this agreement.

7. Data Submission: Meter Agent shall submit Meter Data Submittal Location Meter Values to the Transmission Provider by the deadlines outlined in Section 4.5.13 of the Market Protocols.

ARTICLE II

Term and Termination

- 2.1 **Initial Term:** This Agreement shall become effective on March 1, 2014 and shall continue until the Date the Integrated System effectively Integrates into SPP or January 1, 2016, whichever occurs first.
- 2.2 **Extended Term:** This Agreement shall continue on a year to year basis at the conclusion of its Initial Term, unless terminated as specified in the Agreement. Provided however, such term shall not extend beyond January 31, 2040.
- 2.3 **Termination:** This Agreement may be terminated at any time by mutual agreement of the Market Participant and Meter Agent. Either the Market Participant or the Meter Agent may terminate the Agreement after the Initial Term, upon giving sixty (60) calendar days written notice to the other Party.

ARTICLE III

Miscellaneous

3.1 **Force Majeure:** Neither Party to the Agreement shall be considered to be in default in performance of any of its obligations under the Agreement when a failure of performance shall be due to an uncontrollable force (Force Majeure). An event of Force Majeure means any ~~act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control.~~ A Party will not be considered in default as to any obligation under this Agreement to the extent such Party is prevented or delayed from fulfilling such obligation due to the effect of Force Majeure cause beyond the control of the party affected, including but not restricted to, labor disturbance, labor or material shortage, sabotage, war, civil disturbance or disobedience, fire, storm, earthquake, lightning, epidemic, flood, failure or threat of failure of facilities, restraint by court order or public authority and action or nonaction by, or failure to obtain the necessary authorization or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. A Party whose performance under this Agreement is prevented or delayed by Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement, and shall ~~take all reasonable steps~~exercise due diligence to eliminate the cause with all reasonable dispatch; however, neither Party shall be required to settle or resolve labor disturbances or strikes, ~~or to accept or agree to governmental or regulatory orders or conditions without objection or contest except on any basis agreeable to such Party in its sole discretion.~~ The affected Party, as soon as reasonably possible, shall give notice of Force Majeure to the other Party.

3.2 **Indemnification Liability:**

1. The Market Participant hereby agrees to Each party hereto shall indemnify and hold harmless the other Party (in such case, the "Indemnified Party") Meter Agent, its officers, directors, agents and employees from and against any and all claims for death or injury to persons or destruction of or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorneys fees, and all other obligations by or to third parties (collectively "liabilities"), arising out of or resulting directly or indirectly from the ~~Indemnified Party~~Meter Agent's performance of its obligations under this Agreement on behalf of the ~~Indemnifying Party~~Market Participant, except to the extent any such liability arises, directly or indirectly, from the ~~Indemnified Party~~Meter Agent's gross negligence or intentional wrongdoing. For example, the provisions of this section 3.2 could apply in circumstances where equipment malfunction (or other inadvertent error not involving gross negligence or intentional wrongdoing) causes imbalance information to be inaccurately reported, resulting in billing errors.

2. The United States is liable only for negligence on the part of its officers, and employees in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1346(c), 2401(b), 2402, 2671, 2672, 2674-2680, as amended or supplemented.

3.3 **Successors and Assignment:** This Agreement shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assignable by either Party except with the prior written consent of the other Party which shall not be unreasonably withheld.

- 3.4 **Good Utility Practices:** The Parties shall conduct their affairs under this Agreement in accordance with Good Utility Practices. Good Utility Practices shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result as a reasonable cost consistent with good business practices, safety, and expedition. Good Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts, generally accepted by the region.
- 3.5 **No third party beneficiaries.** There shall be no third party beneficiaries to this Agreement.
- 3.6 **Amendment:** The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by each of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 3.7 **Modification by the Parties:** The Parties may by mutual agreement amend Exhibit A of this Agreement by a written instrument duly executed by the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.
- 3.8 **Notification to SPP:** The initial Agreement and any amendments thereto shall be provided to SPP upon execution.

3.9 Participation by the United States. The participation by the United States through the Western Area Power Administration, or other Federal entity, in the SPP Tariff is subject in all respects to acts of Congress and to regulations of the Secretary of Energy established thereunder, and to rate schedules promulgated by the Secretary of Energy. This reservation includes, but is not limited to, the statutory limitations upon the authority of the Secretary of Energy to submit disputes arising under the SPP Tariff to arbitration. In the event of a conflict between these Federal participation provisions and any other provision of the SPP Tariff, these Federal participation provisions shall have precedence with respect to the application of the SPP Tariff to the United States.

1. Contingent Upon Appropriations and Authorization.

- a. Where activities provided for in the Agreement extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States' obligations under the Agreement. In case such appropriation is not made, the Market Participant hereby releases the United States from its contractual obligations and from all liability due to the failure of Congress to make such appropriation.

- b. In order to receive and expend funds advanced from the Market Participant necessary for the continued performance of the obligations of the United States under the Agreement, additional authorization may be required. In case such authorization is not received, the Market Participant hereby releases the United States from those contractual obligations and from all liability due to the lack of such authorization.
2. Covenant Against Contingent Fees. The Market Participant warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Market Participant for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul the Agreement without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.
3. Contract Work Hours and Safety Standards. The Agreement, to the extent that it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to regulations promulgated by the Secretary of Labor pursuant to the Act.
4. Equal Opportunity Employment Practices. Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that the Market Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into the contract, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.
5. Use of Convict Labor. The Market Participant agrees not to employ any person undergoing sentence of imprisonment in performing the contract except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.
6. Enforcement Authority: By entering into a Transaction under the SPP Tariff, the Western Area Power Administration shall not be construed as having or will be deemed to have consented to the jurisdiction of any enforcement authority (such as FERC, NERC, WECC, or similar entity), conceded that any enforcement authority may exercise authority over it or its operations, waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction, accepted any liability, responsibility, or obligation to pay any penalty imposed by an enforcement authority to which it would not have been subject in the absence of the SPP Tariff, or accepted or assumed any obligation to act, or refrain from acting, in a manner that would violate, or exceed the authority conferred on it by, any applicable statute, regulation, or lawfully promulgated court or regulatory order.

ARTICLE IV

Notices

4.1 **Agreement Notices:** Any notice, demand or request required or authorized by this Agreement shall be deemed properly made, given to, or served on the party to whom it is directed when sent by written notification addressed as follows:

Market Participant:	Meter Agent:
Name: <u>Kim Badenhop</u>	Name: <u>Mark Messerli</u>
Title: <u>Project Coordinator</u>	Title: <u>Energy Management and Marketing Specialist</u>
Company: <u>Basin Electric Power Cooperative</u>	Company: <u>Western Area Power Administration</u>
Address: <u>1717 East Interstate Ave</u>	Address: <u>1330 41st St SE, PO Box 790</u>
City, State, Zip: <u>Bismarck, ND 58503</u>	City, State, Zip: <u>Watertown, SD 57201-0790</u>
Email: <u>kbadenhop@becp.com</u>	Email: <u>Messerli@wapa.gov</u>

Notice of change in the above addresses shall be given in the manner specified above.

ARTICLE V

Complete Agreement

5.1 Complete Agreement: This Agreement represents the Parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by either Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their duly authorized officers as of the day and year first above stated.

Market Participant:

Meter Agent:

Basin Electric Power Cooperative

Western Area Power Administration - UGPR

By: /s/ Becky Kern

By: /s/ Robert J. Harris

Printed Name: Becky Kern

Printed Name: Robert J. Harris

Title: Acting VP Cooperative Planning

Title: Regional Manager

Date: 2/28/2014

Date: 2-28-2014

Exhibit A

Market Participant Meter Data Submittal Location Definitions

Resource Meter Locations:

#	Meter Data Submittal Location Name	Meter	Physical Location	Voltage Level	Losses	Operand

Gross Generation output is negative, auxiliary use is positive. MWh received by the Transmission System is negative.

Load Meter Data Submittal Locations: (Name of Location)

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	BASINRUSH_NPPD	See Attachment					

* SPP OATT Attachment M Losses

** Engineered Adjustment with Assumption – reference SPP Protocols Appendix C and D

Residual Load Meter Data Submittal Locations:

#	Meter Data Submittal Location Name	Meter	Operand

Assumes sign of other Meter Data Submittal Location data used is in polarity required for submission to SPP Market.

Tie-Line Meter data between Settlement Areas:

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ALLIANCE_5	BEPM_TS_NPPD	Alliance	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
BLUE_CREEK	BEPM_TS_NPPD	Blue Creek	Nebraska	34,500	1.02000	1.02000	1.00000	ADD
BOX_BUTTE	BEPM_TS_NPPD	Box Butte	Nebraska	12,500	1.02000	1.02000	1.00000	ADD
BRULE1_115KV	BEPM_TS_NPPD	Brule	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
BRULE2_34_5K	BEPM_TS_NPPD	Brule	Nebraska	34,500	1.02000	1.02000	1.00000	DEDUCT

CHADRON	BEPM_TS_NPPD	Chadron	Nebraska	115,000	1.00800	1.01400	1.00500	ADD
CHAPPELL_WBT	BEPM_TS_NPPD	Chappell	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
COLTON	BEPM_TS_NPPD	Colton	Nebraska	12,500	1.02000	1.02000	1.00000	ADD
COVALT_TAP	BEPM_TS_NPPD	Covalt	Nebraska	24,900	1.02000	1.02000	1.00000	ADD
CRETE	BEPM_TS_NPPD	Crete	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
CROW_BUTTE	BEPM_TS_NPPD	Crow Butte	Nebraska	24,900	1.01300	1.01400	1.00500	ADD
DUNLAP	BEPM_TS_NPPD	Dunlap	Nebraska	69,000	1.00000	1.00000	1.00000	ADD
ELSIE_TAP	BEPM_TS_NPPD	Elsie Tap	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
GORDON	BEPM_TS_NPPD	Gordon	Nebraska	34,500	1.01600	1.01200	1.00500	ADD
GRANT	BEPM_TS_NPPD	Grant	Nebraska	69,000	1.00000	1.00000	1.00000	ADD
HEMINGFORD	BEPM_TS_NPPD	Hemingford	Nebraska	34,500	1.00000	1.00000	1.00000	ADD
INTERSTATE	BEPM_TS_NPPD	Interstate	Colorado	115,000	1.00000	1.00000	1.00000	ADD
JULES_HEA	BEPM_TS_NPPD	Julesburg	Colorado	12,500	1.00000	1.00000	1.00000	ADD
LAMAR	BEPM_TS_NPPD	Lamar	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
LYNN	BEPM_TS_NPPD	Lynn	Nebraska	24,900	1.02000	1.02000	1.00000	ADD
MORRILL_CT_1	BEPM_TS_NPPD	Morrill County #13	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
MORRILL_CT_2	BEPM_TS_NPPD	Morrill County #13	Nebraska	34,500	1.00000	1.00000	1.00000	ADD
OGALL_MIDRE	BEPM_TS_NPPD	Ogallala	Nebraska	34,500	1.00000	1.00000	1.00500	ADD
OGALLALA	BEPM_TS_NPPD	Ogallala	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
PAXTON	BEPM_TS_NPPD	Paxton	Nebraska	115,000	1.00000	1.00000	1.00000	ADD
ROSCOE	BEPM_TS_NPPD	Roscoe	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
RUSH_CREEK	BEPM_TS_NPPD	Rush Creek	Nebraska	34,500	1.01300	1.01300	1.00500	ADD
SPRING_CREEK	BEPM_TS_NPPD	Spring Creek	Nebraska	12,500	1.01600	1.01600	1.00000	ADD
WHITNEY_7_2	BEPM_TS_NPPD	Whitney	Nebraska	12,500	1.03200	1.02800	1.00500	ADD
WILDHORSE	BEPM_TS_NPPD	Wildhorse	Nebraska	115,000	1.00000	1.00000	1.00000	ADD

DO NOT HAVE THIS REVENUE METER DATA

6502R2 - channel 25	BEPM_TS_NPPD	Hemingford	Nebraska	2,400	1.01000	1.01000	1.00000	DEDUCT
z-ALLIANCE S.S. - Manual	BEPM_TS_NPPD	Alliance	Nebraska	240	1.00000	1.00000	1.00500	ADD
z-MORRILL CT S.S. - Manual	BEPM_TS_NPPD	Morrill County #13	Nebraska	240	1.00000	1.00000	1.00000	ADD
z-OGALLALA S.S. - Manual	BEPM_TS_NPPD	Ogallala	Nebraska	120	1.00000	1.00000	1.00500	ADD
z-SIDNEY S.S. - Manual	BEPM_TS_NPPD	Sidney	Nebraska	240	1.01600	1.01600	1.00500	ADD