

June 4, 2024

The Honorable Debbie-Anne A. Reese  
Acting Secretary  
Federal Energy Regulatory Commission  
888 First St., N.E.  
Washington D.C. 20426

Re: *Southwest Power Pool, Inc.*, Docket No. ER24-\_\_\_\_-000  
Submission of Revisions to Tariff, Bylaws and Membership Agreement to Expand  
the Regional Transmission Organization into the Western Interconnection (Part 2  
of 2)

Dear Acting Secretary Reese:

Pursuant to Section 205 of the Federal Power Act (“FPA”), 16 U.S.C. § 824d, and Section 35.13 of the Federal Energy Regulatory Commission’s (“Commission”) Regulations, 18 C.F.R. § 35.13, Southwest Power Pool, Inc. (“SPP”), as authorized by its Board of Directors, submits revisions to its Open Access Transmission Tariff,<sup>1</sup> Bylaws,<sup>2</sup> and Membership Agreement<sup>3</sup> (collectively, the “Governing Documents”). SPP proposes revisions to the Governing Documents in order to facilitate the commitment of numerous entities in the Western Interconnection to join SPP as Transmission Owners, to place their respective transmission facilities under the functional control of SPP, and to begin taking services under the Tariff.

This filing letter and attachments are the second part of a two-part contemporaneous submission to the Commission. Due to technical limitations associated with the eTariff system, SPP is not able to submit the revisions to the Bylaws and Membership Agreement in the same filing with changes to the Tariff, filing letter, and

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<sup>1</sup> Southwest Power Pool, Inc., Open Access Transmission Tariff, Sixth Revised Volume No. 1 (“Tariff”).

<sup>2</sup> Southwest Power Pool, Inc., Bylaws, First Revised Volume No. 4 (“Bylaws”).

<sup>3</sup> Southwest Power Pool, Inc., Membership Agreement, First Revised Volume No. 3 (“Membership Agreement”).

other materials, because the Bylaws and Membership Agreement are maintained in a separate eTariff database from the Tariff. The explanation and supporting materials for the Tariff changes as well as the Bylaws and Membership Agreement changes are contained in Part 1 of the filing. Although the overall filing has been divided into two parts to accommodate the eTariff system, the Commission should treat the submissions as a single filing.<sup>4</sup>

SPP respectfully requests that the Commission establish an extended, 30-day public comment period for the Governing Documents provisions proposed herein. SPP requests that the Commission issue an order in this docket as soon as practicable, but not later than October 1, 2024. SPP requests an effective date of “12/31/9998”<sup>5</sup> for the tariff records submitted in this filing in order to allow SPP staff to develop, test, and move the proposed revisions into the production phase of SPP’s software systems. SPP will submit a filing with the Commission specifying an exact effective date<sup>6</sup> not later than six months prior to implementation. SPP will work as quickly as practicable to implement the Tariff revisions proposed herein. As of the date of this filing, implementation is targeted for April 1, 2026.

This Part 2 letter and attachments are being served on the same parties as listed in the Part 1 filing letter.

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<sup>4</sup> SPP faced the same logistical complication in a previous expansion to include new Members and the Commission addressed both parts of that proposal together. *See* Submission of Tariff Revisions of Southwest Power Pool, Inc., Docket Nos. ER14-2850-000 and ER14-2851-000 (Sept. 11, 2014).

<sup>5</sup> *See, e.g.*, Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings at 10 (Nov. 14, 2016) (“If the effective date is not known at the time of the filing, such as the effective date is contingent on FERC approval . . . the date of 12/31/9998 must be used.”).

<sup>6</sup> *See Electronic Tariff Filings*, Docket No. RM01-5-000, Notice of Procedures for Making Statutory Filings when Authorization for New or Revised Tariff Provisions is Not Required, 85 Fed. Reg. 35,300 at n.1 & Part IV (June 9, 2020).

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Respectfully submitted,

*/s/ Justin A. Hinton*

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## 1.0 Definitions

### Affiliate Relationships

Affiliate Relationships are relationships between SPP Members that have one or more of the following attributes in common:

- (a) are subsidiaries of the same company;
- (b) one Member is a subsidiary of another Member;
- (c) have, through an agency agreement, turned over control of a majority of their generation facilities to another Member;
- (d) have, through an agency agreement, turned over control of a majority of their transmission system to another Member, except to the extent that the facilities are turned over to an independent transmission company recognized by FERC;
- (e) have an exclusive marketing alliance between Members;~~or~~
- (f) ownership by one Member of 10% or greater of another Member;~~;~~ or
- (g) For the purposes of administering these Bylaws, are divisions of the same Federal Power Marketing Agency and are considered to have Affiliate Relationships.

### Articles of Incorporation

SPP's articles of incorporation as filed with the state of Arkansas.

### Board of Directors

The Board of Directors of SPP, which shall manage the general business of SPP pursuant to these Bylaws.

### Bylaws

These bylaws.

### Criteria

Planning and operating standards and procedures as approved by the Board of Directors.

**ERO**

The Electric Reliability Organization under FERC jurisdiction that regulates reliability of the electric power grid.

**Existing Obligations**

Certain financial obligations as defined in Section 8.7.1 of these Bylaws.

**Federal Power Marketing Agency**

This term shall include the term “Federal Power Marketing Administration” and have the same definition that is set forth in the Federal Power Act at 16 U.S.C. § 796(19), which defines “Federal power marketing agency” as “any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy[.]”

**Federal Power Marketing Agency Amendments**

The amendments and revisions to the SPP Bylaws, the SPP Membership Agreement, and Section 39.3 of the SPP OATT that are required by a Federal Power Marketing Agency Member for ~~membership in SPP at the time of the Federal Power Marketing Agency's~~ initial SPP membership or as they may be revised in the future by mutual agreement between the Federal Power Marketing Agency Member and SPP.

**Federal Power Marketing Agency Member**

An entity that is a Member and is a Federal Power Marketing Agency or a division of a Federal Power Marketing Agency.

**FERC**

The Federal Energy Regulatory Commission or successor organization.

**Member**

An entity that has met the requirements of Section 2.2 of these Bylaws.

**Membership**

The collective Members of SPP.

**Membership Agreement**

The contract, that specifies the rights and obligations of the parties, executed between SPP and an entity seeking to become an SPP member.

**NERC**

The North American Electric Reliability Corporation or successor organization.

**Net Energy for Load**

The load served by transmission facilities under the SPP Open Access Transmission Tariff.

**OATT**

Open Access Transmission Tariff.

**Officers**

The officers of SPP as elected by the Board of Directors. The Officers consist of the President and the Corporate Secretary, at a minimum. Any Officer must be independent of any Member organization.

**Organizational Group**

A group, other than the Board of Directors and the Members Committee, comprising a committee or working group that is charged with specific responsibilities toward accomplishing SPP's mission.

**Regional Criteria**

SPP planning and operating standards and procedures as approved by the Board of Directors.

**SPP**

Southwest Power Pool, Inc. or successor organization.

**Staff**

The technical and administrative staff of SPP as hired by the Officers to accomplish SPP's mission.

**Terminated Member**

An entity that was a Signatory to the Membership Agreement but whose membership in SPP has been terminated under Section 4 of the Membership Agreement.

**Transmission Owning Member**

A Member that has placed more than 500 miles of non-radial facilities operated at or above 60 kV under the independent administration of SPP for the provision of regional transmission service as set forth in the Membership Agreement.

**Transmission Using Member**

A Member that does not meet the definition of a Transmission Owning Member.

**~~Western Area Power Administration-Upper Great Plains Region ("Western-UGP")~~**

~~A division of the Western Area Power Administration that markets and transmits Federal power from reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation to Statutory Load Obligations, including preference power customers in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota located in a defined marketing area. Western UGP operates the WAUW Balancing Authority Area in the Western Interconnection, where certain of its transmission facilities are located.~~

### **3.1 Structure**

Member input on decision-making shall be accomplished primarily through Membership participation in Organizational Groups. Members are expected to provide representation to Organizational Groups as requested. Unless otherwise provided in these Bylaws, Organizational Group representation will be appointed by the Board of Directors, who shall consider the various types and expertise of Members and their geographic and interconnection locations, to achieve a widespread and effective representation of the Membership. Organizational Group representation will be reviewed annually for compliance with the Bylaws by the Corporate Governance Committee. The Chair of any Organizational Group may appoint any ad hoc task forces as necessary to fulfill its mission. Task force appointments shall be made with due consideration of the various types and expertise of Members and their geographic and interconnection locations. Criteria for serving on an Organizational Group will be determined in the group's scope. Except for any full representation group, an appointment to an Organizational Group is for an individual, not a corporate entity. Participation in certain sessions of Organizational Group meetings where market sensitive issues are discussed may be restricted to persons representing entities that have executed ERO's Confidentiality Agreement. Representatives on all Organizational Groups will be documented in the SPP directory maintained by Staff. Organizational Group vacancies will be filled on an interim basis by appointment of the President unless otherwise provided for in these Bylaws.



## 6.2 Strategic Planning Committee

The Strategic Planning Committee (SPC) is responsible for the development and recommendation of strategic direction for the company in accordance with its scope as approved by the Board of Directors.

The SPC shall be comprised of up to ~~fourteen~~sixteen members. Up to four representatives, but no less than three representatives, shall be from the Board of Directors which shall include the President of SPP; ~~five~~six representatives from the Transmission Owning Member sector as nominated by the Corporate Governance Committee; and ~~five~~six representatives from the Transmission Using Member sector as nominated by the Corporate Governance Committee.

The Board of Directors shall appoint the representatives of the SPC. The Chair and the Vice Chair shall be representatives from the Board of Directors as determined by the Board of Directors. Each representative of the SPC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs, the Corporate Governance Committee will fill the vacancy on an interim basis until the next meeting of the Board of Directors.

The SPC shall meet at least twice per calendar year, and additionally as needed, provided that a quorum, as defined in these Bylaws, is present. The SPC shall report to the Board of Directors following each SPC meeting with respect to its activities and with such recommendations, as the SPC deems necessary.

### **6.3 Human Resources Committee**

The Human Resources Committee (HRC) is responsible for the development of personnel policies, including benefits structures, for the company in accordance with its scope as approved by the Board of Directors.

The HRC shall be comprised of at least six members and up to nine members with equal representation from SPP's Board of Directors, Transmission Owning Members and Transmission Using Members. Two or three representatives shall be from the Board of Directors, one of whom shall serve as the Chair and the other as Vice Chair; two or three representatives from the Transmission Owning Member sector as nominated by the Corporate Governance Committee; and two or three representatives from the Transmission Using Member sector as nominated by the Corporate Governance Committee. The President of SPP shall not serve on the HRC.

The Board of Directors shall appoint the representatives of the HRC. Each representative of the HRC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs the Corporate Governance Committee will fill the vacancy on an interim basis until the next meeting of the Board of Directors.

The HRC shall meet at least twice per calendar year, and additionally as needed, provided that a quorum, as defined in these Bylaws, is present. The HRC shall report to the Board of Directors following each HRC meeting with respect to its activities and with such recommendations, as the HRC deems necessary.

## **8.7 Financial Obligation of Withdrawing Members**

### **8.7.1 Existing Obligations**

“Existing Obligations” shall be defined in accordance with Section 4.3.2 of the Membership Agreement.

### **8.7.2 Computation of a Transmission Owner Member’s Existing Obligations**

For purposes of computing the Existing Obligations of any withdrawing or terminated Transmission Owner Member in accordance with Sections 4.3.2(b)-(f) of the Membership Agreement, such “Member’s share” is a percentage calculated as follows:

$$A = 100 [0.25(1/N) + 0.75(B/C)]$$

Where: A = Member’s share (expressed as a percentage)

N = Total number of Transmission Owner Members that are subject to Sections 4.3.2(b)-(f) of the Membership Agreement

B = The previous year Net Energy for Load connected to transmission facilities of Transmission Owner Member, including any such load of other load serving entities

C = Total of factor B for all Transmission Owner Members that are subject to Sections 4.3.2(b)-(f) of the Membership Agreement

The Finance Committee shall have the discretion to reduce the Existing Obligations of any withdrawing or Terminated Member or of any Member submitting a notification of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement, to reflect any SPP costs or expenses that may be mitigated in connection with such Member’s withdrawal, termination, or Partial Termination. In the event of consolidation of affiliate memberships or the transfer of membership from one corporate entity to another, whereby one entity remains a member of SPP, the withdrawal obligation for the departing company(ies) may be waived at SPP’s sole discretion.

### **8.7.3 Financial Obligations for Transmission Facilities**

To the extent that Section 4.3.3A of the Membership Agreement is applicable, a Terminated Member and a Member submitting a notice of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date.

#### **8.7.4 Penalty Costs**

A Terminated Member and a Member submitting a notice of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement shall remain liable for its share of costs associated with penalties assessed against SPP by FERC, the FERC-approved Electric Reliability Organization, any Electric Reliability Organization-approved Regional Entity, or any other governmental or regulatory authority with jurisdiction over SPP that SPP incurs as a result of events that occurred prior to Member's Termination Date but that SPP is unable to recover under the SPP OATT.

#### **8.7.5 Limitation on Financial and Penalty Obligations**

(a) Notwithstanding the delineation of Members' financial obligations in Section 8.7, a Federal Power Marketing Agency Member shall not be subject to the financial obligations listed in this Section 8.7 in the event FERC finds that SPP has not adhered to all of the Federal Power Marketing Agency Amendments for such Federal Power Marketing Agency Member as that term is defined in Section 1.0 of these Bylaws or if SPP files and FERC approves material changes to the Federal Power Marketing Agency Amendments for such Federal Power Marketing Agency Member.

(b) Provided further, notwithstanding any language to the contrary in these Bylaws, a Federal Power Marketing Agency Member has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has it accepted any liability, responsibility, or obligation to pay any civil monetary penalties

or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of these Bylaws. SPP, ~~in accepting Western UGP as a member,~~ does not ~~thereby~~ concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of ~~any Federal Power Marketing Agency Member Western UGP~~. SPP will identify the amount of any penalty or fine that SPP allocates to ~~a Federal Power Marketing Agency Member Western UGP~~ or that SPP determines is attributable to ~~a Federal Power Marketing Agency Member Western UGP~~ and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in these Bylaws means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

## **10.0 Amendments to These Bylaws and the Articles of Incorporation**

Except for modifications to Section 4.0 BOARD OF DIRECTORS, Section 5.0 COMMITTEES ADVISING THE BOARD OF DIRECTORS, Section 8.7.5 LIMITATION ON FINANCIAL AND PENALTY OBLIGATIONS, and Section 10.0 AMENDMENTS, these Bylaws may be amended, repealed, or added to by the Board of Directors only upon thirty calendar days written notice to the Membership of the proposed modification(s). Approval of amendments to the Bylaws by the Board of Directors must be by an affirmative vote of a majority plus one of directors. Sections 4.0, 5.0, 8.7.5, and 10.0 of these Bylaws and the Articles of Incorporation may be amended, repealed, or added to only by approval of the Membership. Provided, that all changes to Federal Power Marketing Agency representation in Sections 5.1.1 and 6.6 and any change to Section 8.7.5 must be mutually agreed to by the Federal Power Marketing Agency Member(s) and SPP. All amendments are subject to the requisite regulatory approval(s).

This Agreement is made between the Member and SPP, as defined herein.

## **1.0 Definitions**

### **Agreement**

This Membership Agreement.

### **Basin Electric Amendments**

The amendments and revisions to the SPP OATT, to Basin Electric Power Cooperative's ("Basin Electric's") Network Integration Transmission Service Agreement, or to Basin Electric's Network Operating Agreement necessary for Basin Electric's initial SPP membership or as they may be revised in the future by agreement between Basin Electric and SPP.

### **Board of Directors**

The Board of Directors elected pursuant to the Bylaws.

### **Bylaws**

SPP's Bylaws or any successor document.

**Colorado River Storage Project Zone ("CRSPZ" or "Zone 103"):** The rate pricing zone of facilities within the Salt Lake City Area Integrated Projects marketing area consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the facilities of the Colorado River Storage Project ("CRSP") within the Western Interconnection and (ii) the facilities of other transmission owners approved for inclusion in Zone 103 by the Commission.

### **Distribution Facilities**

Facilities that are the subject of a separate distribution charge pursuant to the Open Access Transmission Tariff.

### **Eastern Interconnection**

One of the three major alternating-current electrical grids in North America. The Eastern Interconnection reaches from Central Canada eastward to the Atlantic coast (excluding Quebec), south to Florida, and back west to the foot of the Rockies (excluding most of Texas).

### **Effective Date**

This Agreement is effective on January 1, 2000 or upon the date of execution by Member if after January 1, 2000.

### **Electric Transmission System**

The transmission facilities subject to SPP's tariff administration, except for any Distribution Facilities.

### **Existing Obligations**

Shall have the meaning given in Section 4.3.2(b).

### **Federal Power Marketing Agency**

This term shall include the term “Federal Power Marketing Administration” and have the same definition that is set forth in the Federal Power Act at 16 U.S.C. § 796(19), which defines “Federal power marketing agency” as “any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy[.]”

### **Federal Power Marketing Agency Amendments**

The amendments and revisions to the SPP Bylaws, the SPP Membership Agreement, and Section 39.3 of the SPP OATT that are required by a Federal Power Marketing Agency Member for initial SPP membership or as they may be revised in the future by mutual agreement between the Federal Power Marketing Agency Member and SPP.

### **Federal Power Marketing Agency Member**

An entity that is a Member and is a Federal Power Marketing Agency or a division of a Federal Power Marketing Agency.

**Federal Power-WAPA-CRSP:** All power and energy generated at reservoir projects under the control of the U.S. Bureau of Reclamation in the marketing area of WAPA-CRSP, and FSE-Qualified WAPA-CRSP Replacement Energy, for the purpose of fulfilling WAPA-CRSP’s Statutory Load Obligations for the sale of power and energy. Federal Power-WAPA-CRSP resources shall be deemed to be eligible as Designated Resources.

**Federal Power-WAPA-RMR:** All power and energy generated at reservoir projects under the control of the U.S. Bureau of Reclamation in the marketing area of WAPA-RMR for the purpose of fulfilling WAPA-RMR’s Statutory Load Obligations for the sale of power and energy. Federal Power-WAPA-RMR resources shall be deemed to be eligible as Designated Resources.

### **Federal Power-~~Western~~WAPA-UGP (or “Federal Power-Western-UGP”)**

All capacity and energy generated at reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation in the marketing area of ~~the Western~~WAPA-UGP for the purpose of fulfilling ~~Western~~WAPA-UGP’s Statutory Load Obligations for the sale of ~~power~~capacity and energy. This shall also include any ~~capacity~~power and energy delivered to or from ~~Western~~WAPA-UGP under the pre-OATT bi-directional agreement with Southwestern Power Administration through Associated Electric Cooperative, Inc. (“AECI”) for delivery and receipt at AECI’s~~the~~ Maryville Substation. ~~Western~~WAPA-UGP’s deliveries to Southwestern shall be considered part of ~~Western~~WAPA-UGP’s Statutory Load Obligations, and receipts from Southwestern to ~~Western~~WAPA-UGP will be considered as coming from Federal resources. Federal Power-~~Western~~WAPA-UGP resources shall be deemed to be eligible ~~to be considered~~ as Designated Resources.

### **FERC**

The Federal Energy Regulatory Commission or successor organization.

### **Financial Obligations**

Shall have the meaning given in Section 4.3.2(b).



**Future Interest**

Shall have the meaning given in Section 4.3.2(b).

**Good Utility Practice**

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 the 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 at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region. SPP Criteria and NERC Policies and Standards are considered Good Utility Practice.

**Heartland Amendments**

The amendments and revisions to the SPP OATT, to Heartland Consumers Power District's ("Heartland's") Network Integration Transmission Service Agreement, or to Heartland's Network Operating Agreement necessary for Heartland's initial SPP membership or as they may be revised in the future by agreement between Heartland and SPP.

**Load Serving Entity (LSE)**

A Member that: (1) is a distribution utility or an electric utility that has a service obligation, where a service obligation, as defined in Section 217(a) of the Federal Power Act, means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility (as defined in Section 217(a) of the Federal Power Act); and/or (2) secures energy and transmission service (and related Interconnected Operations Services) to serve the electric demand and energy requirements of its end-use customers. A Load Serving Entity may or may not be a Transmission Owner or transmission customer under the OATT.

**Loveland Area Projects Facilities:** The facilities within the Loveland Area Projects Marketing Area of the Loveland Area Projects within the Eastern and Western Interconnections excluding facilities transferred to the functional control of the Transmission Provider by WAPA-UGP.

**Loveland Area Projects Zone ("LAPZ" or "Zone 104"):** The rate pricing zone consisting of the facilities within the Loveland Area Projects Marketing Area consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the Loveland Area Projects Facilities and (ii) the facilities of other transmission owners approved for inclusion in Zone 104 by the Commission.

**Member**

Signatory to this Agreement that has completed the application requirements pursuant to the Bylaws.

**NERC**

North American Electric Reliability Corporation or successor organizations.

**Non-Load Serving Entity**

A Member that is not a Load Serving Entity and does not own transmission facilities under the SPP OATT.

**Non-Transmission Owner**

A Member that is not a Transmission Owner. A Non-Transmission Owner that owns or controls Tariff Facilities will have its status changed to a Transmission Owner under this Agreement upon transfer to SPP of the functional control of Tariff Facilities related to the rates, terms and conditions of the OATT.

**Open Access Transmission Tariff (OATT)**

The SPP nondiscriminatory, Open-Access Transmission Tariff (OATT) on file with FERC pursuant to Section 205 of the Federal Power Act under which SPP will offer transmission service, or any such successor tariff.

**Partial Termination**

Shall have the meaning given in Section 4.1.

**Regional Entity**

An entity having enforcement authority delegated to it by NERC pursuant to a delegation agreement accepted by FERC.

**Reliability Coordinator**

SPP, in performing its reliability coordinator function as recognized by NERC pursuant to its policies, and pursuant to SPP Criteria and this Agreement.

**SPP**

Southwest Power Pool, Inc., or successor organization.

**SPP Criteria**

SPP's approved operating and planning criteria.

**SPP Region**

The geographic area encompassing the transmission systems of Members that are Transmission Owners.

**Standards of Conduct**

SPP's Standards of Conduct that apply to the conduct of its directors, officers, employees, contractors, and agents.

**Statutory Load Obligations**

~~Western UGP's~~ A WAPA-Division's power marketing function obligations under Federal law to deliver capacity power and energy ~~from the output of the Federal hydroelectric projects operated by the Department of the Army and the Bureau of Reclamation~~ to loads which include project

use loads, preference power customer loads located in that WAPA-Division's marketing area defined pursuant to its power marketing plan, and other loads required to be served under Federal law. For WAPA-CRSP, Statutory Load Obligations also includes WAPA-CRSP's contractual obligations pursuant to its power marketing plan.

### **Tariff Facilities**

The Electric Transmission System and the Distribution Facilities subject to SPP's tariff administration.

### **Termination**

Shall have the meaning given in Section 4.1.

### **Termination Date**

Shall mean the date Termination or Partial Termination is effective in accordance with Section 4.2.2.

### **Transmission Customer**

A customer under the Open Access Transmission Tariff

### **Terminated Member**

An entity that was a Signatory to this Agreement but whose membership in SPP has been terminated under Section 4 of this Agreement.

### **Transmission Only Entity**

A member that is a Transmission Owner and is not a Load Serving Entity.

### **Transmission Owner**

A signatory to this Agreement which: (1) transfers functional control of Tariff Facilities related to the rates, terms and conditions of the OATT to SPP; or (2) appoints SPP under another agreement to provide service under the Transmission Tariff over Tariff Facilities which it owns or controls; or (3) is assigned by SPP to construct and accepts the obligation to construct new Tariff Facilities; or (4) undertakes another Transmission Owner's obligation to construct Tariff Facilities in accordance with Section 3.3 of this Agreement and Attachment O of the SPP OATT.

### **Upper Missouri Zone ("UMZ" or "Zone 19")**

The ~~Upper Missouri Zone ("UMZ" or "Zone 19")~~ is the rate pricing zone ~~initially~~ consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the facilities of ~~Western~~ WAPA-UGP within the Eastern and Western Interconnections; (ii) the facilities owned or leased by Basin Electric Power Cooperative or Heartland Consumers Power District within the Eastern Interconnection; (iii) a portion of the facilities owned or leased by Basin Electric Power Cooperative within the Western Interconnection; ~~and~~ (iv) other facilities of the Western Area Power Administration in the Eastern Interconnection transferred by WAPA-UGP to the functional control of the Transmission Provider, not included in the facilities of WAPA-UGP in (i) above; and (v) the facilities of other transmission owners approved for inclusion in Zone 19 by the Commission.

**Western Area Power Administration Division (“WAPA-Division”):** The WAPA-CRSP, WAPA-RMR, or WAPA-UGP division of the Western Area Power Administration (“WAPA”).

**Western Area Power Administration-Colorado River Storage Project Management Center (“WAPA-CRSP”):** A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Salt Lake City Area Integrated Projects. WAPA-CRSP has transferred Colorado River Storage Project transmission facilities in the Western Interconnection to the functional control of the Transmission Provider.

**Western Area Power Administration-Rocky Mountain Region (“WAPA-RMR”):** A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Loveland Area Projects. WAPA-RMR also operates the Western Area Lower Colorado Balancing Authority Area, known as WALC, and provides transmission services, including, but not limited to, transmission service across WAPA-owned transmission facilities within WALC which is external to SPP. WAPA-RMR has transferred Loveland Area Projects Facilities located in the Eastern Interconnection and the Western Interconnection to the functional control of the Transmission Provider.

**Western Area Power Administration-Upper Great Plains Region (“WAPA-UGP” or “Western-UGP”)**

A division of the Western Area Power Administration that markets and transmits Federal power from reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation ~~collectively known as the Pick-Sloan Missouri Basin Program-Eastern Division, to Statutory Load Obligations, including preference power customers in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota located in a defined marketing area. Western-UGP operates the WAUW Balancing Authority Area in the Western Interconnection, where certain of its transmission facilities are located.~~ WAPA-UGP has transferred Federal transmission facilities in both the Eastern Interconnection and Western Interconnection to the functional control of the Transmission Provider.

### **Western Interconnection**

One of the three major alternating-current electrical grids in North America. The Western Interconnection stretches from Western Canada South to Baja California in Mexico, reaching eastward over the Rockies to the Great Plains.

### 3.0 Commitments, Rights, Powers, and Obligations of Member

Member has made the following commitments, and shall have the following rights and shall be responsible for the following functions, some of which apply only to a Transmission Owner, some only to a Non-Transmission Owner.

- (a) Transmission Owner shall transfer functional control related to the rates, terms and conditions of the OATT of its ~~T~~transmission ~~F~~facilities, subject to receiving all necessary regulatory authorizations, thereby allowing SPP to (i) direct the operation of the ~~T~~transmission ~~F~~facilities in accordance with the terms of this Agreement; (ii) administer transmission service under the Transmission Tariff over that Transmission Owner's Tariff Facilities; and (iii) receive funds from Transmission Customers relating to transmission service over Tariff Facilities and distribute funds to the Transmission Owner. Where Member, owns generators within the SPP Region which directly affect the capacity or reliability of the Electric Transmission System, it shall offer to provide the ancillary services required under the OATT at rates approved by regulatory authorities, where appropriate, to the extent such generators are able to provide such ancillary services.
- (b) Transmission Owner shall operate and maintain its Tariff Facilities subject to the requirements of this Agreement.
- (c) Where Transmission Owner is a balancing area operator, it shall continue to operate its balancing areas for local generation control and economic dispatch, and shall be responsible for identifying and addressing local problems in a reliable manner.
- (d) Transmission Owner shall provide transmission service over its Tariff Facilities at the direction of SPP pursuant to the terms of the OATT.
- (e) Member agrees to comply with the instructions of SPP in its role as Reliability Coordinator.
- (f) Transmission Owner shall retain all rights of ownership, including legal and equitable title in its Tariff Facilities, subject to the provisions of this Agreement. Transmission Owner, or one acting under its authority, shall retain all rights to

access to its Tariff Facilities so long as such access is consistent with the provisions of this Agreement.

- (g) Notwithstanding any other provision in this Agreement, Transmission Owner shall not be obligated or be considered to be allowing transmission over its facilities if such transmission would cause the loss of the tax-exempt status of Transmission Owner or any bonds or other debt of Transmission Owner.
- (h) Notwithstanding any other provisions of this Agreement, Member reserves the right to exercise operational authority of Member's Tariff Facilities (1) to protect public safety and the safety of its workers, to prevent damage to equipment, and to preserve reliability in compliance with NERC standards, and (2) as necessary to preserve Member's rights, duties and obligations regarding electric service to its retail and wholesale native load customers pursuant to any applicable Federal or state law and consistent with NERC standards, if SPP's exercise of operational authority over the Tariff Facilities would endanger said electric service or is contrary to or would curtail, surrender or delegate such Federal or state law rights, duties and obligations. Member will, as soon as reasonably practicable thereafter, notify SPP of such actions taken by Member. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

### **3.10 Pricing**

Transmission Owner shall possess the unilateral right to file with FERC, and, if the Transmission Owner is non-jurisdictional, the Transmission Owner shall have the option to file with FERC, or submit to SPP for filing with FERC, pursuant to Section 205 of the Federal Power Act and Federal statutory and regulatory requirements, including Delegation Order [S1-DEL-RATES-2016No. 00-37.00A](#), 10 CFR Part 903 and 18 CFR Part 300, as amended or superseded, modifications to change the rates or rate structure for transmission service over its Tariff Facilities, including filing a fixed revenue requirement and supporting data or a rate formula template for its cost of service revenue requirements, and to submit proposals or filings governing new construction with FERC; provided, however, Transmission Owner may not submit a proposal which results in a Transmission Customer paying two or more transmission charges for transmission for one transaction under the OATT (excluding Distribution Facilities for which an additional charge may be imposed, and Grandfathered Agreements as defined in the OATT). Transmission Owner shall notify SPP in advance of its intention to submit a filing to FERC and provide SPP with a copy of the filing. No approval from SPP is required for such filings.

### **3.11 No Waiver of Jurisdictional Immunity**

If Member is not subject to the jurisdiction of FERC as a public utility under the Federal Power Act, Member shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Member that does not otherwise exist. Any order, decision, rule or regulation issued by FERC to SPP or any other Members or Member of SPP relating to matters exempt from FERC jurisdiction under Section 201(f) of the Federal Power Act shall not apply directly or separately to a non-jurisdictional Member. Without limiting the generality of the foregoing, except as otherwise provided in the Federal Power Act, a non-jurisdictional Member shall not be bound or obligated by any FERC order, decision, rule or regulation requiring a change in the rates, terms or conditions for transmission service or compensation for utilizing the transmission facilities of a non-jurisdictional Member, which conflicts with applicable Federal or state law, including any order requiring the suspension of the use of such rates, terms or conditions or the payment of refunds of rates or compensation previously collected or received. A non-jurisdictional Member and SPP acknowledge that FERC, in the context of its jurisdiction over SPP's rates, may review a non-jurisdictional Member's revenue requirement and rates to the extent they comprise or affect the rates charged by SPP or other Members. In the case of a Federal Power Marketing Agency, this review shall be consistent with the Delegation Order ~~S1-DEL-RATES-2016No. 00-037.00A~~, as superseded or amended, from the Secretary of Energy to the Power Marketing Administrations and the FERC, including the regulations implementing this review authority. If FERC does not accept a non-jurisdictional Member's revenue requirement or rates, the non-jurisdictional Member may terminate this Agreement pursuant to the withdrawal provisions of the Agreement. In such event, the non-jurisdictional Member and SPP agree to meet and confer prior to any termination of this Agreement. Nothing in this Agreement, or the participation of a non-jurisdictional Member in SPP and its operations waives any objection to or otherwise constitutes a consent to, the jurisdiction by FERC that does not otherwise exist over the non-jurisdictional Member or its transmission service, facilities and rates.



## **4.2 Termination Procedures and Effective Dates**

### **4.2.1 Voluntary Withdrawal**

(a) **Notice of Voluntary Withdrawal of a Member.** Subject to Section 4.3, a Member may withdraw voluntarily from this Agreement, provided that it has given written notice to the President of its intent to withdraw. For Load Serving Entity and Transmission Only Entity Members, the notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President no less than twenty-four (24) months prior to such date. For Members that are a Non-Load Serving Entity, the notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President prior to such date. The President will advise the Members and the Board of Directors of any withdrawal notices received. In order to assure that there is no more than one proposed termination date with respect to a Member, a withdrawal notice shall be deemed to supersede any prior withdrawal notice given by the Member, except that a Member may not submit a withdrawal notice less than twenty-four (24) months prior to the termination date proposed in the Member's previous notice of intent to withdraw, unless that Member is a Non-Load Serving Entity. Voluntary withdrawal is a Termination and creates the same obligations as a Termination for any other reason. Upon receiving a notice of intent to withdraw, SPP shall account for such notice of intent to withdraw in the SPP planning process, unless the Member plans to continue to take transmission service from SPP after the termination date.

(b) **Withdrawal Deposit.** Load Serving Entity and Transmission Only Entity Members submitting a written notice of its intent to withdraw from this Agreement or notice of a Partial Termination must simultaneously submit a cash withdrawal deposit to SPP, as set forth in the table below. SPP will not accept a notice of intent to withdraw or notice of a Partial Termination from a Load Serving Entity or a Transmission Only Entity without a withdrawal deposit. SPP will treat the withdrawal deposit as a pre-payment of a portion of the costs SPP incurs to process the Member's withdrawal from SPP or Partial Termination, as set forth in Section 4.3.2(d) of this Agreement, or the costs associated with reintegrating the Member, its facilities, or its customers into SPP if the Member subsequently rescinds its notice of intent to withdraw or notice of Partial Termination and SPP incurs costs for such reintegration. Withdrawal deposits are as follows:

<b>Member Category</b>	<b>Withdrawal Deposit</b>
Load Serving Entity	\$ 150,000
Transmission Only Entity	\$ 50,000
Non-Load Serving Entity	\$ 0

If the cost of processing Member's withdrawal as calculated by SPP pursuant to Section 4.3.2(d) of this Agreement exceeds the withdrawal deposit, the additional amount shall be included in the invoice SPP provides to the Member under Section 4.3.2(e) of this Agreement. If the Member rescinds its notice of intent to withdraw and the cost of processing the Member's withdrawal and subsequent reintegration into SPP exceeds the withdrawal deposit, SPP shall invoice the Member for the amount of the cost that exceeds the deposit, and the Member shall provide payment to SPP within thirty (30) days of receipt of the invoice. For Members that are Non-Load Serving Entities, the cost, if any, of processing the Member's withdrawal as calculated by SPP shall be included in the invoice SPP provides to the Member under Section 4.3.2(e) of this Agreement. If the withdrawal deposit exceeds the costs of processing the Member's withdrawal and/or reintegration, SPP shall refund the difference to the Member. Notwithstanding the foregoing, a Federal Power Marketing Agency shall not be required to make a withdrawal deposit and shall only be responsible for paying SPP costs after they are incurred and appropriately invoiced pursuant to Section 4.3.2(e).

(c) **Notice of Partial Termination.** In the event of a Partial Termination, the Member shall provide written notice to the President of its intent to remove a portion of its transmission facilities or customers from the SPP Region. The notice of a Partial Termination must state the effective date for the removal of a portion of the transmission facilities or customers from the SPP Region and be delivered to the President no less than twenty-four (24) months prior to such date. The President will advise the Members and the Board of Directors of notices of Partial Termination received.

#### **4.2.2 Effective Date of Termination**

(a) **Voluntary Withdrawal.** If the withdrawing Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date proposed in the withdrawal notice under Section 4.2.1 or otherwise agreed by

SPP. If the withdrawing Member is a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the later of (i) the proposed date specified in the withdrawal notice or otherwise agreed by SPP, (ii) the effective date, if any, set by the FERC order approving the withdrawal; or (iii) the date that such FERC order is no longer subject to review by a court of competent jurisdiction.

(b) **Termination other than Voluntary Withdrawal.** If the Termination occurs for any reason other than the Member's voluntary withdrawal under Section 4.2.1 or by agreement with SPP, the Termination Date shall be as follows:

- (i) If the Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date of the event by which the Termination occurs, for example, the date a party gives notice that it will treat a breach or repudiation as a Termination or the date a Member withdraws in order to comply with the terms of a law or regulation. The foregoing notwithstanding, if the Termination occurs due to the order of a court or administrative agency, the Termination Date shall be the date the order is no longer subject to review by a court of competent jurisdiction.
- (ii) If the Member is a Transmission Owner requiring regulatory agency approval prior to effectively withdrawing from SPP, then the Termination Date shall be the later of (i) the effective date, if any, set by the regulatory agency order approving the Termination; or (ii) the date that such regulatory order is no longer subject to review by a court of competent jurisdiction.
- (iii) In conjunction with the requirements and limitations imposed in Section 4.2.2(b)(ii) above; Transmission Owning Members of SPP wishing to withdraw from SPP and requiring regulatory agency approval prior to such withdrawal being effective are required to initiate the required regulatory filings seeking approval to withdraw prior to the end of the 24-month notice period. Additionally, these members must provide SPP copies of the

regulatory filings in a timely manner after filing with the appropriate regulatory agency. Failure to comply with the terms of this paragraph will effectively rescind the notice of the withdrawing member.

- (iv) Member may terminate this Agreement with less than the required twenty-four (24) months' notice, in the event that the Federal or state law governing Member changes, or any provisions of this Agreement, the provisions of SPP's OATT, or SPP's Bylaws are changed or modified in a manner that causes a conflict with the Member's Federal or state law, regulations, or rate schedules, and the internal dispute resolution process described in Section 12 of the OATT is unable to resolve such conflict. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with Federal or state law.
- (v) Any Member with ~~T~~transmission ~~F~~facilities located in the Upper Missouri Zone may terminate this Agreement with less than the required twenty-four (24) month notice in the event that ~~Western~~WAPA-UGP or Basin Electric Power Cooperative: (1) withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments, the Basin Electric Amendments, or the Heartland Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by ~~Western~~WAPA-UGP or Basin Electric Power Cooperative, Member's withdrawal will become effective on the same date as that of ~~Western~~WAPA-UGP or Basin Electric Power Cooperative. Such Member also may terminate this Agreement in the event that SPP files and FERC approves changes to the WAPA-UGP Federal

Power Marketing Agency Amendments, the Basin Electric Amendments, or the Heartland Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

(vi) Any Member with transmission facilities located in the Colorado River Storage Project Zone may terminate this Agreement or effectuate a Partial Termination in this zone with less than the required twenty-four (24) month notice in the event that: (1) WAPA-CRSP, WAPA-RMR, Basin Electric Power Cooperative or Tri-State Generation and Transmission Association withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-CRSP and WAPA-RMR Federal Power Marketing Agency Amendments or the Basin Electric Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-CRSP, or WAPA-RMR, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association, Member's withdrawal will become effective on the same date as that of WAPA-CRSP, or WAPA-RMR, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association. Such Member also may terminate this Agreement or effectuate a Partial Termination in this zone in the event that SPP files and FERC approves changes to the WAPA-CRSP or WAPA-RMR Federal Power Marketing Agency Amendments or the Basin Electric Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

(vii) Any Member with transmission facilities located in the Loveland Area Projects Zone may terminate this Agreement or effectuate a Partial Termination in this zone with less than the required twenty-four (24) month notice in the event that: (1) WAPA-RMR, WAPA-CRSP, Basin Electric Power Cooperative or Tri-State Generation and Transmission Association withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-RMR and WAPA-CRSP Federal Power Marketing Agency Amendments or the Basin Electric Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-RMR, or WAPA-CRSP, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association, Member's withdrawal will become effective on the same date as that of WAPA-RMR, or WAPA-CRSP, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association. Such Member also may terminate this Agreement or effectuate a Partial Termination in this zone in the event that SPP files and FERC approves changes to the WAPA-RMR or WAPA-CRSP Federal Power Marketing Agency Amendments or the Basin Electric Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

- (c) **Partial Termination.** The Termination Date for a Partial Termination shall be the date the voluntary removal of a portion of transmission facilities or customers from the SPP Region is effective, unless otherwise agreed by SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT  
FOR BASIN ELECTRIC POWER COOPERATIVE**

**A1. Dispute Resolution**

Notwithstanding any provisions in the Agreement or the SPP Bylaws to the contrary, any disputes arising under the Agreement or SPP Bylaws and relating to determinations, decisions, conduct and actions made or taken by Basin Electric Power Cooperative ("Basin Electric") pursuant to its participation in SPP shall be subject to binding resolution under Section 3.13 of the SPP Bylaws only to the extent agreed upon by Basin Electric's board of directors, and subject to the terms and conditions set by Basin Electric's board of directors.

**A2. Withdrawal Rights**

Basin Electric may terminate this Agreement and withdraw as a member of SPP with less than the advance notice required by Section 4.2.2 of the Agreement in the event that (1) Western Area Power Administration-Upper Great Plains Region ("~~Western~~WAPA-UGP") withdraws from SPP in accordance with its withdrawal rights; (2) FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments or all of the Basin Electric Amendments; or (3) SPP files and FERC approves one or more changes to the Basin Electric Amendments without Basin Electric's consent, and such changes have a material adverse effect on Basin Electric. In such event, Basin Electric and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by ~~Western~~WAPA-UGP, Basin Electric's withdrawal will become effective on the same date as that of ~~Western~~WAPA-UGP. If Basin Electric exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

**A3. Obligation to Build Conditions**

Basin Electric's board of directors shall have discretionary authority to decide whether Basin Electric will construct new transmission facilities. Basin Electric's board of directors shall not replace any state regulatory authority with responsibility for siting activities under state law.

IN WITNESS WHEREOF, Basin Electric and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to Basin Electric's Membership Agreement with SPP, which Amendments are fully applicable and incorporated into said Membership Agreement and together shall constitute one and the same instrument binding upon Basin Electric and SPP.

## AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER ADMINISTRATION-UPPER GREAT PLAINS REGION

### A1. Participation by the Western Area Power Administration-Upper Great Plains Region

#### A1.1 Subject to Acts of Congress

The participation by the United States through the Western Area Power Administration-Upper Great Plains Region ("~~Western~~WAPA-UGP") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

#### A1.2 Federal Service Exemption

~~Western~~WAPA-UGP was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the Department of the Army (Corps) or the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, ~~Western~~WAPA-UGP markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the ~~Western~~WAPA-UGP Federal Service Exemption. ~~Western~~WAPA-UGP's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that ~~Western~~WAPA-UGP owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and ~~Western~~WAPA-UGP's preference power customers is a ~~Western~~WAPA-UGP responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by ~~Western~~WAPA-UGP under this Agreement is solely for the use of Available Transfer Capability in excess of the capability ~~Western~~WAPA-UGP requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. ~~Western~~WAPA-UGP retains the Available Transfer Capability from its Federal Power-~~Western~~WAPA-UGP in the UMZ to deliver to its Statutory Load Obligations

**A1.2.1** ~~Western~~WAPA-UGP shall be exempt from all Schedule 11 Region-wide Charges ~~(for both regionally shared facilities external to the UMZ and those internal to the UMZ) for associated with~~ ~~Western~~WAPA-UGP's delivery of Federal ~~Power-WAPA-UGP~~ generation to ~~Western~~WAPA-UGP's Statutory Load



Obligations internal to the UMZ or external to the Transmission Provider.—~~Any SPP ordered regionally shared projects within the UMZ to address SPP system-wide requirements will not impact Western UGP’s transmission charges to its Statutory Load Obligations. SPP will not assess any Schedule 11 Region-wide Charge, associated with transmission facilities in the Eastern Interconnection, for load that is located in the Western Interconnection and for the portion thereof that is served exclusively by resources in the Western Interconnection.~~

**A1.2.2** ~~WesternWAPA~~-UGP shall be exempt from ~~SPP~~ congestion and financial marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-UGP resources across the UMZ to ~~WesternWAPA~~-UGP’s Statutory Load Obligations. ~~WesternWAPA~~-UGP shall be responsible for providing the Transmission Provider averagereal power losses for the energy delivered from Federal Power-WAPA-UGP resources under the Federal Service Exemption across the UMZ in accordance with Attachment M of the SPP OATT.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable ~~WesternWAPA~~-UGP to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAct 2005) are met. SPP and ~~WesternWAPA~~-UGP will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAct 2005 by taking the following actions:

- a) SPP will annually provide ~~WesternWAPA~~-UGP with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide ~~WesternWAPA~~-UGP with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide ~~WesternWAPA~~-UGP with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) ~~WesternWAPA~~-UGP will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) ~~WesternWAPA~~-UGP will ensure its obligations for oversight and monitoring of SPP’s performance as required by EPAct 2005 are met through participation by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.

- f) Recovery of all of the costs and expenses related to ~~Western~~WAPA-UGP transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

#### **A1.4. Contingent Upon Appropriations and Authorization**

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

#### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving ~~Western~~WAPA-UGP unless exempted by rules, regulations, or order of the Secretary of Labor.

##### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

##### **A1.5.2 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.

##### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

#### **A1.6 Federal Projects**

The individual hydroelectric projects from which the WesternWAPA-UGP markets capacity and energy are owned and controlled by the Corps or the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of either Corps or the Bureau of Reclamation. The Parties also recognize and agree that WesternWAPA-UGP's transmission system is integrated at various locations through switchyard facilities owned and operated by the Corps or Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Corps or Bureau of Reclamation. WesternWAPA-UGP shall communicate and coordinate with the Corps or Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Corps or Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP's request shall be within the discretion of and subject to the approval of the Corps or Bureau of Reclamation. In the event SPP requests changes due to redispatch, operation, maintenance or addition to hydroelectric generation owned and operated by the Corps or Bureau of Reclamation and marketed by WesternWAPA-UGP, WesternWAPA-UGP shall coordinate its operations with the Corps and Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Corps or Bureau of Reclamation. Nothing in this section is intended to change the Corps or Bureau of Reclamation obligations pursuant to their registration with NERC.

#### **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WesternWAPA-UGP must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WesternWAPA-UGP's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WesternWAPA-UGP's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

#### **A1.8 Net Billing**

Payments due ~~Western~~WAPA-UGP may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

#### **A1.9 Bill Crediting**

Payments to ~~Western~~WAPA-UGP by SPP shall be paid by SPP to a third party when so directed by ~~Western~~WAPA-UGP. Any third party designated to receive payment in lieu of ~~Western~~WAPA-UGP, and the amount to be paid to that party, will be so identified in writing to SPP. The payment to the third party shall be due and payable by the payment due date specified on ~~Western~~WAPA-UGP's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of ~~Western~~WAPA-UGP. ~~Western~~WAPA-UGP shall credit SPP for the amount paid as if payment had been made directly to ~~Western~~WAPA-UGP. SPP shall accept payment from third parties of amounts due SPP from WAPA-UGP and shall notify WAPA-UGP of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-UGP as if such payments had been made directly by WAPA-UGP. WAPA-UGP remains liable to SPP for all amounts WAPA-UGP owes SPP that are not paid by WAPA-UGP or a third party. In the event third party payment(s) to SPP exceeds WAPA-UGP's payment obligation to SPP, SPP shall reimburse the difference to WAPA-UGP.

#### **A1.10 Federal Power Marketing Agency Termination**

- (a) Notwithstanding anything else in the Agreement, ~~Western~~WAPA-UGP may terminate this Agreement and withdraw as a member of SPP with less than the advanced notice required by Section 4.2.2 of the Agreement. ~~Western~~WAPA-UGP shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the ~~WAPA-UGP~~ Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the ~~WAPA-UGP~~ Federal Power Marketing Agency Amendments. In such event, ~~Western~~WAPA-UGP and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- (b) Should ~~Western~~WAPA-UGP exercise any type of termination of this Agreement, ~~Western~~WAPA-UGP shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, ~~Western~~WAPA-UGP has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has ~~Western~~WAPA-UGP accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting ~~Western~~WAPA-UGP as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of ~~Western~~WAPA-UGP. SPP will identify the amount of any penalty or fine that SPP allocates to ~~Western~~WAPA-UGP or that SPP determines is attributable to ~~Western~~WAPA-UGP and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

### **A.2 Amendments Not Severable**

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of ~~Western~~WAPA-UGP's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be

invalid, void, or unenforceable, then the remaining provisions of WesternWAPA-UGP's Agreement with SPP shall no longer be in effect with respect to WesternWAPA-UGP.

IN WITNESS WHEREOF, WesternWAPA-UGP and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WesternWAPA-UGP's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WesternWAPA-UGP and SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA  
POWER ADMINISTRATION-COLORADO RIVER STORAGE PROJECT  
MANAGEMENT CENTER**

**A1. Participation by the Western Area Power Administration-Colorado River Storage Project Management Center**

**A1.1 Subject to Acts of Congress**

The participation by the United States through the Western Area Power Administration-Colorado River Storage Project Management Center ("WAPA-CRSP") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

**A1.2 Federal Service Exemption**

WAPA was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, WAPA-CRSP markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the WAPA-CRSP Federal Service Exemption. WAPA-CRSP's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that WAPA-CRSP owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and WAPA-CRSP's preference power customers is a WAPA-CRSP responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by WAPA-CRSP under this Agreement is solely for the use of Available Transfer Capability in excess of the capability WAPA-CRSP requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. WAPA-CRSP retains the Available Transfer Capability from its Federal Power-WAPA-CRSP in the CRSPZ to deliver to its Statutory Load Obligations.

**A1.2.1** WAPA-CRSP shall be exempt from all Schedule 11 Region-wide Charges associated with WAPA-CRSP's delivery of Federal Power-WAPA-CRSP to WAPA-CRSP's Statutory Load Obligations internal to the CRSPZ or external to the Transmission Provider.

**A1.2.2** WAPA-CRSP shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-CRSP resources across the CRSPZ to WAPA-CRSP's Statutory Load Obligations. WAPA-CRSP shall be responsible for providing the Transmission Provider real power losses for the energy delivered from Federal Power-WAPA-CRSP resources under the Federal Service Exemption across the CRSPZ in accordance with Attachment M of the SPP OATT.

**A1.2.3** WAPA-CRSP can acquire WAPA-CRSP Replacement Energy, as defined in the SPP OATT, bilaterally through a specific and identified counterparty, for a minimum of 28 days in duration to fulfill the WAPA-CRSP Statutory Load Obligations. WAPA-CRSP Replacement Energy can qualify for the Federal Service Exemption based upon the requirements set forth in the SPP OATT. The purpose of FSE-Qualified WAPA-CRSP Replacement Energy as defined in the SPP OATT is to provide energy, as needed, for WAPA-CRSP to meet its Statutory Load Obligations, after utilizing WAPA-CRSP's available hydro generation. WAPA-CRSP Replacement Energy that is delivered to the WAPA-CRSP FSE Resource Hub as defined in the SPP OATT is only eligible for the Federal Service Exemption from the WAPA-CRSP FSE Resource Hub to WAPA-CRSP's Statutory Load Obligations.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable WAPA-CRSP to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005) are met. SPP and WAPA-CRSP will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAAct 2005 by taking the following actions:

- a) SPP will annually provide WAPA-CRSP with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide WAPA-CRSP with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide WAPA-CRSP with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) WAPA-CRSP will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) WAPA-CRSP will ensure its obligations for oversight and monitoring of SPP's performance as required by EPAAct 2005 are met through participation



by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.

- f) Recovery of all of the costs and expenses related to WAPA-CRSP transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

#### **A1.4. Contingent Upon Appropriations and Authorization**

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

#### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving WAPA-CRSP unless exempted by rules, regulations, or order of the Secretary of Labor.

##### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

##### **A1.5.2 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.

##### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

## **A1.6 Federal Projects**

The individual hydroelectric projects from which the WAPA-CRSP markets capacity and energy are owned and controlled by the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of the Bureau of Reclamation. The Parties also recognize and agree that WAPA-CRSP's transmission system is integrated at various locations through switchyard facilities owned and operated by the Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Bureau of Reclamation. WAPA-CRSP shall communicate and coordinate with the Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP's request shall be within the discretion of and subject to the approval of Bureau of Reclamation. In the event SPP requests changes due to redispatch, operation, maintenance or addition to hydroelectric generation owned and operated by the Bureau of Reclamation and marketed by WAPA-CRSP, WAPA-CRSP shall coordinate its operations with the Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Bureau of Reclamation. Nothing in this section is intended to change the Bureau of Reclamation obligations pursuant to their registration with NERC.

## **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WAPA-CRSP must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WAPA-CRSP's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WAPA-CRSP's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

## **A1.8 Net Billing**

Payments due WAPA-CRSP may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

#### **A1.9 Bill Crediting**

Payments to WAPA-CRSP by SPP shall be paid by SPP to a third party when so directed by WAPA-CRSP. Any third party designated to receive payment in lieu of WAPA-CRSP, and the amount to be paid to that party, will be so identified in writing to SPP. The payment to the third party shall be due and payable by the payment due date specified on WAPA-CRSP's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of WAPA-CRSP. WAPA-CRSP shall credit SPP for the amount paid as if payment had been made directly to WAPA-CRSP. SPP shall accept payment from third parties of amounts due SPP from WAPA-CRSP and shall notify WAPA-CRSP of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-CRSP as if such payments had been made directly by WAPA-CRSP. WAPA-CRSP remains liable to SPP for all amounts WAPA-CRSP owes SPP that are not paid by WAPA-CRSP or a third party. In the event third party payment(s) to SPP exceeds WAPA-CRSP's payment obligation to SPP, SPP shall reimburse the difference to WAPA-CRSP.

#### **A1.10 Federal Power Marketing Agency Termination**

- a) Notwithstanding anything else in the Agreement, WAPA-CRSP may terminate this Agreement and withdraw as a member of SPP in accordance with less than the advanced notice required by Section 4.2.2 of the Agreement. WAPA-CRSP shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the WAPA-CRSP Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the WAPA-CRSP Federal Power Marketing Agency Amendments. In such event, WAPA-CRSP and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- b) Should WAPA-CRSP exercise any type of termination of this Agreement, WAPA-CRSP shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

#### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, WAPA-CRSP has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has WAPA-CRSP accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting WAPA-CRSP as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of WAPA-CRSP. SPP will identify the amount of any penalty or fine that SPP allocates to WAPA-CRSP or that SPP determines is attributable to WAPA-CRSP and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

### **A1.13 Point-To-Point Transmission Service Revenue Distribution for WAPA-CRSP**

Point-To-Point Transmission Service revenue distribution from WAPA-CRSP transmission reservations using CRSP facilities within the CRSPZ or from within the CRSPZ to the border of the CRSPZ associated with the fulfillment of the WAPA-CRSP contractual obligations pursuant to its power marketing plan or Statutory Load Obligations shall be distributed solely to WAPA-CRSP pursuant to Attachment L, Section II.C.4 of the SPP OATT.

## A.2 Amendments Not Severable

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of WAPA-CRSP's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of WAPA-CRSP's Agreement with SPP shall no longer be in effect with respect to WAPA-CRSP.

IN WITNESS WHEREOF, WAPA-CRSP and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WAPA-CRSP's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WAPA-CRSP and SPP.

## AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER ADMINISTRATION-ROCKY MOUNTAIN REGION

### A1. Participation by the Western Area Power Administration-Rocky Mountain Region

#### A1.1 Subject to Acts of Congress

The participation by the United States through the Western Area Power Administration-Rocky Mountain Region ("WAPA-RMR") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

#### A1.2 Federal Service Exemption

WAPA was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, WAPA-RMR markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the WAPA-RMR Federal Service Exemption. WAPA-RMR's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that WAPA-RMR owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and WAPA-RMR's preference power customers is a WAPA-RMR responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by WAPA-RMR under this Agreement is solely for the use of Available Transfer Capability in excess of the capability WAPA-RMR requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. WAPA-RMR retains the Available Transfer Capability from its Federal Power-WAPA-RMR in the LAPZ to deliver to its Statutory Load Obligations

**A1.2.1** WAPA-RMR shall be exempt from all Schedule 11 Region-wide Charges associated with WAPA-RMR's delivery of Federal Power-WAPA-RMR to WAPA-RMR's Statutory Load Obligations internal to the LAPZ or external to the Transmission Provider.

**A1.2.2** WAPA-RMR shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-RMR resources across the LAPZ to WAPA-RMR's Statutory

Load Obligations. WAPA-RMR shall be responsible for providing the Transmission Provider real power losses for the energy delivered from Federal Power-WAPA-RMR resources under the Federal Service Exemption across the LAPZ in accordance with Attachment M of the SPP OATT.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable WAPA-RMR to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005) are met. SPP and WAPA-RMR will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAAct 2005 by taking the following actions:

- a) SPP will annually provide WAPA-RMR with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide WAPA-RMR with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide WAPA-RMR with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) WAPA-RMR will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) WAPA-RMR will ensure its obligations for oversight and monitoring of SPP's performance as required by EPAAct 2005 are met through by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.
- f) Recovery of all of the costs and expenses related to WAPA-RMR transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

### **A1.4. Contingent Upon Appropriations and Authorization**

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

### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving WAPA-RMR unless exempted by rules, regulations, or order of the Secretary of Labor.

#### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

#### **A1.5.2 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.

#### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

#### **A1.6 Federal Projects**

The individual hydroelectric projects from which the WAPA-RMR markets capacity and energy are owned and controlled by the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of the Bureau of Reclamation. The Parties also recognize and agree that WAPA-RMR’s transmission system is integrated at various locations through switchyard facilities owned and operated by the Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Bureau of Reclamation. WAPA-RMR shall communicate and coordinate with the Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP’s request shall be within the discretion of and subject to the approval of Bureau of Reclamation. In the event SPP requests changes due to redispatch, operation,



maintenance or addition to hydroelectric generation owned and operated by the Bureau of Reclamation and marketed by WAPA-RMR, WAPA-RMR shall coordinate its operations with the Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Bureau of Reclamation. Nothing in this section is intended to change the Bureau of Reclamation obligations pursuant to their registration with NERC.

### **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WAPA-RMR must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WAPA-RMR's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WAPA-RMR's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

### **A1.8 Net Billing**

Payments due WAPA-RMR may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

### **A1.9 Bill Crediting**

Payments to WAPA-RMR by SPP shall be paid by SPP to a third party when so directed by WAPA-RMR. Any third party designated to receive payment in lieu of WAPA-RMR, and the amount to be paid to that party, will be so identified in writing to SPP. The payment to the third party shall be due and payable by the payment due date specified on WAPA-RMR's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of WAPA-RMR. WAPA-RMR shall credit SPP for the amount paid as if payment had been made directly to WAPA-RMR. SPP shall accept payment from third parties of amounts due SPP from WAPA-RMR and

shall notify WAPA-RMR of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-RMR as if such payments had been made directly by WAPA-RMR. WAPA-RMR remains liable to SPP for all amounts WAPA-RMR owes SPP that are not paid by WAPA-RMR or a third party. In the event third party payment(s) to SPP exceeds WAPA-RMR's payment obligation to SPP, SPP shall reimburse the difference to WAPA-RMR.

#### **A1.10 Federal Power Marketing Agency Termination**

- a) Notwithstanding anything else in the Agreement, WAPA-RMR may terminate this Agreement and withdraw as a member of SPP in accordance with with less than the advanced notice required by Section 4.2.2 of the Agreement. WAPA-RMR shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the WAPA-RMR Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the WAPA-RMR Federal Power Marketing Agency Amendments. In such event, WAPA-RMR and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- b) Should WAPA-RMR exercise any type of termination of this Agreement, WAPA-RMR shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

#### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, WAPA-RMR has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has WAPA-RMR accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting WAPA-RMR as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of WAPA-RMR. SPP will identify the amount of any penalty or fine that SPP allocates to WAPA-RMR or that SPP determines is attributable to WAPA-RMR and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

#### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

#### **A1.13 DC Tie Incremental Market Efficiency Use (Incremental MEU) and DC Tie Access Revenue Distributions to WAPA-RMR**

Revenue received by the Transmission Provider associated with the DC Tie Access Charge and Incremental MEU as both terms are defined in the SPP OATT for WAPA-RMR's Sidney DC Tie that are included in the Integrated Marketplace shall be distributed to WAPA-RMR respectively pursuant to Attachment L, Sections IV.13 and IV.14 of the SPP OATT.

#### **A.2 Amendments Not Severable**

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of WAPA-RMR's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of WAPA-RMR's Agreement with SPP shall no longer be in effect with respect to WAPA-RMR.

IN WITNESS WHEREOF, WAPA-RMR and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WAPA-RMR's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WAPA-RMR and SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT  
FOR HEARTLAND CONSUMERS POWER DISTRICT**

**A1. Dispute Resolution**

Notwithstanding any provisions in the Agreement or the SPP Bylaws to the contrary, any disputes arising under the Agreement or SPP Bylaws and relating to determinations, decisions, conduct and actions made or taken by Heartland Consumers Power District ("Heartland") pursuant to its participation in SPP shall be subject to binding resolution under Section 3.13 of the SPP Bylaws only to the extent agreed upon by Heartland's board of directors, and subject to the terms and conditions set by Heartland's board of directors.

**A2. Withdrawal Rights**

Heartland may terminate this Agreement and withdraw as a member of SPP with less than the advance notice required by Section 4.2.2 of the Agreement in the event that (1) Western Area Power Administration-Upper Great Plains Region ("~~Western~~WAPA-UGP") or Basin Electric Power Cooperative withdraws from SPP in accordance with its withdrawal rights; (2) FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments or all of the Heartland Amendments; or (3) SPP files and FERC approves one or more changes to the Heartland Amendments without Heartland's consent, and such changes have a material adverse effect on Heartland. In such event, Heartland and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by ~~Western~~WAPA-UGP, Heartland's withdrawal will become effective on the same date as that of ~~Western~~WAPA-UGP. If Heartland exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

**A3. Obligation to Build Conditions**

Heartland's board of directors shall have discretionary authority to decide whether to construct new transmission facilities. Heartland's board of directors shall not replace any state regulatory authority with responsibility for siting activities under state law.

IN WITNESS WHEREOF, Heartland and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to Heartland's Membership Agreement with SPP, which Amendments are fully applicable and incorporated into said Membership Agreement and together shall constitute one and the same instrument binding upon Heartland and SPP.

## **1.0 Definitions**

### **Affiliate Relationships**

Affiliate Relationships are relationships between SPP Members that have one or more of the following attributes in common:

- (a) are subsidiaries of the same company;
- (b) one Member is a subsidiary of another Member;
- (c) have, through an agency agreement, turned over control of a majority of their generation facilities to another Member;
- (d) have, through an agency agreement, turned over control of a majority of their transmission system to another Member, except to the extent that the facilities are turned over to an independent transmission company recognized by FERC;
- (e) have an exclusive marketing alliance between Members;
- (f) ownership by one Member of 10% or greater of another Member; or
- (g) For the purposes of administering these Bylaws, are divisions of the same Federal Power Marketing Agency and are considered to have Affiliate Relationships.

### **Articles of Incorporation**

SPP's articles of incorporation as filed with the state of Arkansas.

### **Board of Directors**

The Board of Directors of SPP, which shall manage the general business of SPP pursuant to these Bylaws.

### **Bylaws**

These bylaws.

### **Criteria**

Planning and operating standards and procedures as approved by the Board of Directors.

**ERO**

The Electric Reliability Organization under FERC jurisdiction that regulates reliability of the electric power grid.

**Existing Obligations**

Certain financial obligations as defined in Section 8.7.1 of these Bylaws.

**Federal Power Marketing Agency**

This term shall include the term “Federal Power Marketing Administration” and have the same definition that is set forth in the Federal Power Act at 16 U.S.C. § 796(19), which defines “Federal power marketing agency” as “any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy[.]”

**Federal Power Marketing Agency Amendments**

The amendments and revisions to the SPP Bylaws, the SPP Membership Agreement, and Section 39.3 of the SPP OATT that are required by a Federal Power Marketing Agency Member for initial SPP membership or as they may be revised in the future by mutual agreement between the Federal Power Marketing Agency Member and SPP.

**Federal Power Marketing Agency Member**

An entity that is a Member and is a Federal Power Marketing Agency or a division of a Federal Power Marketing Agency.

**FERC**

The Federal Energy Regulatory Commission or successor organization.

**Member**

An entity that has met the requirements of Section 2.2 of these Bylaws.

**Membership**

The collective Members of SPP.

**Membership Agreement**

The contract, that specifies the rights and obligations of the parties, executed between SPP and an entity seeking to become an SPP member.

**NERC**

The North American Electric Reliability Corporation or successor organization.

**Net Energy for Load**

The load served by transmission facilities under the SPP Open Access Transmission Tariff.

**OATT**

Open Access Transmission Tariff.

**Officers**

The officers of SPP as elected by the Board of Directors. The Officers consist of the President and the Corporate Secretary, at a minimum. Any Officer must be independent of any Member organization.

**Organizational Group**

A group, other than the Board of Directors and the Members Committee, comprising a committee or working group that is charged with specific responsibilities toward accomplishing SPP's mission.

**Regional Criteria**

SPP planning and operating standards and procedures as approved by the Board of Directors.

**SPP**

Southwest Power Pool, Inc. or successor organization.

**Staff**

The technical and administrative staff of SPP as hired by the Officers to accomplish SPP's mission.

**Terminated Member**

An entity that was a Signatory to the Membership Agreement but whose membership in SPP has been terminated under Section 4 of the Membership Agreement.

**Transmission Owning Member**

A Member that has placed more than 500 miles of non-radial facilities operated at or above 60 kV under the independent administration of SPP for the provision of regional transmission service as set forth in the Membership Agreement.

**Transmission Using Member**

A Member that does not meet the definition of a Transmission Owning Member.



### **3.1 Structure**

Member input on decision-making shall be accomplished primarily through Membership participation in Organizational Groups. Members are expected to provide representation to Organizational Groups as requested. Unless otherwise provided in these Bylaws, Organizational Group representation will be appointed by the Board of Directors, who shall consider the various types and expertise of Members and their geographic and interconnection locations, to achieve a widespread and effective representation of the Membership. Organizational Group representation will be reviewed annually for compliance with the Bylaws by the Corporate Governance Committee. The Chair of any Organizational Group may appoint any ad hoc task forces as necessary to fulfill its mission. Task force appointments shall be made with due consideration of the various types and expertise of Members and their geographic and interconnection locations. Criteria for serving on an Organizational Group will be determined in the group's scope. Except for any full representation group, an appointment to an Organizational Group is for an individual, not a corporate entity. Participation in certain sessions of Organizational Group meetings where market sensitive issues are discussed may be restricted to persons representing entities that have executed ERO's Confidentiality Agreement. Representatives on all Organizational Groups will be documented in the SPP directory maintained by Staff. Organizational Group vacancies will be filled on an interim basis by appointment of the President unless otherwise provided for in these Bylaws.

## **6.2 Strategic Planning Committee**

The Strategic Planning Committee (SPC) is responsible for the development and recommendation of strategic direction for the company in accordance with its scope as approved by the Board of Directors.

The SPC shall be comprised of up to sixteen members. Up to four representatives, but no less than three representatives, shall be from the Board of Directors which shall include the President of SPP; six representatives from the Transmission Owning Member sector as nominated by the Corporate Governance Committee; and six representatives from the Transmission Using Member sector as nominated by the Corporate Governance Committee.

The Board of Directors shall appoint the representatives of the SPC. The Chair and the Vice Chair shall be representatives from the Board of Directors as determined by the Board of Directors. Each representative of the SPC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs, the Corporate Governance Committee will fill the vacancy on an interim basis until the next meeting of the Board of Directors.

The SPC shall meet at least twice per calendar year, and additionally as needed, provided that a quorum, as defined in these Bylaws, is present. The SPC shall report to the Board of Directors following each SPC meeting with respect to its activities and with such recommendations, as the SPC deems necessary.

### **6.3 Human Resources Committee**

The Human Resources Committee (HRC) is responsible for the development of personnel policies, including benefits structures, for the company in accordance with its scope as approved by the Board of Directors.

The HRC shall be comprised of at least six members and up to nine members with equal representation from SPP's Board of Directors, Transmission Owning Members and Transmission Using Members. Two or three representatives shall be from the Board of Directors, one of whom shall serve as the Chair and the other as Vice Chair; two or three representatives from the Transmission Owning Member sector as nominated by the Corporate Governance Committee; and two or three representatives from the Transmission Using Member sector as nominated by the Corporate Governance Committee. The President of SPP shall not serve on the HRC.

The Board of Directors shall appoint the representatives of the HRC. Each representative of the HRC shall continue to be a representative thereof until the Board of Directors appoints his/her successor. Where a vacancy occurs the Corporate Governance Committee will fill the vacancy on an interim basis until the next meeting of the Board of Directors.

The HRC shall meet at least twice per calendar year, and additionally as needed, provided that a quorum, as defined in these Bylaws, is present. The HRC shall report to the Board of Directors following each HRC meeting with respect to its activities and with such recommendations, as the HRC deems necessary.

## **8.7 Financial Obligation of Withdrawing Members**

### **8.7.1 Existing Obligations**

“Existing Obligations” shall be defined in accordance with Section 4.3.2 of the Membership Agreement.

### **8.7.2 Computation of a Transmission Owner Member’s Existing Obligations**

For purposes of computing the Existing Obligations of any withdrawing or terminated Transmission Owner Member in accordance with Sections 4.3.2(b)-(f) of the Membership Agreement, such “Member’s share” is a percentage calculated as follows:

$$A = 100 [0.25(1/N) + 0.75(B/C)]$$

Where: A = Member’s share (expressed as a percentage)

N = Total number of Transmission Owner Members that are subject to Sections 4.3.2(b)-(f) of the Membership Agreement

B = The previous year Net Energy for Load connected to transmission facilities of Transmission Owner Member, including any such load of other load serving entities

C = Total of factor B for all Transmission Owner Members that are subject to Sections 4.3.2(b)-(f) of the Membership Agreement

The Finance Committee shall have the discretion to reduce the Existing Obligations of any withdrawing or Terminated Member or of any Member submitting a notification of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement, to reflect any SPP costs or expenses that may be mitigated in connection with such Member’s withdrawal, termination, or Partial Termination. In the event of consolidation of affiliate memberships or the transfer of membership from one corporate entity to another, whereby one entity remains a member of SPP, the withdrawal obligation for the departing company(ies) may be waived at SPP’s sole discretion.

### **8.7.3 Financial Obligations for Transmission Facilities**

To the extent that Section 4.3.3A of the Membership Agreement is applicable, a Terminated Member and a Member submitting a notice of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement shall remain financially responsible for all financial obligations incurred and costs allocated to its load for transmission facilities approved prior to the Termination Date.

#### **8.7.4 Penalty Costs**

A Terminated Member and a Member submitting a notice of Partial Termination pursuant to Section 4.2.1(c) of the Membership Agreement shall remain liable for its share of costs associated with penalties assessed against SPP by FERC, the FERC-approved Electric Reliability Organization, any Electric Reliability Organization-approved Regional Entity, or any other governmental or regulatory authority with jurisdiction over SPP that SPP incurs as a result of events that occurred prior to Member's Termination Date but that SPP is unable to recover under the SPP OATT.

#### **8.7.5 Limitation on Financial and Penalty Obligations**

(a) Notwithstanding the delineation of Members' financial obligations in Section 8.7, a Federal Power Marketing Agency Member shall not be subject to the financial obligations listed in this Section 8.7 in the event FERC finds that SPP has not adhered to all of the Federal Power Marketing Agency Amendments for such Federal Power Marketing Agency Member as that term is defined in Section 1.0 of these Bylaws or if SPP files and FERC approves material changes to the Federal Power Marketing Agency Amendments for such Federal Power Marketing Agency Member.

(b) Provided further, notwithstanding any language to the contrary in these Bylaws, a Federal Power Marketing Agency Member has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has it accepted any liability, responsibility, or obligation to pay any civil monetary penalties

or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of these Bylaws. SPP does not concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of any Federal Power Marketing Agency Member. SPP will identify the amount of any penalty or fine that SPP allocates to a Federal Power Marketing Agency Member or that SPP determines is attributable to a Federal Power Marketing Agency Member and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in these Bylaws means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

## **10.0 Amendments to These Bylaws and the Articles of Incorporation**

Except for modifications to Section 4.0 BOARD OF DIRECTORS, Section 5.0 COMMITTEES ADVISING THE BOARD OF DIRECTORS, Section 8.7.5 LIMITATION ON FINANCIAL AND PENALTY OBLIGATIONS, and Section 10.0 AMENDMENTS, these Bylaws may be amended, repealed, or added to by the Board of Directors only upon thirty calendar days written notice to the Membership of the proposed modification(s). Approval of amendments to the Bylaws by the Board of Directors must be by an affirmative vote of a majority plus one of directors. Sections 4.0, 5.0, 8.7.5, and 10.0 of these Bylaws and the Articles of Incorporation may be amended, repealed, or added to only by approval of the Membership. Provided, that all changes to Federal Power Marketing Agency representation in Sections 5.1.1 and 6.6 and any change to Section 8.7.5 must be mutually agreed to by the Federal Power Marketing Agency Member(s) and SPP. All amendments are subject to the requisite regulatory approval(s).

This Agreement is made between the Member and SPP, as defined herein.

## **1.0 Definitions**

### **Agreement**

This Membership Agreement.

### **Basin Electric Amendments**

The amendments and revisions to the SPP OATT, to Basin Electric Power Cooperative's ("Basin Electric's") Network Integration Transmission Service Agreement, or to Basin Electric's Network Operating Agreement necessary for Basin Electric's initial SPP membership or as they may be revised in the future by agreement between Basin Electric and SPP.

### **Board of Directors**

The Board of Directors elected pursuant to the Bylaws.

### **Bylaws**

SPP's Bylaws or any successor document.

**Colorado River Storage Project Zone ("CRSPZ" or "Zone 103"):** The rate pricing zone of facilities within the Salt Lake City Area Integrated Projects marketing area consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the facilities of the Colorado River Storage Project ("CRSP") within the Western Interconnection and (ii) the facilities of other transmission owners approved for inclusion in Zone 103 by the Commission.

### **Distribution Facilities**

Facilities that are the subject of a separate distribution charge pursuant to the Open Access Transmission Tariff.

### **Eastern Interconnection**

One of the three major alternating-current electrical grids in North America. The Eastern Interconnection reaches from Central Canada eastward to the Atlantic coast (excluding Quebec), south to Florida, and back west to the foot of the Rockies (excluding most of Texas).

### **Effective Date**

This Agreement is effective on January 1, 2000 or upon the date of execution by Member if after January 1, 2000.

### **Electric Transmission System**

The transmission facilities subject to SPP's tariff administration, except for any Distribution Facilities.

### **Existing Obligations**

Shall have the meaning given in Section 4.3.2(b).



### **Federal Power Marketing Agency**

This term shall include the term “Federal Power Marketing Administration” and have the same definition that is set forth in the Federal Power Act at 16 U.S.C. § 796(19), which defines “Federal power marketing agency” as “any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy[.]”

### **Federal Power Marketing Agency Amendments**

The amendments and revisions to the SPP Bylaws, the SPP Membership Agreement, and Section 39.3 of the SPP OATT that are required by a Federal Power Marketing Agency Member for initial SPP membership or as they may be revised in the future by mutual agreement between the Federal Power Marketing Agency Member and SPP.

### **Federal Power Marketing Agency Member**

An entity that is a Member and is a Federal Power Marketing Agency or a division of a Federal Power Marketing Agency.

**Federal Power-WAPA-CRSP:** All power and energy generated at reservoir projects under the control of the U.S. Bureau of Reclamation in the marketing area of WAPA-CRSP, and FSE-Qualified WAPA-CRSP Replacement Energy, for the purpose of fulfilling WAPA-CRSP’s Statutory Load Obligations for the sale of power and energy. Federal Power-WAPA-CRSP resources shall be deemed to be eligible as Designated Resources.

**Federal Power-WAPA-RMR:** All power and energy generated at reservoir projects under the control of the U.S. Bureau of Reclamation in the marketing area of WAPA-RMR for the purpose of fulfilling WAPA-RMR’s Statutory Load Obligations for the sale of power and energy. Federal Power-WAPA-RMR resources shall be deemed to be eligible as Designated Resources.

### **Federal Power-WAPA-UGP (or “Federal Power-Western-UGP”)**

All capacity and energy generated at reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation in the marketing area of WAPA-UGP for the purpose of fulfilling WAPA-UGP’s Statutory Load Obligations for the sale of power and energy. This shall also include any power and energy delivered to or from WAPA-UGP under the pre-OATT bi-directional agreement with Southwestern Power Administration through Associated Electric Cooperative, Inc. (“AECI”) for delivery and receipt at AECI’s Maryville Substation. WAPA-UGP’s deliveries to Southwestern shall be considered part of WAPA-UGP’s Statutory Load Obligations, and receipts from Southwestern to WAPA-UGP will be considered as coming from Federal resources. Federal Power-WAPA-UGP resources shall be deemed to be eligible as Designated Resources.

### **FERC**

The Federal Energy Regulatory Commission or successor organization.

### **Financial Obligations**

Shall have the meaning given in Section 4.3.2(b).

### **Future Interest**

Shall have the meaning given in Section 4.3.2(b).

### **Good Utility Practice**

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 the 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 at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region. SPP Criteria and NERC Policies and Standards are considered Good Utility Practice.

### **Heartland Amendments**

The amendments and revisions to the SPP OATT, to Heartland Consumers Power District's ("Heartland's") Network Integration Transmission Service Agreement, or to Heartland's Network Operating Agreement necessary for Heartland's initial SPP membership or as they may be revised in the future by agreement between Heartland and SPP.

### **Load Serving Entity (LSE)**

A Member that: (1) is a distribution utility or an electric utility that has a service obligation, where a service obligation, as defined in Section 217(a) of the Federal Power Act, means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility (as defined in Section 217(a) of the Federal Power Act); and/or (2) secures energy and transmission service (and related Interconnected Operations Services) to serve the electric demand and energy requirements of its end-use customers. A Load Serving Entity may or may not be a Transmission Owner or transmission customer under the OATT.

**Loveland Area Projects Facilities:** The facilities within the Loveland Area Projects Marketing Area of the Loveland Area Projects within the Eastern and Western Interconnections excluding facilities transferred to the functional control of the Transmission Provider by WAPA-UGP.

**Loveland Area Projects Zone (“LAPZ” or “Zone 104”):** The rate pricing zone consisting of the facilities within the Loveland Area Projects Marketing Area consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the Loveland Area Projects Facilities and (ii) the facilities of other transmission owners approved for inclusion in Zone 104 by the Commission.

### **Member**

Signatory to this Agreement that has completed the application requirements pursuant to the Bylaws.

### **NERC**

North American Electric Reliability Corporation or successor organizations.

**Non-Load Serving Entity**

A Member that is not a Load Serving Entity and does not own transmission facilities under the SPP OATT.

**Non-Transmission Owner**

A Member that is not a Transmission Owner. A Non-Transmission Owner that owns or controls Tariff Facilities will have its status changed to a Transmission Owner under this Agreement upon transfer to SPP of the functional control of Tariff Facilities related to the rates, terms and conditions of the OATT.

**Open Access Transmission Tariff (OATT)**

The SPP nondiscriminatory, Open-Access Transmission Tariff (OATT) on file with FERC pursuant to Section 205 of the Federal Power Act under which SPP will offer transmission service, or any such successor tariff.

**Partial Termination**

Shall have the meaning given in Section 4.1.

**Regional Entity**

An entity having enforcement authority delegated to it by NERC pursuant to a delegation agreement accepted by FERC.

**Reliability Coordinator**

SPP, in performing its reliability coordinator function as recognized by NERC pursuant to its policies, and pursuant to SPP Criteria and this Agreement.

**SPP**

Southwest Power Pool, Inc., or successor organization.

**SPP Criteria**

SPP's approved operating and planning criteria.

**SPP Region**

The geographic area encompassing the transmission systems of Members that are Transmission Owners.

**Standards of Conduct**

SPP's Standards of Conduct that apply to the conduct of its directors, officers, employees, contractors, and agents.

**Statutory Load Obligations**

A WAPA-Division's power marketing function obligations under Federal law to deliver power and energy to loads which include project use loads, preference power customer loads located in that WAPA-Division's marketing area defined pursuant to its power marketing plan, and other

loads required to be served under Federal law. For WAPA-CRSP, Statutory Load Obligations also includes WAPA-CRSP's contractual obligations pursuant to its power marketing plan.

**Tariff Facilities**

The Electric Transmission System and the Distribution Facilities subject to SPP's tariff administration.

**Termination**

Shall have the meaning given in Section 4.1.

**Termination Date**

Shall mean the date Termination or Partial Termination is effective in accordance with Section 4.2.2.

**Transmission Customer**

A customer under the Open Access Transmission Tariff

**Terminated Member**

An entity that was a Signatory to this Agreement but whose membership in SPP has been terminated under Section 4 of this Agreement.

**Transmission Only Entity**

A member that is a Transmission Owner and is not a Load Serving Entity.

**Transmission Owner**

A signatory to this Agreement which: (1) transfers functional control of Tariff Facilities related to the rates, terms and conditions of the OATT to SPP; or (2) appoints SPP under another agreement to provide service under the Transmission Tariff over Tariff Facilities which it owns or controls; or (3) is assigned by SPP to construct and accepts the obligation to construct new Tariff Facilities; or (4) undertakes another Transmission Owner's obligation to construct Tariff Facilities in accordance with Section 3.3 of this Agreement and Attachment O of the SPP OATT.

**Upper Missouri Zone ("UMZ" or "Zone 19")**

The rate pricing zone consisting of the following facilities that meet the requirements of Attachment AI of the SPP OATT, upon the transfer of those facilities to the functional control of the Transmission Provider: (i) the facilities of WAPA-UGP within the Eastern and Western Interconnections; (ii) the facilities owned or leased by Basin Electric Power Cooperative or Heartland Consumers Power District within the Eastern Interconnection; (iii) a portion of the facilities owned or leased by Basin Electric Power Cooperative within the Western Interconnection; (iv) other facilities of the Western Area Power Administration in the Eastern Interconnection transferred by WAPA-UGP to the functional control of the Transmission Provider, not included in the facilities of WAPA-UGP in (i) above; and (v) the facilities of other transmission owners approved for inclusion in Zone 19 by the Commission.

**Western Area Power Administration Division ("WAPA-Division"):** The WAPA-CRSP, WAPA-RMR, or WAPA-UGP division of the Western Area Power Administration ("WAPA").

**Western Area Power Administration-Colorado River Storage Project Management Center (“WAPA-CRSP”):** A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Salt Lake City Area Integrated Projects. WAPA-CRSP has transferred Colorado River Storage Project transmission facilities in the Western Interconnection to the functional control of the Transmission Provider.

**Western Area Power Administration-Rocky Mountain Region (“WAPA-RMR”):** A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Loveland Area Projects. WAPA-RMR also operates the Western Area Lower Colorado Balancing Authority Area, known as WALC, and provides transmission services, including, but not limited to, transmission service across WAPA-owned transmission facilities within WALC which is external to SPP. WAPA-RMR has transferred Loveland Area Projects Facilities located in the Eastern Interconnection and the Western Interconnection to the functional control of the Transmission Provider.

**Western Area Power Administration-Upper Great Plains Region (“WAPA-UGP” or “Western-UGP”)**

A division of the Western Area Power Administration that markets and transmits Federal power from reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation collectively known as the Pick-Sloan Missouri Basin Program-Eastern Division. WAPA-UGP has transferred Federal transmission facilities in both the Eastern Interconnection and Western Interconnection to the functional control of the Transmission Provider.

### **Western Interconnection**

One of the three major alternating-current electrical grids in North America. The Western Interconnection stretches from Western Canada South to Baja California in Mexico, reaching eastward over the Rockies to the Great Plains.

### **3.0 Commitments, Rights, Powers, and Obligations of Member**

Member has made the following commitments, and shall have the following rights and shall be responsible for the following functions, some of which apply only to a Transmission Owner, some only to a Non-Transmission Owner.

- (a) Transmission Owner shall transfer functional control related to the rates, terms and conditions of the OATT of its transmission facilities, subject to receiving all necessary regulatory authorizations, thereby allowing SPP to (i) direct the operation of the transmission facilities in accordance with the terms of this Agreement; (ii) administer transmission service under the Transmission Tariff over that Transmission Owner's Tariff Facilities; and (iii) receive funds from Transmission Customers relating to transmission service over Tariff Facilities and distribute funds to the Transmission Owner. Where Member, owns generators within the SPP Region which directly affect the capacity or reliability of the Electric Transmission System, it shall offer to provide the ancillary services required under the OATT at rates approved by regulatory authorities, where appropriate, to the extent such generators are able to provide such ancillary services.
- (b) Transmission Owner shall operate and maintain its Tariff Facilities subject to the requirements of this Agreement.
- (c) Where Transmission Owner is a balancing area operator, it shall continue to operate its balancing areas for local generation control and economic dispatch, and shall be responsible for identifying and addressing local problems in a reliable manner.
- (d) Transmission Owner shall provide transmission service over its Tariff Facilities at the direction of SPP pursuant to the terms of the OATT.
- (e) Member agrees to comply with the instructions of SPP in its role as Reliability Coordinator.
- (f) Transmission Owner shall retain all rights of ownership, including legal and equitable title in its Tariff Facilities, subject to the provisions of this Agreement. Transmission Owner, or one acting under its authority, shall retain all rights to

access to its Tariff Facilities so long as such access is consistent with the provisions of this Agreement.

- (g) Notwithstanding any other provision in this Agreement, Transmission Owner shall not be obligated or be considered to be allowing transmission over its facilities if such transmission would cause the loss of the tax-exempt status of Transmission Owner or any bonds or other debt of Transmission Owner.
- (h) Notwithstanding any other provisions of this Agreement, Member reserves the right to exercise operational authority of Member's Tariff Facilities (1) to protect public safety and the safety of its workers, to prevent damage to equipment, and to preserve reliability in compliance with NERC standards, and (2) as necessary to preserve Member's rights, duties and obligations regarding electric service to its retail and wholesale native load customers pursuant to any applicable Federal or state law and consistent with NERC standards, if SPP's exercise of operational authority over the Tariff Facilities would endanger said electric service or is contrary to or would curtail, surrender or delegate such Federal or state law rights, duties and obligations. Member will, as soon as reasonably practicable thereafter, notify SPP of such actions taken by Member. Member and SPP will meet and confer regarding the matter and, as necessary, negotiate in good faith to modify the Agreement to address the matter.

### **3.10 Pricing**

Transmission Owner shall possess the unilateral right to file with FERC, and, if the Transmission Owner is non-jurisdictional, the Transmission Owner shall have the option to file with FERC, or submit to SPP for filing with FERC, pursuant to Section 205 of the Federal Power Act and Federal statutory and regulatory requirements, including Delegation Order S1-DEL-RATES-2016, 10 CFR Part 903 and 18 CFR Part 300, as amended or superseded, modifications to change the rates or rate structure for transmission service over its Tariff Facilities, including filing a fixed revenue requirement and supporting data or a rate formula template for its cost of service revenue requirements, and to submit proposals or filings governing new construction with FERC; provided, however, Transmission Owner may not submit a proposal which results in a Transmission Customer paying two or more transmission charges for transmission for one transaction under the OATT (excluding Distribution Facilities for which an additional charge may be imposed, and Grandfathered Agreements as defined in the OATT). Transmission Owner shall notify SPP in advance of its intention to submit a filing to FERC and provide SPP with a copy of the filing. No approval from SPP is required for such filings.



### **3.11 No Waiver of Jurisdictional Immunity**

If Member is not subject to the jurisdiction of FERC as a public utility under the Federal Power Act, Member shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over Member that does not otherwise exist. Any order, decision, rule or regulation issued by FERC to SPP or any other Members or Member of SPP relating to matters exempt from FERC jurisdiction under Section 201(f) of the Federal Power Act shall not apply directly or separately to a non-jurisdictional Member. Without limiting the generality of the foregoing, except as otherwise provided in the Federal Power Act, a non-jurisdictional Member shall not be bound or obligated by any FERC order, decision, rule or regulation requiring a change in the rates, terms or conditions for transmission service or compensation for utilizing the transmission facilities of a non-jurisdictional Member, which conflicts with applicable Federal or state law, including any order requiring the suspension of the use of such rates, terms or conditions or the payment of refunds of rates or compensation previously collected or received. A non-jurisdictional Member and SPP acknowledge that FERC, in the context of its jurisdiction over SPP's rates, may review a non-jurisdictional Member's revenue requirement and rates to the extent they comprise or affect the rates charged by SPP or other Members. In the case of a Federal Power Marketing Agency, this review shall be consistent with the Delegation Order S1-DEL-RATES-2016, as superseded or amended, from the Secretary of Energy to the Power Marketing Administrations and the FERC, including the regulations implementing this review authority. If FERC does not accept a non-jurisdictional Member's revenue requirement or rates, the non-jurisdictional Member may terminate this Agreement pursuant to the withdrawal provisions of the Agreement. In such event, the non-jurisdictional Member and SPP agree to meet and confer prior to any termination of this Agreement. Nothing in this Agreement, or the participation of a non-jurisdictional Member in SPP and its operations waives any objection to or otherwise constitutes a consent to, the jurisdiction by FERC that does not otherwise exist over the non-jurisdictional Member or its transmission service, facilities and rates.

## **4.2 Termination Procedures and Effective Dates**

### **4.2.1 Voluntary Withdrawal**

(a) **Notice of Voluntary Withdrawal of a Member.** Subject to Section 4.3, a Member may withdraw voluntarily from this Agreement, provided that it has given written notice to the President of its intent to withdraw. For Load Serving Entity and Transmission Only Entity Members, the notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President no less than twenty-four (24) months prior to such date. For Members that are a Non-Load Serving Entity, the notice of intent to withdraw must state a proposed date for the withdrawal and be delivered to the President prior to such date. The President will advise the Members and the Board of Directors of any withdrawal notices received. In order to assure that there is no more than one proposed termination date with respect to a Member, a withdrawal notice shall be deemed to supersede any prior withdrawal notice given by the Member, except that a Member may not submit a withdrawal notice less than twenty-four (24) months prior to the termination date proposed in the Member's previous notice of intent to withdraw, unless that Member is a Non-Load Serving Entity. Voluntary withdrawal is a Termination and creates the same obligations as a Termination for any other reason. Upon receiving a notice of intent to withdraw, SPP shall account for such notice of intent to withdraw in the SPP planning process, unless the Member plans to continue to take transmission service from SPP after the termination date.

(b) **Withdrawal Deposit.** Load Serving Entity and Transmission Only Entity Members submitting a written notice of its intent to withdraw from this Agreement or notice of a Partial Termination must simultaneously submit a cash withdrawal deposit to SPP, as set forth in the table below. SPP will not accept a notice of intent to withdraw or notice of a Partial Termination from a Load Serving Entity or a Transmission Only Entity without a withdrawal deposit. SPP will treat the withdrawal deposit as a pre-payment of a portion of the costs SPP incurs to process the Member's withdrawal from SPP or Partial Termination, as set forth in Section 4.3.2(d) of this Agreement, or the costs associated with reintegrating the Member, its facilities, or its customers into SPP if the Member subsequently rescinds its notice of intent to withdraw or notice of Partial Termination and SPP incurs costs for such reintegration. Withdrawal deposits are as follows:

<b>Member Category</b>	<b>Withdrawal Deposit</b>
Load Serving Entity	\$ 150,000
Transmission Only Entity	\$ 50,000
Non-Load Serving Entity	\$ 0

If the cost of processing Member's withdrawal as calculated by SPP pursuant to Section 4.3.2(d) of this Agreement exceeds the withdrawal deposit, the additional amount shall be included in the invoice SPP provides to the Member under Section 4.3.2(e) of this Agreement. If the Member rescinds its notice of intent to withdraw and the cost of processing the Member's withdrawal and subsequent reintegration into SPP exceeds the withdrawal deposit, SPP shall invoice the Member for the amount of the cost that exceeds the deposit, and the Member shall provide payment to SPP within thirty (30) days of receipt of the invoice. For Members that are Non-Load Serving Entities, the cost, if any, of processing the Member's withdrawal as calculated by SPP shall be included in the invoice SPP provides to the Member under Section 4.3.2(e) of this Agreement. If the withdrawal deposit exceeds the costs of processing the Member's withdrawal and/or reintegration, SPP shall refund the difference to the Member. Notwithstanding the foregoing, a Federal Power Marketing Agency shall not be required to make a withdrawal deposit and shall only be responsible for paying SPP costs after they are incurred and appropriately invoiced pursuant to Section 4.3.2(e).

(c) **Notice of Partial Termination.** In the event of a Partial Termination, the Member shall provide written notice to the President of its intent to remove a portion of its transmission facilities or customers from the SPP Region. The notice of a Partial Termination must state the effective date for the removal of a portion of the transmission facilities or customers from the SPP Region and be delivered to the President no less than twenty-four (24) months prior to such date. The President will advise the Members and the Board of Directors of notices of Partial Termination received.

#### **4.2.2 Effective Date of Termination**

(a) **Voluntary Withdrawal.** If the withdrawing Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date proposed in the withdrawal notice under Section 4.2.1 or otherwise agreed by

SPP. If the withdrawing Member is a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the later of (i) the proposed date specified in the withdrawal notice or otherwise agreed by SPP, (ii) the effective date, if any, set by the FERC order approving the withdrawal; or (iii) the date that such FERC order is no longer subject to review by a court of competent jurisdiction.

(b) **Termination other than Voluntary Withdrawal.** If the Termination occurs for any reason other than the Member's voluntary withdrawal under Section 4.2.1 or by agreement with SPP, the Termination Date shall be as follows:

- (i) If the Member is not a Transmission Owner subject to FERC jurisdiction, the Termination Date shall be the date of the event by which the Termination occurs, for example, the date a party gives notice that it will treat a breach or repudiation as a Termination or the date a Member withdraws in order to comply with the terms of a law or regulation. The foregoing notwithstanding, if the Termination occurs due to the order of a court or administrative agency, the Termination Date shall be the date the order is no longer subject to review by a court of competent jurisdiction.
- (ii) If the Member is a Transmission Owner requiring regulatory agency approval prior to effectively withdrawing from SPP, then the Termination Date shall be the later of (i) the effective date, if any, set by the regulatory agency order approving the Termination; or (ii) the date that such regulatory order is no longer subject to review by a court of competent jurisdiction.
- (iii) In conjunction with the requirements and limitations imposed in Section 4.2.2(b)(ii) above; Transmission Owning Members of SPP wishing to withdraw from SPP and requiring regulatory agency approval prior to such withdrawal being effective are required to initiate the required regulatory filings seeking approval to withdraw prior to the end of the 24-month notice period. Additionally, these members must provide SPP copies of the

regulatory filings in a timely manner after filing with the appropriate regulatory agency. Failure to comply with the terms of this paragraph will effectively rescind the notice of the withdrawing member.

- (iv) Member may terminate this Agreement with less than the required twenty-four (24) months' notice, in the event that the Federal or state law governing Member changes, or any provisions of this Agreement, the provisions of SPP's OATT, or SPP's Bylaws are changed or modified in a manner that causes a conflict with the Member's Federal or state law, regulations, or rate schedules, and the internal dispute resolution process described in Section 12 of the OATT is unable to resolve such conflict. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable as necessary to ensure compliance with Federal or state law.
- (v) Any Member with transmission facilities located in the Upper Missouri Zone may terminate this Agreement with less than the required twenty-four (24) month notice in the event that WAPA-UGP or Basin Electric Power Cooperative: (1) withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments, the Basin Electric Amendments, or the Heartland Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-UGP or Basin Electric Power Cooperative, Member's withdrawal will become effective on the same date as that of WAPA-UGP or Basin Electric Power Cooperative. Such Member also may terminate this Agreement in the event that SPP files and FERC approves changes to the WAPA-UGP Federal Power Marketing Agency

Amendments, the Basin Electric Amendments, or the Heartland Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

- (vi) Any Member with transmission facilities located in the Colorado River Storage Project Zone may terminate this Agreement or effectuate a Partial Termination in this zone with less than the required twenty-four (24) month notice in the event that: (1) WAPA-CRSP, WAPA-RMR, Basin Electric Power Cooperative or Tri-State Generation and Transmission Association withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-CRSP and WAPA-RMR Federal Power Marketing Agency Amendments or the Basin Electric Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-CRSP, or WAPA-RMR, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association, Member's withdrawal will become effective on the same date as that of WAPA-CRSP, or WAPA-RMR, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association. Such Member also may terminate this Agreement or effectuate a Partial Termination in this zone in the event that SPP files and FERC approves changes to the WAPA-CRSP or WAPA-RMR Federal Power Marketing Agency Amendments or the Basin Electric Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

(vii) Any Member with transmission facilities located in the Loveland Area Projects Zone may terminate this Agreement or effectuate a Partial Termination in this zone with less than the required twenty-four (24) month notice in the event that: (1) WAPA-RMR, WAPA-CRSP, Basin Electric Power Cooperative or Tri-State Generation and Transmission Association withdraws from SPP in accordance with its respective withdrawal rights; or (2) if FERC finds that SPP has not adhered to all of the WAPA-RMR and WAPA-CRSP Federal Power Marketing Agency Amendments or the Basin Electric Amendments. In such event, Member and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-RMR, or WAPA-CRSP, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association, Member's withdrawal will become effective on the same date as that of WAPA-RMR, or WAPA-CRSP, or Basin Electric Power Cooperative, or Tri-State Generation and Transmission Association. Such Member also may terminate this Agreement or effectuate a Partial Termination in this zone in the event that SPP files and FERC approves changes to the WAPA-RMR or WAPA-CRSP Federal Power Marketing Agency Amendments or the Basin Electric Amendments that have a material adverse effect on such Member. If such Member exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

(c) **Partial Termination.** The Termination Date for a Partial Termination shall be the date the voluntary removal of a portion of transmission facilities or customers from the SPP Region is effective, unless otherwise agreed by SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT  
FOR BASIN ELECTRIC POWER COOPERATIVE**

**A1. Dispute Resolution**

Notwithstanding any provisions in the Agreement or the SPP Bylaws to the contrary, any disputes arising under the Agreement or SPP Bylaws and relating to determinations, decisions, conduct and actions made or taken by Basin Electric Power Cooperative ("Basin Electric") pursuant to its participation in SPP shall be subject to binding resolution under Section 3.13 of the SPP Bylaws only to the extent agreed upon by Basin Electric's board of directors, and subject to the terms and conditions set by Basin Electric's board of directors.

**A2. Withdrawal Rights**

Basin Electric may terminate this Agreement and withdraw as a member of SPP with less than the advance notice required by Section 4.2.2 of the Agreement in the event that (1) Western Area Power Administration-Upper Great Plains Region ("WAPA-UGP") withdraws from SPP in accordance with its withdrawal rights; (2) FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments or all of the Basin Electric Amendments; or (3) SPP files and FERC approves one or more changes to the Basin Electric Amendments without Basin Electric's consent, and such changes have a material adverse effect on Basin Electric. In such event, Basin Electric and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-UGP, Basin Electric's withdrawal will become effective on the same date as that of WAPA-UGP. If Basin Electric exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

**A3. Obligation to Build Conditions**

Basin Electric's board of directors shall have discretionary authority to decide whether Basin Electric will construct new transmission facilities. Basin Electric's board of directors shall not replace any state regulatory authority with responsibility for siting activities under state law.

IN WITNESS WHEREOF, Basin Electric and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to Basin Electric's Membership Agreement with SPP, which Amendments are fully applicable and incorporated into said Membership Agreement and together shall constitute one and the same instrument binding upon Basin Electric and SPP.



## **AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER ADMINISTRATION-UPPER GREAT PLAINS REGION**

### **A1. Participation by the Western Area Power Administration-Upper Great Plains Region**

#### **A1.1 Subject to Acts of Congress**

The participation by the United States through the Western Area Power Administration-Upper Great Plains Region ("WAPA-UGP") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

#### **A1.2 Federal Service Exemption**

WAPA was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the Department of the Army (Corps) or the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, WAPA-UGP markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the WAPA-UGP Federal Service Exemption. WAPA-UGP's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that WAPA-UGP owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and WAPA-UGP's preference power customers is a WAPA-UGP responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by WAPA-UGP under this Agreement is solely for the use of Available Transfer Capability in excess of the capability WAPA-UGP requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. WAPA-UGP retains the Available Transfer Capability from its Federal Power-WAPA-UGP in the UMZ to deliver to its Statutory Load Obligations

**A1.2.1** WAPA-UGP shall be exempt from all Schedule 11 Region-wide Charges associated with WAPA-UGP's delivery of Federal Power-WAPA-UGP generation to WAPA-UGP's Statutory Load Obligations internal to the UMZ or external to the Transmission Provider.

**A1.2.2** WAPA-UGP shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-UGP resources across the UMZ to WAPA-UGP's Statutory Load Obligations. WAPA-UGP shall be responsible for providing the Transmission Provider real power losses for the energy delivered from Federal Power-WAPA-UGP resources under the Federal Service Exemption across the UMZ in accordance with Attachment M of the SPP OATT.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable WAPA-UGP to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005) are met. SPP and WAPA-UGP will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAAct 2005 by taking the following actions:

- a) SPP will annually provide WAPA-UGP with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide WAPA-UGP with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide WAPA-UGP with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) WAPA-UGP will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) WAPA-UGP will ensure its obligations for oversight and monitoring of SPP's performance as required by EPAAct 2005 are met through participation by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.
- f) Recovery of all of the costs and expenses related to WAPA-UGP transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

### **A1.4. Contingent Upon Appropriations and Authorization**

Where activities provided for in this Agreement extend beyond the current fiscal year, continued expenditures by the United States through WAPA-UGP are contingent upon Congress making the necessary appropriations required for the continued performance of the obligations of WAPA-UGP under this Agreement. In case such appropriation is not made, SPP hereby releases WAPA-UGP from its contractual obligations under this

Agreement and from all liability due to the failure of Congress to make such appropriation.

### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving WAPA-UGP unless exempted by rules, regulations, or order of the Secretary of Labor.

#### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

#### **A1.5.2 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.

#### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

### **A1.6 Federal Projects**

The individual hydroelectric projects from which the WAPA-UGP markets capacity and energy are owned and controlled by the Corps or the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of either Corps or the Bureau of Reclamation. The Parties also recognize and agree that WAPA-UGP’s transmission system is integrated at various locations through switchyard facilities owned and operated by the Corps or Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Corps or Bureau of Reclamation. WAPA-UGP shall

communicate and coordinate with the Corps or Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Corps or Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP's request shall be within the discretion of and subject to the approval of the Corps or Bureau of Reclamation. In the event SPP requests changes due to redispach, operation, maintenance or addition to hydroelectric generation owned and operated by the Corps or Bureau of Reclamation and marketed by WAPA-UGP, WAPA-UGP shall coordinate its operations with the Corps and Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Corps or Bureau of Reclamation. Nothing in this section is intended to change the Corps or Bureau of Reclamation obligations pursuant to their registration with NERC.

### **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WAPA-UGP must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WAPA-UGP's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WAPA-UGP's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

### **A1.8 Net Billing**

Payments due WAPA-UGP may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

### **A1.9 Bill Crediting**

Payments to WAPA-UGP by SPP shall be paid by SPP to a third party when so directed by WAPA-UGP. Any third party designated to receive payment in lieu of WAPA-UGP, and the amount to be paid to that party, will be so identified in writing to SPP. The

payment to the third party shall be due and payable by the payment due date specified on WAPA-UGP's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of WAPA-UGP. WAPA-UGP shall credit SPP for the amount paid as if payment had been made directly to WAPA-UGP. SPP shall accept payment from third parties of amounts due SPP from WAPA-UGP and shall notify WAPA-UGP of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-UGP as if such payments had been made directly by WAPA-UGP. WAPA-UGP remains liable to SPP for all amounts WAPA-UGP owes SPP that are not paid by WAPA-UGP or a third party. In the event third party payment(s) to SPP exceeds WAPA-UGP's payment obligation to SPP, SPP shall reimburse the difference to WAPA-UGP.

#### **A1.10 Federal Power Marketing Agency Termination**

- a) Notwithstanding anything else in the Agreement, WAPA-UGP may terminate this Agreement and withdraw as a member of SPP with less than the advanced notice required by Section 4.2.2 of the Agreement. WAPA-UGP shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the WAPA-UGP Federal Power Marketing Agency Amendments. In such event, WAPA-UGP and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- b) Should WAPA-UGP exercise any type of termination of this Agreement, WAPA-UGP shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

#### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, WAPA-UGP has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has WAPA-UGP accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting WAPA-UGP as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of WAPA-UGP. SPP will identify the amount of any penalty or fine that SPP allocates to WAPA-UGP or that SPP determines is attributable to WAPA-UGP and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization

(ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

### **A.2 Amendments Not Severable**

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of WAPA-UGP's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of WAPA-UGP's Agreement with SPP shall no longer be in effect with respect to WAPA-UGP.

IN WITNESS WHEREOF, WAPA-UGP and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WAPA-UGP's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WAPA-UGP and SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA  
POWER ADMINISTRATION-COLORADO RIVER STORAGE PROJECT  
MANAGEMENT CENTER**

**A1. Participation by the Western Area Power Administration-Colorado River Storage Project Management Center**

**A1.1 Subject to Acts of Congress**

The participation by the United States through the Western Area Power Administration-Colorado River Storage Project Management Center ("WAPA-CRSP") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

**A1.2 Federal Service Exemption**

WAPA was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, WAPA-CRSP markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the WAPA-CRSP Federal Service Exemption. WAPA-CRSP's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that WAPA-CRSP owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and WAPA-CRSP's preference power customers is a WAPA-CRSP responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by WAPA-CRSP under this Agreement is solely for the use of Available Transfer Capability in excess of the capability WAPA-CRSP requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. WAPA-CRSP retains the Available Transfer Capability from its Federal Power-WAPA-CRSP in the CRSPZ to deliver to its Statutory Load Obligations.

**A1.2.1** WAPA-CRSP shall be exempt from all Schedule 11 Region-wide Charges associated with WAPA-CRSP's delivery of Federal Power-WAPA-CRSP to WAPA-CRSP's Statutory Load Obligations internal to the CRSPZ or external to the Transmission Provider.

**A1.2.2** WAPA-CRSP shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-CRSP resources across the CRSPZ to WAPA-CRSP's Statutory Load Obligations. WAPA-CRSP shall be responsible for providing the Transmission Provider real power losses for the energy delivered from Federal Power-WAPA-CRSP resources under the Federal Service Exemption across the CRSPZ in accordance with Attachment M of the SPP OATT.

**A1.2.3** WAPA-CRSP can acquire WAPA-CRSP Replacement Energy, as defined in the SPP OATT, bilaterally through a specific and identified counterparty, for a minimum of 28 days in duration to fulfill the WAPA-CRSP Statutory Load Obligations. WAPA-CRSP Replacement Energy can qualify for the Federal Service Exemption based upon the requirements set forth in the SPP OATT. The purpose of FSE-Qualified WAPA-CRSP Replacement Energy as defined in the SPP OATT is to provide energy, as needed, for WAPA-CRSP to meet its Statutory Load Obligations, after utilizing WAPA-CRSP's available hydro generation. WAPA-CRSP Replacement Energy that is delivered to the WAPA-CRSP FSE Resource Hub as defined in the SPP OATT is only eligible for the Federal Service Exemption from the WAPA-CRSP FSE Resource Hub to WAPA-CRSP's Statutory Load Obligations.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable WAPA-CRSP to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005) are met. SPP and WAPA-CRSP will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAAct 2005 by taking the following actions:

- a) SPP will annually provide WAPA-CRSP with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide WAPA-CRSP with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide WAPA-CRSP with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) WAPA-CRSP will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) WAPA-CRSP will ensure its obligations for oversight and monitoring of SPP's performance as required by EPAAct 2005 are met through participation



by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.

- f) Recovery of all of the costs and expenses related to WAPA-CRSP transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

#### **A1.4. Contingent Upon Appropriations and Authorization**

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

#### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving WAPA-CRSP unless exempted by rules, regulations, or order of the Secretary of Labor.

##### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

##### **A1.5.2 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.

##### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

## **A1.6 Federal Projects**

The individual hydroelectric projects from which the WAPA-CRSP markets capacity and energy are owned and controlled by the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of the Bureau of Reclamation. The Parties also recognize and agree that WAPA-CRSP's transmission system is integrated at various locations through switchyard facilities owned and operated by the Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Bureau of Reclamation. WAPA-CRSP shall communicate and coordinate with the Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP's request shall be within the discretion of and subject to the approval of Bureau of Reclamation. In the event SPP requests changes due to redispatch, operation, maintenance or addition to hydroelectric generation owned and operated by the Bureau of Reclamation and marketed by WAPA-CRSP, WAPA-CRSP shall coordinate its operations with the Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Bureau of Reclamation. Nothing in this section is intended to change the Bureau of Reclamation obligations pursuant to their registration with NERC.

## **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WAPA-CRSP must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WAPA-CRSP's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WAPA-CRSP's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

## **A1.8 Net Billing**

Payments due WAPA-CRSP may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

#### **A1.9 Bill Crediting**

Payments to WAPA-CRSP by SPP shall be paid by SPP to a third party when so directed by WAPA-CRSP. Any third party designated to receive payment in lieu of WAPA-CRSP, and the amount to be paid to that party, will be so identified in writing to SPP. The payment to the third party shall be due and payable by the payment due date specified on WAPA-CRSP's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of WAPA-CRSP. WAPA-CRSP shall credit SPP for the amount paid as if payment had been made directly to WAPA-CRSP. SPP shall accept payment from third parties of amounts due SPP from WAPA-CRSP and shall notify WAPA-CRSP of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-CRSP as if such payments had been made directly by WAPA-CRSP. WAPA-CRSP remains liable to SPP for all amounts WAPA-CRSP owes SPP that are not paid by WAPA-CRSP or a third party. In the event third party payment(s) to SPP exceeds WAPA-CRSP's payment obligation to SPP, SPP shall reimburse the difference to WAPA-CRSP.

#### **A1.10 Federal Power Marketing Agency Termination**

- a) Notwithstanding anything else in the Agreement, WAPA-CRSP may terminate this Agreement and withdraw as a member of SPP in accordance with less than the advanced notice required by Section 4.2.2 of the Agreement. WAPA-CRSP shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the WAPA-CRSP Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the WAPA-CRSP Federal Power Marketing Agency Amendments. In such event, WAPA-CRSP and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- b) Should WAPA-CRSP exercise any type of termination of this Agreement, WAPA-CRSP shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

#### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, WAPA-CRSP has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has WAPA-CRSP accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting WAPA-CRSP as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of WAPA-CRSP. SPP will identify the amount of any penalty or fine that SPP allocates to WAPA-CRSP or that SPP determines is attributable to WAPA-CRSP and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

#### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

#### **A1.13 Point-To-Point Transmission Service Revenue Distribution for WAPA-CRSP**

Point-To-Point Transmission Service revenue distribution from WAPA-CRSP transmission reservations using CRSP facilities within the CRSPZ or from within the CRSPZ to the border of the CRSPZ associated with the fulfillment of the WAPA-CRSP contractual obligations pursuant to its power marketing plan or Statutory Load Obligations shall be distributed solely to WAPA-CRSP pursuant to Attachment L, Section II.C.4 of the SPP OATT.

## **A.2 Amendments Not Severable**

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of WAPA-CRSP's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of WAPA-CRSP's Agreement with SPP shall no longer be in effect with respect to WAPA-CRSP.

IN WITNESS WHEREOF, WAPA-CRSP and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WAPA-CRSP's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WAPA-CRSP and SPP.

## **AMENDMENTS TO SPP MEMBERSHIP AGREEMENT FOR THE WESTERN AREA POWER ADMINISTRATION-ROCKY MOUNTAIN REGION**

### **A1. Participation by the Western Area Power Administration-Rocky Mountain Region**

#### **A1.1 Subject to Acts of Congress**

The participation by the United States through the Western Area Power Administration-Rocky Mountain Region ("WAPA-RMR") in this Agreement 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 this Agreement to arbitration. In the event of a conflict between these Federal participation provisions set forth in this Section A1 and any other provision of this Agreement, these Federal participation provisions shall have precedence with respect to the application of this Agreement to the United States.

#### **A1.2 Federal Service Exemption**

WAPA was established on December 21, 1977, pursuant to Section 302 of the Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977. By law, the U.S. Bureau of Reclamation (Bureau of Reclamation) provide Federal power resources to its project use customers. By law, WAPA-RMR markets Federal power resources to its firm electric service customers. These are both considered Statutory Load Obligations that will be provided for under the WAPA-RMR Federal Service Exemption. WAPA-RMR's transmission system was built primarily to enable the delivery of Federal power to satisfy these obligations. Use of transmission facilities that WAPA-RMR owns, operates, or to which it has contract rights for delivery of Federal long-term firm capacity and energy to project use and WAPA-RMR's preference power customers is a WAPA-RMR responsibility under the terms and conditions of its marketing plan and electric service contracts implementing statutory obligations to market Federal power. This is complementary with the provisions of transmission service under the Agreement. Capacity in transmission facilities provided by WAPA-RMR under this Agreement is solely for the use of Available Transfer Capability in excess of the capability WAPA-RMR requires for the delivery of long-term firm capacity and energy to Statutory Load Obligations. WAPA-RMR retains the Available Transfer Capability from its Federal Power-WAPA-RMR in the LAPZ to deliver to its Statutory Load Obligations

**A1.2.1** WAPA-RMR shall be exempt from all Schedule 11 Region-wide Charges associated with WAPA-RMR's delivery of Federal Power-WAPA-RMR to WAPA-RMR's Statutory Load Obligations internal to the LAPZ or external to the Transmission Provider.

**A1.2.2** WAPA-RMR shall be exempt from congestion and marginal loss charges in accordance with Attachment AE of the SPP OATT for deliveries from Federal Power-WAPA-RMR resources across the LAPZ to WAPA-RMR's Statutory

Load Obligations. WAPA-RMR shall be responsible for providing the Transmission Provider real power losses for the energy delivered from Federal Power-WAPA-RMR resources under the Federal Service Exemption across the LAPZ in accordance with Attachment M of the SPP OATT.

### **A1.3 Compliance with Section 1232(c) of the Energy Policy Act of 2005**

The parties have made modifications to this Agreement, the Bylaws, and the OATT to enable WAPA-RMR to execute the Agreement, abide by the Bylaws, and provide and take transmission service under the OATT. These revisions have been made to ensure the goals, objectives, and requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAAct 2005) are met. SPP and WAPA-RMR will ensure compliance with the performance standards, monitoring, and oversight requirements of Section 1232(c) of EPAAct 2005 by taking the following actions:

- a) SPP will annually provide WAPA-RMR with copies of any nonconfidential content of its strategic plan and annual targets used for monitoring compliance with the plan through oversight and monitoring as performed by its Board of Directors and Members Committee.
- b) SPP will annually make reasonable efforts to provide WAPA-RMR with nonconfidential information regarding its performance as a Transmission Provider in meeting its obligations under section 2.1.1 of the Agreement.
- c) SPP will annually make reasonable efforts to provide WAPA-RMR with nonconfidential information regarding its performance as a Reliability Coordinator in meeting its obligations under section 2.1.2 of the Agreement.
- d) WAPA-RMR will utilize the inspection and auditing procedures under section 2.4.1 of the Agreement to verify the annual reports provided by SPP.
- e) WAPA-RMR will ensure its obligations for oversight and monitoring of SPP's performance as required by EPAAct 2005 are met through by the Federal Power Marketing Agency representative on the Members Committee and the Corporate Governance Committee.
- f) Recovery of all of the costs and expenses related to WAPA-RMR transmission facilities shall be made in accordance with Sections 3.10 and 3.11 of the Agreement.

### **A1.4. Contingent Upon Appropriations and Authorization**

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

### **A1.5 Employment Practices; SPP Agreement**

During the performance of this Agreement, SPP agrees to the provisions set forth in OATT Section 39.3 and its subdivisions. In addition, the Agreement will include the following provisions in every subcontract or purchase order involving WAPA-RMR unless exempted by rules, regulations, or order of the Secretary of Labor.

#### **A1.5.1 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), which provides, among other things, that the Agreement will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Agreement by reference to same as if the specific language had been written into the Agreement, except that Indian Tribes and tribal organizations may apply Indian Preference to the extent permitted by Federal law.

#### **A1.5.2 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.

#### **A1.5.3 Use of Convict Labor**

SPP agrees not to employ any person undergoing sentence of imprisonment in performing the Agreement 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.

#### **A1.6 Federal Projects**

The individual hydroelectric projects from which the WAPA-RMR markets capacity and energy are owned and controlled by the Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the requirements and express approval of the Bureau of Reclamation. The Parties also recognize and agree that WAPA-RMR’s transmission system is integrated at various locations through switchyard facilities owned and operated by the Bureau of Reclamation. Any operation of, and maintenance, modification, or addition to such facilities, including the funding of such activities, is subject to the requirements and express approval of the Bureau of Reclamation. WAPA-RMR shall communicate and coordinate with the Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Bureau of Reclamation facilities as requested by SPP; Provided, that compliance with SPP’s request shall be within the discretion of and subject to the approval of Bureau of Reclamation. In the event SPP requests changes due to redispatch, operation,



maintenance or addition to hydroelectric generation owned and operated by the Bureau of Reclamation and marketed by WAPA-RMR, WAPA-RMR shall coordinate its operations with the Bureau of Reclamation to accommodate SPP's request to the extent allowed by the Bureau of Reclamation. Nothing in this section is intended to change the Bureau of Reclamation obligations pursuant to their registration with NERC.

### **A1.7 Transmission Expansion, Interconnections, Modifications, and Additions**

SPP recognizes that as a Federal agency, WAPA-RMR must comply with various environmental and natural resource laws regulating the construction, operation and maintenance of its transmission facilities, including but not limited to the National Historic Preservation Act, 16 U.S.C § 470 to 470x-6, the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347 ("NEPA"), the Endangered Species Act, 16 U.S.C. §§ 1531-1544, and the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa-470mm (2006); and regulations, and executive orders implementing these laws, as they may be amended or supplemented, as well as any other existing or subsequent applicable laws, regulations and executive orders. SPP shall comply with environmental laws, regulations and resource protection measures that apply to SPP, including but not limited to, any mitigation measures and Best Management Practices that apply to SPP and are associated with a transmission or interconnection customer's requested service. SPP understands that WAPA-RMR's decision to allow transmission expansion, interconnections, modifications and additions is dependent on conclusions reached in the record of decision under NEPA, or other such appropriate NEPA document, concerning the respective project and that WAPA-RMR's NEPA review could result in a decision not to take action or to delay action. This decision shall not be subject to dispute resolution.

### **A1.8 Net Billing**

Payments due WAPA-RMR may be offset against payments due SPP. For services included in net billing procedures, payments due one Party in any month shall be offset against payments due the other Party in such month, and the resulting net balance shall be paid to the Party in whose favor such balance exists. The Parties shall exchange such reports and information that either Party requires for billing purposes. Net billing shall not be used for any amounts due which are in dispute.

### **A1.9 Bill Crediting**

Payments to WAPA-RMR by SPP shall be paid by SPP to a third party when so directed by WAPA-RMR. Any third party designated to receive payment in lieu of WAPA-RMR, and the amount to be paid to that party, will be so identified in writing to SPP. The payment to the third party shall be due and payable by the payment due date specified on WAPA-RMR's bill. When remitting payment to a designated third party, SPP shall indicate that such payment is being made on behalf of WAPA-RMR. WAPA-RMR shall credit SPP for the amount paid as if payment had been made directly to WAPA-RMR. SPP shall accept payment from third parties of amounts due SPP from WAPA-RMR and

shall notify WAPA-RMR of the date of receipt of each payment. Following receipt of such payments, SPP shall credit WAPA-RMR as if such payments had been made directly by WAPA-RMR. WAPA-RMR remains liable to SPP for all amounts WAPA-RMR owes SPP that are not paid by WAPA-RMR or a third party. In the event third party payment(s) to SPP exceeds WAPA-RMR's payment obligation to SPP, SPP shall reimburse the difference to WAPA-RMR.

#### **A1.10 Federal Power Marketing Agency Termination**

- a) Notwithstanding anything else in the Agreement, WAPA-RMR may terminate this Agreement and withdraw as a member of SPP in accordance with with less than the advanced notice required by Section 4.2.2 of the Agreement. WAPA-RMR shall not be required to pay the exit fees outlined in Section 4.3 (entitled Obligations Upon Termination) of the Agreement, Section 8.4 (entitled Monthly Assessments) and Section 8.7 (entitled Financial Obligation of Withdrawing Members) of the Bylaws in the event FERC finds that SPP has not adhered to all of the WAPA-RMR Federal Power Marketing Agency Amendments or if SPP files and FERC approves material changes to the WAPA-RMR Federal Power Marketing Agency Amendments. In such event, WAPA-RMR and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to facilitate the withdrawal.
- b) Should WAPA-RMR exercise any type of termination of this Agreement, WAPA-RMR shall not be responsible for payment of facility expansion costs under regional Schedule 11, including but not limited to capital, interest, prepayment premiums or penalties, for past, present or future SPP construction projects.

#### **A1.11 No Expansion of Jurisdiction, Waiver Of Defenses, Liability For Penalties, Or Inconsistent Obligations**

By entering into this Agreement, WAPA-RMR has not waived or conceded any defense it may have, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has WAPA-RMR accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Agreement. SPP, in accepting WAPA-RMR as a member, does not thereby concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of WAPA-RMR. SPP will identify the amount of any penalty or fine that SPP allocates to WAPA-RMR or that SPP determines is attributable to WAPA-RMR and will identify that amount to FERC as uncollectable and not otherwise owed by SPP. Enforcement Authority in this Agreement means the Federal Energy Regulatory Commission (FERC), Electric Reliability Organization (ERO), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or FERC for the purpose of proposing and enforcing reliability standards.

#### **A1.12 Affiliates**

Notwithstanding the definition of Affiliate contained in the SPP OATT or the definition of Affiliate Relationships in the Bylaws, WAPA-Divisions are not affiliates but rather are regional divisions or operating units of a single Federal Power Marketing Agency. Solely for purposes of ease of administering the SPP OATT and Bylaws, however, and unless specifically stated otherwise in the SPP OATT or Bylaws, a WAPA-Division, who has executed a Membership Agreement, will be treated as if it is an Affiliate of, or as having Affiliate Relationships with, any other WAPA-Division who has executed a Membership Agreement and of Western Area Power Administration.

Although treated as Affiliates and as having Affiliate Relationships for the SPP OATT and Bylaws administration purposes, Western Area Power Administration and the WAPA-Divisions are not Affiliates and do not have Affiliate Relationships for any other purposes, and preserve any and all arguments, and has/have not waived or conceded any defense, that they are not Affiliates or have Affiliate Relationships, including but not limited to any actions of an Enforcement Authority. Western Area Power Administration, or WAPA-Divisions, are not Affiliates of, or have Affiliate Relationships with, any other Federal Power Marketing Agencies, such as Southwestern Power Administration.

#### **A1.13 DC Tie Incremental Market Efficiency Use (Incremental MEU) and DC Tie Access Revenue Distributions to WAPA-RMR**

Revenue received by the Transmission Provider associated with the DC Tie Access Charge and Incremental MEU as both terms are defined in the SPP OATT for WAPA-RMR's Sidney DC Tie that are included in the Integrated Marketplace shall be distributed to WAPA-RMR respectively pursuant to Attachment L, Sections IV.13 and IV.14 of the SPP OATT.

#### **A.2 Amendments Not Severable**

Pursuant to Section 8.4 of the Agreement, these Amendments shall not be considered severable from the other provisions of WAPA-RMR's Membership Agreement with SPP. If for any reason any provision of these Amendments, or the application thereof to any person, entity, or circumstance, is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of WAPA-RMR's Agreement with SPP shall no longer be in effect with respect to WAPA-RMR.

IN WITNESS WHEREOF, WAPA-RMR and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to WAPA-RMR's Membership Agreement with SPP, which Amendments are fully applicable and incorporated in to said Membership Agreement and together shall constitute one and the same instrument binding upon WAPA-RMR and SPP.

**AMENDMENTS TO SPP MEMBERSHIP AGREEMENT  
FOR HEARTLAND CONSUMERS POWER DISTRICT**

**A1. Dispute Resolution**

Notwithstanding any provisions in the Agreement or the SPP Bylaws to the contrary, any disputes arising under the Agreement or SPP Bylaws and relating to determinations, decisions, conduct and actions made or taken by Heartland Consumers Power District ("Heartland") pursuant to its participation in SPP shall be subject to binding resolution under Section 3.13 of the SPP Bylaws only to the extent agreed upon by Heartland's board of directors, and subject to the terms and conditions set by Heartland's board of directors.

**A2. Withdrawal Rights**

Heartland may terminate this Agreement and withdraw as a member of SPP with less than the advance notice required by Section 4.2.2 of the Agreement in the event that (1) Western Area Power Administration-Upper Great Plains Region ("WAPA-UGP") or Basin Electric Power Cooperative withdraws from SPP in accordance with its withdrawal rights; (2) FERC finds that SPP has not adhered to all of the WAPA-UGP Federal Power Marketing Agency Amendments or all of the Heartland Amendments; or (3) SPP files and FERC approves one or more changes to the Heartland Amendments without Heartland's consent, and such changes have a material adverse effect on Heartland. In such event, Heartland and SPP shall meet and confer to facilitate the withdrawal as soon as practicable or as necessary to ensure compliance with state or Federal law. In the event of a withdrawal by WAPA-UGP, Heartland's withdrawal will become effective on the same date as that of WAPA-UGP. If Heartland exercises its withdrawal rights under this provision, the financial obligations will be calculated under § 4.3 of this Agreement.

**A3. Obligation to Build Conditions**

Heartland's board of directors shall have discretionary authority to decide whether to construct new transmission facilities. Heartland's board of directors shall not replace any state regulatory authority with responsibility for siting activities under state law.

IN WITNESS WHEREOF, Heartland and SPP have caused their duly authorized representatives to execute, on their respective behalves, these Amendments to Heartland's Membership Agreement with SPP, which Amendments are fully applicable and incorporated into said Membership Agreement and together shall constitute one and the same instrument binding upon Heartland and SPP.