

Attachment A

DCO Core Principle A: Compliance

(i) IN GENERAL. – To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION. – Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

Response:

SPP’s practices are consistent with the Core Principles for DCOs. Given that SPP is principally regulated by the Federal Energy Regulatory Commission (“FERC”) and the differences between SPP and registered DCOs, SPP in some cases achieves compliance with the Core Principles using different methods than those ordinarily employed by registered DCOs. This discretion is expressly permitted by Core Principle A(ii). As demonstrated below, SPP’s practices and the comprehensive regulatory regime of FERC achieve the goals of and are consistent with the policies of the Commodity Exchange Act (“CEA”). Accordingly, the exemption requested herein is in the public interest. SPP’s representations are similar to the Prior Requesters’ representations regarding DCO Core Principles.

In the Commission’s recent final order in response to a petition from certain independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) (collectively “Prior Requesters”) to exempt specified transactions from certain provisions of the CEA,¹ the Commission explained that “the standards set forth in FERC regulation 35.47 appear to achieve goals similar to the regulatory objectives of the Commission’s DCO Core Principles.”²

The Commission also explained that in the Final Order it incorporated the DCO and SEF Core Principle analyses set forth in its proposed order on the Prior Requesters’ petition to exempt

¹ Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (Apr. 2, 2013) (“Final Order”).

² *Id.* at 19,900.

specified transactions³ “into its consideration of the Final Order’s consistency with the public interest and the purposes of the Act.”⁴ Further, the Commission explained in its Final Order that, through its analyses of the DCO and SEF Core Principles in the Proposed Order, the Commission determined that the policies and procedures of the Prior Requesters “appear to be consistent with, and to accomplish sufficiently for purposes of [the] Final Order, the regulatory objectives of the DCO [and SEF] Core Principles in the context of the Covered Transactions.”⁵

In the Proposed Order’s analysis regarding DCO Core Principle A, the Commission found that the Prior Requesters’ similar representation and their representations regarding the Core Principles “appear congruent with, and to accomplish sufficiently, the regulatory objectives of each DCO core principle.”⁶

³ Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 Fed. Reg. 52,138 (proposed Aug. 28, 2012) (“Proposed Order”).

⁴ Final Order at 19,895.

⁵ *Id.* at 19,901. The same language is stated with respect to the SEF Core Principles at Final Order at 19,902.

⁶ Proposed Order at 52,149.

Attachment B

DCO Core Principle B: Financial Resources

(i) IN GENERAL. – Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES. – Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would –

(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(III) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

Response:

SPP maintains adequate financial, operational, and managerial resources to discharge its responsibilities.

Financial Resources

Several provisions of the SPP Tariff provide SPP with sufficient financial resources to mitigate the impact of a market participant default. SPP is revenue neutral with respect to all market transactions and services that SPP provides. Under the SPP Tariff, revenue shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations.⁷ The SPP Tariff contains similar provisions for failures of a transmission customer to pay invoiced amounts due for transmission service, with such costs being socialized among SPP Transmission Owners.⁸ Attachment AE of the SPP Tariff, which governs operation of the SPP Integrated Marketplace, contains extensive “Revenue Neutrality Uplift” provisions designed to ensure that any difference between aggregate market payments and market charges are uplifted to market participants so that SPP remains revenue neutral.⁹ Attachment L further provides that SPP is only required to remit revenues it has collected.¹⁰

⁷ SPP Tariff, Attachment L § V.C.

⁸ *Id.*, Attachment L § V.D.

⁹ *See, e.g., id.*, Attachment AE §§ 8.5.12 (Transmission Congestion Rights Daily Uplift Amount), 8.7.3 (Auction Revenue Rights Uplift Amount), 8.8 (Revenue Neutrality Uplift Distribution Amount). The Revenue Neutrality Uplift provisions referenced herein
(continued . . .)

Attachment L sets forth the procedure for SPP to socialize unpaid amounts among non-defaulting market participants (or, in the case of a default on a transmission service invoice, Transmission Owners). When SPP concludes that it does not reasonably expect payment in full of an unpaid past due amount for a market services invoice (which SPP may conclude as early as one day after the due date), SPP shall declare the unpaid past due amount to be an “Unpaid Obligation.”¹¹ SPP is required to notify market participants by posting a notice of its declaration on OASIS, including information identifying the defaulting market participant, the amount of the unpaid obligation, the applicable weeks of service, and the future weeks of service in which SPP will reduce the revenues to be paid to non-defaulting market participants who conducted business in the market during the time covered by the invoice applicable to the Unpaid Obligation, based on their pro rata share. SPP is also required to provide a notice to cure to the defaulting market participant and to take additional steps to address an Unpaid Obligation, including: segregating funds held by SPP with respect to the defaulting market participant; drawing on collateral provided by the market participant; seeking to recover from any guarantor of the defaulting market participant; seeking to exercise other remedies under the credit support documents provided by the defaulting market participant; and pursuing other available remedies, including initiating a filing with FERC to terminate service.

An Unpaid Obligation that has not been paid within 90 days (or sooner if the market participant’s service agreement is terminated) becomes an Uncollectible Obligation, and SPP proceeds to recover on a pro rata basis the Uncollectible Obligation from all market participants who conducted business in the market during the period covered in the invoice(s) associated with the Uncollectible Obligation, with the amount of the Uncollected Obligation adjusted by the amount of the Unpaid Obligation already recovered pursuant to Attachment L and any partial payments SPP received.¹² SPP determines each non-defaulting market participant’s pro rata share by dividing its aggregate market charges and credits in the weekly invoicing cycle by the total market charges and credits in the weekly invoicing cycle.

Upon an Event of Default other than a market participant’s involvement in financial difficulties such as bankruptcy or insolvency,¹³ the SPP Tariff allows a party two days to cure such Event of Default prior to liquidating collateral or taking other actions in response to the

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ensure that SPP is not obligated to provide payments for market services that exceed charges for market services.

¹⁰ *Id.*, Attachment L § V.B.

¹¹ *Id.*, Attachment L § V.C.1.

¹² *Id.*, Attachment L § V.C.3.

¹³ Bankruptcy or insolvency events trigger immediate action by SPP, including suspension of credit, termination of service, or other actions, as specified in Sections 8.1.4 and 8.3 of Attachment X of the Tariff.

default.¹⁴ If the defaulting market participant fails to cure the default within the two-day cure period, the Tariff permits SPP to initiate the actions outlined above including liquidating collateral.¹⁵

SPP also imposes strict creditworthiness and collateral requirements on market participants to reduce the possibility of a market participant's default and mitigate the impact of such a default on SPP's ability to meet its obligations to other market participants. As stated in Attachment D below, SPP conducts an extensive analysis to determine a market participant's creditworthiness.¹⁶ Pursuant to SPP's credit policy in Attachment X of the SPP Tariff, SPP determines a market participants' creditworthiness, Total Potential Exposure, the amount of credit the credit customer requires, and whether to grant (and the amount of any), unsecured credit. SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for profit entity. Through the creditworthiness analysis, SPP determines the unsecured credit allowance based on the creditworthiness score and a percentage of the tangible net worth of the market participant.¹⁷

In addition, SPP's credit policy limits a credit customer's unsecured credit to a maximum of \$25 million¹⁸ and requires financial security for any remaining market exposure. Additionally, the \$25 million unsecured credit limit would apply to all affiliates that are granted an unsecured credit allowance as if all of the affiliates were a single market participant.¹⁹ SPP also has the right to continuously modify a market participant's unsecured credit allowance or required financial security.²⁰ A market participant's total credit limit is the sum of its unsecured credit allowance and financial security it has provided to SPP.

¹⁴ The two-day cure period is consistent with the requirement imposed by FERC in Order No. 741 to establish a maximum two-day cure period for calls for additional collateral. *See* 18 C.F.R. § 35.47(e).

¹⁵ Unlike some of the Prior Requesters, SPP does not draw on working capital, revolving credit facilities, or third-party insurance or other financing to address defaults. *See* Proposed Order at 52,149.

¹⁶ *See generally* SPP Tariff, Attachment X, Art. 3 (Credit Assessment) & 4 (Creditworthiness and Total Credit Limit).

¹⁷ SPP Tariff, Attachment X § 4.3.

¹⁸ *Id.*, Attachment X § 4.3.2.1.

¹⁹ *Id.*, Attachment X § 4.3.4.1.

²⁰ *Id.*, Attachment X § 4.3.5.

Pursuant to the SPP credit policy, SPP calculates the Total Potential Exposure as a sum of Market Exposure and Transmission Service Potential Exposure.²¹ The Market Exposure includes invoiced market settlement charges, calculated but not yet invoiced market settlement charges, the maximum estimated market exposure for Real-Time Balancing Market activity, the maximum estimated market exposure for Day-Ahead Market activity, and the estimated virtual exposure related to virtual energy bids and offers.²²

SPP also has adopted a 100% collateral requirement for a market participant's transactions in the Transmission Congestion Rights ("TCR") markets.²³ SPP is authorized to terminate a market participant's ability to transact in the market if it defaults and the default is not cured within a specified time period (or, in the event of a market participant bankruptcy, immediately).²⁴

In its Proposed Order analysis, the Commission stated that the Prior Requesters represented that they maintain sufficient financial resources to meet their financial obligations to their members due to their collateral requirements and provisions that permit the Prior Requester to socialize any default-related losses to non-defaulting market participants pursuant to a pre-determined formula that is included in each Prior Requesters tariff.²⁵ The Commission stated, "[o]n the basis of these representations, the Commission believes that each [Prior Requester's] financial resource requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of [the Prior Requesters'] activities with respect to the Transactions."²⁶ The same is true for SPP. As demonstrated above, SPP has provisions in place to require collateral to satisfy credit requirements (including a 100% collateral requirement for TCR market activity) and to apply such collateral against default-related amounts. SPP also has in place provisions to short-pay for Unpaid Obligations and to "socialize" or uplift Uncollectible Obligations to non-defaulting market participants.

Operational Resources

SPP also has sufficient operational resources to fulfill its obligations. Pursuant to the Bylaws, SPP staff and the SPP Finance Committee prepare an annual budget of expenditures for

²¹ SPP Tariff, Attachment X, Art. 5.

²² Article 4A of Attachment X sets forth the calculations regarding estimated virtual energy bids and offers. It also includes procedures that will limit a market participant's virtual energy bids and offers based on the market participant's available credit. *Id.*, Attachment X § 4A.3.

²³ *Id.*, Attachment X §§ 4.4, 5A.1.

²⁴ *Id.*, Attachment X § 8.3.

²⁵ Proposed Order at 52,149.

²⁶ *Id.*

the following fiscal year and an estimate for an additional two years, which is approved by the Board of Directors.²⁷ SPP recovers the costs associated with providing its services under Schedule 1-A of the SPP Tariff, which assesses a “Tariff Administration Charge” on each megawatt (MW) of transmission capacity reserved during the year. SPP’s annual budget and the amount of the Tariff Administration Charge are not subject to annual approval by FERC, although SPP submits an informational filing to FERC on an annual basis outlining its budget and Tariff Administration Charge for the following year. Schedule 1-A also contains a FERC-approved cap on the Tariff Administration Charge, for which SPP must seek FERC approval to increase. Like other RTOs, SPP has a “captive audience” of market participants that are required to pay SPP’s fees.²⁸ Additionally, the Bylaws require the Board of Directors annually to engage an independent certified public accounting firm to complete an annual audit of SPP’s financial records and to prepare a report on SPP’s financial condition.²⁹

In addition, to the extent that an SPP member³⁰ terminates its membership, the Bylaws and Membership Agreement require that the member pay its share of SPP’s outstanding financial obligations, including principal and interest on SPP debt obligations.³¹ These provisions protect SPP and its remaining members from increased financial exposure due to a member’s termination of its participation in SPP. Finally, the Bylaws also provide SPP with the ability to assess a charge to all SPP members to recover any SPP costs that SPP is not otherwise able to collect under its Tariff and other governing documents,³² which further insures that SPP will have sufficient operational resources to satisfy its obligations.

In the Proposed Order, the Commission noted that each Prior Requester “represents that it has sufficient operational resources to cover its operating costs through a charge allocated to its participants and set forth in its Tariffs, which are approved by FERC and PUCT, as applicable,” and that “the charge is based on expected costs for the following year.”³³ The Commission also noted that, under the regulatory structure under which the Prior Requesters operate, the Prior requesters have a “captive audience” of market participants that are required to pay the charge, and that because market participant defaults are mutualized amongst the non-defaulting

²⁷ Bylaws § 8.1. The Finance Committee is comprised of SPP Directors and representatives from SPP membership sectors (i.e., “Transmission Owning Members” and “Transmission Using Members”) and is responsible for all aspects of SPP’s financial operations and risk management. *Id.* § 6.5.

²⁸ *See* Proposed Order at 52,149.

²⁹ Bylaws § 8.6.

³⁰ Membership in SPP is voluntary, and is not required to participate in SPP markets.

³¹ *Id.* § 8.7.1; Membership Agreement § 4.3.2.

³² Bylaws § 8.4.

³³ Proposed Order at 52,149.

participants, such defaults would not impair the Prior Requesters' ability to cover their operating costs.³⁴ Therefore, the Commission determined that these policies and procedures "appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Transactions."³⁵ The same is true for SPP. As demonstrated above, SPP establishes annual budgets and recovers its operating costs through a "Tariff Administration Charge" under Schedule 1-A of the Tariff that is based on expected costs for the following year, SPP has a "captive audience" of market participants who are required to pay SPP charges, and SPP has provisions to mutualize market participant defaults amongst non-defaulting market participants.

Managerial Resources

As noted in the Proposed Order, FERC Order Nos. 888 and 2000 provide incentives and impose requirements to promote effective management of RTOs.³⁶ Under the Bylaws, SPP's Board of Directors is comprised of seven individuals, each of whom must have recent and relevant senior management expertise and experience in one or more of the following disciplines: finance; accounting; electric transmission or generation planning or operation; law and regulation; commercial markets; and trading and associated risk management.³⁷ The President of SPP serves on the Board of Directors.³⁸

The Bylaws also vest executive authority in the Officers of SPP to carry out the rights, duties, and obligations of SPP, including (among other things): employing qualified technical and administrative employees; engaging outside technical and special service organizations; executing contracts; and providing for SPP services.³⁹ SPP's Officers include: a President and Chief Executive Officer; an Executive Vice President and Chief Operating Officer; an Executive Vice President, Regulatory Policy and General Counsel; a Vice-President, Process Integrity and Chief Administrative Officer; a Vice President, Finance and Chief Financial Officer; a Vice President, Chief Compliance Officer and Corporate Secretary; and Vice Presidents of Engineering, Operations, and Information Technology. SPP also employs more than 500 employees with experience in engineering, market operations, legal and regulatory compliance, finance and credit, and other disciplines, that carry out SPP market and services and support the various SPP member organizational groups.⁴⁰ Through SPP's budget setting and forecasting

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See id.* at 52,149-150.

³⁷ Bylaws § 4.2.

³⁸ *Id.*

³⁹ *Id.* § 3.4.

⁴⁰ *See, e.g., id.* § 3.11.

processes discussed above, SPP ensures that it has sufficient human resources to fulfill its obligations to its members, market participants, and customers.

In the Proposed Order, the Commission stated that each of the Prior Requesters represented having adequate managerial resources to discharge organized wholesale electricity market responsibilities, due to the requirements of Order Nos. 888 and 2000 to develop, among other things, “open architecture so that the RTO and its members have the flexibility to improve their organizations in the future in terms of structure, geographic scope, market support and operations in order to adapt to an environment that is rapidly changing and meet market needs.”⁴¹ The Commission noted that the Prior Requesters also represented that they maintain the staff and labor necessary to fulfill their obligations and responsibilities, and only employ persons who are appropriately qualified, skilled, and experienced in their respective trades or occupations.⁴² Based on these representations, the Commission stated that the Prior Requesters’ “managerial resources appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle B in the context of the Transactions.”⁴³ The same is true for SPP. As demonstrated above, SPP is subject to the managerial requirements of Order Nos. 888 and 2000 like the Prior Requesters and SPP recruits, hires, and retains employees and executives that are appropriately qualified, skilled, and experienced in trades and occupations critical to SPP’s successful discharge of its rights, duties, and obligations.

⁴¹ Proposed Order at 52,149-50.

⁴² *Id.* at 52,150.

⁴³ *Id.*

Attachment C

DCO Core Principle C: Participant and Product Eligibility

(i) IN GENERAL. – Each derivatives clearing organization shall establish –

(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

(II) appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing.

(ii) REQUIRED PROCEDURES. – Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

(iii) REQUIREMENTS. – The participation and membership requirements of each derivatives clearing organization shall—

(I) be objective;

(II) be publicly disclosed; and

(III) permit fair and open access.

Response:

SPP Membership

The SPP Bylaws specify the qualifications and procedures for membership in SPP.⁴⁴ Membership in SPP is voluntary and open to any electric utility, federal power marketing agency, transmission service provider, any entity in the business of producing, selling and/or purchasing electric energy for resale, and any entity willing to meet the membership requirements. Membership also is available to any entity eligible to take service under the SPP Tariff. Membership in SPP is not required to participate in the SPP markets.

SPP Market Participation

The SPP Tariff requires each market participant to execute the Service Agreement for Market Participants in the Integrated Marketplace set forth as Attachment AH of the SPP Tariff.⁴⁵ Section 2.2 of Attachment AE of the SPP Tariff sets forth the application and asset

⁴⁴ Bylaws § 2.1 (Qualifications).

⁴⁵ SPP Tariff, Attachment AE § 2.1.

registration requirements for entities seeking market participation, with additional information set forth in Section 6 of the IM Protocols.⁴⁶

Training for SPP's Integrated Marketplace is made available to prospective Market Participants, current Members, and any other interested parties such as state and federal regulators, media, etc. SPP strongly encourages these audiences to attend the training, which has been provided at no cost during the Integrated Marketplace implementation phase. The training curriculum for the Marketplace has been offered in many different formats to allow easy access for all interested parties. SPP offers: instructor-led clinics facilitated throughout the footprint, net conferences, and computer/web-based learning modules. In addition to these formal training offerings, SPP also provides performance support encompassing any learning modality, resource, or asset that provides task guidance, support, and productivity benefits. In addition to these formal training offerings, SPP also provides job aids, reference guides, and task lists that provide guidance and support at the time of need or on-the-job. All training has been thoroughly vetted and approved by those SPP stakeholder working groups that focus on training and the Integrated Marketplace.

Pursuant to the SPP Tariff, SPP validates each market participant's ability to provide the services for which it has registered in the Integrated Marketplace, including that it has met the technical and communication requirements set forth in the IM Protocols, and the credit requirements set forth in Attachment X of the SPP Tariff.⁴⁷

Attachment X of the SPP Tariff requires market participants to comply with the SPP credit policy. Under the credit policy, SPP conducts initial and ongoing credit assessments for each potential market participant based on its credit application, credit information, and credit ratings.⁴⁸ Pursuant to Attachment X, SPP determines a market participant's total potential exposure, the amount of credit that the market participant requires, the amount of unsecured credit to grant the market participant (if any), the amount of financial security that the credit customer may require, and whether the credit customer meets the minimum criteria for participation. In compliance with FERC's Order No. 741, SPP's credit policy in Attachment X of the SPP Tariff includes minimum capitalization requirements and an attestation of a market participant's risk management capabilities.⁴⁹

The minimum capitalization requirements state that a market participant must possess either: (i) a tangible net worth of \$1,000,000; (ii) assets of \$10,000,000; (iii) a credit rating of

⁴⁶ Southwest Power Pool, Inc., *Market Protocols SPP Integrated Marketplace*, Revision 16.0a (last revised Aug. 6, 2013), <http://www.spp.org/publications/Integrated%20Marketplace%20Protocols%2016.0a.pdf> ("IM Protocols").

⁴⁷ SPP Tariff, Attachment AE § 3.7.

⁴⁸ *Id.*, Attachment X § 1.2.4, Art. 3, and Appendix A.

⁴⁹ *Id.*, Attachment X §§ 3.1.1.6, 3.1.1.8.

BBB- or its equivalent; or (iv) a guaranty where the guarantor meets one of those requirements. Alternatively, if the market participant cannot meet one of those requirements, it may provide a deposit of \$200,000, which is segregated and unavailable to be used as financial security for market transactions. If, under this alternative provision, the market participant's expected market exposure exceeds \$100,000, it must also provide twice the amount of financial security otherwise required pursuant to Attachment X of the SPP Tariff.⁵⁰ The attestation requires that the market participant describe its risk management capabilities and procedures and whether it is engaged in hedging, describe the employees who perform the risk management procedures, define the special training, skills, experience, and industry tenure of those employees, and provide any additional information in determining the risk management capabilities of the market participant.⁵¹ Market participants also are required to notify SPP of material adverse changes in their financial conditions.⁵²

Attachment X also provides the process by which SPP will periodically review and verify a market participant's risk management policies, practices, and procedures pertaining to its activities in SPP.⁵³ SPP may select market participants "for review on a random basis and/or based on identified risk factors such as, but not limited to, the SPP markets in which the Market Participant is transacting, the magnitude of the Market Participant's transactions, or the volume of the Market Participant's open positions."⁵⁴ Successful completion of SPP's verification is required for a selected market participant's continued eligibility to participate in the SPP markets.

FERC recently approved revisions to SPP's Tariff to include minimum eligibility requirements to be consistent with the Final Order's appropriate person requirement.⁵⁵ Specifically, in order to participate in the Integrated Marketplace, each market participant must demonstrate to SPP that it qualifies as (a) an appropriate person as that term is defined under Section 4(c)(3)(A) through (J) of the CEA; (b) an eligible contract participant as that term is defined in Section 1(a)(18) of the CEA; or (c) a person or entity that is in the business of: (i) generating transmitting or distributing electric energy or (2) providing electric services that are necessary to support the reliable operation of the transmission system.⁵⁶

⁵⁰ *Id.*, Attachment X § 3.1.1.8.

⁵¹ SPP Tariff, Attachment X § 3.1.1.6.

⁵² *Id.*, Attachment X § 3.2.7.

⁵³ *Id.*, Attachment X § 3.1.1.9.

⁵⁴ *Id.*

⁵⁵ Final Order at 19,900.

⁵⁶ SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing on other Tariff provisions related to information sharing.

(continued . . .)

SPP's Tariff and Bylaws are filed with FERC and publicly available on SPP's website. The IM Protocols also are posted publicly on SPP's website.

Conclusion

In the Proposed Order's analysis regarding DCO Core Principle C, the Commission explained that FERC's Order No. 741 credit policy requirements, including FERC regulations 35.47(f)⁵⁷ require, ISOs and RTOs to impose publicly disclosed participant eligibility requirements that appear to be consistent with the regulatory objectives of DCO Core Principle C.⁵⁸ The Commission explained that the Prior Requesters represented that they had adopted or were in the process of adopting: (1) minimum market participant eligibility criteria that include capitalization requirements, which may vary based on the size of the market participants; (2) standards regarding risk management; and (3) provisions requiring market participant disclosure of material litigation or regulatory sanctions, bankruptcies, mergers, acquisitions, and activities in the wholesale electricity market.⁵⁹ The Commission also explained that the Prior Requesters represented that they impose operational capability requirements, that the tariffs they maintain either include or were in the process of including provisions that would allow the ISO or RTO to verify the risk management standards and procedures of its market participants either on a random basis or upon identification of risks.⁶⁰ Some of the Prior Requesters also represented that they require from each market participant an attestation that it continues to comply with the minimum participation criteria.⁶¹ The Commission concluded that the Prior Requesters' "arrangements with respect to participant eligibility requirements are (or will be) congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle C in the context of [their] activities with respect to the Transactions."⁶² The same is true for SPP. As demonstrated above, SPP has publicly disclosed participant eligibility requirements in its Tariff that comply with Order No. 741 that appear to be consistent with the regulatory objectives of DCO Core

(. . . continued)

Sw. Power Pool, Inc., 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁵⁷ 18 C.F.R. § 35.47(f) (requires each organized wholesale electric market to have tariff provisions that "[r]equire minimum participation criteria for market participants to be eligible to participate in the organized wholesale electric market").

⁵⁸ Proposed Order at 52,148, 52,150.

⁵⁹ *Id.* at 52,150.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Proposed Order at 52,151.

Principle C. SPP has adopted: (1) minimum market participant eligibility criteria that include capitalization requirements, which may vary based on the size of the market participants; (2) standards regarding risk management; and (3) provisions requiring market participant disclosure of material litigation or regulatory sanctions, bankruptcies, mergers, acquisitions, and activities in the wholesale electricity market. SPP also imposes operational capability requirements and SPP's Tariff includes provisions that allow SPP to verify the risk management standards and procedures of its market participants either on a random basis or upon identification of risks and require from each market participant an attestation that it continues to comply with the minimum participation criteria.

Attachment D

DCO Core Principle D: Risk Management

(i) IN GENERAL. – Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(ii) MEASUREMENT OF CREDIT EXPOSURE. – Each derivatives clearing organization shall –

(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS. – Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

(I) the operations of the derivatives clearing organization would not be disrupted; and

(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

(iv) MARGIN REQUIREMENTS. – The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS. – Each model and parameter used in setting margin requirements under clause (iv) shall be –

(I) risk-based; and

(II) reviewed on a regular basis.

Response:

Risk Management Framework

SPP's risk management provisions provide SPP with appropriate tools and procedures to manage risk associated with operating its wholesale and related markets. These provisions are set forth in the SPP Tariff, primarily in the SPP credit policy in Attachment X of the SPP Tariff and the provisions in Attachment AE to the SPP Tariff specifying that SPP is the counterparty to certain market transactions in the Integrated Marketplace, as described in more detail below.

The provisions also are consistent with FERC’s Order No. 741 requirements, which required SPP to revise its Tariff regarding the tools and procedures that RTOs use to manage risk. SPP’s credit policy defines the forms of collateral that market participants may provide, includes the formulas for determining the amount of collateral or unsecured credit a market participant is required to have, and states when additional collateral may be required. The risk management procedures are tailored to the unique environment of SPP as an RTO and the products in the SPP Integrated Marketplace. The SPP credit policy is intended to encourage maximum participation of large and small participants from various sectors while minimizing the likelihood of losses due to defaults. The credit policy provides for initial and ongoing assessments using qualitative and quantitative credit scoring under formulas and procedures.

As described above in Attachment C regarding DCO Core Principle C, in compliance with FERC’s Order No. 741, SPP’s credit policy includes minimum capitalization requirements and an attestation of a market participant’s risk management capabilities.⁶³ The attestation requires that the market participant describe its risk management capabilities and procedures and whether it is engaged in hedging, describe the employees who perform the risk management procedures, define the special training, skills, experience, and industry tenure of those employees, and provide any additional information in determining the risk management capabilities of the market participant.⁶⁴ Market participants also are required to notify SPP of material adverse changes in their financial conditions.⁶⁵

Attachment X also provides the process by which SPP will periodically review and verify a market participant’s risk management policies, practices, and procedures pertaining to its activities in SPP.⁶⁶ SPP may select market participants “for review on a random basis and/or based on identified risk factors such as, but not limited to, the SPP markets in which the Market Participant is transacting, the magnitude of the Market Participant’s transactions, or the volume of the Market Participant’s open positions.”⁶⁷ Successful completion of SPP’s verification is required for a selected market participant’s continued eligibility to participate in the SPP markets.

FERC recently approved revisions to SPP’s Tariff to include minimum eligibility requirements to be consistent with the Final Order’s appropriate person requirement.⁶⁸ In order to participate in the Integrated Marketplace, each market participant must demonstrate to SPP that it qualifies as (a) an appropriate person as that term is defined under Section 4(c)(3)(A)

⁶³ SPP Tariff, Attachment X §§ 3.1.1.6, 3.1.1.8.

⁶⁴ *Id.*, Attachment X § 3.1.1.6.

⁶⁵ *Id.*, Attachment X § 3.2.7.

⁶⁶ *Id.*, Attachment X § 3.1.1.9.

⁶⁷ SPP Tariff, Attachment X § 3.1.1.9.

⁶⁸ Final Order at 19,900.

through (J) of the CEA; (b) an eligible contract participant as that term is defined in Section 1(a)(18) of the CEA; or (c) a person or entity that is in the business of: (i) generating transmitting or distributing electric energy or (2) providing electric services that are necessary to support the reliable operation of the transmission system.⁶⁹

The credit policy also includes procedures for SPP to complete credit assessments. Attachment X specifies the criteria that each market participant must meet to be allowed any unsecured credit allowance for market trading purposes. SPP completes such credit assessments at least annually. SPP also has access to and reviews multiple rating agency and industry advisories on market participant activities.

Consistent with FERC Order No. 741's requirements, SPP implements weekly invoicing for Integrated Marketplace activity, with market participants required to pay amounts due on the third business day after the date of the invoice.⁷⁰

Further, in compliance with FERC Order No. 741's requirement to establish the ability to net and offset market obligations in bankruptcy, SPP is the counterparty to market transactions that are pooled within the Integrated Marketplace as set forth in Section 3.8 of Attachment AE.⁷¹ SPP will be the counterparty with each market participant for that market participant's Integrated Marketplace agreements and transactions in the TCR Market, Day-Ahead Market, and Real-Time Balancing Market, with specified exclusions regarding bilateral transactions between market participants, and self-committed, self-scheduled, and self-supplied arrangements.⁷² SPP also is the counterparty to TCR and Auction Revenue Rights ("ARR") instruments held by market participants.⁷³

Measurement and Monitoring of Credit Exposure, Unsecured Credit

⁶⁹ SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing on other Tariff provisions related to information sharing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁷⁰ SPP Tariff, Attachment AE § 10.2.

⁷¹ *Id.*, Attachment AE § 3.8.

⁷² *Id.*, Attachment AE §§ 3.8.1, 3.8.3. Section 3.8.3 also specifies that SPP is not the counterparty to agreements and transaction for transmission service and certain ancillary services, which are not agreements and transactions in the Integrated Marketplace.

⁷³ *Id.*, Attachment AE § 3.8.2.

Pursuant to the SPP credit policy in Attachment X of the SPP Tariff, SPP monitors and mitigates its credit exposure. The SPP credit policy is part of SPP's risk management procedures. Pursuant to the credit policy, SPP determines a market participants' (i) creditworthiness, (ii) Total Potential Exposure, and (iii) amount of credit required, and whether to grant (and the amount of any) unsecured credit to a market participant. SPP's credit exposure is monitored through its determination of the amount of unsecured credit it will grant to a market participant pursuant to the SPP credit policy, ongoing assessments of market participants' creditworthiness, and the regular monitoring of each market participants' use of services and associated financial obligations.⁷⁴ SPP monitors its credit exposure for the unsecured credit it has granted through monitoring the credit requirements of each market participant and each market participant's market activity and whether it is supported by the credit each market participant has with SPP. SPP calculates credit exposure on at least a daily basis. SPP uses a highly customized system that collects data from multiple SPP systems to provide accurate and up-to-date credit exposures for each market participant. During TCR auctions, SPP's system calculates credit exposure for each bid or offer in real-time and compares the market participant's credit limit available.⁷⁵ Bids and offers are systematically rejected if they contribute to exceeding the market participant's available credit. Pursuant to the credit policy, SPP requires each market participant to have credit to support its market activities. The credit can either be in the form of (i) unsecured credit granted by SPP, which is the unsecured credit allowance determined pursuant to the credit policy, and/or (ii) financial security provided by the market participant to SPP.⁷⁶ A market participant is required to have an amount of credit (unsecured credit and/or financial security) to support its Total Potential Exposure, which is determined pursuant to Article 5 of the SPP credit policy. However, a market participant is required to provide financial security to support all of its TCR activity. Consistent with FERC Order No. 741, unsecured credit is not available to support a market participant's TCR activity.

Pursuant to Article 7 of the SPP credit policy, SPP only accepts financial security that is in the form of cash deposits or irrevocable letters of credit, or if the market participant is a Federal Power Marketing Agency, a Federal Power Marketing Agency Letter executed by an officer of the agency that includes an attestation that the agency is lawfully allowed to participate in the SPP TCR market and that any debt the agency incurs from such participation is a debt of the United States, and that identifies the current appropriations for the agency from the United States Congress and verifies that such amount meets or exceeds the amount required to satisfy

⁷⁴ See SPP Tariff, Attachment X §§ 4.1, 5.1, 5.3.1.

⁷⁵ FERC also recently accepted revisions to Article 5A of Attachment X of the Integrated Marketplace Tariff to permit the netting of credit positions associated with TCRs self-converted from ARRAs during the time frame between the requested conversion and the subsequent publication of TCR Auction clearing results. *Sw. Power Pool, Inc.*, FERC Docket No. ER14-1357-000, Letter Order (Apr. 11, 2014).

⁷⁶ *Id.*, Attachment X § 4.1.

the credit requirements set forth in the credit policy.⁷⁷ Per the credit policy, SPP requires financial security for all of a market participant's TCR activity and for any other activity where a market participant's potential exposure is greater than the unsecured credit granted to the market participant.

Pursuant to the SPP credit policy, a market participant is required to meet the credit requirements for its TCR activity and its other activities. SPP calculates a market participant's potential exposure to non-payment separately for each category of service. SPP sums together a market participant's market exposure (excluding TCR activity) and transmission service exposure to determine the amount of the market participant's Total Potential Exposure.⁷⁸ The market exposure includes Real-Time Balancing and Day-Ahead (including virtual transaction) market activity, charges and estimated market exposure.⁷⁹ SPP estimates the cumulative financial obligation under the Tariff other than TCRs in its Total Potential Exposure calculation.⁸⁰ At all times, each market participant is required to have sufficient credit to satisfy its Total Potential Exposure, as well as any additional financial security required to support its TCR activity.⁸¹ In addition, SPP requires that a market participant has sufficient credit to support the expected exposure of all of its virtual energy bids and offers.⁸²

SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for profit entity. Through the creditworthiness analysis, SPP determines the unsecured credit allowance it will provide to a market participant based on the creditworthiness score and a percentage of the tangible net worth of the market participant.⁸³

Under the credit policy, and consistent with FERC Order No. 741, a market participant may not have an unsecured credit allowance in excess of \$25 million.⁸⁴ Additionally, the \$25

⁷⁷ *Id.*, Attachment X §§ 7.1, 7.1.4. On January 29, 2014, SPP filed the revisions to the SPP Tariff that permit Federal Power Marketing Agencies to provide the letter with the required attestations and verifications as financial security, in order to permit the Western Area Power Administration to participate in SPP's Integrated Marketplace. FERC accepted these Tariff revisions effective March 30, 2014, as requested by SPP. *Sw. Power Pool, Inc.*, FERC Docket No. ER14-1204-000, Letter Order (Mar. 14, 2014).

⁷⁸ SPP Tariff, Attachment X §§ 5.1, 5.2.

⁷⁹ *Id.* Attachment X § 5.2.1.

⁸⁰ *Id.* Attachment X § 5.1.

⁸¹ *Id.* Attachment X § 5.3

⁸² *Id.* Attachment X § 4A.3.

⁸³ SPP Tariff, Attachment X § 4.3.

⁸⁴ *Id.*, Attachment X § 4.3.2.1.

million unsecured credit limit would apply to all affiliates that are granted an unsecured credit allowance as if all of the affiliates were a single market participant.⁸⁵ SPP also has the right to continuously modify a market participant's unsecured credit allowance or required financial security.⁸⁶ A market participant's total credit limit is the sum of its unsecured credit allowance and financial security it has provided to SPP.

Pursuant to the SPP credit policy, SPP calculates the Total Potential Exposure as a sum of Market Exposure and Transmission Service Potential Exposure.⁸⁷ The Market Exposure includes invoiced market settlement charges, calculated but not yet invoiced market settlement charges, the maximum estimated market exposure for Real-Time Balancing Market activity, the maximum estimated market exposure for Day-Ahead Market activity, and the estimated virtual exposure related to virtual energy bids and offers.⁸⁸

In compliance with FERC Order No. 741, unsecured credit is unavailable for TCR activity. Under the SPP credit policy, SPP calculates a TCR Credit Requirement for a market participant's holding of TCRs and/or participating in a TCR auction that must be satisfied by providing financial security.⁸⁹ Under the credit policy, SPP will evaluate if market participants have sufficient financial security to support their TCR bids and offers to determine whether they can be submitted.⁹⁰

Limiting Exposure to Potential Losses Through the Use of Risk Control Mechanisms and Grace Period to Cure

Pursuant to Section 5.3 of the credit policy, each market participant is required to maintain its Total Potential Exposure to a value equal to or less than its Total Credit Limit excluding any financial security required for its TCR activity. SPP will monitor each market participant's use of services and associated financial obligations. SPP notifies a market participant if its Total Potential Exposure equals or exceeds 90% of its Total Credit Limit. A Total Potential Exposure Violation occurs when either or both (i) a market participant's Total Potential Exposure equals or exceeds its Total Credit Limit excluding any financial security required for TCR activity; or (ii) a market participant's Total TCR Credit Requirement exceeds

⁸⁵ *Id.*, Attachment X § 4.3.4.1.

⁸⁶ *Id.*, Attachment X § 4.3.5.

⁸⁷ SPP Tariff, Attachment X, Art. 5.

⁸⁸ Article 4A of Attachment X sets forth the calculations regarding estimated virtual energy bids and offers. It also includes procedures that will limit a market participant's virtual energy bids and offers based on the market participant's available credit. *Id.*, Attachment X § 4A.3.

⁸⁹ *Id.*, Attachment X § 5A.1.1.

⁹⁰ *Id.*, Attachment X § 5A.6.

the market participant's financial security excluded from the Total Credit Limit (i.e., the financial security provided to support its TCR activity).⁹¹

Section 5.3.2 of Attachment X provides that a market participant can cure a Total Potential Exposure Violation by paying SPP invoices to reduce its Total Potential Exposure and/or providing additional financial security. In other words, for a market participant to avoid a default when its exposure exceeds its credit, SPP requires a market participant to either pay SPP invoices to reduce its exposure and/or provide additional financial security to increase its credit. Market participants have two business days from receipt of notice from SPP to cure a violation, consistent with FERC Order No. 741. Under Section 5.3.3, a credit customer's failure to cure a Total Potential Exposure Violation, is a Default.

As stated in Attachment G, below regarding DCO Core Principle G, Article 8 of Attachment X of the SPP Tariff specifies the default procedures. Article 8 provides that an event of default by a market participant includes: (i) failure of the market participant to post any financial security required under the credit policy; (ii) failure of the market participant to pay in full amounts payable, unless cured; (iii) the market participant is in bankruptcy or has commenced bankruptcy proceedings; (iv) defaults under the credit policy; and (iv) failure of the market participant to provide information required under the credit policy in a timely manner. Article 8 includes specified cure periods, including a two business day cure period for most events of default.

The SPP Tariff also sets forth the remedies for default, which include sanctions depending on the circumstances and number of defaults, such as suspending any unsecured credit allowance, terminating service in accordance with the Tariff, and terminating market activity. Depending on the timing and number of events of defaults, SPP will suspend any unsecured credit allowances, and if an event of default is not cured, SPP may terminate the market participant's rights under the SPP credit policy and may terminate service in accordance with the SPP Tariff and applicable law.⁹² If the event of default is that the market participant is in bankruptcy or has commenced bankruptcy proceedings, SPP will immediately suspend the market participant's unsecured credit and may terminate the market participant's rights under the SPP credit policy, and SPP may terminate service in accordance with the SPP Tariff and applicable law.⁹³ The SPP Tariff also sets forth procedures to close out and liquidate TCRs held by a defaulting market participant.⁹⁴ These remedies are without prejudice to other remedies.⁹⁵

⁹¹ *Id.*, Attachment X § 5.3.1.

⁹² SPP Tariff, Attachment X § 8.3. The *pro forma* Service Agreement for Market Participants in the Integrated Marketplace also permits SPP to terminate service if a market participant is in default. *Id.*, Attachment AH § 12(b).

⁹³ *Id.*, Attachment X § 8.3.

⁹⁴ *Id.*, Attachment AE § 7.8.

⁹⁵ *Id.*, Attachment X § 5.3.3.

SPP also may exercise any rights or remedies it may have at law or in equity, including, but not limited to, bringing suit or otherwise initiating monetary damages, injunctive relief, specific performance, and relief available under the Federal Power Act, except to the extent such remedy is limited under Attachment X.⁹⁶ The SPP credit policy does not require SPP to exercise such rights or remedies it may have at law or in equity and also does not provide for financial penalties to be assessed on a market participant in default. At this time, SPP has not had any instance of energy market payment default. If a payment default were to occur, SPP would aggressively pursue with any legal recourse as allowed in the SPP Tariff.

SPP is revenue neutral with respect to all market transactions and services that SPP provides.⁹⁷ Under the SPP Tariff, revenue shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations.⁹⁸ The SPP Tariff contains similar provisions for failures of a transmission customer to pay invoiced amounts due for transmission service, with such costs being socialized among SPP Transmission Owners.⁹⁹ Attachment AE of the SPP Tariff, which governs operation of the SPP Integrated Marketplace, contains extensive “Revenue Neutrality Uplift” provisions designed to ensure that SPP remains revenue neutral.¹⁰⁰

If SPP declares that an amount is uncollectible from a defaulting market participant, it will notify market participants by posting a notice on its OASIS, including the amount of the uncollectible obligation, the applicable weeks of service invoiced associated with the uncollectible amount, and the future billing weeks in which SPP will reduce the revenues to be paid to all non-defaulting market participants who conducted business in the market during the time covered by the invoice applicable to the unpaid obligations.¹⁰¹

Margin Requirement and the Use of Risk-Based Models and Parameters in Setting Margin

As discussed above in this Attachment D, pursuant to Article 5 of Attachment X of the SPP Tariff, SPP requires that each market participant maintains unsecured credit and/or posted financial security (collectively “margin”) that is sufficient to meet its estimated aggregate

⁹⁶ *Id.*, Attachment X § 8.3.

⁹⁷ Attachment B, above, regarding DCO Core Principle B, also includes the discussion regarding SPP’s revenue neutrality.

⁹⁸ SPP Tariff, Attachment L § V.C.

⁹⁹ *Id.*, Attachment L § V.D.

¹⁰⁰ *See, e.g., id.*, Attachment AE §§ 8.5.12 (Transmission Congestion Rights Daily Uplift Amount), 8.7.3 (Auction Revenue Rights Uplift Amount), 8.8 (Revenue Neutrality Uplift Distribution Amount).

¹⁰¹ *Id.*, Attachment L § V.C.1.

liability or financial obligation at all times.¹⁰² Section 5.3.1 of Attachment X of the SPP Tariff explicitly states this requirement and Section 5.2 of Attachment X sets forth the calculation for determining a market participant's Total Potential Exposure, which is an aggregate of a market participant's liability or financial obligation for both settlement charges and estimated exposure related to Real-Time Balancing and Day-Ahead (including virtual transactions) market activity, as well as transmission service potential exposure. Market participants also are required to provide separate financial security to support their TCR activity and potential exposure from holding TCRs, and to support their TCR bids and offers.¹⁰³

Calls for Additional Collateral Due to a Material Adverse Change

Consistent with Order No. 741, Section 3.2.7 of Attachment X of the SPP Tariff requires that market participants provide SPP notice of any Material Adverse Change in its financial position within two business days of the occurrence of the Material Adverse Change. Section 3.2.7 describes that a Material Adverse Change in financial condition includes any material change in operations or financial condition that a reasonable examiner of creditworthiness would deem material, and includes a non-exhaustive list of the types of items that would be a Material Adverse Change. SPP is required to provide notice to a market participant prior to SPP compelling the market participant to post additional Financial Security, requiring the market participant to cease one or more transactions, or taking other measures.

Ability to Offset Market Obligations

As described above, FERC recently accepted SPP's revisions to its Tariff that clarify that SPP will be the counterparty to certain market transactions that are pooled within the Integrated Marketplace. FERC determined that SPP's counterparty provisions are compliant with the requirement in Order No. 741 that RTOs adopt steps to address the risk that RTOs may not be allowed to use netting and set off in the event of a market participant bankruptcy. The SPP Tariff sets forth that SPP will net payments to market participants.¹⁰⁴

Additionally, SPP plans to submit a separate legal memorandum of outside counsel that SPP's counterparty arrangements (i.e., the arrangements used to satisfy FERC's regulation

¹⁰² See Proposed Order at 52,152.

¹⁰³ SPP Tariff, Attachment X, Art. 5A. FERC also recently accepted revisions to Article 5A of Attachment X of the Integrated Marketplace Tariff to permit the netting of credit positions associated with TCRs self-converted from ARR during the time frame between the requested conversion and the subsequent publication of TCR Auction clearing results. *Sw. Power Pool, Inc.*, FERC Docket No. ER14-1357-000, Letter Order (Apr. 11, 2014).

¹⁰⁴ SPP Tariff, Attachment AE § 10.6.

35.47(d))¹⁰⁵ will provide SPP with enforceable rights of set off against a market participant in the event of the market participant's bankruptcy.¹⁰⁶

Conclusion

In the Proposed Order's analysis regarding DCO Core Principle D, the Commission addressed: (a) risk management framework; (b) measurement and monitoring of credit exposure; (c) unsecured credit; (d) limiting exposure to potential losses through the use of risk control mechanisms and grace period to cure; (e) calls for additional collateral due to a material adverse change; (f) margin requirement and use of risk-based models and parameters in setting margin; and (g) ability to offset market obligations.¹⁰⁷

Regarding risk management framework, the Commission explained that: (i) the Prior Requesters each had established policies and procedures to minimize risk; (ii) most of the Prior Requesters complied or were in the process of complying with FERC regulation 35.47(b) that required RTOs to have billing periods and settlement periods of seven days or less; (iii) that each Prior Requester regulated by FERC represented that it had or was in the process of revising its tariff to have a verification program regarding market participants' risk management in compliance with FERC Order No. 741. The Commission concluded, that based on the Prior Requesters' representations, that the policies and procedures are or will be "congruent with, and will sufficiently accomplish, the regulatory objectives of DCO Core Principle D."¹⁰⁸ The same is true for SPP. As demonstrated above, SPP has (i) established policies and procedures to minimize risk, (ii) complied with FERC regulation 35.47(b) that requires RTOs to have billing periods and settlement periods of seven days or less, and (iii) a verification program regarding market participants' risk management in compliance with Order No. 741.

Regarding measurement and monitoring of credit exposures, the Commission explained that the Prior Requesters represented that their "risk management procedures measure, monitor, and mitigate their credit exposure to market participants" and that most calculate credit exposure daily.¹⁰⁹ The Commission concluded that the Prior Requesters' representations "appear[ed]

¹⁰⁵ 18 C.F.R. § 35.47(d) (requires each organized wholesale electric market to have tariff provisions that "[e]stablish a single counterparty to all market participant transactions, or require each market participant in an organized wholesale electric market to grant a security interest to the organized wholesale electric market in the receivables of its transactions, or provide another method of supporting netting that provides a similar level of protection to the market and is approved by [FERC]. In the alternative, the organized wholesale electric market shall not net market participants' transactions and must establish credit based on market participants' gross obligations.").

¹⁰⁶ See Final Order at 19,890-91 (requiring such a memorandum from the Prior Requesters).

¹⁰⁷ Proposed Order at 52,151-53.

¹⁰⁸ *Id.* at 52,151.

¹⁰⁹ *Id.*

congruent with, and to accomplish sufficiently, DCO Core Principle D’s objective that a DCO measure its credit exposure to each of its clearing members.”¹¹⁰ The same is true for SPP. As demonstrated above, SPP has risk management procedures that measure, monitor, and mitigate its credit exposure to market participants and that SPP calculates credit exposure daily.

Regarding unsecured credit, the Commission explained that the Prior Requesters represented that: (i) a market participant is required to obtain unsecured credit lines from an RTO or post financial security sufficient to meet its estimated aggregate liability; (ii) their tariff provisions comply with FERC regulation 35.47(a) requiring RTOs to limit unsecured credit to no more than \$50 million for each market participant; and (iii) their tariff provisions comply or will comply with FERC regulation 35.47(c) prohibiting the use of unsecured credit for FTR or equivalent markets. The Commission concluded that “[s]ince FERC regulations 35.47(a) and 35.47(c) appear to manage risk and limit an RTO’s or ISO’s exposure to potential losses from a market participant, these requirements would appear to be congruent with, and . . . to accomplish sufficiently, the regulatory objectives of Core Principle D in the context of [the Prior Requesters’] activities with respect to the Transactions.”¹¹¹ The same is true for SPP. As demonstrated above, (i) SPP requires a market participant to obtain unsecured credit lines from SPP or post financial security sufficient to meet its estimated aggregate liability; (ii) SPP’s Tariff provisions comply with FERC regulation 35.47(a) requiring RTOs to limit unsecured credit to no more than \$50 million for each market participant; and (iii) SPP’s Tariff provisions comply with FERC regulation 35.47(c) prohibiting the use of unsecured credit for FTR or equivalent markets.

Regarding limiting the exposure to potential losses through use of risk control mechanisms and cure periods, the Commission explained that each of the Prior Requesters represented that it requires a market participant to post additional financial security when the participant’s estimated aggregate liability exceeds its unsecured credit and posted financial security.¹¹² The Commission also noted that FERC regulation 35.47(e) requires RTOs to limit such cure periods for collateral calls to no more than two days and that the Prior Requesters have implemented the requirements. Additionally, the Prior Requesters represented that they, in response to a failure by a market participant to cure a collateral call, have a wide number of remedies. The Commission found that, based on these representations, “it appears that the requirements to post additional financial security and cure collateral calls in no more than two days help [the Prior Requesters] manage risk and limit their exposure against potential losses from a market participant.”¹¹³ Further, “[t]hese requirements appear to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D in the context of [the Prior Requesters’] activities with respect to the Transactions.”¹¹⁴ The same is true for SPP. As

¹¹⁰ *Id.*

¹¹¹ Proposed Order at 52,152.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

demonstrated above, SPP requires a market participant to post additional financial security when the participant's estimated aggregate liability exceeds its unsecured credit and posted financial security.¹¹⁵ SPP also has complied with, and implemented, FERC regulation 35.47(e) which requires RTOs to limit such cure periods for collateral calls to no more than two days. Additionally, SPP, in response to a failure by a market participant to cure a collateral call, has a wide number of remedies.

The Commission also explained that the Prior Requesters represented that their tariffs complied with FERC regulation 35.47(g) requiring "ISOs and RTOs to specify in their tariffs the conditions under which they will request additional collateral due to a material adverse change."¹¹⁶ The Commission concluded that because the Prior Requesters did "not appear to be limited in their ability to call for additional collateral in unusual or unforeseen circumstances, FERC regulation 35.47(g) appears to support some of DCO Core Principle D's objectives, namely that a DCO have appropriate tools and procedures to manage the risks associated with discharging its responsibilities, and that a DCO limit its exposure to potential losses from defaults by clearing members."¹¹⁷ The Commission concluded that the policy "appears to help avoid potentially harmful delays or disruptions that could subject the RTOs and ISOs to unnecessary damage, and thus is congruent with, and to accomplish sufficiently, the regulatory objectives of Core Principle D in the context of [the Prior Requesters'] activities with respect to the Transactions."¹¹⁸ Like the Prior Requesters' representations, SPP also represents that its Tariff complies with FERC regulation 35.47(g).

The Commission also concluded that the Prior Requesters' representations that they each require market participants to "maintain unsecured credit and/or post financial security (collectively, 'margin') that is sufficient to meet their estimated aggregate liability or financial obligations at all times" were practices that "seem to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle D in the context of [the Prior Requesters'] activities with respect to the Transactions."¹¹⁹ As mentioned above, SPP also requires market participants to maintain unsecured credit and/or post financial security that is sufficient to meet their estimated aggregate liability or financial obligations at all times.

The Commission explained that FERC regulation 35.47(d) – which requires RTOs and ISOs to either establish a single counterparty to all market participant transactions, require each market participant to grant a security interest in its receivable from market transactions, to provide another method of supporting netting at a similar level, or to establish credit on gross obligations – "attempts to ensure that, in the event of a bankruptcy, ISOs and RTOs are not

¹¹⁵ *Id.*

¹¹⁶ Proposed Order at 52,152.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

prohibited from offsetting accounts receivable against accounts payable, is congruent with the regulatory objectives of Core Principle D.”¹²⁰ The Prior Requesters represented that they are or plan to become central counterparties. The Commission concluded that compliance with FERC regulation 35.47(d), along with the submittal of a legal memorandum, or a legal opinion of, outside counsel that provides the Commission adequate assurance, at the Commission’s determination, that the approach selected by the Prior Requester will provide the Prior Requester with set-off rights in a bankruptcy proceeding.¹²¹ As described above, SPP also represents that it is in compliance with FERC regulation 35.47(d). Also, as mentioned above, SPP plans to submit a separate legal memorandum of outside counsel that SPP’s counterparty arrangements (i.e., the arrangements used to satisfy FERC’s regulation 35.47(d)) will provide SPP with enforceable rights of set off against a market participant in the event of the market participant’s bankruptcy

¹²⁰ Proposed Order at 52,153.

¹²¹ *Id.*; Final Order at 19,890-91.

Attachment E

DCO Core Principle E: Settlement Procedures

Each derivatives clearing organization shall –

- (i) complete money settlements on a timely basis (but not less frequently than once each business day);
- (ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);
- (iii) ensure that money settlements are final when effected;
- (iv) maintain an accurate record of the flow of funds associated with each money settlement;
- (v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;
- (vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and
- (vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

Response:

For each operating day, SPP issues (i) a preliminary settlement statement no later than seven calendar days after the operating day, unless the seventh day is not a business day in which case the preliminary settlement statement is issued on the next business day; and (ii) a final settlement statement no later than forty-seven calendar days following the operating day, unless it falls on a day that is not a business day, in which case the final settlement statement is issued on the next business day. SPP makes corrections to the preliminary and final settlement statements to correct data errors and resolved disputes. The settlement associated with a specific operating day is considered final at the end of the 365th calendar day following the applicable operating day.¹²²

SPP invoices market participants for market transactions on a weekly basis detailing all charges and payments. Market participants are required to make payments equal to the net charge on the invoice by 5:00 pm on the 3rd business day following the date of the invoice, while SPP makes payments to the market participants equal to the net credit on the invoice by

¹²² SPP Tariff, Attachment AE § 10.1. SPP's IM Protocols provide additional details regarding the initial and final settlement statements. *See also* IM Protocols § 4.5.14.

5:00 pm on the 5th business day following the date of the invoice.¹²³ This weekly invoicing is consistent with FERC’s Order No. 741 directives mandating that RTOs have no greater than 7-day billing periods.

Section 8 of Attachment AE of the SPP Tariff provides the rules and calculations for the settlement statements regarding the Day-Ahead Market, Real-Time Balancing Market, and TCRs and ARR settlement and auction settlement. Additional detail is included in Section 4.5 of the IM Protocols.

SPP maintains records concerning the flow of funds involved in the settlements by market participant. Market participants have electronic access to all settlement statements pertaining to them.¹²⁴

SPP is not a clearing organization and does not have netting or offsetting arrangements with other clearing organizations or ISOs/RTOs. In compliance with FERC Order No. 741 regarding the ability to net and offset market obligations in bankruptcy, SPP is the counterparty to certain market transactions that are pooled within the Integrated Marketplace.¹²⁵

In the Proposed Order’s analysis regarding DCO Core Principle E, the Commission acknowledged that the Prior Requesters represented that they had “policies and procedures that contain detailed procedures regarding data and record-keeping, and that . . . they have, or will soon have, billing periods and settlement periods of no more than seven days (for a total of 14 days)” did not meet the standards applicable to registered DCOs, but the Commission found the approach “appears to be congruent with, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle E in the context of [the Prior Requesters’] activities with respect to the Transactions.”¹²⁶ The same is true for SPP. As demonstrated above, SPP has policies and procedures that contain detailed procedures regarding data and record-keeping and billing periods and settlement periods of no more than seven days.

¹²³ SPP Tariff, Attachment AE §10.2.

¹²⁴ IM Protocols § 4.5.14.3.

¹²⁵ SPP Tariff, Attachment AE § 3.8.

¹²⁶ Proposed Order at 52,153.

Attachment F

DCO Core Principle F: Treatment of Funds

(i) REQUIRED STANDARDS AND PROCEDURES. – Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

(ii) HOLDING OF FUNDS AND ASSETS. – Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

(iii) PERMISSIBLE INVESTMENTS. – Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

Response:

SPP maintains separate accounts for funds it receives or holds from market participants invoiced for market transactions. Pursuant to the SPP Tariff, market participants pay amounts they owe by the 3rd business day after being invoiced, and SPP pays amounts owed to market participants pertaining to market transactions by the 5th business day after the invoice is issued.¹²⁷

Pursuant to SPP's credit policy set forth in Attachment X of the SPP Tariff, SPP deposits cash collateral received from a customer in a segregated, interest bearing account in SPP's name, with all of the interest accruing to the benefit of the customer.¹²⁸ The interest is added to the segregated account and, to the extent such accrued and unpaid interest is not applied to satisfy the customer's obligations, it is paid to the customer quarterly. SPP is not required to release such interest while the customer has an uncured default.

In the Proposed Order's analysis regarding DCO Core Principle F, the Commission found that Prior Requesters representations that included tariff provisions that require an ISO/RTO "to maintain specified types of separate accounts for funds it receives or holds," or to hold all monies deposited by its participants as financial assurance in separate, interest-bearing accounts with one-hundred percent of the interest earned accruing to the benefit of the participant, or policies or practices "such as segregation requirements and/or limitations on investment options" appeared congruent with, and to accomplish sufficiently the regulatory objectives of DCO Core Principle F in the context of the Prior Requesters' activities with respect to the Transactions.¹²⁹ The same is true for SPP. As demonstrated above, SPP's credit policy set forth in Attachment X of the SPP Tariff, requires that SPP deposit cash collateral received from a customer in a

¹²⁷ SPP Tariff, Attachment AE § 10.2.

¹²⁸ *Id.*, Attachment X § 7.1.2.2.

¹²⁹ Proposed Order at 52,153.

segregated, interest bearing account in SPP's name, with all of the interest accruing to the benefit of the customer.

Attachment G

DCO Core Principle G: Default Rules and Procedures

(i) IN GENERAL. – Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

(I) become insolvent; or

(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

(ii) DEFAULT PROCEDURES. – Each derivatives clearing organization shall—

(I) clearly state the default procedures of the derivatives clearing organization;

(II) make publicly available the default rules of the derivatives clearing organization; and

(III) ensure that the derivatives clearing organization may take timely action—

(aa) to contain losses and liquidity pressures; and (bb) to continue meeting each obligation of the derivatives clearing organization.

Response:

SPP's Tariff contains its default procedures.¹³⁰ Article 8 of Attachment X of the SPP Tariff specifies the default procedures. It provides that an event of default by a market participant includes: (i) failure of the market participant to post any financial security required under the credit policy; (ii) failure of the market participant to pay in full amounts payable, unless cured; (iii) the market participant is in bankruptcy or has commenced bankruptcy proceedings; (iv) defaults under the credit policy; and (v) failure of the market participant to provide information required under the credit policy in a timely manner. Article 8 includes specified cure periods, including a two business day cure period for most events of default.

The SPP Tariff also sets forth the remedies for default, which include sanctions depending on the circumstances and number of defaults, such as suspending any unsecured credit allowance, terminating service in accordance with the Tariff, and terminating market activity. Depending on the timing and number of events of defaults, SPP will suspend any unsecured credit allowances, and if an event of default is not cured, SPP may terminate the market

¹³⁰ SPP Tariff, Attachment AE § 10.5 (explaining that customer defaults are handled in accordance with the SPP credit policy in Attachment X of the SPP Tariff); *id.*, Attachment X, Art. 8.

participant's rights under the SPP credit policy and may terminate service in accordance with the SPP Tariff and applicable law.¹³¹ If the event of default is that the market participant is in bankruptcy or has commenced bankruptcy proceedings, SPP will immediately suspend the market participant's unsecured credit and may terminate the market participant's rights under the SPP credit policy, and SPP may terminate service in accordance with the SPP Tariff and applicable law.¹³² The SPP Tariff also sets forth procedures to close out and liquidate TCRs held by a defaulting market participant.¹³³ These remedies are without prejudice to other remedies.¹³⁴ SPP also may exercise any rights or remedies it may have at law or in equity, including, but not limited to, bringing suit or otherwise initiating monetary damages, injunctive relief, specific performance, and relief available under the Federal Power Act, except to the extent such remedy is limited under Attachment X.¹³⁵ The SPP credit policy does not require SPP to exercise such rights or remedies it may have at law or in equity and also does not provide for financial penalties to be assessed on a market participant in default. At this time, SPP has not had any instance of energy market payment default. If a payment default were to occur, SPP would aggressively pursue with any legal recourse as allowed in the SPP Tariff.

SPP also is the counterparty to each market participant for that market participant's Integrated Marketplace agreements and transactions in the TCR Market, Day-Ahead Market, and Real-Time Balancing Market, with specified exclusions regarding bilateral transactions between market participants, and self-committed, self-scheduled, and self-supplied arrangements.¹³⁶ SPP also is the counterparty to TCR and ARR instruments held by market participants.¹³⁷ The SPP Tariff also states that SPP will net payments to market participants.¹³⁸ FERC has found that these arrangements comply with its requirements under Order No. 741.

¹³¹ *Id.*, Attachment X § 8.3. The *pro forma* Service Agreement for Market Participants in the Integrated Marketplace also permits SPP to terminate service if a market participant is in default. *Id.*, Attachment AH § 12(b).

¹³² SPP Tariff, Attachment X § 8.3.

¹³³ *Id.*, Attachment AE § 7.8.

¹³⁴ *Id.*, Attachment X § 5.3.3.

¹³⁵ *Id.*, Attachment X § 8.3.

¹³⁶ *Id.*, Attachment AE § 3.8. Section 3.8.3 also specifies that SPP is not the counterparty to agreements and transaction for transmission service and certain ancillary services, which are not agreements and transactions in the Integrated Marketplace.

¹³⁷ SPP Tariff, Attachment AE § 3.8.2.

¹³⁸ *Id.*, Attachment AE § 10.6.

SPP is revenue neutral with respect to all market transactions and services that SPP provides.¹³⁹ Under the SPP Tariff, revenue shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations.¹⁴⁰ The SPP Tariff contains similar provisions for failures of a transmission customer to pay invoiced amounts due for transmission service, with such costs being socialized among SPP Transmission Owners.¹⁴¹ Attachment AE of the SPP Tariff, which governs operation of the SPP Integrated Marketplace, contains extensive “Revenue Neutrality Uplift” provisions designed to ensure that SPP remains revenue neutral.¹⁴²

If SPP declares that an amount is uncollectible from a defaulting market participant, it will notify market participants by posting a notice on its OASIS, including the amount of the uncollectible obligation, the applicable weeks of service invoiced associated with the uncollectible amount, and the future billing weeks in which SPP will reduce the revenues to be paid to all non-defaulting market participants who conducted business in the market during the time covered by the invoice applicable to the unpaid obligations.¹⁴³

In the Proposed Order’s analysis regarding DCO Core Principle G, the Commission explained that each of the Prior Requesters represented “that it has procedures in its tariffs or other governing documents that address events surrounding the insolvency or default of a market participant.”¹⁴⁴ These procedures include identifying events of default, cure periods for such defaults, and actions to be taken in the event of default or remedies for a default. Further, the procedures of the Prior Requesters permit that if the remedies are insufficient to timely cure the default, they “have the right to socialize losses from the default among other market participants by, for example, ‘short-paying’ such other participants.”¹⁴⁵ The Commission also discussed concerns about the right of an ISO or RTO to offset amounts they may owe a market participant in bankruptcy against the amount that the participant may owe the ISO or RTO and that the Commission would require the Prior Requesters to provide memoranda or opinions of counsel

¹³⁹ Attachment B, above, regarding DCO Core Principle B, also includes the discussion regarding SPP’s revenue neutrality.

¹⁴⁰ SPP Tariff, Attachment L § V.C.

¹⁴¹ *Id.*, Attachment L § V.D.

¹⁴² *See, e.g., id.*, Attachment AE §§ 8.5.12 (Transmission Congestion Rights Daily Uplift Amount), 8.7.3 (Auction Revenue Rights Uplift Amount), 8.8 (Revenue Neutrality Uplift Distribution Amount).

¹⁴³ *Id.*, Attachment L § V.C.1.

¹⁴⁴ Proposed Order at 52,153.

¹⁴⁵ *Id.* at 52,154.

about that ability.¹⁴⁶ The Commission concluded that these “arrangements appear congruent to, and to accomplish sufficiently, the regulatory objectives of DCO Core Principle G in the context of [the Prior Requesters’] activities with respect to the Transactions.”¹⁴⁷ The same is true for SPP. As demonstrated above, the SPP Tariff has procedures that address events surrounding the insolvency or default of a market participant. These procedures include identifying events of default, cure periods for such defaults, and actions to be taken in the event of default or remedies for a default. Further, these procedures permit that if the remedies are insufficient to timely cure the default, SPP has the right to socialize losses from the default among other market participants. Also as mentioned above in Attachment D, SPP plans to submit a separate legal memorandum of outside counsel that SPP’s counterparty arrangements (i.e., the arrangements used to satisfy FERC’s regulation 35.47(d)) will provide SPP with enforceable rights of set off against a market participant in the event of the market participant’s bankruptcy.

¹⁴⁶ *Id.* See Final Order at 19,890-91 (requiring such memoranda or legal opinion).

¹⁴⁷ Proposed Order at 52,154.

Attachment HDCO Core Principle H: Rule Enforcement

Each derivatives clearing organization shall –

(i) maintain adequate arrangements and resources for –

(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

(II) the resolution of disputes;

(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

Response:

In the Proposed Order, the Commission noted that each Prior Requester “represents that it maintains tariffs or procedures or is subject to a regulatory framework that accomplishes the regulatory goals of DCO Core Principle H,” including possessing “*e.g.*, the power to take a range of actions against participants that fail to pay, pay late, or fail to post financial security.” On the basis of these representations, the Commission determined that the Prior Requesters’ practices appear to be “congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle H in the context of [the Prior Requesters’] activities with respect to the Transactions.”¹⁴⁸ The same is true for SPP. As demonstrated below in this Attachment H, SPP’s Bylaws, Membership Agreement, and Tariff contain substantial rules governing member, customer, and market participant conduct, and provide SPP the ability to discipline such conduct and report certain conduct to FERC. These documents also establish dispute resolution procedures as required by DCO Core Principle H.

Rule and Market Enforcement

FERC Order Nos. 719¹⁴⁹ and 2000¹⁵⁰ require RTOs to employ a Market Monitor to monitor the conduct of both SPP and its market participants with regard to all SPP markets and

¹⁴⁸ See Proposed Order at 52,154.

¹⁴⁹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, III FERC Stats. & Regs., Regs. Preambles ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh’g*, Order No. 719-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

¹⁵⁰ *Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 1996-2000 FERC
(continued . . .)

services.¹⁵¹ The SPP Market Monitor is an independent department within SPP that reports directly to the SPP Board of Directors, except that the President of SPP (a member of the Board of Directors) is excluded from participating in oversight of the Market Monitor.¹⁵² SPP is obligated to ensure that the Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under the Tariff.¹⁵³

The SPP Tariff sets forth SPP's market monitoring plan (Attachment AG) and market power mitigation plan (Attachment AF). The Market Monitor is required to fulfill certain core functions,¹⁵⁴ including among them: (1) monitoring and reporting on possible abuses of horizontal and vertical market power and gaming; (2) identifying market design flaws and recommending changes to market design; and (3) monitoring market participant compliance with market rules.¹⁵⁵ The Market Monitor monitors transactions in all SPP markets and services (including, among other things, the Day-Ahead Market (including virtual transactions), Real-Time Balancing Market, and TCR markets), and is obligated to report any instances of market behavior or potential market manipulation that may require investigation to FERC's Office of Enforcement.¹⁵⁶ Market participants are forbidden from engaging in market manipulation, which the Tariff defines as "actions or transactions that are without a legitimate business purpose and that are intended to, or foreseeably could, manipulate market prices, market conditions, or market rules for electric energy or electric products."¹⁵⁷ The Market Monitor also monitors for price divergence between the Day-Ahead Market and Real-Time Balancing Market,¹⁵⁸ and if the

(. . . continued)

Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

¹⁵¹ Order No. 2000 at 31,155-57; Order No. 719 at PP 326-32, 339-44, 353-60; *see also* Bylaws § 3.17 (stating that "SPP shall establish and provide appropriate support to a market monitoring function in accordance with its OATT"); SPP Tariff, Attachment AG §§ 1.3, 4.1.

¹⁵² SPP Tariff, Attachment AG § 3.1; *see also* Bylaws § 3.17 ("The market monitoring unit shall report to the Board of Directors, except that any management representatives on the Board of Directors are excluded from oversight of the internal market monitor.").

¹⁵³ SPP Tariff, Attachment AG § 3.1.

¹⁵⁴ *See* Order No. 719 at PP 353-54 (establishing the core functions of RTO market monitors).

¹⁵⁵ SPP Tariff, Attachment AG § 1.3.1.

¹⁵⁶ *Id.*, Attachment AG §§ 3.2, 4.3, 4.4.

¹⁵⁷ *Id.*, Attachment AE § 2.3; *see also id.*, Attachment AG § 4.4.

¹⁵⁸ SPP Tariff, Attachment AG § 4.6.2.

Market Monitor identifies one or more market participants as having caused excessive price divergence through virtual trading, SPP imposes mitigation under the market power mitigation plan set forth in Attachment AF of the Tariff.¹⁵⁹

In the event that a market participant is determined to possess market power in certain products and/or during certain periods, Attachment AF of the Tariff sets forth several market power mitigation measures that SPP employs to limit the market participant's ability to exercise market power for energy and operating reserves,¹⁶⁰ including virtual transactions.¹⁶¹

In addition, the Market Monitor reviews the performance of SPP markets and, if it identifies any weaknesses or failures in market design and market rules, it is required to advise SPP, FERC, state regulatory commissions, market participants, and organizational groups.¹⁶² Where such disclosure could lead to exploitation, the Market Monitor is empowered to limit its disclosure of such flaws to the President of SPP, the chairman of the SPP Board of Directors' Oversight Committee, and FERC.¹⁶³ In the event that the identified weakness or failure requires immediate corrective action to ensure just and reasonable prices, the Market Monitor may request that the President of SPP authorize an immediate FERC filing requesting implementation of a corrective action.¹⁶⁴

With regard to payment for services, the Tariff sets forth provisions for SPP to address a transmission customer or market participant's failure to pay invoices when due. The Tariff contains provisions for SPP to suspend or terminate service for a market participant's failure to pay its invoices for services provided in the Integrated Marketplace or for failure to comply with SPP's credit policy.¹⁶⁵ Section 7 of the Tariff similarly enables SPP to initiate proceedings at FERC to suspend or terminate transmission service when a customer fails to pay its invoice.¹⁶⁶ Section 7.2 of the Tariff and Section 10.4 of Attachment AE of the Tariff empower SPP to calculate and charge interest on any unpaid amounts from the due date of the invoice to the date of payment, with such interest calculated in accordance with FERC's interest calculation regulations, 18 C.F.R. § 35.19.¹⁶⁷ If a customer fails to pay its invoice, SPP may apply financial

¹⁵⁹ *Id.*, Attachment AG § 4.6.2.

¹⁶⁰ *See generally id.*, Attachment AF § 3.

¹⁶¹ *See generally id.*, Attachment AF § 4.

¹⁶² SPP Tariff, Attachment AG §§ 3.2, 6.2.

¹⁶³ *Id.*

¹⁶⁴ *Id.*, Attachment AG § 6.2.

¹⁶⁵ *See generally id.*, Attachment X § 8.

¹⁶⁶ SPP Tariff § 7.4.

¹⁶⁷ SPP Tariff § 7.2 and Attachment AE § 10.4.

security it holds as necessary to satisfy the deficits.¹⁶⁸ SPP’s application of financial security in such instances does not cure a default due to the customer’s failure to make a timely payment until and unless the cash deposit or other financial security is replenished.¹⁶⁹ Section 8.3 of Attachment X of the Tariff requires SPP to suspend a credit customer’s unsecured credit allowance for 90 days if it experiences two events of default (which includes failure to pay amounts due under the Tariff) within a 12 month period. Section 8.3 of Attachment X also provides that SPP may exercise any rights or remedies it may have at law or in equity to the extent such rights or remedies is not limited in the credit policy.

SPP also monitors a customer’s Total Potential Exposure, which a customer is required to keep equal to or less than its Total Credit Limit.¹⁷⁰ A customer’s failure to cure a Total Potential Exposure Violation is an event of default.¹⁷¹ A customer may cure a Total Potential Exposure Violation by paying invoiced amounts to reduce its Total Potential Exposure or providing additional financial security to increase its Total Credit Limit or Total TCR Credit Requirement.¹⁷² If a customer cures by paying invoiced amounts, SPP, in its sole discretion, may determine to treat any amount tended as an increase of financial security and not as a payment to SPP.¹⁷³ Without prejudice to other remedies, a customer “that fails to timely cure a Total Potential Exposure Violation shall be suspended from requesting any future services, including all Transmission Service and market services SPP may provide, unless and until the [customer’s] Total Potential Exposure is cured.”¹⁷⁴

In addition to the rule and market enforcement provisions set forth in the Tariff, the Bylaws provide for the monitoring of member compliance with the Bylaws and Membership Agreement, including collecting information needed to investigate all facets of possible non-compliance and possible imposition of penalties or other sanctions for non-compliance associated with the results of investigations or audits pursuant to approved standards, policies, or criteria.¹⁷⁵ Under the Bylaws and Membership Agreement, the SPP Board of Directors may

¹⁶⁸ *Id.*, Attachment X §§ 7.1.2.3 (Use of Cash Deposits) and 7.1.3.6 (Use of Irrevocable Letter of Credit)

¹⁶⁹ *Id.*, Attachment X § 7.1.2.3.

¹⁷⁰ *Id.*, Attachment X § 5.3.1.

¹⁷¹ *Id.*, Attachment X §§ 5.3.2, 5.3.3.

¹⁷² *Id.*, Attachment X § 5.3.2.

¹⁷³ *Id.*

¹⁷⁴ *Id.*, Attachment X § 5.3.3.

¹⁷⁵ Bylaws § 3.16.

terminate the membership of any member for cause, including (but not limited to) material violations of the Bylaws or nonpayment of obligations.¹⁷⁶

Dispute Resolution

Both the SPP Tariff and Bylaws contain provisions addressing dispute resolution. Section 12 of the Tariff sets forth processes for internal and external resolution of disputes arising from services provided under the Tariff. Section 12 provides that the dispute will be referred to senior representatives of SPP and the disputing party for informal resolution within 30 days.¹⁷⁷ If the parties do not reach a resolution, the dispute may be submitted to arbitration.¹⁷⁸ The Tariff also contains provisions for the resolution of billing disputes arising from transmission service¹⁷⁹ or Integrated Marketplace charges.¹⁸⁰

Additionally, the Bylaws set forth a process to resolve disputes between members, between members and consenting non-members, or between SPP and any member or consenting non-member, for disputes other than those that are covered under the dispute resolution procedures of the Tariff.¹⁸¹ Any member may initiate a dispute resolution process by making a written request to the President of SPP;¹⁸² where SPP is not a party to the dispute, the President of SPP facilitates the dispute resolution process.¹⁸³ Under this process, the parties to a dispute engage a firm specializing in alternative dispute resolution to administer the dispute resolution process, and the types of proceedings available to resolve the dispute include advisory proceedings, mediation proceedings, non-binding dispute resolution involving formal evidence, and binding dispute resolution proceedings involving formal evidence.¹⁸⁴

¹⁷⁶ *Id.* §§ 2.3, 2.4; Membership Agreement § 6.0.

¹⁷⁷ SPP Tariff § 12.1.

¹⁷⁸ *Id.* §§ 12.1-12.4.

¹⁷⁹ *Id.* § 7.4.

¹⁸⁰ *Id.*, Attachment AE § 10.3.

¹⁸¹ Bylaws § 3.13.

¹⁸² *Id.* § 3.13.1.

¹⁸³ *Id.* § 3.13.2.

¹⁸⁴ *Id.* §§ 3.13.2-3.13.3.

Attachment I

DCO Core Principle I: System Safeguards

Each derivatives clearing organization shall –

(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

Response:

SPP has developed system safeguard controls and procedures to identify and minimize operational risks. As a North American Electric Reliability Corporation (“NERC”) registered entity, SPP is required to comply with mandatory electric reliability standards that include (among other things) protecting against risk to control centers, information systems, and communications.¹⁸⁵ SPP has installed redundant primary and back-up control centers in separate secured locations, and redundant communication and computer systems. SPP has also implemented on- and off-site data storage and back-up.

The SPP Oversight Committee, which is comprised of three members of the SPP Board of Directors, oversees the process of monitoring compliance with all SPP and NERC policies (except for those that are assigned to the SPP RE under the Bylaws).¹⁸⁶ The Oversight Committee also oversees SPP’s Internal Audit functions, except for audit work associated

¹⁸⁵ Separate from its function as a FERC-authorized RTO, SPP also functions as a NERC “Regional Entity” responsible for developing and enforcing mandatory reliability standards for users, owners, and operators of the bulk power system in the SPP Regional Entity (“SPP RE”) region. Under FERC order, the SPP RE is required to function independently of the SPP RTO. The SPP RE is governed by three Regional Entity Trustees and supervised by a Regional Entity General Manager.

¹⁸⁶ Bylaws § 6.4.

financial requirements,¹⁸⁷ which is overseen by the SPP Finance Committee.¹⁸⁸ SPP is subject to routine audits and spot checks by NERC and FERC.

SPP also has emergency preparedness, business continuity, and disaster recovery plans, which are reviewed and updated on a regular basis. SPP also conducts periodic emergency drills and mock disaster scenarios to ensure the readiness of back-up facilities and personnel. Multiple SPP business units, including SPP's Internal Audit Department, work to review, test, and update SPP's business continuity plans.

Also, SPP has a business continuity plan to provide for the calculation of market prices in the event of Day-Ahead Market or Real-Time Balancing Market system failures or isolation of portions of the SPP market from the rest of the market footprint.¹⁸⁹

In the Proposed Order's analysis regarding DCO Core Principle I, the Commission stated that the Prior Requesters "represent that they have policies and procedures that accomplish the regulatory goals of DCO Core Principle I, albeit in a manner that is somewhat different than the way in which a DCO complies with DCO Core Principle I."¹⁹⁰ The Commission recognized that these differences are due to the fact that the Prior Requesters are responsible for reliably managing the bulk power system, which requires additional operational safeguards.¹⁹¹ The Commission noted that certain Prior Requesters' indicated that they are required to comply with reliability standards established by NERC and other reliability organizations, which require the Prior Requesters to implement procedures to address emergency situations, maintain alternate control centers and back-up computer and data systems, and to perform internal and external audits to ensure that internal controls, procedures, and business processes comply with accepted standards. The Commission concluded, based on these representations, that the Prior Requesters' "system safeguard practices are congruent with, and accomplish sufficiently, the regulatory objectives of DCO Core Principle I in the context of [the Prior Requesters'] activities with respect to the Transactions."¹⁹² The same is true for SPP. As demonstrated above in this Attachment I, SPP is required to comply with reliability standards established by NERC and other reliability organizations, and has adopted procedures to address emergency situations,

¹⁸⁷ *Id.* § 6.4; *see also* Southwest Power Pool, Inc., *Oversight Committee Organizational Group Scope Statement* (Dec. 2010), <http://www.spp.org/publications/OCScope1210.pdf>.

¹⁸⁸ Bylaws § 6.5; *see also* Southwest Power Pool, Inc., *Finance Committee Organizational Group Scope Statement* (last revised Feb. 2, 2006), <http://www.spp.org/publications/FCScopeRev020206.pdf>.

¹⁸⁹ Attachment Z, below, also discusses these Tariff provisions and also is applicable to this Attachment.

¹⁹⁰ Proposed Order at 52,154 (footnote omitted).

¹⁹¹ *Id.*

¹⁹² *Id.*

maintain alternate control centers and back-up computer and data systems, and to perform internal and external audits to ensure that internal controls, procedures, and business processes comply with accepted standards.

Attachment J

DCO Core Principle J: Reporting

Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

Response:

SPP has adopted for the Integrated Marketplace substantial data and information disclosure provisions, which enable SPP to provide information to the Commission, including information deemed confidential by market participants. First, as a FERC-jurisdictional transmission provider, SPP is obligated to comply with FERC's regulations requiring establishment of an Open Access Same-Time Information System ("OASIS"), 18 C.F.R. Part 37.¹⁹³ Additionally, the Tariff requires SPP to publish the results of the Day-Ahead Market by 4:00 pm each day¹⁹⁴ and communicate Locational Marginal Prices ("LMP") and Market Clearing Prices ("MCP") for each dispatch interval in the Real-Time Balancing Market.¹⁹⁵ SPP also is required to release all bid and offer data 90 days after the day for which they were submitted, including all Day-Ahead Offers and Bids, and Real-Time Balancing Market energy and operating reserve data.¹⁹⁶ SPP's website also provides extensive data regarding market and transmission system operations, policies, and procedures.

SPP also has adopted procedures to allow for disclosure to the Commission,¹⁹⁷ FERC¹⁹⁸ and state regulatory agencies¹⁹⁹ of confidential information it receives from market participants. These procedures apply both to SPP and to the Market Monitor. On September 30, 2013, FERC conditionally approved the Tariff revisions that extended the disclosure provisions that apply to information requests from FERC to requests from the Commission.²⁰⁰ Generally, if SPP

¹⁹³ SPP Tariff § 4. Attachment AA below provides additional information regarding the information posting requirements under FERC's OASIS regulations, 18 C.F.R. Part 37.

¹⁹⁴ *Id.*, Attachment AE §§ 5.1, 5.1.3.

¹⁹⁵ *Id.*, Attachment AE § 6.2.3.

¹⁹⁶ *Id.*, Attachment AE § 9.0.

¹⁹⁷ *Id.*, Attachment AE § 11.3.

¹⁹⁸ *Id.*

¹⁹⁹ SPP Tariff, Attachment AE § 11.4.

²⁰⁰ SPP filed these Tariff revisions with FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP

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receives a request that involves a market participant's confidential information, SPP is required to provide notice to such market participant(s).²⁰¹ However, such notice is not provided when the Commission or FERC or their respective staffs are the party requesting the confidential information.

In addition to the information disclosure provisions identified above, SPP's Market Monitor also provides monthly, quarterly, and annual reports to the Board of Directors, which are generally available to the public subject to applicable confidentiality provisions under the Tariff,²⁰² as well as an annual "State of the Market Report" addressing performance of the wholesale market, which is provided to FERC, the Board of Directors, state regulatory commissions, market participants, and other interested entities.²⁰³

Finally, SPP's Membership Agreement includes a general provision that SPP must comply with all reporting requirements of federal and state regulatory authorities having jurisdiction over SPP with respect to the business aspects of SPP's operations.²⁰⁴ SPP's Bylaws require SPP to publish and distribute reports as necessary to fulfill SPP's mission and to develop and maintain electronic databases of relevant technical information, access to which is subject to applicable data disclosure and confidentiality provisions.²⁰⁵

In the Proposed Order's analysis regarding DCO Core Principle J, the Commission found that the Prior Requesters that are subject to FERC jurisdiction "represent[ed] that, pursuant to their Tariffs and other FERC orders, FERC has access to the information that it would need to oversee the" Prior Requesters.²⁰⁶ The Commission concluded, based on these representations, that "it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle J in the context of [the Prior Requesters'] activities with

(... continued)

submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, with FERC directed revisions to Section 11.2(3) of Attachment AE to the Tariff, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

²⁰¹ SPP Tariff, Attachment AE § 11.6.

²⁰² *Id.*, Attachment AG §§ 7.1-7.2; *see also* Bylaws § 3.17.

²⁰³ SPP Tariff, Attachment AG § 7.2; *see also* Bylaws § 3.17 (requiring that public reports submitted to the Board of Directors are concurrently provided to FERC staff, staff of interested state regulatory commissions, SPP management, and market participants).

²⁰⁴ Membership Agreement § 2.4.1.

²⁰⁵ Bylaws § 3.12.

²⁰⁶ Proposed Order at 52,154.

respect to the Transactions.”²⁰⁷ The same is true for SPP. As demonstrated above, under the SPP Tariff, FERC and the Commission have access to the information they need to oversee SPP.

In the Final Order, the Commission conditioned the requested exemption on the requirement that the Prior Requesters remove from their tariffs any provisions requiring prior notice to market participants before releasing information to the Commission.²⁰⁸ SPP has satisfied this condition through its filings in FERC Docket No. ER13-2091, which FERC accepted in orders issued September 30, 2013 and November 22, 2013.²⁰⁹

²⁰⁷ *Id.* at 52,155.

²⁰⁸ Final Order at 19,891.

²⁰⁹ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013) (conditionally accepting, subject to compliance filing, tariff revisions); *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013) (accepting compliance filing).

Attachment K

DCO Core Principle K: Recordkeeping

Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization –

(i) in a form and manner that is acceptable to the Commission; and

(ii) for a period of not less than 5 years.

Response:

SPP complies with FERC’s comprehensive regulations governing public utility recordkeeping set forth in 18 C.F.R. Part 125, many of which require retention of data for at least 5 years. SPP also complies with the requirements of FERC’s Uniform System of Accounts. In addition, under SPP’s Standards of Conduct, SPP is required to maintain records showing the transactions under the SPP Tariff for a period of 5 years unless otherwise provided in the Tariff or by law or regulation. SPP retains such records in either electronic or paper format. Finally, SPP’s Market Monitoring Plan requires all market data and information held by SPP or the Market Monitor to be retained for a minimum period of three years,²¹⁰ and requires market participants to retain such data in their possession for a minimum period of three years.²¹¹ Market participants must provide such data promptly to the Market Monitor upon request, and must do so in native data format or in a non-proprietary format such as CSV or XML.²¹² Most records are retained electronically onsite, but some are in paper format, and some paper records are stored offsite. SPP policy is to not retain duplicates for inactive records. If there is no legal or regulatory requirement that a type of record be retained in paper format, it is retained in electronic format.

In the Proposed Order’s analysis regarding DCO Core Principle K, the Commission stated that the Prior Requesters “represent that their practices satisfy the regulatory goals of DCO Core Principle K because they have adequate recordkeeping requirements or systems.”²¹³ The Commission also noted that the Prior Requesters represented that they are subject to FERC’s comprehensive recordkeeping regulations that cover, among other things protection and storage of records, record storage media, destruction of records, and premature destruction or loss of records, and that the regulations require retention of accounting records, in general, for at least five years.²¹⁴ The Commission concluded that “[b]ased on these regulations and [the Prior

²¹⁰ SPP Tariff, Attachment AG § 8.2.

²¹¹ *Id.*, Attachment AG § 8.3.

²¹² *Id.*

²¹³ Proposed Order at 52,155.

²¹⁴ *Id.*

Requesters'] representations, it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle K in the context of [the Prior Requesters'] activities with respect to the Transactions."²¹⁵ The same is true for SPP. As demonstrated above in this Attachment K, SPP is subject to FERC's comprehensive recordkeeping regulations and accounting recordkeeping requirements, and through its Tariff, SPP imposes recordkeeping obligations on market participants.

²¹⁵

Id.

Attachment L

DCO Core Principle L: Public Information

(i) IN GENERAL. – Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

(ii) AVAILABILITY OF INFORMATION. – Each derivatives clearing organization shall make information concerning the rules and operating and default procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

(iii) PUBLIC DISCLOSURE. – Each derivatives clearing organization shall disclose publicly and to the Commission information concerning –

(I) the terms and conditions of each contract, agreement, and transaction cleared and settled by the derivatives clearing organization;

(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

Response:

SPP makes all of its rules and operating procedures available to market participants and the general public. The SPP Tariff, SPP Bylaws, Membership Agreement, and the IM Protocols are publicly posted on the SPP website. SPP's rules are established through an open and interactive stakeholder process. SPP's Tariff and any changes to the SPP Tariff must be reviewed and accepted by FERC.

The SPP Tariff provides information about the rules and operations of the SPP markets, including the following:

- Eligibility requirements to be a market participant²¹⁶

²¹⁶ SPP Tariff, Attachment AE § 2 (setting forth market participant obligations, such as execution of required service agreements), Attachment X § 3.1.1.8 (setting forth minimum participation criteria). On August 1, 2013, in Docket No. ER13-2091-000, SPP filed with FERC revisions to Section 3.1.1.8 of Attachment X to include minimum
(continued . . .)

- Credit requirements for market participants²¹⁷
- Default procedures²¹⁸ and default allocations²¹⁹
- Settlement procedures²²⁰
- SPP fees²²¹

The IM Protocols, publicly posted on the SPP website, provide additional information regarding the market procedures.

Additionally, in response to FERC Order No. 741, SPP requires market participants to provide annual certification that they continue to comply with the minimum participation criteria and that they have appropriate risk management policies, which SPP may periodically verify through a process set forth in the SPP Tariff.²²²

Also, as stated in Attachment J, above, as a FERC-jurisdictional transmission provider, SPP is obligated to comply with FERC’s regulations requiring establishment of an Information System (“OASIS”), 18 C.F.R. Part 37.²²³ Additionally, the Tariff specifies that SPP will publish the results of the Day-Ahead Market by 4:00 pm each day²²⁴ and communicate Locational Marginal Prices (“LMP”) and Market Clearing Prices (“MCP”) for each dispatch interval in the

(. . . continued)

eligibility requirements consistent with the eligibility standards described in the Final Order at 19,913 in addition to the minimum capitalization requirements currently set forth in Section 3.1.1.8. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing on other Tariff provisions related to information sharing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

²¹⁷ SPP Tariff, Attachment X.

²¹⁸ *Id.*, Attachment X § 8.

²¹⁹ *Id.*, Attachment L.

²²⁰ *Id.*, Attachment AE §§ 8, 10.

²²¹ SPP Tariff, Schedule 1-A § 1.

²²² *Id.*, Attachment X § 3.1.1.9, Appendix E.

²²³ *Id.* § 4. Attachment AA below provides additional information regarding the information posting requirements under FERC’s OASIS regulations, 18 C.F.R. Part 37.

²²⁴ *Id.*, Attachment AE §§ 5.1, 5.1.3.

Real-Time Balancing Market.²²⁵ SPP also is required to release all bid and offer data 90 days after the day for which they were submitted, including all Day-Ahead Offers and Bids, and Real-Time Balancing Market energy and operating reserve data.²²⁶ SPP's website also provides extensive data regarding market and transmission system operations, policies, and procedures.

In the Proposed Order's analysis regarding DCO Core Principle L, the Commission found that the Prior Requesters each represented "that it makes its tariff or related governing documents publicly available on its Web site, which, in turn, allows market participants (and the public) to access its rules and procedures regarding, among other things, participant and product eligibility requirements, risk management methodologies, settlement procedures, and other information that may impact prices, such as transmission system models, reserved transmission capacity, and similar information."²²⁷ The Commission found that "it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle L in the context of the [Prior Requesters'] activities with respect to the Transactions."²²⁸ The same is true for SPP. As demonstrated above, the SPP Tariff and governing documents are publicly available on its Web site, which provides market participants and the public with access to SPP's rules and procedures regarding, among other things, participant and product eligibility requirements, risk management methodologies, settlement procedures, and other information that may impact prices, such as transmission system models, reserved transmission capacity, and similar information.

²²⁵ *Id.*, Attachment AE § 6.2.3.

²²⁶ SPP Tariff, Attachment AE § 9.0.

²²⁷ Proposed Order at 52,155.

²²⁸ *Id.*

Attachment M

DCO Core Principle M: Information-Sharing

Each derivatives clearing organization shall –

- (i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and
- (ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

Response:

Several provisions in SPP's governing documents and Standards of Conduct govern SPP's information sharing with SPP members, market participants, regulatory agencies, and other stakeholders. For example, the SPP Tariff establishes procedures for SPP's sharing of market-related data (and applicable confidentiality protections thereof) with the Market Monitor, market participants, FERC, and state regulatory agencies.²²⁹ SPP is generally prohibited from sharing confidential market participant data with other market participants; however, SPP is authorized to disclose composite market data, documents, and other information that may be developed based on confidential market participant data.²³⁰ SPP also is authorized to provide data, including confidential market participant information, to certain regulatory agencies and organizations – such as the Commission, FERC, state regulatory commissions, and NERC – and to Transmission Owners, subject to certain conditions and applicable confidentiality agreements.²³¹ On September 30, 2013, FERC conditionally approved the Tariff revisions that extended the disclosure provisions that apply to information requests from FERC to requests from the Commission.²³²

Under the SPP Tariff, SPP also is required to provide the Market Monitor access to all information necessary for effective functioning of the Market Monitor and implementation of the

²²⁹ See generally SPP Tariff, Attachment AE § 11.

²³⁰ *Id.*, Attachment AE § 11.1.4(1).

²³¹ See, e.g., *id.*, Attachment AE §§ 11.1.4(2) (NERC provisions), 11.1.4(4) (Transmission Owner provisions), 11.3 (Commission and FERC provisions).

²³² SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

Market Monitoring Plan.²³³ The Market Monitor is required to interface with FERC and other RTO market monitors in adjacent regions as needed for the purpose of addressing electricity market issues in a comprehensive manner.²³⁴ Thus, the Market Monitor is able to communicate with other RTO market monitors regarding market trends and potential market manipulation risks observed in other RTO markets. The Market Monitor also is obligated to report perceived market design flaws and recommend changes to FERC, SPP organizational groups, SPP staff, state regulatory commissions, and market participants, subject to certain limitations where such disclosure could lead to exploitation.²³⁵ Market participants also are required to provide the Market Monitor with certain data for use in its market monitoring activities,²³⁶ and the Market Monitor has discretion to release to SPP or market participants any data that the Market Monitor creates in the course of performing its duties.²³⁷

SPP also has executed “Joint Operating Agreements” with interconnected electric transmission providers such as (among others) the Midcontinent Independent System Operator, Inc. (a FERC-approved RTO) and Associated Electric Cooperative, Inc. (a utility not subject to FERC regulatory jurisdiction). These agreements contain provisions to address the sharing of certain transmission system planning and operational information between SPP and the counterparty.

Also, as stated in Attachment J, above, SPP has adopted for the Integrated Marketplace substantial data and information disclosure provisions, which enable SPP to provide information to the Commission, including information deemed confidential by market participants. First, as a FERC-jurisdictional transmission provider, SPP is obligated to comply with FERC’s regulations requiring establishment of an Open Access Same-Time Information System (“OASIS”), 18 C.F.R. Part 37.²³⁸ Additionally, the Tariff requires SPP to publish the results of the Day-Ahead Market by 4:00 pm each day²³⁹ and communicate Locational Marginal Prices (“LMP”) and Market Clearing Prices (“MCP”) for each dispatch interval in the Real-Time Balancing Market.²⁴⁰ SPP also is required to release all bid and offer data 90 days after the day for which they were submitted, including all Day-Ahead Offers and Bids, and Real-Time Balancing Market

²³³ SPP Tariff, Attachment AG §§ 3.1, 8.2.

²³⁴ *Id.*, Attachment AG § 3.2.

²³⁵ *Id.*, Attachment AG § 6.2.

²³⁶ *Id.*, Attachment AG § 8.3.

²³⁷ SPP Tariff, Attachment AG § 8.4.

²³⁸ *Id.* § 4. Attachment AA below provides additional information regarding the information posting requirements under FERC’s OASIS regulations, 18 C.F.R. Part 37.

²³⁹ *Id.*, Attachment AE §§ 5.1, 5.1.3.

²⁴⁰ *Id.*, Attachment AE § 6.2.3.

energy and operating reserve data.²⁴¹ SPP's website also provides extensive data regarding market and transmission system operations, policies, and procedures.

SPP also has adopted procedures to allow for disclosure to the Commission,²⁴² FERC²⁴³ and state regulatory agencies²⁴⁴ of confidential information it receives from market participants. These procedures apply both to SPP and to the Market Monitor. On September 30, 2013, FERC approved the Tariff revisions that extended the disclosure provisions that apply to information requests from FERC to requests from the Commission.²⁴⁵ Generally, if SPP receives a request that involves a market participant's confidential information, SPP is required to provide notice to such market participant(s).²⁴⁶ However, such notice is not provided when the Commission or FERC or their respective staffs are the party requesting the confidential information.

In addition to the information disclosure provisions identified above, SPP's Market Monitor also provides monthly, quarterly, and annual reports to the Board of Directors, which are generally available to the public subject to applicable confidentiality provisions under the Tariff,²⁴⁷ as well as an annual "State of the Market Report" addressing performance of the wholesale market, which is provided to FERC, the Board of Directors, state regulatory commissions, market participants, and other interested entities.²⁴⁸

Finally, SPP's Membership Agreement includes a general provision that SPP must comply with all reporting requirements of federal and state regulatory authorities having jurisdiction over SPP with respect to the business aspects of SPP's operations.²⁴⁹ SPP's Bylaws

²⁴¹ *Id.*, Attachment AE § 9.0.

²⁴² *Id.*, Attachment AE § 11.3.

²⁴³ *Id.*

²⁴⁴ *Id.*, Attachment AE § 11.4.

²⁴⁵ SPP filed these Tariff revisions with FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

²⁴⁶ SPP Tariff, Attachment AE § 11.6.

²⁴⁷ *Id.*, Attachment AG §§ 7.1-7.2; *see also* Bylaws § 3.17.

²⁴⁸ SPP Tariff, Attachment AG § 7.2; *see also* Bylaws § 3.17 (requiring that public reports submitted to the Board of Directors are concurrently provided to FERC staff, staff of interested state regulatory commissions, SPP management, and market participants).

²⁴⁹ Membership Agreement § 2.4.1.

require SPP to publish and distribute reports as necessary to fulfill SPP's mission and to develop and maintain electronic databases of relevant technical information, access to which is subject to applicable data disclosure and confidentiality provisions.²⁵⁰

In the Proposed Order's analysis regarding DCO Core Principle M, the Commission observed that the Prior Requesters "represent that they have policies and procedures that allow them to share information with and receive information from other entities as necessary to carry out their risk management functions," including sharing information with such parties as market participants, market monitors, FERC, and other RTOs and ISOs.²⁵¹ The Commission concluded that, based on the Prior Requesters' representations, "it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle M in the context of [the Prior Requesters'] activities with respect to the Transactions."²⁵² The same is true for SPP. As demonstrated above in this Attachment M, SPP has policies and procedures in place allowing it to share with and receive information from other entities, including but not limited to the Market Monitor, FERC, the Commission, other RTOs and market participants.

²⁵⁰ Bylaws § 3.12.

²⁵¹ Proposed Order at 52,155.

²⁵² *Id.*

Attachment N

DCO Core Principle N: Antitrust Considerations

Unless necessary or appropriate to achieve the purposes of this chapter, a derivatives clearing organization shall not –

- (i) adopt any rule or take any action that results in any unreasonable restraint of trade; or
- (ii) impose any material anticompetitive burden.

Response:

SPP's rules and actions are subject to oversight by FERC. SPP, like other RTOs and ISOs, promotes competition in the wholesale energy markets. SPP does not anticipate that its current or future products or services in the Integrated Marketplace will result in unreasonable restraints of trade or anticompetitive burdens. The SPP Market Monitor's responsibilities include screening the markets for anticompetitive behavior, evaluating market rules, tariff provisions, and market design elements for potential flaws, and providing notification if it determines that there are market design flaws.²⁵³ This continued oversight by FERC and the SPP Market Monitor could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior.

In the Proposed Order's analysis regarding DCO Core Principle N, the Commission explained that FERC encouraged the formation of ISOs and RTOs (through FERC Order Nos. 888 and 2000) "in order to foster greater competition in the power generation sectors by allowing open access to transmission lines."²⁵⁴ The Commission found that the Prior Requesters' represented that "they are subject to continued oversight by FERC, PUCT or their market monitors, as appropriate, which oversight could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior."²⁵⁵ The Commission concluded that based on their representations, their "existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of Core Principle N."²⁵⁶ The same is true for SPP. As demonstrated above, SPP is subject to continued oversight by FERC and the Market Monitor, which oversight could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior.

²⁵³ See SPP Tariff, Attachment AG §§ 3.2, 4, 6.2.

²⁵⁴ Proposed Order at 52,155.

²⁵⁵ *Id.* at 52,156.

²⁵⁶ *Id.*

Attachment O

DCO Core Principle O: Governance Fitness Standards

(i) GOVERNANCE ARRANGEMENTS. – Each derivatives clearing organization shall establish governance arrangements that are transparent –

(I) to fulfill public interest requirements; and

(II) to permit the consideration of the views of owners and participants.

(ii) FITNESS STANDARDS. – Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

(I) directors;

(II) members of any disciplinary committee;

(III) members of the derivatives clearing organization;

(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

(V) any party affiliated with any individual or entity described in this clause.

Response:

SPP has established: (1) robust governance arrangements that are transparent, fulfill public interest requirements, and permit consideration of the views of SPP members and market participants; and (2) appropriate fitness standards for directors, members, and employees.

FERC Order No. 2000 sets forth minimum characteristics for RTOs, which include, among other things, that an RTO be independent from all market participants and that its decisionmaking process be independent of individual market participants and classes of market participants.²⁵⁷ In a series of orders issued in 2004, FERC granted SPP's request to become an RTO.²⁵⁸

FERC Order No. 719 sets forth minimum standards for RTO governance regarding responsiveness to stakeholders. Specifically, Order No. 719 directed RTOs to adopt means for

²⁵⁷ See generally Order No. 2000 at 31,061-76; see also Proposed Order at 52,156 (summarizing the requirements of Order No. 2000 that relate to DCO Core Principle O).

²⁵⁸ *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 (2004); *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004), *order on reh'g*, 110 FERC ¶ 61,138 (2005); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

direct access to their boards of directors for customers and stakeholders²⁵⁹ and established obligations for RTOs to increase responsiveness to customers and stakeholders using four responsiveness criteria: (1) inclusiveness; (2) fairness in balancing diverse interests; (3) representation of minority positions; and (4) ongoing responsiveness.²⁶⁰ In an order issued on October 21, 2010, FERC determined that SPP met all of the Order No. 719 governance criteria for stakeholder responsiveness.²⁶¹

Governance Arrangements and Member Input

SPP is a non-profit corporation independent of any of its members or market participants. Pursuant to the Bylaws, SPP Directors must be independent of any member or customer of SPP. Directors (other than the President of SPP, who serves as a Director) are elected to a three-year term by the membership during its annual meeting.²⁶² A Director can be removed by a vote of the membership (based on membership sector voting) upon a petition signed by not less than 20% of SPP members.²⁶³ The Board of Directors is required to meet no less than three times per calendar year,²⁶⁴ and is obligated to convene at least one meeting of the membership per year.²⁶⁵

Regarding transparency and consideration of the views of owners and participants, SPP has adopted an open meeting policy under which all organizational group meetings, including meetings of the Board of Directors, are open to the public except when executive session is necessary to safeguard confidentiality of sensitive information, including but not limited to personnel, financial, or legal matters.²⁶⁶ During such open meetings, any attendee may speak upon recognition by the chair of the organizational group.

Additionally, SPP has established several committees comprised of SPP members that provide stakeholder views on matters before the Board of Directors. One such committee, the Members Committee, meets in conjunction with the Board of Directors to provide individual and collective input to the Board of Directors, including taking an advisory straw vote on all actions pending before the Board of Directors.²⁶⁷ The Members Committee is comprised of

²⁵⁹ Order No. 719 at PP 477, 503.

²⁶⁰ *Id.* at PP 7, 477, 502, 504-05.

²⁶¹ *Sw. Power Pool, Inc.*, 133 FERC ¶ 61,069, at P 2 (2010).

²⁶² Bylaws § 4.3.

²⁶³ *Id.* § 4.4.

²⁶⁴ *Id.* § 4.6.1.

²⁶⁵ *Id.* §§ 3.14, 4.1(l).

²⁶⁶ Bylaws § 3.5.

²⁶⁷ *Id.* § 5.1; *see also id.* § 4.6.1.

representatives of each membership category (investor-owned utilities, cooperatives, municipals, independent power producers and marketers, state and federal public power agencies, alternative power and public interest organizations, large retail customers, and small retail customers).²⁶⁸ Another committee is the Markets and Operations Policy Committee, which is comprised of one representative from each SPP member company and advises the Board of Directors on various market-related and operational matters, including administration of the SPP Tariff and Integrated Marketplace.²⁶⁹ Several other committees reporting to the Board of Directors, such as the Strategic Planning Committee, Human Resources Committee, Finance Committee, and Corporate Governance Committee are comprised of both Directors and representatives from SPP membership sectors, allowing for direct interaction between members of the Board of Directors and SPP stakeholders.

SPP also has established processes for stakeholders to provide written comment on any proposed changes to the SPP Tariff and other protocols, manuals, and criteria that govern operation of the SPP transmission system and SPP markets. Proposed changes to these governing documents are generally vetted through various stakeholder working groups and task forces that report to the organizational committees that report to the Board of Directors, further providing for transparency and consideration of stakeholder views.

Fitness Standards

The Bylaws require that Directors have recent and relevant senior management experience, as well as experience in one or more of the following disciplines: finance; accounting; electric transmission or generation planning or operation; law and regulation; commercial markets; and trading and associated risk management.²⁷⁰ Directors are required to be independent of any member,²⁷¹ and Directors may not be a director, officer, or employee of, or have a direct business relationship or affiliation with or financial interest in a member or customer of services provided by SPP.²⁷² Except for the President of SPP, no other Director may be an employee of SPP.²⁷³ Directors are permitted to invest in accordance with SPP's Standards of Conduct,²⁷⁴ which prohibit ownership of securities issued by owners, operators, and users of the bulk power system in the SPP region, entities that engage in purchases and sales of wholesale

²⁶⁸ *Id.* § 5.1.1.1.

²⁶⁹ *See* Bylaws § 6.1.

²⁷⁰ *Id.* § 4.2.2.

²⁷¹ *Id.* § 4.2.1.

²⁷² *Id.* § 4.2.3.

²⁷³ Bylaws § 4.2.1.

²⁷⁴ *Id.* § 4.2.3.

or retail electric energy in the SPP region, transmission customers under the SPP Tariff, or any entity for which SPP provides services under contract.

The Bylaws also contain eligibility requirements for SPP members, which include being an electric utility, federal power marketing agency, transmission service provider, an entity engaged in the business of producing, selling, and/or purchasing electricity for resale, or an entity eligible to take service under the SPP Tariff.²⁷⁵ Market participants are additionally required to comply with the creditworthiness requirements set forth in SPP's credit policy in Attachment X of the SPP Tariff. As stated in Attachment D, above, Attachment X of the SPP Tariff sets forth the procedures for SPP to complete credit assessments on each market participant, establishes minimum participation criteria, defines the forms of collateral that market participants may provide, includes the formulas for determining the amount of collateral or unsecured credit a market participant is required to have, and states when additional collateral may be required. SPP's credit policy also includes requirements that market participants attest that they have risk management procedures and policies and includes associated verification procedures. Pursuant to the credit policy, SPP determines a market participants' creditworthiness, Total Potential Exposure, the amount of credit the credit customer requires, and whether to grant (and the amount of any) unsecured credit. SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for-profit entity. Through the creditworthiness analysis, SPP determines the unsecured credit allowance based on the creditworthiness score and a percentage of the tangible net worth of the market participant.²⁷⁶ FERC conditionally approved revisions to SPP's Tariff to include minimum eligibility requirements to be consistent with the Final Order's appropriate person requirement.²⁷⁷ In order to participate in the Integrated Marketplace, each market participant must demonstrate to SPP that it qualifies as (a) an appropriate person as that term is defined under Section 4(c)(3)(A) through (J) of the CEA; (b) an eligible contract participant as that term is defined in Section 1(a)(18) of the CEA; or (c) a person or entity that is in the business of: (i) generating transmitting or distributing electric energy or (2) providing electric services that are necessary to support the reliable operation of the transmission system.²⁷⁸

²⁷⁵ *Id.* § 2.1.

²⁷⁶ SPP Tariff, Attachment X § 4.3.

²⁷⁷ Final Order at 19,900.

²⁷⁸ SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing on other Tariff provisions related to information sharing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

Finally, all SPP Officers and employees are required to execute a statement certifying they have read the SPP Standards of Conduct (which outline the independence requirements for all SPP employees) upon employment and annually thereafter, and to complete annual review of the Standards of Conduct and certification thereof.²⁷⁹ The Standards of Conduct govern and limit employee conduct regarding: (1) involvement in marketing of electric energy; (2) handling and disclosure of confidential information and transmission system information; (3) access to facilities; (4) implementation of the SPP Tariff; (5) recordkeeping; (6) investments; (7) relationships with other parties; (8) reporting of violations of the Standards of Conduct; and (9) conflicts of interest.

Conclusion

In the Proposed Order, the Commission noted that the Prior Requesters represented “that their tariffs, organizational documents, and applicable state law set forth specific governance standards that are consistent with the regulatory goals which address, for example, director independence and fitness requirements.”²⁸⁰ The Commission also recognized that the Prior Requesters are subject to FERC Orders, including Order Nos. 888 and 2000, which “set out certain minimum governance structures for ISOs and RTOs” including fair and non-discriminatory governance, independence of employees from market participants, and “strict conflict of interest standards.”²⁸¹ Based on the Prior Requesters’ representations, the Commission found that “it appears that [Prior Requesters’] governance structures are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle O in the context of [the Prior Requesters’] activities with respect to the Transactions.”²⁸² The same is true for SPP. As demonstrated above in this Attachment O, SPP’s governing documents set forth specific governance standards addressing, among other things, Director independence and fitness requirements. Moreover, SPP is subject to the same FERC regulations as the Prior Requesters (except ERCOT, which is not subject to FERC jurisdiction), which set out minimum governance structures for RTOs including fair and non-discriminatory governance, independence, and strict conflicts of interest.

²⁷⁹ Bylaws §§ 3.4, 3.11.

²⁸⁰ Proposed Order at 52,156.

²⁸¹ *Id.*

²⁸² *Id.*

Attachment P

DCO Core Principle P: Conflicts of Interest

Each derivatives clearing organization shall –

- (i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and
- (ii) establish a process for resolving conflicts of interest described in clause (i).

Response:

SPP has adopted stringent conflict of interest requirements for SPP Directors and employees (including Officers). SPP has developed Standards of Conduct for Officers and employees, and similar Standards of Conduct for members of the Board of Directors. Employees and Directors must execute a statement certifying they have read the Standards of Conduct annually.²⁸³ As stated in Attachment O, above, Directors are required to be independent of any member,²⁸⁴ and Directors may not be a director, officer, or employee of, or have a direct business relationship or affiliation with or financial interest in a member or customer of services provided by SPP.²⁸⁵ Except for the President of SPP, no other Director may be an employee of SPP.²⁸⁶ Directors are permitted to invest in accordance with SPP's Standards of Conduct,²⁸⁷ which prohibit ownership of securities issued by owners, operators, and users of the bulk power system in the SPP region, entities that engage in purchases and sales of wholesale or retail electric energy in the SPP region, transmission customers under the SPP Tariff, or any entity for which SPP provides services under contract. The onus is on each individual Director to ensure compliance with the Standards of Conduct or face removal.

All SPP Officers and employees are required to execute a statement certifying they have read the SPP Standards of Conduct (which outline the independence requirements for all SPP employees) upon employment and annually thereafter, and to complete annual review of the Standards of Conduct and certification thereof.²⁸⁸ The Standards of Conduct govern and limit employee conduct regarding: (1) involvement in marketing of electric energy; (2) handling and

²⁸³ Membership Agreement § 2.2.2. For the sake of convenience, this Attachment P refers to these parties collectively as “employees.”

²⁸⁴ Bylaws § 4.2.1.

²⁸⁵ *Id.* § 4.2.3.

²⁸⁶ *Id.* § 4.2.1.

²⁸⁷ *Id.* § 4.2.3.

²⁸⁸ Bylaws §§ 3.4, 3.11.

disclosure of confidential information and transmission system information; (3) access to facilities; (4) implementation of the SPP Tariff; (5) recordkeeping; (6) investments; (7) relationships with other parties; (8) reporting of violations of the Standards of Conduct; and (9) conflicts of interest.

The Standards of Conduct prohibit employees from being an employee, director, consultant, or contractor to or having any investment interest in any “Third Party.”²⁸⁹ SPP employees and family members (i.e., spouses, minor children, or other persons for whom the employee has power of attorney or guardianship rights) are prohibited from owning securities issued by any Third Party, but indirect ownership through a mutual fund or similar arrangement is permitted (except for any fund targeted toward the electric industry or electric utility industry or segments thereof). SPP maintains a list of Third Parties and requires divestiture of any existing ownership in a Third Party within 4 months of employment or from the time the entity becomes a Third Party. The Standards of Conduct also limit the ability of employees to receive gifts or any form of cash from other parties where such gifts are being made to influence the intended recipient’s actions in their position with SPP or that could reasonably create such an impression.

Violation of the Standards of Conduct by employees could result in disciplinary action including possible reprimand, suspension, limitation in the scope of responsibilities, monetary fines, termination, or other action. Employees are also required to report known or suspected violations of the Standards of Conduct and to cooperate in any investigation. In general, the onus is on the individual employee to ensure compliance with the Standards of Conduct or else face disciplinary action. The SPP Board of Directors may authorize a waiver of the Standards of Conduct for an officer of SPP, and any such waiver must be promptly disclosed to the SPP membership. The Office of General Counsel may authorize a waiver of the Standards of Conduct for other SPP employees.

In addition to the Standards of Conduct, the SPP Market Monitor and all of its employees must comply with additional independence and ethics standards set forth in Attachment AG of the SPP Tariff, including prohibiting: (a) material affiliation with any market participant or any affiliate of a market participant; (b) serving as an officer, employee, or partner of a market participant; (c) material financial interest in any market participant or any affiliate of a market participant (allowing for such potential exceptions as mutual funds and non-directed investments); (d) engaging in any market transactions other than the performance of their duties under the Tariff; (e) receiving compensation, other than by SPP, for any expert witness testimony or other commercial services to SPP or to any other party in connection with any legal or

²⁸⁹

A “Third Party” is an entity including its representatives, agents, and employees: (i) that is an owner, operator or user of the bulk power system in the SPP region, as defined in the Delegation Agreement between NERC and SPP; (ii) that is a Transmission Customer as defined in the SPP Tariff or any other tariff that SPP administers; or, (iii) for which SPP provides services under contract, including, but not limited to, tariff administration services; or (iv) that engages in purchases or sales of wholesale or retail electric energy in the SPP region.

regulatory proceeding or commercial transaction relating to SPP; and (f) acceptance of anything of value from a market participant in excess of a *de minimis* amount.²⁹⁰ Market Monitor employees also must advise their relevant supervisor (or, in the case of the Market Monitoring management, SPP’s Board of Directors) in the event that they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of such market participant.²⁹¹

In the Proposed Order’s analysis, the Commission observed that “[e]ach [Prior Requester] represent[ed] that it has established a conflict of interest policy in a Code of Conduct or other corporate document that requires board members and employees to, among other things, avoid activities that are contrary to the interests of the [Prior Requester].”²⁹² The Commission concluded, “[b]ased upon [Prior Requesters’] representations, it appears that the conflict of interest policies [Prior Requesters] have adopted and that the requirements [Prior Requesters] are subject to are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle P in the context of [the Prior Requesters’] activities with respect to the Transactions.”²⁹³ The same is true for SPP. As demonstrated above in this Attachment P, SPP has established conflict of interest policies in its Standards of Conduct and other governing documents that require Directors and employees to avoid activities that are contrary to SPP’s interests.

²⁹⁰ SPP Tariff, Attachment AG § 3.3.

²⁹¹ *Id.*

²⁹² Proposed Order at 52,156.

²⁹³ *Id.*

Attachment Q

DCO Core Principle Q: Composition of Governing Boards

Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

Response:

SPP's Board of Directors is required by FERC precedent and the SPP Bylaws to be independent of any individual market participants or class of market participants.²⁹⁴ Directors are required to be independent of any member,²⁹⁵ and Directors may not be a director, officer, or employee of, or have a direct business relationship or affiliation with or financial interest in a member or customer of services provided by SPP.²⁹⁶ Except for the President of SPP, no other Director may be an employee of SPP.²⁹⁷ However, the composition of the Board of Directors is influenced by the members of SPP through the nomination and election process. The Corporate Governance Committee, which includes member representatives, nominates Director candidates who are then elected via membership sector voting during a meeting of the members.²⁹⁸

Additionally, SPP's stakeholder process provides ample opportunity for market participants to express their viewpoints to the Board of Directors, including participation in numerous working groups and task forces that report to the organizational committees that report to the Board of Directors, and through the organizational committees themselves and at Board of Director Meetings.²⁹⁹ Directors (other than the President of SPP, who serves as a Director) are elected to a three-year term by the membership during its annual meeting.³⁰⁰ A Director can be removed by a vote of the membership (based on membership sector voting) upon a petition

²⁹⁴ Attachment O, above, similarly discusses the composition of SPP's Board of Directors and the opportunity for market participants to express their viewpoints to the Board of Directors.

²⁹⁵ Bylaws § 4.2.1.

²⁹⁶ *Id.* § 4.2.3.

²⁹⁷ *Id.* § 4.2.1.

²⁹⁸ *Id.* § 4.3; *see also* Proposed Order at 52,156 (discussing similar Director election processes in other RTOs, which the Commission determined to be congruent with DCO Core Principle Q).

²⁹⁹ *See id.* at 52,156 (discussing the New York Independent System Operator's similar stakeholder feedback process, which the Commission determined to be congruent with DCO Core Principle Q).

³⁰⁰ Bylaws § 4.3.

signed by not less than 20% of SPP members.³⁰¹ The Board of Directors is required to meet no less than three times per calendar year,³⁰² and is obligated to convene at least one meeting of the membership per year.³⁰³

SPP has adopted an open meeting policy under which all organizational group meetings, including meetings of the Board of Directors, are open to the public except when executive session is necessary to safeguard confidentiality of sensitive information, including but not limited to personnel, financial, or legal matters.³⁰⁴ During such open meetings, any attendee may speak upon recognition by the chair of the organizational group.

Additionally, SPP has established several committees comprised of SPP members that provide stakeholder views on matters before the Board of Directors. One such committee, the Members Committee meets in conjunction with the Board of Directors to provide individual and collective input to the Board of Directors, including taking an advisory straw vote on all actions pending before the Board of Directors.³⁰⁵ The Members Committee is comprised of representatives of each membership category (investor-owned utilities, cooperatives, municipals, independent power producers and marketers, state and federal public power agencies, alternative power and public interest organizations, large retail customers, and small retail customers).³⁰⁶ Another committee is the Markets and Operations Policy Committee, which is comprised of one representative from each SPP member company and advises the Board of Directors on various market-related and operational matters, including administration of the SPP Tariff and Integrated Marketplace.³⁰⁷ Several other committees reporting to the Board of Directors, such as the Strategic Planning Committee, Human Resources Committee, Finance Committee, and Corporate Governance Committee are comprised of both Directors and representatives from SPP membership sectors, allowing for direct interaction between members of the Board of Directors and SPP stakeholders.

SPP also has established processes for stakeholders to provide written comment on any proposed changes to the SPP Tariff and other protocols, manuals, and criteria that govern operation of the SPP transmission system and SPP markets. Proposed changes to these governing documents are generally vetted through various working groups and task forces that

³⁰¹ *Id.* § 4.4.

³⁰² *Id.* § 4.6.1.

³⁰³ *Id.* §§ 3.14, 4.1(*l*).

³⁰⁴ Bylaws § 3.5.

³⁰⁵ *Id.* §§ 4.1, 5.1; *see also id.* § 4.6.1.

³⁰⁶ *Id.* § 5.1.1.1.

³⁰⁷ *See* Bylaws § 6.1.

report to the organizational committees that report to the Board of Directors, further providing for transparency and consideration of stakeholder views.

In the Proposed Order's analysis regarding DCO Core Principle Q, the Commission observed that, while certain of the Prior Requesters have governing boards that are independent of market participants, the Prior Requesters allow active participation by market participants in governing board elections and in providing feedback through market participant committees and working groups.³⁰⁸ The Commission also noted that FERC regulations require RTOs to have decisionmaking processes that are independent of control by any market participant or class of participants, and that, per FERC Order No. 719, RTO's and ISOs are required to adopt practices to promote responsiveness to stakeholders.³⁰⁹ Based on the Prior Requesters' representation and FERC regulations and supervision, the Commission determined that "it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle Q in the context of [the Prior Requesters'] activities with respect to the Transactions."³¹⁰ The same is true for SPP. As demonstrated above in this Attachment Q, while SPP's Board of Directors does not include members that are market participants, SPP has adopted procedures to allow for direct market participant access to the SPP Board of Directors, market participant election of Directors, and stakeholder committees and working groups that interact directly with the Board of Directors. Also, SPP complies with FERC requirements set forth in Order Nos. 2000 and 719.

³⁰⁸ Proposed Order at 52,156 (citing 18 C.F.R. § 35.34(j)(1)(ii)).

³⁰⁹ *Id.* (citing 18 C.F.R. § 35.28(g)(6)).

³¹⁰ *Id.*

Attachment R

DCO Core Principle R: Legal Risk

Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.

Response:

SPP operates under a transparent statutory and regulatory framework, which is grounded in the Federal Power Act and administered by FERC. SPP is subject to FERC orders, rules, and regulations. SPP operates pursuant to its Tariff that has been reviewed and approved by FERC, which includes pro forma agreements.

FERC recently accepted SPP's revisions to its Tariff that clarify that SPP will be the counterparty to certain market transactions that are pooled within the Integrated Marketplace.³¹¹ FERC found these revisions to be compliant with the requirement in Order No. 741 that RTOs adopt steps to address the risk that an RTO may not be allowed to use netting and set-offs in the event of a bankruptcy of a market participant. Additionally, as required by the Final Order,³¹² SPP plans to submit a separate legal memorandum of outside counsel that SPP's counterparty arrangements (i.e., the arrangements used to satisfy FERC's regulation 35.47(d), 18 C.F.R. § 35.47(d)), provides SPP with enforceable rights of set off against a market participant in the event of the market participant's bankruptcy.

In the Proposed Order's analysis regarding DCO Core Principle R, the Commission stated that the Prior Requesters asserted "that they operate under a transparent and comprehensive legal framework that is grounded in the Federal Power Act . . . and administered by FERC," "are subject to FERC . . . orders[,] rules and regulations," and "that [they each] operate[] pursuant to a tariff that has been reviewed and approved by FERC or the PUCT, as applicable."³¹³ The Commission also noted that, with respect to eligibility for set off in bankruptcy, the Commission required additional independent confirmation through the memorandum it was requiring each of the Prior Requesters to provide.³¹⁴ The Commission found "that this framework is congruent with, and sufficiently accomplishes, the regulatory objectives of Core Principle R in the context of [the Prior Requesters'] activities with respect to

³¹¹ SPP Tariff, Attachment AE §§ 3.8.1, 3.8.3. Section 3.8.3 also specifies that SPP is not the counterparty to agreements and transaction for transmission service and certain ancillary services, which are not agreements and transactions in the Integrated Marketplace.

³¹² See Final Order at 19,890-91.

³¹³ Proposed Order at 52,156.

³¹⁴ *Id.* at 52,157.

the Transactions.”³¹⁵ The same is true for SPP. As demonstrated above, SPP operates under a transparent and comprehensive legal framework that is grounded in the Federal Power Act and administered by FERC. SPP also is subject to FERC’s orders, rules, and regulations. SPP also operates pursuant to the SPP Tariff that has been reviewed and approved by FERC. Further, as mentioned above, SPP plans to submit a separate legal memorandum of outside counsel that SPP’s counterparty arrangements (i.e., the arrangements used to satisfy FERC’s regulation 35.47(d)) will provide SPP with enforceable rights of set off against a market participant in the event of the market participant’s bankruptcy.

³¹⁵

Id.

Attachment S

SEF Core Principle 1: Compliance with Core Principles

(A) IN GENERAL. – To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with –

- (i) the core principles described in this subsection; and
- (ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) [7 U.S.C. § 12a (5)].

(B) REASONABLE DISCRETION OF SWAP EXECUTION FACILITY. – Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

Response:

Many of SPP’s practices that are generally comparable to this SEF core principle and the SEF core principles addressed below are the same as those discussed in responses to the DCO core principles above.

SPP’s practices are consistent with the Core Principles for SEFs. Given that SPP is principally regulated by the Federal Energy Regulatory Commission (“FERC”) and the differences between SPP and registered SEFs, SPP in some cases achieves compliance with the Core Principles using different methods than those ordinarily employed by registered SEFs. This discretion is expressly permitted by SEF Core Principle 1(B). As demonstrated below, SPP’s practices and the comprehensive regulatory regime of FERC achieve the goals of and are consistent with the policies of the Commodity Exchange Act (“CEA”). Accordingly, the exemption requested herein is in the public interest. SPP’s representations are similar to the Prior Requesters’ representations regarding SEF Core Principles.

In the Commission’s recent final order in response to a petition from certain independent system operators (“ISOs”) and regional transmission organizations (“RTOs”) (collectively “Prior Requesters”) to exempt specified transactions from certain provisions of the CEA,³¹⁶ the Commission explained that it incorporated the DCO and SEF Core Principle analyses set forth in

³¹⁶ Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act, 78 Fed. Reg. 19,880 (Apr. 2, 2013) (“Final Order”).

its proposed order on the Prior Requesters' petition to exempt specified transactions³¹⁷ "into its consideration of the Final Order's consistency with the public interest and the purposes of the Act."³¹⁸ Further, the Commission explained in its Final Order that, through its analyses of the DCO and SEF Core Principles in the Proposed Order, the Commission determined that the policies and procedures of the Prior Requesters "appear to be consistent with, and to accomplish sufficiently for purposes of [the] Final Order, the regulatory objectives of the DCO [and SEF] Core Principles in the context of the Covered Transactions."³¹⁹

SPP's representations are similar to the Prior Requesters' representations regarding SEF Core Principle 1. In the Proposed Order's analysis regarding SEF Core Principle 1, the Commission found that the Prior Requesters' "practices appear congruent with, and to accomplish sufficiently, the regulatory objectives of each SEF core principle" in the context of their activities with respect to the Transactions within the scope of the proposed exemption."³²⁰

³¹⁷ Proposed Order and Request for Comment on a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act, 77 Fed. Reg. 52,138 (proposed Aug. 28, 2012) ("Proposed Order").

³¹⁸ Final Order at 19,895.

³¹⁹ *Id.* at 19,901. The same language is stated with respect to the SEF Core Principles at Final Order at 19,902.

³²⁰ Proposed Order at 52,157.

Attachment T

SEF Core Principle 2: Compliance With Rules

A swap execution facility shall –

(A) establish and enforce compliance with any rule of the swap execution facility, including –

(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

(ii) any limitation on access to the swap execution facility;

(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means –

(i) to provide market participants with impartial access to the market; and

(ii) to capture information that may be used in establishing whether rule violations have occurred;

(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement under section 2(h)(8).

Response:

SPP has transparent rules for all of its markets and services under its Tariff, including rules to deter abuses, as well as market monitoring and mitigation plans aimed at discovering and addressing potential and actual abuses. Adoption of these rules and any changes to them are subject to FERC approval. SPP has enforcement mechanisms that allow SPP to, among other things, monitor the SPP markets, investigate suspected Tariff violations, take action against violators, and refer potential violations to FERC.³²¹

SPP has detailed rules in its Tariff and IM Protocols to deter, detect, and prevent market manipulation in the SPP markets. In general, market participants are prohibited from engaging in “actions or transactions that are without a legitimate business purpose and that are intended to,

³²¹ Attachments H and U also discuss SPP’s enforcement mechanisms and also are applicable to this Attachment.

or foreseeably could, manipulate market prices, market conditions, or market rules.”³²² The Tariff requires SPP to establish and provide appropriate staffing and resources for the Market Monitor and to “ensure that the Market Monitor has such adequate employees, funding, and/or other resources, access to required information, and the full cooperation of SPP Staff, Organizational Groups, and other persons, as necessary, for the effective functioning of the Market Monitor and implementation of [the Market Monitoring] Plan.”³²³ The Market Monitor is required to monitor SPP markets for potential and suspected market power abuses and gaming, suspected Tariff violations, suspected violations of FERC regulations, and market design flaws and to report to FERC.³²⁴ The Market Monitor also is required to report market design flaws to SPP, state commissions, and market participants (among other entities), unless such disclosure could lead to exploitation.³²⁵ SPP’s Market Working Group and Markets and Operations Policy Committee advise the Board of Directors on design and modification of SPP market rules.

SPP’s governing documents contain substantial rules governing member, customer, and market participant conduct, and provide SPP the ability to discipline such conduct and report certain conduct to FERC.

FERC Order Nos. 719³²⁶ and 2000³²⁷ require RTOs to employ a Market Monitor to monitor the conduct of both the RTO and its market participants with regard to all RTO markets and services.³²⁸ The SPP Market Monitor is an independent department within SPP that reports directly to the SPP Board of Directors, except that the President of SPP (a member of the Board

³²² SPP Tariff, Attachment AE § 2.3; *see also id.* at Attachment AG § 4.4.

³²³ *Id.*, Attachment AG § 3.1.

³²⁴ *Id.*, Attachment AG §§ 1.3, 3.2, 4.3-4.6, 6.1, 6.2.

³²⁵ SPP Tariff, Attachment AG §§ 1.3, 3.2.

³²⁶ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 2008-2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh’g*, Order No. 719-A, 2008-2013 FERC Stats. & Regs., Regs. Preambles ¶ 31,292, *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

³²⁷ *Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

³²⁸ Order No. 2000 at 31,155-57; Order No. 719 at PP 326-32, 339-44, 353-60; *see also* Bylaws § 3.17 (stating that “SPP shall establish and provide appropriate support to a market monitoring function in accordance with its OATT”); SPP Tariff, Attachment AG §§ 1.3, 4.1.

of Directors) is excluded from participating in oversight of the Market Monitor.³²⁹ SPP is obligated to ensure that the Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under the Tariff.³³⁰

The Tariff sets forth SPP's market monitoring plan (Attachment AG) and market power mitigation plan (Attachment AF). The Market Monitor is required to fulfill certain "core functions,"³³¹ including among them: (1) monitoring and reporting on possible abuses of horizontal and vertical market power and gaming; (2) identifying market design flaws and recommending changes to market design; and (3) monitoring market participant compliance with market rules.³³² The Market Monitor monitors transactions in all SPP markets and services (including, among other things, the Day-Ahead Market (including virtual transactions), Real-Time Balancing Market, and TCR markets), and is obligated to report any instances of market behavior or potential market manipulation that may require investigation to FERC's Office of Enforcement.³³³ Market participants are forbidden from engaging in market manipulation. The Market Monitor also monitors for price divergence between the Day-Ahead Market and Real-Time Balancing Market,³³⁴ and if the Market Monitor identifies one or more market participants as having caused excessive price divergence through virtual trading, SPP imposes mitigation under the market power mitigation plan set forth in Attachment AF of the Tariff.³³⁵

In the event that a market participant is determined to possess market power in certain products and/or during certain periods, Attachment AF of the Tariff sets forth several market power mitigation measures that SPP employs to limit the market participant's ability to exercise market power for energy and operating reserves,³³⁶ including virtual transactions.³³⁷

³²⁹ SPP Tariff, Attachment AG § 3.1; *see also* Bylaws § 3.17 ("The market monitoring unit shall report to the Board of Directors, except that any management representatives on the Board of Directors are excluded from oversight of the internal market monitor.").

³³⁰ SPP Tariff, Attachment AG § 3.1.

³³¹ *See* Order No. 719 at PP 353-54 (establishing the "core" functions of RTO market monitors).

³³² SPP Tariff, Attachment AG § 1.3.1.

³³³ *Id.*, Attachment AG §§ 3.2, 4.3, 4.4.

³³⁴ *Id.*, Attachment AG § 4.6.2.

³³⁵ *Id.*

³³⁶ *See generally* SPP Tariff, Attachment AF § 3.

³³⁷ *See generally id.*, Attachment AF § 4.

In addition, the Market Monitor reviews the performance of SPP markets and, if it identifies any weaknesses or failures in market design and market rules, it is required to advise SPP, FERC, state regulatory commissions, market participants, and organizational groups.³³⁸ Where such disclosure could lead to exploitation, the Market Monitor is empowered to limit its disclosure of such flaws to the President of SPP, the chairman of the SPP Board of Directors' Oversight Committee, and FERC.³³⁹ In the event that the identified weakness or failure requires immediate corrective action to ensure just and reasonable prices, the Market Monitor may request that the President of SPP authorize an immediate FERC filing requesting implementation of a corrective action.³⁴⁰

With regard to payment for services, the Tariff sets forth provisions for SPP to address a transmission customer or market participant's failure to pay invoices when due. The Tariff contains provisions for SPP to suspend or terminate service for a market participant's failure to pay its invoices for services provided in the Integrated Marketplace or for failure to comply with SPP's credit policy.³⁴¹ Section 7 of the Tariff similarly enables SPP to initiate proceedings at FERC to suspend or terminate transmission service when a customer fails to pay its invoice.³⁴²

In addition to the rule and market enforcement provisions set forth in the Tariff, the Bylaws provide for the monitoring of member compliance with the Bylaws and Membership Agreement, including collecting information needed to investigate all facets of possible non-compliance and possible imposition of penalties or other sanctions for non-compliance associated with the results of investigations or audits pursuant to approved standards, policies, or criteria.³⁴³ Under the Bylaws and Membership Agreement, the SPP Board of Directors may terminate the membership of any member for cause, including (but not limited to) material violations of the Bylaws or nonpayment of obligations.³⁴⁴

In the Proposed Order's analysis of SEF Core Principle 2, the Commission noted that the Prior Requesters "represent that they have transparent rules for their market, including rules that govern market abuses and compliance enforcement," and "that they have enforcement mechanisms that allow the [the Prior Requesters] to, among other things, monitor their markets,

³³⁸ *Id.*, Attachment AG §§ 3.2, 6.2.

³³⁹ *Id.*

³⁴⁰ SPP Tariff, Attachment AG § 6.2.

³⁴¹ *See generally id.*, Attachment X § 8.

³⁴² *Id.* § 7.4.

³⁴³ Bylaws § 3.16.

³⁴⁴ *Id.* §§ 2.3, 2.4; Membership Agreement § 6.0.

investigate suspected tariff violations, take action against violators (including assessing fines or suspending or terminating a market participant's participation in market activities), and refer potential violations to FERC."³⁴⁵ The Commission concluded, based on these representations, that "it appears that [the Prior Requesters'] practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 2 in the context of [the Prior Requesters'] activities with respect to the Transactions."³⁴⁶ The same is true for SPP. As demonstrated above in this Attachment T, SPP has transparent market rules that govern abuses and compliance enforcement, and provide SPP and the Market Monitor with the authority to investigate suspected Tariff violations and market abuses and take actions against market participants, including referring potential violations to FERC.

³⁴⁵ Proposed Order at 52,157.

³⁴⁶ *Id.*

Attachment U

SEF Core Principle 3: Swaps Not Readily Susceptible to Manipulation

The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

Response:

SPP has detailed rules in its Tariff and IM Protocols to deter, detect, and prevent market manipulation in the SPP markets. In general, market participants are prohibited from engaging in “actions or transactions that are without a legitimate business purpose and that are intended to, or foreseeably could, manipulate market prices, market conditions, or market rules.”³⁴⁷ The Tariff requires SPP to establish and provide appropriate staffing and resources for the Market Monitor and to “ensure that the Market Monitor has such adequate employees, funding, and/or other resources, access to required information, and the full cooperation of SPP Staff, Organizational Groups, and other persons, as necessary, for the effective functioning of the Market Monitor and implementation of [the Market Monitoring] Plan.”³⁴⁸ The Market Monitor is required to monitor SPP markets for potential and suspected market power abuses and gaming, suspected Tariff violations, suspected violations of FERC regulations, and market design flaws and to report to FERC.³⁴⁹ The Market Monitor also is required to report market design flaws to SPP, state commissions, and market participants (among other entities), unless such disclosure could lead to exploitation.³⁵⁰ SPP’s Market Working Group and Markets and Operations Policy Committee advise the Board of Directors on design and modification of SPP market rules. Additional detail regarding SPP’s market monitoring and mitigation plans is provided below.³⁵¹

Rule and Market Enforcement

FERC Order Nos. 719 and 2000 require RTOs to employ a Market Monitor to monitor the conduct of both the RTO and its market participants with regard to all RTO markets and services.³⁵² The SPP Market Monitor is an independent department within SPP that reports

³⁴⁷ SPP Tariff, Attachment AE § 2.3; *see also id.* at Attachment AG § 4.4.

³⁴⁸ *Id.*, Attachment AG § 3.1.

³⁴⁹ *Id.*, Attachment AG §§ 1.3, 3.2, 4.3-4.6, 6.1, 6.2.

³⁵⁰ SPP Tariff, Attachment AG §§ 1.3, 3.2.

³⁵¹ Attachments H and T, above, also discuss SPP’s market monitoring mitigation plans, and also are applicable to this Attachment.

³⁵² Order No. 2000 at 31,155-57; Order No. 719 at PP 326-32, 339-44, 353-60; *see also* Bylaws § 3.17 (stating that “SPP shall establish and provide appropriate support to a market monitoring function in accordance with its OATT”); SPP Tariff, Attachment AG §§ 1.3, 4.1.

directly to the SPP Board of Directors, except that the President of SPP (a member of the Board of Directors) is excluded from participating in oversight of the Market Monitor.³⁵³ SPP is obligated to ensure that the Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under the Tariff.³⁵⁴

The Tariff sets forth SPP's market monitoring plan (Attachment AG) and market power mitigation plan (Attachment AF). The Market Monitor is required to fulfill certain "core functions,"³⁵⁵ including among them: (1) monitoring and reporting on possible abuses of horizontal and vertical market power and gaming; (2) identifying market design flaws and recommending changes to market design; and (3) monitoring market participant compliance with market rules.³⁵⁶ The Market Monitor monitors transactions in all SPP markets and services (including, among other things, the Day-Ahead Market (including virtual transactions), Real-Time Balancing Market, and TCR markets), and is obligated to report any instances of market behavior or potential market manipulation that may require investigation to FERC's Office of Enforcement.³⁵⁷ The Market Monitor also monitors for price divergence between the Day-Ahead Market and Real-Time Balancing Market,³⁵⁸ and if the Market Monitor identifies one or more market participants as having caused excessive price divergence through virtual trading, SPP imposes mitigation under the market power mitigation plan set forth in Attachment AF of the Tariff.³⁵⁹

In the event that a market participant is determined to possess market power in certain products and/or during certain periods, Attachment AF of the Tariff sets forth several market power mitigation measures that SPP employs to limit the market participant's ability to exercise market power for energy and operating reserves,³⁶⁰ including virtual transactions.³⁶¹

³⁵³ SPP Tariff, Attachment AG § 3.1; *see also* Bylaws § 3.17 ("The market monitoring unit shall report to the Board of Directors, except that any management representatives on the Board of Directors are excluded from oversight of the internal market monitor.").

³⁵⁴ SPP Tariff, Attachment AG § 3.1.

³⁵⁵ *See* Order No. 719 at PP 353-54 (establishing the "core" functions of RTO market monitors).

³⁵⁶ SPP Tariff, Attachment AG § 1.3.1.

³⁵⁷ *Id.*, Attachment AG §§ 3.2, 4.3, 4.4.

³⁵⁸ *Id.*, Attachment AG § 4.6.2.

³⁵⁹ *Id.*

³⁶⁰ *See generally* SPP Tariff, Attachment AF § 3.

³⁶¹ *See generally id.*, Attachment AF § 4.

In addition, the Market Monitor reviews the performance of SPP markets and, if it identifies any weaknesses or failures in market design and market rules, it is required to advise SPP, FERC, state regulatory commissions, market participants, and organizational groups.³⁶² Where such disclosure could lead to exploitation, the Market Monitor is empowered to limit its disclosure of such flaws to the President of SPP, the chairman of the SPP Board of Directors' Oversight Committee, and FERC.³⁶³ In the event that the identified weakness or failure requires immediate corrective action to ensure just and reasonable prices, the Market Monitor may request that the President of SPP authorize an immediate FERC filing requesting implementation of a corrective action.³⁶⁴

In addition to the rule and market enforcement provisions set forth in the Tariff, the Bylaws provide for the monitoring of member compliance with the Bylaws and Membership Agreement, including collecting information needed to investigate all facets of possible non-compliance and possible imposition of penalties or other sanctions for non-compliance associated with the results of investigations or audits pursuant to approved standards, policies, or criteria.³⁶⁵ Under the Bylaws and Membership Agreement, the SPP Board of Directors may terminate the membership of any member for cause, including (but not limited to) material violations of the Bylaws or nonpayment of obligations.³⁶⁶

Proposed Order Analysis of Specific Transactions

In its discussion of SEF Core Principle 3 in the Proposed Order, the Commission focused on cash-settled energy transactions, financial transmission rights, and capacity and reserve transactions.³⁶⁷

Cash-Settled Energy Transactions

The purpose of virtual transactions in the Day-Ahead Market is to promote convergence between Day-Ahead Market and Real-Time Balancing Market prices, which reduces price volatility normally found in electric markets.³⁶⁸ Among its other duties, the SPP Market Monitor monitors virtual transactions in the Day-Ahead Market and monitors for excessive divergence

³⁶² *Id.*, Attachment AG §§ 3.2, 6.2.

³⁶³ *Id.*

³⁶⁴ SPP Tariff, Attachment AG § 6.2.

³⁶⁵ Bylaws § 3.16.

³⁶⁶ *Id.* §§ 2.3, 2.4; Membership Agreement § 6.0.

³⁶⁷ *See* Proposed Order at 52,157-58 (summarizing the transaction types upon which the Commission focused its analysis).

³⁶⁸ *See id.* at 52,157.

between Day-Ahead and Real-Time prices due to virtual transactions, and the Tariff provides for mitigation in the event of such excessive divergence.³⁶⁹ In the event that the Market Monitor suspects manipulative trading activity, it is obligated to inform FERC.³⁷⁰

In the Proposed Order, the Commission acknowledged “that [market monitoring units] operated by each of the [Prior Requesters] have been organized in such a way that both the Real-Time and Day-Ahead markets are monitored to identify suspicious trading activity,” and that the market monitoring unit notifies FERC of suspicious trading activity, including transactions involving repeated losses.³⁷¹ The Commission also noted that the market monitoring units of the Prior Requesters “look for manipulative behavior and market power, as well as market flaws (such as persistent non-convergence of Day-Ahead and Real-Time prices), which are fed back into a stakeholder process for changing the market structure and rules.”³⁷² Based on the representations of the Prior Requesters “regarding the surveillance carried out by the [market monitoring units] for each [Prior Requester] and the method by which the Day-Ahead and Real-Time auctions are conducted, it appears that [the Prior Requesters’] policies and procedures to mitigate the susceptibility of Energy Transactions to manipulation are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3.”³⁷³ The same is true for SPP. As demonstrated above, SPP’s Market Monitor has been organized in such a way to monitor both Day-Ahead and Real-Time markets to identify suspicious trading activity and to report such activity to FERC. The Market Monitor looks for manipulative behavior and market power, as well as market flaws, and advises SPP, FERC, stakeholders, and others of such flaws.

Financial Transmission Rights

Section 7 of Attachment AE of the SPP Tariff lays out detailed rules for the allocation, auction, and trading of ARRs and TCRs.³⁷⁴ Additionally, SPP’s Market Monitor monitors for potential market power manipulation and abuse in all SPP markets, including the TCR market, recommends modifications to market design and rules to address perceived market design flaws, and reports suspected and confirmed market power abuse to the attention of FERC’s Office of Enforcement.³⁷⁵ Additionally, as stated in Attachment D, above, SPP has stringent credit and collateral requirements for market participants transacting in the TCR markets. In compliance with FERC Order No. 741, unsecured credit is unavailable for TCR activity. Under the SPP

³⁶⁹ SPP Tariff, Attachment AG §§ 4.2, 4.6; *see also id.* at Attachment AF § 4.

³⁷⁰ *Id.*, Attachment AG § 4.3, 4.4, 4.6.

³⁷¹ Proposed Order at 52,157.

³⁷² *Id.* at 52,157-58.

³⁷³ *Id.* at 52,158.

³⁷⁴ SPP Tariff, Attachment AE § 7.

³⁷⁵ *Id.*, Attachment AG §§ 1.2, 1.3, 3.2, 4.3, 4.4.

credit policy, SPP calculates a TCR Credit Requirement for a market participant's holding of TCRs and/or participating in a TCR auction that must be satisfied by providing financial security.³⁷⁶ Under the credit policy, SPP will evaluate if market participants have sufficient financial security to support their TCR bids and offers to determine whether they can be submitted.³⁷⁷

In the Proposed Order's analysis, the Commission noted that both the Prior Requesters and "their respective [market monitoring units] conduct market surveillance of both the Real-Time and Day-Ahead markets to identify manipulation of the price of electricity," and that in "the event unusual trading activity is detected by the [market monitoring units, they] will immediately contact FERC. . . so that an investigation into the unusual activity may begin."³⁷⁸ The Commission also observed that while "the price of FTRs may be altered by the manipulation of the Real-Time or Day-Ahead markets, FERC requires that the [Prior Requesters] have systems to monitor for such activity."³⁷⁹ On that basis, the "Commission believes that the [Prior Requesters] policies and procedures should mitigate the susceptibility of FTRs to manipulation" and that they "are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 3 in the context of [Prior Requesters'] activities with respect to FTRs."³⁸⁰ The same is true for SPP. As demonstrated above, the SPP Market Monitor monitors the Day-Ahead and Real-Time Markets, as well as ARR and TCR allocation, auction, and trading, and reports suspected market abuses to FERC for possible investigation.

Capacity and Reserve Transactions

SPP has not proposed a capacity market. With respect to operating reserves, like the Prior Requesters, SPP's market monitoring and mitigation measures apply to both energy and operating reserve transactions. In its analysis of SEF Core Principle 3 in the Proposed Order, the Commission noted that "the [Prior Requesters'] would apply the same oversight policies and procedures to Capacity and Reserve Transactions as they apply to Energy Transactions and FTRs," which the Commission found "appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 3 in the context of [the Prior Requesters'] activities with respect to Capacity and Reserve Transactions."³⁸¹ As demonstrated above, the same is true for SPP.

³⁷⁶ *Id.*, Attachment X § 5A.1.1.

³⁷⁷ SPP Tariff, Attachment X § 5A.6.

³⁷⁸ Proposed Order at 52,158.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

Attachment V

SEF Core Principle 4: Monitoring of Trading and Trade Processing

The swap execution facility shall –

(A) establish and enforce rules or terms and conditions defining, or specifications detailing –

(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

Response:

SPP has established detailed and enforceable rules, terms, and conditions for transacting in the Integrated Marketplace. Attachment AE of the SPP Tariff sets forth the practices and procedures for transacting in the Integrated Marketplace and defines the various markets and products, as well as the rules for trading in such markets. Attachment X of the SPP Tariff establishes market participant eligibility rules for trading in the Integrated Marketplace, including specific financial security rules for trading in the TCR market. The IM Protocols contain further details regarding the rules, terms, conditions, practices, and procedures for the Integrated Marketplace. Collectively, these rules govern the manner in which energy, operating reserve, and TCRs are traded and tracked in the Integrated Marketplace.

Like the other RTOs, SPP offers ARR to eligible transmission customers to address their exposure to transmission congestion costs, which is based on their transmission service or network load, with SPP performing a simultaneous feasibility analysis to ensure that ARR awards do not exceed physical system capability.³⁸² SPP then conducts auctions for TCRs, and also oversees a secondary TCR market.³⁸³ SPP systems track ownership of ARRs and TCRs, including transfers of TCR ownership in the secondary market and SPP verifies that secondary TCR owners qualify under SPP's TCR creditworthiness requirements.³⁸⁴

³⁸² See generally SPP Tariff, Attachment AE §§ 7.1-7.2, 7.6.

³⁸³ See generally *id.*, Attachment AE §§ 7.3-7.7.

³⁸⁴ *Id.*, Attachment AE § 7.7.

SPP has developed market monitoring and mitigation plans that apply to all markets and services under the SPP Tariff.³⁸⁵ The Market Monitor monitors the SPP markets to identify any potential or actual manipulative behavior and market design flaws.³⁸⁶ When potential or actual market power abuse or manipulation is identified, Attachment AF of the SPP Tariff provides detailed mitigation procedures, and Attachment AG sets forth procedures for the Market Monitor to report or refer suspected or actual market violations to FERC's Office of Enforcement, and to report market design flaws to the SPP Board of Directors, management, FERC staff, and others.³⁸⁷ Additional supplementary market monitoring and mitigation provisions are contained in the IM Protocols.

FERC Order Nos. 719 and 2000 require RTOs to employ a Market Monitor to monitor the conduct of both the RTO and its market participants with regard to all RTO markets and services.³⁸⁸ The SPP Market Monitor is an independent department within SPP that reports directly to the SPP Board of Directors, except that the President of SPP (a member of the Board of Directors) is excluded from participating in oversight of the Market Monitor.³⁸⁹ SPP is obligated to ensure that the Market Monitor is appropriately staffed and provided with sufficient resources and access to data to carry out its duties under the Tariff.³⁹⁰

The Tariff sets forth SPP's market monitoring plan (Attachment AG) and market power mitigation plan (Attachment AF). The Market Monitor is required to fulfill certain core functions,³⁹¹ including among them: (1) monitoring and reporting on possible abuses of horizontal and vertical market power and gaming; (2) identifying market design flaws and recommending changes to market design; and (3) monitoring market participant compliance with market rules.³⁹² The Market Monitor monitors transactions in all SPP markets and services

³⁸⁵ Attachments H and T, above, also discuss SPP's market monitoring and mitigation plans, and also are applicable to this Attachment.

³⁸⁶ *See generally id.*, Attachment AG §§ 4, 6.

³⁸⁷ SPP Tariff, Attachment AG §§ 1.3, 3.2.

³⁸⁸ Order No. 2000 at 31,155-57; Order No. 719 at PP 326-32, 339-44, 353-60; *see also* Bylaws § 3.17 (stating that "SPP shall establish and provide appropriate support to a market monitoring function in accordance with its OATT"); SPP Tariff, Attachment AG §§ 1.3, 4.1.

³⁸⁹ SPP Tariff, Attachment AG § 3.1; *see also* Bylaws § 3.17 ("The market monitoring unit shall report to the Board of Directors, except that any management representatives on the Board of Directors are excluded from oversight of the internal market monitor.").

³⁹⁰ SPP Tariff, Attachment AG § 3.1.

³⁹¹ *See* Order No. 719 at PP 353-54 (establishing the "core" functions of RTO market monitors).

³⁹² SPP Tariff, Attachment AG § 1.3.1.

(including, among other things, the Day-Ahead Market (including virtual transactions), Real-Time Balancing Market, and TCR markets), and is obligated to report any instances of market behavior or potential market manipulation that may require investigation to FERC’s Office of Enforcement.³⁹³ Market participants are forbidden from engaging in market manipulation, which the Tariff defines as “actions or transactions that are without a legitimate business purpose and that are intended to, or foreseeably could, manipulate market prices, market conditions, or market rules for electric energy or electric products.”³⁹⁴ The Market Monitor also monitors for price divergence between the Day-Ahead Market and Real-Time Balancing Market,³⁹⁵ and if the Market Monitor identifies one or more market participants as having caused excessive price divergence through virtual trading, SPP imposes mitigation under the market power mitigation plan set forth in Attachment AF of the Tariff.³⁹⁶

In the event that a market participant is determined to possess market power in certain products and/or during certain periods, Attachment AF of the Tariff sets forth several market power mitigation measures that SPP employs to limit the market participant’s ability to exercise market power for energy and operating reserves,³⁹⁷ including virtual transactions.³⁹⁸

In addition, the Market Monitor reviews the performance of SPP markets and, if it identifies any weaknesses or failures in market design and market rules, it is required to advise SPP, FERC, state regulatory commissions, market participants, and organizational groups.³⁹⁹ Where such disclosure could lead to exploitation, the Market Monitor is empowered to limit its disclosure of such flaws to the President of SPP, the chairman of the SPP Board of Directors’ Oversight Committee, and FERC.⁴⁰⁰ In the event that the identified weakness or failure requires immediate corrective action to ensure just and reasonable prices, the Market Monitor may request that the President of SPP authorize an immediate FERC filing requesting implementation of a corrective action.⁴⁰¹

³⁹³ *Id.*, Attachment AG §§ 3.2, 4.3, 4.4.

³⁹⁴ *Id.*, Attachment AE § 2.3; *see also id.*, Attachment AG § 4.4.

³⁹⁵ SPP Tariff, Attachment AG § 4.6.2.

³⁹⁶ *Id.*

³⁹⁷ *See generally id.*, Attachment AF § 3.

³⁹⁸ *See generally id.*, Attachment AF § 4.

³⁹⁹ SPP Tariff, Attachment AG §§ 3.2, 6.2.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*, Attachment AG § 6.2.

With regard to payment for services, the Tariff sets forth provisions for SPP to address a transmission customer or market participant’s failure to pay invoices when due. The Tariff contains provisions for SPP to suspend or terminate service for a market participant’s failure to pay its invoices for services provided in the Integrated Marketplace or for failure to comply with SPP’s credit policy.⁴⁰² Section 7 of the Tariff similarly enables SPP to initiate proceedings at FERC to suspend or terminate transmission service when a customer fails to pay its invoice.⁴⁰³

In addition to the rule and market enforcement provisions set forth in the Tariff, the Bylaws provide for the monitoring of member compliance with the Bylaws and Membership Agreement, including collecting information needed to investigate all facets of possible non-compliance and possible imposition of penalties or other sanctions for non-compliance associated with the results of investigations or audits pursuant to approved standards, policies, or criteria.⁴⁰⁴ Under the Bylaws and Membership Agreement, the SPP Board of Directors may terminate the membership of any member for cause, including (but not limited to) material violations of the Bylaws or nonpayment of obligations.⁴⁰⁵

In the Proposed Order’s analysis, the Commission noted that the Prior Requesters have rules in place governing the submission of energy bid and offers, and systems that enable the market monitoring units to track energy transactions to identify trading activity that could be manipulative.⁴⁰⁶ The Commission noted that these policies and procedures “appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of [the Prior Requesters’] activities with respect to Energy Transactions.”⁴⁰⁷ The Commission also noted, with respect to FTRs, that the Prior Requesters are able to determine which market participants hold FTRs, including during primary allocation and auction of ARRs and FTRs and in secondary FTR markets (with appropriate credit checks for secondary FTR purchasers).⁴⁰⁸ The Commission observed that the Prior Requesters “do not perform an analysis to determine whether a member is obtaining a large position in the secondary FTR market[, but] only identify which members hold FTRs in the secondary market.”⁴⁰⁹ However, the Commission determined, based on the Prior Requesters’ representations, that “it appears that the [Prior Requesters’] policies and procedures regarding the monitoring of trading and trade processing

⁴⁰² See generally *id.*, Attachment X § 8.

⁴⁰³ SPP Tariff § 7.4.

⁴⁰⁴ Bylaws § 3.16.

⁴⁰⁵ *Id.* §§ 2.3, 2.4; Membership Agreement § 6.0.

⁴⁰⁶ Proposed Order at 52,158.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* at 52,159.

⁴⁰⁹ *Id.*

are consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of [the Prior Requesters’] activities with respect to FTRs.”⁴¹⁰ Finally, with respect to reserve transactions, the Commission noted that the Prior Requesters’ “policies and procedures regarding the monitoring of trading and trade processing appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 4 in the context of [the Prior Requesters’] activities with respect to . . . Reserve Transactions.”⁴¹¹

The same is true for SPP. As demonstrated above in this Attachment V, SPP has rules and procedures in place governing the submission of energy bid and offers and systems that enable the Market Monitor to track energy transactions to identify trading activity that could be manipulative. SPP also has systems in place to track which market participants hold TCRs, including during primary allocation and auction of ARR and TCRs and in secondary TCR markets, and conducts appropriate credit checks for all TCR holders including secondary purchasers.

⁴¹⁰ Proposed Order at 52,159.

⁴¹¹ *Id.*

Attachment W

SEF Core Principle 5: Ability to Obtain Information

The swap execution facility shall –

- (A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;
- (B) provide the information to the Commission on request; and
- (C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

Response:

SPP has established rules requiring market participants to provide data and information and enabling disclosure of such information to FERC or the Commission upon request. Market participants are required to provide data and information that the Market Monitor requires upon request to fulfill its duties under the market monitoring and mitigation plans set forth in Attachments AF and AG of the SPP Tariff, including conducting investigations of market participant conduct.⁴¹² SPP also is required to provide the Market Monitor “access to all Data and Information gathered or generated by SPP in the course of its operations”⁴¹³ for the Market Monitor to fulfill its market monitoring and mitigation obligations. As stated in Attachments J and M, above, SPP and the Market Monitor are authorized to provide confidential information to FERC or the Commission upon request, including information requested “during the course of an investigation or otherwise.”⁴¹⁴

⁴¹² SPP Tariff, Attachment AG §§ 8 (“The Market Monitor shall regularly collect and maintain Data and Information necessary for monitoring Markets and Services and implementing mitigation protocols.”), 8.3 (requiring market participants to retain data and provide it to the Market Monitor upon request, including specified data and information as well as “any additional Data and Information” needed “by the Market Monitor for the purpose of fulfilling its responsibilities,” which include monitoring and investigating market participant conduct in the SPP markets).

⁴¹³ SPP Tariff, Attachment AG § 8.2.

⁴¹⁴ *E.g.*, SPP Tariff, Attachment AE § 11.3. FERC conditionally accepted, subject to a compliance filing, the provisions for disclosure to the Commission, which SPP filed on August 1, 2013, in Docket No. ER13-2091-000. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

SPP also has adopted procedures to allow for disclosure to FERC,⁴¹⁵ the Commission,⁴¹⁶ and state regulatory agencies⁴¹⁷ of confidential information it receives from market participants. These procedures apply both to SPP and to the Market Monitor. Generally, if SPP receives a request that involves a market participant's confidential information, SPP is required to provide notice to such market participant(s).⁴¹⁸ However, such notice is not provided when the Commission or FERC or their respective staffs are the party requesting the confidential information.

The SPP Tariff establishes procedures for SPP's sharing of market-related data (and applicable confidentiality protections thereof) with the Market Monitor, market participants, FERC, and state regulatory agencies.⁴¹⁹ SPP is generally prohibited from sharing confidential market participant data with other market participants; however, SPP is authorized to disclose composite market data, documents, and other information that may be developed based on confidential market participant data.⁴²⁰ SPP also is authorized to provide data, including confidential market participant information, to certain regulatory agencies and organizations – such as FERC, state regulatory commissions, and NERC – and to Transmission Owners, subject to certain conditions and applicable confidentiality agreements.⁴²¹

In its analysis in the Proposed Order, the Commission noted that each of the Prior Requesters “represents that it has rules in place that require market participants to submit information to [the Prior Requesters] upon request so that [the Prior Requesters] may conduct investigations and provide or give access to such information to their market monitors and FERC or PUCT, as applicable.”⁴²² The Commission determined that, “[o]n the basis of these representations, it appears that [the Prior Requesters'] practices are consistent with, and sufficiently accomplish, the regulatory goals of SEF Core Principle 5.”⁴²³ The same is true for SPP. As demonstrated above in this Attachment W, SPP has rules in place to require market

⁴¹⁵ SPP Tariff, Attachment AE §§ 11.3(1) & (2).

⁴¹⁶ *Id.*, Attachment AE §§ 11.3(1) & (3).

⁴¹⁷ *Id.*, Attachment AE § 11.4.

⁴¹⁸ *Id.*, Attachment AE § 11.6.

⁴¹⁹ *See generally id.*, Attachment AE § 11.

⁴²⁰ SPP Tariff, Attachment AE § 11.1.4(1).

⁴²¹ *See, e.g., id.*, Attachment AE §§ 11.1.4(2) (NERC provisions), 11.1.4(4) (Transmission Owner provisions), 11.3 (FERC provisions).

⁴²² Proposed Order at 52,159.

⁴²³ *Id.*

participants to submit information upon request to enable SPP, the Market Monitor, FERC, or the Commission to gain access to information to conduct investigations.

Attachment X

SEF Core Principle 6: Position Limits or Accountability

(A) IN GENERAL. – To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) POSITION LIMITS. – For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall –

- (i) set its position limitation at a level no higher than the Commission limitation; and
- (ii) monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

Response:

The physical capabilities of SPP's transmission system limit the size of positions that any single market participant can take at a particular time. SPP's simultaneous feasibility analysis limits the overall amount of ARRs and TCRs that can be created to the physical capability of the transmission system.⁴²⁴ The aggregate cleared volume of both physical and cash-settled energy transactions (i.e. Real-Time and Day-Ahead (including virtual) transactions) for any period of time is limited by the physical capability of the electric energy transmission system operated by SPP for that period of time. In addition, Operating Reserve Transactions have the value, quantity, and specifications for any period of time limited to the physical capability of the electric energy transmission system operated by SPP for that period of time.

In addition, for individual participants, the SPP credit policy includes requirements that limit a participant's transactions based on its unsecured credit allowance and financial security. Additionally, Articles 4A and 5A of Attachment X of the SPP Tariff, SPP's credit policy, provide specific credit rules for virtual transactions and TCRs. The credit policy also provides for SPP approval of virtual energy bids and offers in the Day-Ahead Market and for TCR bids and offers in the TCR auctions based on a market participant's available credit and financial security to support the positions.⁴²⁵ As stated in Attachment D, above, in compliance with FERC Order No. 741, unsecured credit is unavailable for TCR activity. Under the SPP credit policy, SPP calculates a TCR Credit Requirement for a market participant's holding of TCRs and/or participating in a TCR auction that must be satisfied by providing financial security.⁴²⁶ Under

⁴²⁴ See SPP Tariff, Attachment AE §§ 7.2, 7.3.2, 7.4.2, 7.4.3, 7.5.4.

⁴²⁵ *Id.*, Attachment X §§ 4A.1.2, 4A.3, 5A.1.2, 5A.6.1.

⁴²⁶ *Id.*, Attachment X § 5A.1.1.

the credit policy, SPP will evaluate if market participants have sufficient financial security to support their TCR bids and offers to determine whether they can be submitted.⁴²⁷

SPP's ARR rules do not impose expressly enumerated position limits on market participants. SPP uses a simultaneous feasibility test to limit the total number of ARRs available for allocation.⁴²⁸ SPP grants ARRs through its allocation process to eligible transmission customers based on transmission reservations or network load, based on simultaneous feasibility.⁴²⁹ Only "Eligible Entities" as defined in the IM Protocols can participate in the ARR allocation process. TCRs are awarded via auction or self-conversion of ARRs.⁴³⁰ Prior to the first TCR auction, ARRs can be converted into TCRs by ARR holders seeking to hedge their congestion risk.⁴³¹ This reduces the TCRs available for auction to other market participants, and as a result prevents any entity from acquiring an excessive share of TCRs. SPP's simultaneous feasibility analysis limits the overall amount of TCRs that can be created to the physical capability of the transmission system.⁴³²

SPP's allocation rules sufficiently protect against one or a few holders gaining large concentrations of ARRs.

The SPP Market Monitor monitors SPP's markets to ensure that the SPP market participants do not manipulate the market.

Additionally, as stated in Attachment D above, pursuant to the credit policy, SPP determines a market participants' creditworthiness, Total Potential Exposure, the amount of credit the credit customer requires, and whether to grant (and the amount of any) unsecured credit. SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for profit entity. Through the creditworthiness analysis, SPP

⁴²⁷ *Id.*, Attachment X § 5A.6.

⁴²⁸ *Id.*, Attachment AE §§ 7.2, 7.5.4.

⁴²⁹ *See* SPP Tariff, Attachment AE §§ 7.1, 7.2.

⁴³⁰ *Id.*, Attachment AE § 7.3.

⁴³¹ FERC also recently accepted revisions to Article 5A of Attachment X of the Integrated Marketplace Tariff to permit the netting of credit positions associated with TCRs self-converted from ARRs during the time frame between the requested conversion and the subsequent publication of TCR Auction clearing results. *Sw. Power Pool, Inc.*, FERC Docket No. ER14-1357-000, Letter Order (Apr. 11, 2014).

⁴³² *See id.*, Attachment AE §§ 7.3.2, 7.4.2, 7.4.3.

determines the unsecured credit allowance it will provide a market participant based on the creditworthiness score and a percentage of the tangible net worth of the market participant.⁴³³

Under the credit policy, and consistent with FERC Order No. 741, a market participant may not have an unsecured credit allowance in excess of \$25 million.⁴³⁴ Additionally, the \$25 million unsecured credit limit would apply to all affiliates that are granted an unsecured credit allowance as if all of the affiliates were a single market participant.⁴³⁵ SPP also has the right to continuously modify a market participant's unsecured credit allowance or required financial security.⁴³⁶ A market participant's total credit limit is the sum of its unsecured credit allowance and financial security it has provided to SPP.

Pursuant to the SPP credit policy, SPP calculates the Total Potential Exposure as a sum of Market Exposure and Transmission Service Potential Exposure.⁴³⁷ The Market Exposure includes invoiced market settlement charges, calculated but not yet invoiced market settlement charges, the maximum estimated market exposure for Real-Time Balancing Market activity, the maximum estimated market exposure for Day-Ahead Market activity, and the estimated virtual exposure related to virtual energy bids and offers.⁴³⁸

Pursuant to Section 5.3 of the credit policy, each market participant is required to maintain its Total Potential Exposure to a value equal to or less than its Total Credit Limit excluding any financial security required for its TCR activity. SPP will monitor each market participant's use of services and associated financial obligations. SPP notifies a market participant if its Total Potential Exposure equals or exceeds 90% of its Total Credit Limit.

Section 5.3.2 of Attachment X provides that a market participant can cure a Total Potential Exposure Violation by paying SPP invoices to reduce its Total Potential Exposure and/or providing additional financial security. Market participants have two business days from receipt of notice from SPP to cure a violation, consistent with FERC Order No. 741. Under Section 5.3.3, a credit customer's failure to cure a Total Potential Exposure Violation is a Default.

⁴³³ *Id.*, Attachment X § 4.3.

⁴³⁴ SPP Tariff, Attachment X § 4.3.2.1.

⁴³⁵ *Id.*, Attachment X § 4.3.4.1.

⁴³⁶ *Id.*

⁴³⁷ *Id.*, Attachment X, Art. 5.

⁴³⁸ Article 4A of Attachment X sets forth the calculations regarding estimated virtual energy bids and offers. It also includes procedures that will limit a market participant's virtual energy bids and offers based on the market participant's available credit. SPP Tariff, Attachment X § 4A.3.

In the Proposed Order’s analysis regarding SEF Core Principle 6, the Commission explained that the Prior Requesters are subject to market monitoring units but “do not have position limits or position accountability thresholds for speculators in order to reduce the potential threat of market manipulation or congestion.”⁴³⁹ The Commission sought comment on whether the lack of such limits or thresholds would prevent the Commission from determining that the proposed exemption was in the public interest.⁴⁴⁰ In the Final Order, the Commission did “not impose position limits on the Covered Transactions” and “accept[ed] the [Prior Requesters’] representations that the physical capability of their transmission grids limits the size of positions that any single market participant can take at a given time.”⁴⁴¹ The Commission further found that based on the representations, the Proposed Order found that “each category of exempted transaction, including FTRs, would be limited by the physical capability of the electric energy transmission system.”⁴⁴² The Commission concluded that because the Final Order limits each Covered Transaction category to the physical capability of the transmission grid, it was not necessary to impose position limits on the Covered Transaction for the Commission to be able to make the required public interest and purposes of the CEA determinations.⁴⁴³ The same is true for SPP. As demonstrated above, the SPP markets are monitored by the SPP Market Monitor. In addition, the physical capability of SPP’s transmission grid limits the size of positions that any single market participant can take at a given time and each category of the requested transactions for exemption, including TCRs, is limited by the physical capability of the electric energy transmission system.

⁴³⁹ Proposed Order at 52,159.

⁴⁴⁰ *Id.*

⁴⁴¹ Final Order at 19,902.

⁴⁴² *Id.*

⁴⁴³ *Id.*

Attachment Y

SEF Core Principle 7: Financial Integrity of Transactions

The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2 (h)(1) of this title.

Response:

As stated in Attachment D, above, the SPP manages risk associated with operating its wholesale and related markets.

Risk Management Framework

SPP's risk management provisions provide SPP with appropriate tools and procedures to manage risk associated with operating its wholesale and related markets. These provisions are set forth in the SPP Tariff, including the SPP credit policy in Attachment X of the SPP Tariff. The provisions also are consistent with FERC's Order No. 741 requirements, which required SPP to revise its Tariff regarding the tools and procedures that RTOs use to manage risk. SPP's credit policy defines the forms of collateral that market participants may provide, includes the formulas for determining the amount of collateral or unsecured credit a market participant is required to have, and states when additional collateral may be required. The risk management procedures are tailored to the unique environment of SPP as an RTO and the products in the SPP Integrated Marketplace. The SPP credit policy is intended to encourage maximum participation of large and small participants from various sectors while minimizing the likelihood of losses due to defaults. The credit policy provides for initial and ongoing assessments using qualitative and quantitative credit scoring under formulas and procedures.

In compliance with FERC's Order No. 741, SPP's credit policy in Attachment X of the SPP Tariff includes minimum capitalization requirements and an attestation of a market participant's risk management capabilities.⁴⁴⁴ The attestation requires that the market participant describe its risk management capabilities and procedures and whether it is engaged in hedging, describe the employees who perform the risk management procedures, define the special training, skills, experience, and industry tenure of those employees, and provide any additional information in determining the risk management capabilities of the market participant.⁴⁴⁵ Market participants also are required to notify SPP of material adverse changes in their financial conditions.⁴⁴⁶

⁴⁴⁴ SPP Tariff, Attachment X §§ 3.1.1.6, 3.1.1.8.

⁴⁴⁵ *Id.*, Attachment X § 3.1.1.6.

⁴⁴⁶ *Id.*, Attachment X § 3.2.7.

Attachment X also provides the process by which SPP will periodically review and verify a market participant's risk management policies, practices, and procedures pertaining to its activities in SPP.⁴⁴⁷ SPP may select market participants "for review on a random basis and/or based on identified risk factors such as, but not limited to, the SPP markets in which the Market Participant is transacting, the magnitude of the Market Participant's transactions, or the volume of the Market Participant's open positions."⁴⁴⁸ Successful completion of SPP's verification is required for a selected market participant's continued eligibility to participate in the SPP markets.

FERC recently approved revisions to SPP's Tariff to include minimum eligibility requirements to be consistent with the Final Order's appropriate person requirement.⁴⁴⁹ Specifically, in order to participate in the Integrated Marketplace, each market participant must demonstrate to SPP that it qualifies as (a) an appropriate person as that term is defined under Section 4(c)(3)(A) through (J) of the CEA; (b) an eligible contract participant as that term is defined in Section 1(a)(18) of the CEA; or (c) a person or entity that is in the business of: (i) generating transmitting or distributing electric energy or (2) providing electric services that are necessary to support the reliable operation of the transmission system.⁴⁵⁰

The credit policy also includes procedures for SPP to complete credit assessments. Attachment X specifies the criteria that each market participant must meet to be allowed any unsecured credit allowance for market trading purposes. SPP completes such credit assessments at least annually. SPP also has access to and reviews multiple rating agency and industry advisories on market participant activities.

Consistent with FERC Order No. 741's requirements, SPP will implement weekly invoicing for Integrated Marketplace activity, with market participants required to pay amounts due on the third business day after the date of the invoice.⁴⁵¹

Further, in compliance with FERC Order No. 741's requirement to establish the ability to net and offset market obligations in bankruptcy, SPP is the counterparty to certain market

⁴⁴⁷ *Id.*, Attachment X § 3.1.1.9.

⁴⁴⁸ SPP Tariff, Attachment X § 3.1.1.9.

⁴⁴⁹ Final Order at 19,900.

⁴⁵⁰ SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing on other Tariff provisions related to information sharing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁴⁵¹ SPP Tariff, Attachment AE § 10.2.

transactions that are pooled within the Integrated Marketplace.⁴⁵² SPP also is the counterparty with each market participant for that market participant's Integrated Marketplace agreements and transactions in the TCR Market, Day-Ahead Market, and Real-Time Balancing Market, with specified exclusions regarding bilateral transactions between market participants, and self-committed, self-scheduled, and self-supplied arrangements.⁴⁵³ SPP also is the counterparty to TCR and ARR instruments held by market participants.⁴⁵⁴

Measurement and Monitoring of Credit Exposure, Unsecured Credit

Pursuant to the credit policy, SPP determines a market participants' creditworthiness, Total Potential Exposure, the amount of credit the credit customer requires, and whether to grant (and the amount of any) unsecured credit. SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for profit entity. Through the creditworthiness analysis, SPP determines the unsecured credit allowance it will provide to a market participant based on the creditworthiness score and a percentage of the tangible net worth of the market participant.⁴⁵⁵

Under the credit policy, and consistent with FERC Order No. 741, a market participant may not have an unsecured credit allowance in excess of \$25 million.⁴⁵⁶ Additionally, the \$25 million unsecured credit limit would apply to all affiliates that are granted an unsecured credit allowance as if all of the affiliates were a single market participant.⁴⁵⁷ SPP also has the right to continuously modify a market participant's unsecured credit allowance or required financial security.⁴⁵⁸ A market participant's total credit limit is the sum of its unsecured credit allowance and financial security it has provided to SPP.

Pursuant to the SPP credit policy, SPP calculates the Total Potential Exposure as a sum of Market Exposure and Transmission Service Potential Exposure.⁴⁵⁹ The Market Exposure

⁴⁵² *Id.*, Attachment AE § 3.8.

⁴⁵³ *Id.*, Attachment AE § 3.8. Section 3.8.3 also specifies that SPP is not the counterparty to agreements and transaction for transmission service and certain ancillary services, which are not agreements and transactions in the Integrated Marketplace.

⁴⁵⁴ *Id.*, Attachment AE § 3.8.2.

⁴⁵⁵ SPP Tariff, Attachment X § 4.3.

⁴⁵⁶ *Id.*, Attachment X § 4.3.2.1.

⁴⁵⁷ *Id.*, Attachment X § 4.3.4.1.

⁴⁵⁸ *Id.*, Attachment X § 4.3.5.

⁴⁵⁹ SPP Tariff, Attachment X, Art. 5.

includes invoiced market settlement charges, calculated but not yet invoiced market settlement charges, the maximum estimated market exposure for Real-Time Balancing Market activity, the maximum estimated market exposure for Day-Ahead Market activity, and the estimated virtual exposure related to virtual energy bids and offers.⁴⁶⁰

In compliance with FERC Order No. 741, unsecured credit is unavailable for TCR activity. Under the SPP credit policy, SPP calculates a TCR Credit Requirement for a market participant's holding of TCRs and/or participating in a TCR auction that must be satisfied by providing financial security.⁴⁶¹ Under the credit policy, SPP will evaluate if market participants have sufficient financial security to support their TCR bids and offers to determine whether they can be submitted.⁴⁶²

Limiting Exposure to Potential Losses Through the Use of Risk Control Mechanisms and Grace Period to Cure

Pursuant to Section 5.3 of the credit policy, each market participant is required to maintain its Total Potential Exposure to a value equal to or less than its Total Credit Limit excluding any financial security required for its TCR activity. SPP monitors each market participant's use of services and associated financial obligations. SPP notifies a market participant if its Total Potential Exposure equals or exceeds 90% of its Total Credit Limit.

Section 5.3.2 of Attachment X provides that a market participant can cure a Total Potential Exposure Violation by paying SPP invoices to reduce its Total Potential Exposure and/or providing additional financial security. Market participants have two business days from receipt of notice from SPP to cure a violation, consistent with FERC Order No. 741. Under Section 5.3.3, a credit customer's failure to cure a Total Potential Exposure Violation is a Default.

Article 8 of Attachment X of the SPP Tariff specifies the default procedures. It provides that an event of default by a market participant includes: (i) failure of the market participant to post any financial security required under the credit policy; (ii) failure of the market participant to pay in full amounts payable, unless cured; (iii) the market participant is in bankruptcy or has commenced bankruptcy proceedings; (iv) defaults under the credit policy; and (v) failure of the market participant to provide information required under the credit policy in a timely manner. Article 8 includes specified cure periods, including a two business day cure period for most events of default.

⁴⁶⁰ Article 4A of Attachment X sets forth the calculations regarding estimated virtual energy bids and offers. It also includes procedures that will limit a market participant's virtual energy bids and offers based on the market participant's available credit. *Id.*, Attachment X § 4A.3.

⁴⁶¹ *Id.*, Attachment X § 5A.1.1.

⁴⁶² *Id.*, Attachment X § 5A.6.

The SPP Tariff also sets forth the remedies for default. Depending on the timing and number of events of defaults, SPP will suspend any unsecured credit allowances, and if an event of default is not cured, SPP may terminate the market participant's rights under the SPP credit policy and may terminate service in accordance with the SPP Tariff and applicable law.⁴⁶³ If the event of default is that the market participant is in bankruptcy or has commenced bankruptcy proceedings, SPP will immediately suspend the market participant's unsecured credit and may terminate the market participant's rights under the SPP credit policy, and SPP may terminate service in accordance with the SPP Tariff and applicable law.⁴⁶⁴ The SPP Tariff also sets forth procedures to close out and liquidate TCRs held by a defaulting market participant.⁴⁶⁵

Calls for Additional Collateral Due to a Material Adverse Change

Consistent with Order No. 741, Section 3.2.7 of Attachment X of the SPP Tariff requires that market participants provide SPP notice of any Material Adverse Change in its financial position within two business days of the occurrence of the Material Adverse Change. Section 3.2.7 describes that a Material Adverse Change in financial condition includes any material change in operations or financial condition that a reasonable examiner of creditworthiness would deem material, and includes a non-exhaustive list of the types of items that would be a Material Adverse Change. SPP is required to provide notice to a market participant prior to SPP compelling the market participant to post additional Financial Security, requiring the market participant to cease one or more transactions, or taking other measures.

Ability to Offset Market Obligations

As described above, FERC recently accepted SPP's revisions to its Tariff that clarify that SPP will be the counterparty to certain market transactions that are pooled within the Integrated Marketplace. FERC determined that SPP's counterparty provisions are compliant with the requirement in Order No. 741 that RTOs adopt steps to address the risk that RTOs may not be allowed to use netting and set off in the event of a market participant bankruptcy. The SPP Tariff sets forth that SPP will net payments to market participants.⁴⁶⁶

Additionally, SPP plans to submit a separate legal memorandum of outside counsel that SPP's counterparty arrangements (i.e., the arrangements used to satisfy FERC's regulation

⁴⁶³ SPP Tariff, Attachment X § 8.3. The *pro forma* Service Agreement for Market Participants in the Integrated Marketplace also permits SPP to terminate service if a market participant is in default. *Id.*, Attachment AH § 12(b).

⁴⁶⁴ *Id.*, Attachment X § 8.3.

⁴⁶⁵ *Id.*, Attachment AE § 7.8.

⁴⁶⁶ *Id.*, Attachment AE § 10.6.

35.47(d))⁴⁶⁷ will provide SPP with enforceable rights of set off against a market participant in the event of the market participant's bankruptcy.⁴⁶⁸

Conclusion

In the Proposed Order's analysis regarding SEF Core Principle 7, the Commission discussed (a) risk management requirements and credit policies; (b) minimum financial standards and ongoing monitoring for compliance; and (c) establishment of a central counterparty.⁴⁶⁹ The Commission explained that the Prior Requesters represented "that they ensure the financial integrity of transactions that are entered on or through their markets through the risk management requirements and credit policies that apply to their market participants."⁴⁷⁰ The same is true for SPP. As demonstrated above, SPP ensures the financial integrity of transactions that are entered on or through its markets through the risk management requirements and credit policies that apply to SPP's market participants

The Prior Requesters represented that they have: (1) minimum capitalization requirements; (2) risk management policies; (3) procedures and internal controls appropriate to their trading activities in their markets; (4) provisions requiring that a responsible officer of the market participant certify, on an annual basis, that the market participant has risk management policies, procedures, and internal controls appropriate to its trading activities in place; and (5) proposed processes to verify that market participants have such policies, procedures, and internal controls. The Prior Requesters also represented that they have comprehensive and integrated credit policies to manage risk and protect the financial integrity of transactions with market participants.⁴⁷¹ Like the Prior Requesters, SPP also has (1) minimum capitalization requirements; (2) risk management policies; (3) procedures and internal controls appropriate to their trading activities in their markets; (4) provisions requiring that a responsible officer of the market participant certify, on an annual basis, that the market participant has risk management policies, procedures, and internal controls appropriate to its trading activities in place; and (5) proposed processes to verify that market participants have such policies, procedures, and internal

⁴⁶⁷ 18 C.F.R. § 35.47(d) (requires each organized wholesale electric market to have tariff provisions that "[e]stablish a single counterparty to all market participant transactions, or require each market participant in an organized wholesale electric market to grant a security interest to the organized wholesale electric market in the receivables of its transactions, or provide another method of supporting netting that provides a similar level of protection to the market and is approved by [FERC]. In the alternative, the organized wholesale electric market shall not net market participants' transactions and must establish credit based on market participants' gross obligations").

⁴⁶⁸ See Final Order at 19,890-91 (requiring such a memorandum from the Prior Requesters).

⁴⁶⁹ Proposed Order at 52,159-60.

⁴⁷⁰ *Id.* at 52,159.

⁴⁷¹ *Id.* at 52,159-60.

controls. SPP also has an integrated credit policy to manage risk and protect the financial integrity of transactions with market participants.

The Prior Requesters also represented that their policies and procedures require market participants to meet minimum financial standards and creditworthiness standards and that the Prior Requesters monitor their market participants for compliance with these standards on an ongoing basis.⁴⁷² The Prior Requesters also represented that they either are, or planned to become, central counterparties.⁴⁷³ As described above, SPP's policies and procedures require market participants to meet minimum financial standards and creditworthiness standards, SPP monitors their market participants for compliance with these standards on an ongoing basis, and SPP is the counterparty to certain market transactions that are pooled within the Integrated Marketplace.

The Commission concluded that the issues of “risk management requirements, financial standards, and the use of a central counterparty are also addressed within the context of DCO Core Principle D.”⁴⁷⁴ The Commission also explained that its conclusion that the Prior Requesters' policies and procedures are congruent with, and sufficiently accomplish, the regulatory objectives of DCO Core Principle D is relevant in its analysis of SEF Core Principle 7 and that based on that analysis, the Prior Requesters' policies and procedures appear to be consistent with, and to accomplish sufficiently, the regulatory objectives of SEF Core Principle 7 in the context of their activities with respect to the transactions.⁴⁷⁵

⁴⁷² *Id.* at 52,160.

⁴⁷³ Proposed Order at 52,160.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

Attachment Z

SEF Core Principle 8: Emergency Authority

The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

Response:

SPP has adopted rules to address emergencies. The SPP Tariff provides for SPP's response to transmission system emergency conditions related to the physical operation of the system. Additionally, SPP's Tariff includes provisions to address a market participant's default on its obligations, including the ability to liquidate a market participant's TCR positions in the Integrated Marketplace in the event of a default.⁴⁷⁶

As stated in Attachment G, above, SPP's Tariff contains its default procedures.⁴⁷⁷ Article 8 of Attachment X of the SPP Tariff specifies the default procedures. It provides that an event of default by a market participant includes: (i) failure of the market participant to post any financial security required under the credit policy; (ii) failure of the market participant to pay in full amounts payable, unless cured; (iii) the market participant is in bankruptcy or has commenced bankruptcy proceedings; (iv) defaults under the credit policy; and (v) failure of the market participant to provide information required under the credit policy in a timely manner. Article 8 includes specified cure periods, including a two business day cure period for most events of default.

The SPP Tariff also sets forth the remedies for default. Depending on the timing and number of events of defaults, SPP will suspend any unsecured credit allowances, and if an event of default is not cured, SPP may terminate the market participant's rights under the SPP credit policy and may terminate service in accordance with the SPP Tariff and applicable law.⁴⁷⁸ If the event of default is that the market participant is in bankruptcy or has commenced bankruptcy proceedings, SPP will immediately suspend the market participant's unsecured credit and may terminate the market participant's rights under the SPP credit policy, and SPP may terminate

⁴⁷⁶ SPP Tariff, Attachment AE § 7.8.

⁴⁷⁷ *Id.*, Attachment AE § 10.5 (explaining that customer defaults are handled in accordance with the SPP credit policy in Attachment X of the SPP Tariff); *id.*, Attachment X, Art. 8.

⁴⁷⁸ *Id.*, Attachment X § 8.3. The *pro forma* Service Agreement for Market Participants in the Integrated Marketplace also permits SPP to terminate service if a market participant is in default. *Id.*, Attachment AH § 12(b).

service in accordance with the SPP Tariff and applicable law.⁴⁷⁹ The SPP Tariff also sets forth procedures to close out and liquidate TCRs held by a defaulting market participant.⁴⁸⁰

SPP also will be the counterparty with each market participant for that market participant's Integrated Marketplace agreements and transactions in the TCR Market, Day-Ahead Market, and Real-Time Balancing Market, with specified exclusions regarding transmission service and certain ancillary services, bilateral transactions between market participants, and self-committed, self-scheduled, and self-supplied arrangements.⁴⁸¹ SPP also is the counterparty to TCR and ARR instruments held by market participants.⁴⁸² The SPP Tariff also states that SPP will net payments to market participants.⁴⁸³ FERC has found that these arrangements comply with its requirements under Order No. 741.

SPP is revenue neutral with respect to all market transactions and services that SPP provides.⁴⁸⁴ Under the SPP Tariff, revenue shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations.⁴⁸⁵ The SPP Tariff contains similar provisions for failures of a transmission customer to pay invoiced amounts due for transmission service, with such costs being socialized among SPP Transmission Owners.⁴⁸⁶ Attachment AE of the SPP Tariff, which governs operation of the SPP Integrated Marketplace, contains extensive "Revenue Neutrality Uplift" provisions designed to ensure that SPP remains revenue neutral.⁴⁸⁷

If SPP declares that an amount is uncollectible from a defaulting market participant, it will notify market participants by posting a notice on its OASIS, including the amount of the uncollectible obligation, the applicable weeks of service invoiced associated with the

⁴⁷⁹ SPP Tariff, Attachment X § 8.3.

⁴⁸⁰ *Id.*, Attachment AE § 7.8.

⁴⁸¹ *Id.*, Attachment AE § 3.8.

⁴⁸² SPP Tariff, Attachment AE § 3.8.2.

⁴⁸³ *Id.*, Attachment AE § 10.6.

⁴⁸⁴ Attachment B, above, regarding DCO Core Principle B, also includes the discussion regarding SPP's revenue neutrality.

⁴⁸⁵ SPP Tariff, Attachment L § V.C.

⁴⁸⁶ *Id.*, Attachment L § V.D.

⁴⁸⁷ *See, e.g., id.*, Attachment AE §§ 8.5.12 (Transmission Congestion Rights Daily Uplift Amount), 8.7.3 (Auction Revenue Rights Uplift Amount), 8.8 (Revenue Neutrality Uplift Distribution Amount).

uncollectible amount, and the future billing weeks in which SPP will reduce the revenues to be paid to all non-defaulting market participants who conducted business in the market during the time covered by the invoice applicable to the unpaid obligations.⁴⁸⁸

Additionally, if the Market Monitor discovers any weaknesses or failures in market design that requires immediate corrective action, the Market Monitor may request that the President of SPP authorize an immediate FERC filing to implement a corrective action while the appropriate SPP organizational group considers a solution.⁴⁸⁹ SPP has additional Tariff provisions to govern the calculation of market prices in the event of a failure of either the Day-Ahead Market or Real-Time Balancing Market systems, as well as calculation of prices in the event that a portion of the SPP system becomes isolated from the remainder of the market.

In the Proposed Order, the Commission observed that the Prior Requesters “represent[ed] that their Tariffs generally provide a wide range of authorities to address emergency situations,” and that some of the Prior Requesters “have the ability to close out and liquidate all of a market participant’s current and forward FTR positions if the market participant no longer meets creditworthiness requirements, or fails to make timely payment when due, in each case following any opportunity given to cure the deficiency.”⁴⁹⁰ Based on these representations, the Commission observed that “it appears that [the Prior Requesters’] policies and procedures regarding the exercise of emergency authority are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 8 in the context of [the Prior Requesters’] activities with respect to the Transactions.”⁴⁹¹ The same is true for SPP. As demonstrated above in this Attachment Z, SPP has a wide range of procedures in place to address emergency situations, including provisions allowing SPP to close out and liquidate all of a defaulting market participant’s TCR positions.

⁴⁸⁸ *Id.*, Attachment L § V.C.1.

⁴⁸⁹ SPP Tariff, Attachment AG § 6.2.

⁴⁹⁰ Proposed Order at 52,160.

⁴⁹¹ *Id.* at 52,161.

Attachment AA

SEF Core Principle 9: Timely Publication of Trading Information

(A) IN GENERAL. – The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

(B) CAPACITY OF SWAP EXECUTION FACILITY. – The swap execution facility shall be required to have the capacity to electronically capture and transmit trade information with respect to transactions executed on the facility.

Response:

SPP has established Tariff provisions requiring the timely public release of market data on the SPP website and Open Access Same-Time Information System (“OASIS”). Bids and offers in the Integrated Marketplace, including TCRs and virtual transactions, are conducted electronically. ARR allocation data is provided to FERC. TCR Bids, TCR Awards, and TCR transactions are posted to SPP’s website.

As further stated in Attachment J, above, SPP has adopted for the Integrated Marketplace substantial data and information disclosure provisions, which will enable SPP to provide information to the Commission, including information deemed confidential by market participants. First, as a FERC-jurisdictional transmission provider, SPP is obligated at all times to comply with FERC’s regulations requiring establishment of an OASIS, 18 C.F.R. Part 37.⁴⁹²

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See SPP Tariff Part I § 4. Part 37 of FERC’s regulations require SPP to post extensive transmission system management information. First, SPP is obligated to post transmission service request information, such as transmission service products and pricing, including any offers to sell transmission service at a discount, 18 C.F.R. § 37.6(c), and all requests for service and responses to such requests, 18 C.F.R. § 37.6(e). FERC’s OASIS regulations also require SPP to post transmission system information such as available transfer capability, total transfer capability, capacity benefit margin, and transmission reliability margin. 18 C.F.R. § 37.6(b). The regulations require that “information posted on the OASIS must be in such detail and the OASIS must have such capabilities as to allow Transmission Customers to: (1) Make requests for transmission services offered by Transmission Providers, Resellers and other providers of ancillary services, request the designation of a network resource, and request the termination of the designation of a network resource; (2) View and download in standard formats, using standard protocols, information regarding the transmission system necessary to enable prudent business decision making; (3) Post, view, upload and download information regarding available products and desired services; (4) Clearly identify the degree to which transmission service requests or schedules were denied or interrupted; (5) Obtain access, in electronic format, to information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes; and (6) Make file transfers and automated computer-to-computer file transfers (continued . . .)

Additionally, the Tariff requires SPP to publish the results of the Day-Ahead Market by 4:00 pm each day⁴⁹³ and communicate Locational Marginal Prices (“LMP”) and Market Clearing Prices (“MCP”) for each dispatch interval in the Real-Time Balancing Market.⁴⁹⁴ SPP also is required to release all bid and offer data 90 days after the day for which they were submitted, including all Day-Ahead Offers and Bids, and Real-Time Balancing Market energy and operating reserve data.⁴⁹⁵ SPP’s website also provides extensive data regarding market and transmission system operations, policies, and procedures.

In addition to the information disclosure provisions identified above, SPP’s Market Monitor also provides monthly, quarterly, and annual reports to the Board of Directors, which are generally available to the public subject to applicable confidentiality provisions under the Tariff,⁴⁹⁶ as well as an annual “State of the Market Report” addressing performance of the wholesale market, which is provided to FERC, the Board of Directors, state regulatory commissions, market participants, and other interested entities.⁴⁹⁷

Finally, SPP’s Membership Agreement includes a general provision that SPP must comply with all reporting requirements of federal and state regulatory authorities having jurisdiction over SPP with respect to the business aspects of SPP’s operations.⁴⁹⁸ SPP’s Bylaws require SPP to publish and distribute reports as necessary to fulfill SPP’s mission and to develop and maintain electronic databases of relevant technical information, access to which is subject to applicable data disclosure and confidentiality provisions.⁴⁹⁹

In the Proposed Order’s analysis of SEF Core Principle 9, the Commission noted that the Prior Requesters “represent[ed] that their Tariffs generally require the timely publication of trading information,” and that the Prior Requesters “regulated by FERC also assert that they are able to publicly release market operations and grid management information using their Open

(. . . continued)

and queries as defined by the Standards and Communications Protocols Document.” 18 C.F.R § 37.6(a).

⁴⁹³ SPP Tariff, Attachment AE §§ 5.1, 5.1.3.

⁴⁹⁴ *Id.*, Attachment AE § 6.2.3.

⁴⁹⁵ *Id.*, Attachment AE § 9.0.

⁴⁹⁶ *Id.*, Attachment AG §§ 7.1-7.2; *see also* Bylaws § 3.17.

⁴⁹⁷ SPP Tariff, Attachment AG § 7.2; *see also* Bylaws § 3.17 (requiring that public reports submitted to the Board of Directors are concurrently provided to FERC staff, staff of interested state regulatory commissions, SPP management, and market participants).

⁴⁹⁸ Membership Agreement § 2.4.1.

⁴⁹⁹ Bylaws § 3.12.

Access Same-Time Information System (OASIS).”⁵⁰⁰ Based on these representations, the Commission stated that “it appears that [Prior Requesters’] policies and procedures regarding the publication of trading information are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 9 in the context of [the Prior Requesters’] activities with respect to the Transactions.”⁵⁰¹ The same is true for SPP. As demonstrated above in this Attachment AA, SPP’s Tariff requires the timely publication of trading information, and SPP is subject to FERC’s OASIS regulations and publishes market operation and grid management data on the SPP OASIS.

⁵⁰⁰ Proposed Order at 52,161.

⁵⁰¹ *Id.*

Attachment BB

SEF Core Principle 10: Recordkeeping and Reporting

(A) IN GENERAL. – A swap execution facility shall –

(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this chapter; and

(iii) shall keep any such records relating to swaps defined in section 1a (47)(A)(v) of this title open to inspection and examination by the Securities and Exchange Commission.”

(B) REQUIREMENTS. – The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.

Response:

SPP has adopted data retention and disclosure policies and is required to comply with FERC regulations regarding data retention and disclosure.

*Disclosure Policies*⁵⁰²

SPP has adopted for the Integrated Marketplace substantial data and information disclosure provisions, which will enable SPP to provide information to the Commission, including information deemed confidential by market participants. First, as a FERC-jurisdictional transmission provider, SPP is obligated to comply with FERC’s regulations requiring establishment of an OASIS, 18 C.F.R. Part 37.⁵⁰³ Additionally, the Tariff specifies that SPP will publish the results of the Day-Ahead Market by 4:00 pm each day⁵⁰⁴ and communicate Locational Marginal Prices (“LMP”) and Market Clearing Prices (“MCP”) for each dispatch interval in the Real-Time Balancing Market.⁵⁰⁵ SPP also is required to release all bid and offer data 90 days after the day for which they were submitted, including all Day-Ahead Offers and

⁵⁰² Attachments J and M, above, contain similar descriptions, which also are applicable to this Attachment.

⁵⁰³ SPP Tariff § 4. Attachment AA above provides additional information regarding the information posting requirements under FERC’s OASIS regulations, 18 C.F.R. Part 37.

⁵⁰⁴ *Id.*, Attachment AE §§ 5.1, 5.1.3.

⁵⁰⁵ *Id.*, Attachment AE § 6.2.3.

Bids, and Real-Time Balancing Market energy and operating reserve data.⁵⁰⁶ SPP's website also provides extensive data regarding market and transmission system operations, policies, and procedures.

SPP also has adopted procedures to allow for disclosure to the Commission,⁵⁰⁷ FERC⁵⁰⁸ and state regulatory agencies⁵⁰⁹ of confidential information it receives from market participants. These procedures apply both to SPP and to the Market Monitor. FERC recently approved that Tariff revisions that extended the disclosure provisions that apply to information requests from FERC to requests from the Commission.⁵¹⁰ Generally, if SPP receives a request that involves a market participant's confidential information, SPP is required to provide notice to such market participant(s).⁵¹¹ However, such notice is not provided when the Commission or FERC or their respective staffs are the party requesting the confidential information.

In addition to the information disclosure provisions identified above, SPP's Market Monitor also provides monthly, quarterly, and annual reports to the Board of Directors, which are generally available to the public subject to applicable confidentiality provisions under the Tariff,⁵¹² as well as an annual "State of the Market Report" addressing performance of the wholesale market, which is provided to FERC, the Board of Directors, state regulatory commissions, market participants, and other interested entities.⁵¹³

Finally, SPP's Membership Agreement includes a general provision that SPP must comply with all reporting requirements of federal and state regulatory authorities having

⁵⁰⁶ *Id.*, Attachment AE § 9.0.

⁵⁰⁷ *Id.*, Attachment AE § 11.3.

⁵⁰⁸ *Id.*

⁵⁰⁹ SPP Tariff, Attachment AE § 11.4.

⁵¹⁰ SPP filed these Tariff revisions with FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁵¹¹ SPP Tariff, Attachment AE § 11.6.

⁵¹² *Id.*, Attachment AG §§ 7.1-7.2; *see also* Bylaws § 3.17.

⁵¹³ SPP Tariff, Attachment AG § 7.2; *see also* Bylaws § 3.17 (requiring that public reports submitted to the Board of Directors are concurrently provided to FERC staff, staff of interested state regulatory commissions, SPP management, and market participants).

jurisdiction over SPP with respect to the business aspects of SPP's operations.⁵¹⁴ SPP's Bylaws require SPP to publish and distribute reports as necessary to fulfill SPP's mission and to develop and maintain electronic databases of relevant technical information, access to which is subject to applicable data disclosure and confidentiality provisions.⁵¹⁵

*Information Sharing*⁵¹⁶

Several provisions in SPP's governing documents and Standards of Conduct govern SPP's information sharing with SPP members, market participants, regulatory agencies, and other stakeholders. For example, the SPP Tariff establishes procedures for SPP's sharing of market-related data (and applicable confidentiality protections thereof) with the Market Monitor, market participants, FERC, and state regulatory agencies.⁵¹⁷ SPP is generally prohibited from sharing confidential market participant data with other market participants; however, SPP is authorized to disclose composite market data, documents, and other information that may be developed based on confidential market participant data.⁵¹⁸ SPP also is authorized to provide data, including confidential market participant information, to certain regulatory agencies and organizations – such as the Commission, FERC, state regulatory commissions, and NERC – and to Transmission Owners, subject to certain conditions and applicable confidentiality agreements.⁵¹⁹ FERC recently approved the Tariff revisions that extend the disclosure provisions that apply to information requests from FERC to requests from the Commission.⁵²⁰

⁵¹⁴ Membership Agreement § 2.4.1.

⁵¹⁵ Bylaws § 3.12.

⁵¹⁶ Attachment M, above, contains a similar description, which also is applicable to this Attachment.

⁵¹⁷ *See generally* SPP Tariff, Attachment AE § 11. FERC recently accepted SPP's compliance filing in FERC Docket No. ER13-2091-001 with FERC directed revisions to Section 11.2(3) of Attachment AE of the SPP Tariff to revise the phrase "from a source other than the CFTC or its staff" to state "from a source other than [FERC] or its staff or the CFTC or its staff" regarding information sharing by the Market Monitor without prior written consent. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁵¹⁸ *Id.*, Attachment AE § 11.1.4(1).

⁵¹⁹ *See, e.g., id.*, Attachment AE §§ 11.1.4(2) (NERC provisions), 11.1.4(4) (Transmission Owner provisions), 11.3 (Commission and FERC provisions).

⁵²⁰ SPP submitted these Tariff revisions to FERC on August 1, 2013, in Docket No. ER13-2091-000. FERC conditionally accepted these Tariff revisions on September 30, 2013, subject to a compliance filing. *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251 (2013). SPP submitted the compliance filing on October 25, 2013, in Docket No. ER13-2091-001, (continued . . .)

Under the SPP Tariff, SPP also is required to provide the Market Monitor access to all information necessary for effective functioning of the Market Monitor and implementation of the Market Monitoring Plan.⁵²¹ The Market Monitor is required to interface with FERC and other RTO market monitors in adjacent regions as needed for the purpose of addressing electricity market issues in a comprehensive manner.⁵²² Thus, the Market Monitor is able to communicate with other RTO market monitors regarding market trends and potential market manipulation risks observed in other RTO markets. The Market Monitor also is obligated to report perceived market design flaws and recommend changes to FERC, SPP organizational groups, SPP staff, state regulatory commissions, and market participants, subject to certain limitations where such disclosure could lead to exploitation.⁵²³ Market participants are also required to provide the Market Monitor with certain data for use in its market monitoring activities,⁵²⁴ and the Market Monitor has discretion to release to SPP or market participants any data that the Market Monitor creates in the course of performing its duties.⁵²⁵

SPP also has executed “Joint Operating Agreements” with interconnected electric transmission providers such as (among others) the Midcontinent Independent System Operator, Inc. (a FERC-approved RTO) and Associated Electric Cooperative, Inc. (a utility not subject to FERC regulatory jurisdiction). These agreements contain provisions to address the sharing of certain transmission system planning and operational information between SPP and the counterparty.

*Recordkeeping*⁵²⁶

SPP complies with FERC’s comprehensive regulations governing public utility recordkeeping set forth in 18 C.F.R. § 125, many of which require retention of data for at least 5 years. SPP also complies with the requirements of FERC’s Uniform System of Accounts. In addition, under SPP’s Standards of Conduct, SPP is required to maintain records showing the transactions under the SPP Tariff for a period of 5 years unless otherwise provided in the Tariff or by law or regulation. SPP retains such records in either electronic or paper format. Finally,

(. . . continued)

which FERC accepted on November 22, 2013. *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013).

⁵²¹ SPP Tariff, Attachment AG §§ 3.1, 8.2.

⁵²² *Id.*, Attachment AG § 3.2.

⁵²³ *Id.*, Attachment AG § 6.2.

⁵²⁴ *Id.*, Attachment AG § 8.3.

⁵²⁵ SPP Tariff, Attachment AG § 8.4.

⁵²⁶ Attachment K, above, includes a similar description, which also is applicable to this Attachment.

SPP's Market Monitoring Plan requires all market data and information held by SPP or the Market Monitor to be retained for a minimum period of three years,⁵²⁷ and requires market participants to retain such data in their possession for a minimum period of three years.⁵²⁸ Market participants must provide such data promptly to the Market Monitor upon request, and must do so in native data format or in a non-proprietary format such as CSV or XML.⁵²⁹ Most records are retained electronically onsite, but some are in paper format, and some paper records are stored offsite. SPP policy is to not retain duplicates for inactive records. If there is no legal or regulatory requirement that a type of record be retained in paper format, it is retained in electronic format.

In addition to the requirement that market participants provide information upon request, market participants are also required to provide SPP with information on a regular basis, such as resource offer and load bid data for participation in both the Day-Ahead and Real-Time Balancing Market.⁵³⁰ Market participants are also required to provide mitigated energy offer curves, mitigated start-up and no-load offers, and mitigated operating reserve offers on a daily basis.⁵³¹

Conclusion

In the Proposed Order, the Commission stated that the Prior Requesters “represent[ed] that their Tariffs require their market participants to provide [the Prior Requesters] with information on a regular and *ad hoc* basis,” and that the Prior Requesters “further represent that they are required to comply with FERC or PUCT regulations, as applicable, regarding the maintenance of information by public utilities.”⁵³² Based on these representations and the Proposed Order’s discussion regarding DCO Core Principles J and K, the Commission determined that “it appears that these practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 10 in the context of [Prior Requesters’] activities with respect to the Transactions.”⁵³³ The same is true for SPP. As demonstrated above in this Attachment BB, SPP’s Tariff requires market participants to provide SPP and the Market Monitor with information on a regular and *ad hoc* basis and SPP is required to comply with all FERC regulations governing the maintenance of information by public utilities.

⁵²⁷ SPP Tariff, Attachment AG § 8.2.

⁵²⁸ *Id.*, Attachment AG § 8.3.

⁵²⁹ *Id.*

⁵³⁰ *Id.*, Attachment AE §§ 4.1 & 4.3.

⁵³¹ *Id.*, Attachment AF §§ 3.2 – 3.4.

⁵³² Proposed Order at 52,161.

⁵³³ *Id.*

Attachment CC

SEF Core Principle 11: Antitrust Considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the swap execution facility shall not –

- (A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or
- (B) impose any material anticompetitive burden on trading or clearing.

Response:

As stated in Attachment N, above, SPP’s rules and actions are subject to oversight by FERC. SPP, like other RTOs and ISOs, promotes competition in the wholesale energy markets. SPP does not anticipate that its current or future products or services in the Integrated Marketplace will result in unreasonable restraints of trade or anticompetitive burdens. The SPP Market Monitor’s responsibilities include screening the markets for anticompetitive behavior, evaluating market rules, tariff provisions, and market design elements for potential flaws, and providing notification if it determines that there are market design flaws.⁵³⁴ This continued oversight by FERC and the SPP Market Monitor could detect activities such as undue concentrations or market power, discriminatory treatment of market participants or other anticompetitive behavior.

In the Proposed Order’s analysis regarding SEF Core Principle 11, the Commission explained that FERC established ISOs and RTOs to promote competition in electricity markets and that the Prior Requesters represented that their “rates, terms and conditions of service are subject to” FERC oversight, review and acceptance, and that FERC and the Prior Requesters’ market monitoring units “review trading activity to identify anticompetitive behavior.”⁵³⁵ The Commission concluded that based on their representations and the Commission’s conclusions regarding DCO Core Principle N, their “existence and practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 11 in the context of [their] activities with respect to the Transactions.”⁵³⁶ The same is true for SPP. As demonstrated above, SPP’s rates, terms, and conditions of service are subject to FERC oversight, review, and acceptance. In addition, the SPP Market Monitor reviews trading activity to identify anticompetitive behavior.

⁵³⁴ See SPP Tariff, Attachment AG §§ 3.2, 4, 6.2.

⁵³⁵ Proposed Order at 52,161.

⁵³⁶ *Id.*

Attachment DD

SEF Core Principle 12: Conflicts of Interest

The swap execution facility shall –

(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(B) establish a process for resolving the conflicts of interest.

Response:

SPP has developed extensive Standards of Conduct and conflict of interest protections.⁵³⁷

FERC Order No. 2000 sets forth minimum characteristics for RTOs, which include, among other things, that an RTO be independent from all market participants and that its decisionmaking process be independent of individual market participants and classes of market participants.⁵³⁸ In a series of orders issued in 2004, FERC granted SPP's request to become an RTO.⁵³⁹

Directors are required to be independent of any member,⁵⁴⁰ and Directors may not be a director, officer, or employee of, or have a direct business relationship or affiliation with or financial interest in a member or customer of services provided by SPP.⁵⁴¹ Except for the President of SPP, no other Director may be an employee of SPP.⁵⁴² Directors are permitted to invest in accordance with SPP's Standards of Conduct,⁵⁴³ which prohibit ownership of securities issued by owners, operators, and users of the bulk power system in the SPP region, entities that

⁵³⁷ Attachments O and P, above, contain similar descriptions, which also are applicable to this Attachment.

⁵³⁸ *See generally* Order No. 2000 at 31,061-76; *see also* Proposed Order at 52,156 (summarizing the requirements of Order No. 2000 that relate to DCO Core Principle O).

⁵³⁹ *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 (2004); *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003 (2004), *order on reh'g*, 110 FERC ¶ 61,138 (2005); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

⁵⁴⁰ Bylaws § 4.2.1.

⁵⁴¹ *Id.* § 4.2.3.

⁵⁴² *Id.* § 4.2.1.

⁵⁴³ *Id.* § 4.2.3.

engage in purchases and sales of wholesale or retail electric energy in the SPP region, transmission customers under the SPP Tariff, or any entity for which SPP provides services under contract.

SPP has adopted stringent conflict of interest requirements for SPP Directors and employees (including Officers). SPP has developed Standards of Conduct for Officers and employees, and similar Standards of Conduct for members of the Board of Directors. The Standards of Conduct govern and limit employee conduct regarding: (1) involvement in marketing of electric energy; (2) handling and disclosure of confidential information and transmission system information; (3) access to facilities; (4) implementation of the SPP Tariff; (5) recordkeeping; (6) investments; (7) relationships with other parties; (8) reporting of violations of the Standards of Conduct; and (9) conflicts of interest. Employees and Directors must execute a statement certifying they have read the Standards of Conduct annually.⁵⁴⁴

The Standards of Conduct prohibit employees from being an employee, director, consultant, or contractor to or having any investment interest in any “Third Party.”⁵⁴⁵ SPP employees and family members (i.e., spouses, minor children, or other persons for whom the employee has power of attorney or guardianship rights) are prohibited from owning securities issued by any Third Party, but indirect ownership through a mutual fund or similar arrangement is permitted (except for any fund targeted toward the electric industry or electric utility industry or segments thereof). SPP maintains a list of Third Parties and requires divestiture of any existing ownership in a Third Party within 4 months of employment or from the time the entity becomes a Third Party. The Standards of Conduct also limit the ability of employees to receive gifts or any form of cash from other parties where such gifts are being made to influence the intended recipient’s actions in their position with SPP or that could reasonably create such an impression.

Violation of the Standards of Conduct by employees could result in disciplinary action including possible reprimand, suspension, limitation in the scope of responsibilities, monetary fines, termination, or other action. Employees are also required to report known or suspected violations of the Standards of Conduct and to cooperate in any investigation.

In addition to the Standards of Conduct, the SPP Market Monitor and all of its employees must comply with additional independence and ethics standards set forth in Attachment AG of

⁵⁴⁴ Bylaws §§ 3.4, 3.11. *See also* Membership Agreement § 2.2.2. For the sake of convenience, this Attachment DD refers to these parties collectively as “employees.”

⁵⁴⁵ A “Third Party” is an entity including its representatives, agents, and employees: (i) that is an owner, operator or user of the bulk power system in the SPP region, as defined in the Delegation Agreement between NERC and SPP; (ii) that is a Transmission Customer as defined in the SPP Tariff or any other tariff that SPP administers; or, (iii) for which SPP provides services under contract, including, but not limited to, tariff administration services; or (iv) that engages in purchases or sales of wholesale or retail electric energy in the SPP region.

the SPP Tariff, including prohibiting: (a) material affiliation with any market participant or any affiliate of a market participant; (b) serving as an officer, employee, or partner of a market participant; (c) material financial interest in any market participant or any affiliate of a market participant (allowing for such potential exceptions as mutual funds and non-directed investments); (d) engaging in any market transactions other than the performance of their duties under the Tariff; (e) receiving compensation, other than by SPP, for any expert witness testimony or other commercial services to SPP or to any other party in connection with any legal or regulatory proceeding or commercial transaction relating to SPP; and (f) acceptance of anything of value from a market participant in excess of a *de minimis* amount.⁵⁴⁶ Market Monitor employees also must advise their relevant supervisor (or, in the case of the Market Monitoring management, SPP’s Board of Directors) in the event that they seek employment with a market participant, and must disqualify themselves from participating in any matter that would have an effect on the financial interest of such market participant.⁵⁴⁷

In the Proposed Order’s analysis of SEF Core Principle 12, the Commission observed that “FERC Order No. 2000 requires RTOs to be independent of any market participant, and to include in their demonstration of independence that the RTO, its employees, and any non-stakeholder directors do not have financial interests in any market participant.”⁵⁴⁸ The Commission further noted that each of the Prior Requesters “represents that it has either established codes of conduct, which include conflict of interest rules, for employees and members of the Board of Directors or implemented specific policies and procedures to mitigate conflicts of interest.”⁵⁴⁹ The Commission determined, based on the Prior Requesters’ representations and the Proposed Order’s discussion of DCO Core Principle P, that “it appears that [Prior Requesters’] conflict of interest policies and the requirements to which the [Prior Requesters] are subject are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 12 in the context of [Prior Requesters’] activities with respect to the Transactions.”⁵⁵⁰ This is the same for SPP. As demonstrated above, SPP has a code of conduct and conflict of interest protections for employees and members of the Board of Directors.

⁵⁴⁶ SPP Tariff, Attachment AG § 3.3.

⁵⁴⁷ *Id.*

⁵⁴⁸ Proposed Order at 52,161.

⁵⁴⁹ *Id.* (footnote omitted).

⁵⁵⁰ *Id.*

Attachment EE

SEF Core Principle 13: Financial Resources

(A) IN GENERAL. – The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

(B) DETERMINATION OF RESOURCE ADEQUACY. – The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

Response:

SPP has adopted provisions to ensure adequate financial, operational, and managerial resources to discharge its responsibilities.⁵⁵¹

Financial Resources

Several provisions of the SPP Tariff provide SPP with sufficient financial resources to mitigate the impact of a market participant default. SPP is revenue neutral with respect to all market transactions and services that SPP provides. Under the SPP Tariff, revenue shortfalls resulting from a failure of one or more market participants to pay market service invoices are socialized among the market participants receiving revenues for the market services associated with the unpaid obligations.⁵⁵² The SPP Tariff contains similar provisions for failures of a transmission customer to pay invoiced amounts due for transmission service, with such costs being socialized among SPP Transmission Owners.⁵⁵³ Attachment AE of the SPP Tariff, which governs operation of the SPP Integrated Marketplace, contains extensive “Revenue Neutrality Uplift” provisions designed to ensure that SPP remains revenue neutral.⁵⁵⁴

SPP also imposes strict creditworthiness and collateral requirements on market participants to reduce the possibility of a market participant’s default and mitigate the impact of such a default on SPP’s ability to meet its obligations to other market participants. As stated in Attachment D, above, SPP conducts an extensive analysis to determine a market participant’s

⁵⁵¹ Attachment B, above, contains a similar description, which also is applicable to this Attachment.

⁵⁵² SPP Tariff, Attachment L § V.C.

⁵⁵³ *Id.*, Attachment L § V.D.

⁵⁵⁴ *See, e.g., id.*, Attachment AE §§ 8.5.12 (Transmission Congestion Rights Daily Uplift Amount), 8.7.3 (Auction Revenue Rights Uplift Amount), 8.8 (Revenue Neutrality Uplift).

creditworthiness.⁵⁵⁵ Pursuant to SPP's credit policy in Attachment X of the SPP Tariff, SPP determines a market participants' creditworthiness, Total Potential Exposure, the amount of credit the credit customer requires, and whether to grant (and the amount of any) unsecured credit. SPP evaluates creditworthiness using qualitative and quantitative criteria specified in Article 4 of the credit policy, which vary depending on whether the market participant is a large company, small company, or a not-for profit entity. Through the creditworthiness analysis, SPP determines the unsecured credit allowance based on the creditworthiness score and a percentage of the tangible net worth of the market participant.⁵⁵⁶

In addition, SPP's credit policy limits a credit customer's unsecured credit to a maximum of \$25 million and requires financial security for any remaining market exposure.⁵⁵⁷ Additionally, the \$25 million unsecured credit limit applies in the aggregate to all affiliates that are granted an unsecured credit allowance as if all of the affiliates were a single market participant.⁵⁵⁸ SPP also has the right to continuously modify a market participant's unsecured credit allowance or required financial security.⁵⁵⁹ A market participant's total credit limit is the sum of its unsecured credit allowance and financial security it has provided to SPP.

Pursuant to the SPP credit policy, SPP calculates the Total Potential Exposure as a sum of Market Exposure and Transmission Service Potential Exposure.⁵⁶⁰ The Market Exposure includes invoiced market settlement charges, calculated but not yet invoiced market settlement charges, the maximum estimated market exposure for Real-Time Balancing Market activity, the maximum estimated market exposure for Day-Ahead Market activity, and the estimated virtual exposure related to virtual energy bids and offers.⁵⁶¹

SPP also has adopted a 100% collateral requirement for a market participant's transactions in the TCR markets.⁵⁶² SPP is authorized to terminate a market participant's ability

⁵⁵⁵ See generally *id.*, Attachment X, Art. 3 (Credit Assessment) & 4 (Creditworthiness and Total Credit Limit).

⁵⁵⁶ SPP Tariff, Attachment X § 4.3.

⁵⁵⁷ *Id.*, Attachment X § 4.3.2.1.

⁵⁵⁸ *Id.*, Attachment X § 4.3.4.1.

⁵⁵⁹ *Id.*

⁵⁶⁰ SPP Tariff, Attachment X, Art. 5.

⁵⁶¹ Article 4A of Attachment X sets forth the calculations regarding estimated virtual energy bids and offers. It also includes procedures that will limit a market participant's virtual energy bids and offers based on the market participant's available credit. *Id.*, Attachment X § 4A.3.

⁵⁶² *Id.*, Attachment X §§ 4.4, 5A.1.

to transact in the market if it defaults and the default is not cured within a specified time period (or, in the event of a market participant bankruptcy, immediately).⁵⁶³

Operational Resources

SPP also has sufficient operational resources to fulfill its obligations. Pursuant to the Bylaws, SPP staff and the SPP Finance Committee prepare an annual budget of expenditures for the following fiscal year and an estimate for an additional two years, which is approved by the Board of Directors.⁵⁶⁴ SPP recovers the costs associated with providing its services under Schedule 1-A of the SPP Tariff, which assesses a “Tariff Administration Charge” on each megawatt (MW) of transmission capacity reserved during the year. SPP’s annual budget and the amount of the Tariff Administration Charge are not subject to annual approval by FERC, although SPP submits an informational filing to FERC on an annual basis outlining its budget and Tariff Administration Charge for the following year. Schedule 1-A also contains a FERC-approved cap on the Tariff Administration Charge, for which SPP must seek FERC approval to increase. Like other RTOs, SPP has a “captive audience” of market participants that are required to pay SPP’s fees.⁵⁶⁵ Additionally, the Bylaws require the Board of Directors annually to engage an independent certified public accounting firm to complete an annual audit of SPP’s financial records and to prepare a report on SPP’s financial condition.⁵⁶⁶

In addition, to the extent that an SPP member⁵⁶⁷ terminates its membership, the Bylaws and Membership Agreement require that the member pay its share of SPP’s outstanding financial obligations, including principal and interest on SPP debt obligations.⁵⁶⁸ These provisions protect SPP and its remaining members from increased financial exposure due to a member’s termination of its participation in SPP. Finally, the Bylaws also provide SPP with the ability to assess a charge to all SPP members to recover any SPP costs that SPP is not otherwise able to collect under its Tariff and other governing documents,⁵⁶⁹ which further insures that SPP will have sufficient operational resources to satisfy its obligations.

⁵⁶³ *Id.*, Attachment X § 8.3.

⁵⁶⁴ Bylaws § 8.1. The Finance Committee is comprised of SPP Directors and representatives from SPP membership sectors (i.e., “Transmission Owning Members” and “Transmission Using Members”) and is responsible for all aspects of SPP’s financial operations and risk management. *Id.* § 6.5.

⁵⁶⁵ *See* Proposed Order at 52,149.

⁵⁶⁶ Bylaws § 8.6.

⁵⁶⁷ Membership in SPP is voluntary, and is not required to participate in SPP markets.

⁵⁶⁸ *Id.* § 8.7.1; Membership Agreement § 4.3.2.

⁵⁶⁹ Bylaws § 8.4.

Managerial Resources

As noted in the Proposed Order, FERC Order Nos. 888 and 2000 provide incentives and impose requirements to promote effective management of RTOs.⁵⁷⁰ Under the Bylaws, SPP's Board of Directors is comprised of seven individuals, each of whom must have recent and relevant senior management expertise and experience in one or more of the following disciplines: finance; accounting; electric transmission or generation planning or operation; law and regulation; commercial markets; and trading and associated risk management.⁵⁷¹ The President of SPP serves on the Board of Directors.⁵⁷²

The Bylaws also vest executive authority in the Officers of SPP to carry out the rights, duties, and obligations of SPP, including (among other things): employing qualified technical and administrative employees; engaging outside technical and special service organizations; executing contracts; and providing for SPP services.⁵⁷³ SPP's Officers include: a President and Chief Executive Officer; an Executive Vice President and Chief Operating Officer; an Executive Vice President, Regulatory Policy and General Counsel; a Vice-President, Process Integrity and Chief Administrative Officer; a Vice President, Finance and Chief Financial Officer; a Vice President, Chief Compliance Officer and Corporate Secretary; and Vice Presidents of Engineering, Operations, and Information Technology. SPP also employs more than 500 employees with experience in engineering, market operations, legal and regulatory compliance, finance and credit, and other disciplines, that carry out SPP market and services and support the various SPP member organizational groups.⁵⁷⁴ Through SPP's budget setting and forecasting processes discussed above, SPP ensures that it has sufficient human resources to fulfill its obligations to its members, market participants, and customers.

Conclusion

In the Proposed Order's analysis, the Commission noted that the Prior Requesters "represent[ed] that they have rules in place that allow them to collect revenue from market participants sufficient for each of their operations," that they "represent to have adequate managerial resources to operate their systems," and that they have "sufficient staff necessary for [their] operations."⁵⁷⁵ Based on these representations and the Proposed Order's discussion regarding DCO Core Principle B, the Commission found that "it appears that [the Prior Requesters'] practices are congruent with, and sufficiently accomplish, the regulatory objectives

⁵⁷⁰ See Proposed Order at 52,149-150.

⁵⁷¹ Bylaws § 4.2.

⁵⁷² *Id.*

⁵⁷³ *Id.* § 3.4.

⁵⁷⁴ See, e.g., *id.* § 3.11.

⁵⁷⁵ Proposed Order at 52,161-62.

of SEF Core Principle 13 in the context of [Prior Requesters'] activities with respect to the Transactions."⁵⁷⁶ The same is true for SPP. As demonstrated above in this Attachment EE, SPP's Tariff and other governing documents allow SPP to collect revenue from market participants and members sufficient for SPP's operations, SPP has adequate managerial resources and sufficient qualified and skilled staff.

⁵⁷⁶ *Id.* at 52,162.

Attachment FF

SEF Core Principle 14: System Safeguards

The swap execution facility shall –

(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that –

- (i) are reliable and secure; and
- (ii) have adequate scalable capacity;

(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for –

- (i) the timely recovery and resumption of operations; and
- (ii) the fulfillment of the responsibilities and obligations of the swap execution facility; and

(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued –

- (i) order processing and trade matching;
- (ii) price reporting;
- (iii) market surveillance and
- (iv) maintenance of a comprehensive and accurate audit trail.

Response:

SPP has adopted procedures to address operational risk, including procedures addressing (i) back-up facilities, (ii) emergencies, and (iii) disaster recovery plans.⁵⁷⁷

As a NERC registered entity, SPP is required to comply with mandatory electric reliability standards that include (among other things) protecting against risk to control centers, information systems, and communications.⁵⁷⁸ SPP has installed redundant primary and back-up

⁵⁷⁷ Attachment I, above, contains a similar description, which also is applicable to this Attachment.

⁵⁷⁸ Separate from its function as a FERC-authorized RTO, SPP also functions as a NERC “Regional Entity” responsible for developing and enforcing mandatory reliability standards for users, owners, and operators of the bulk power system in the SPP Regional (continued . . .)

control centers in separate secured locations, and redundant communication and computer systems. SPP has also implemented on- and off-site data storage and back-up.

The SPP Oversight Committee, which is comprised of three members of the SPP Board of Directors, oversees the process of monitoring compliance with all SPP and NERC policies (except for those that are assigned to the SPP RE under the Bylaws).⁵⁷⁹ The Oversight Committee also oversees SPP's Internal Audit functions, except for audit work associated with financial requirements,⁵⁸⁰ which are overseen by the SPP Finance Committee.⁵⁸¹ SPP is subject to routine audits and spot checks by NERC and FERC.

SPP also has emergency preparedness, business continuity, and disaster recovery plans, which are reviewed and updated on a regular basis. SPP also conducts periodic emergency drills and mock disaster scenarios to ensure the readiness of back-up facilities and personnel. Multiple SPP business units, including SPP's Internal Audit Department, work to review, test, and update SPP's business continuity plans.

Also, SPP has a business continuity plan to provide for the calculation of market prices in the event of Day-Ahead Market or Real-Time Balancing Market system failures or isolation of portions of the SPP market from the rest of the market footprint. Specifically, SPP has additional Tariff provisions to govern the calculation of market prices in the event of a failure of either the Day-Ahead Market or Real-Time Balancing Market systems, as well as calculation of prices in the event that a portion of the SPP system becomes isolated from the remainder of the market.

Additionally, if the Market Monitor discovers any weaknesses or failures in market design that require immediate corrective action, the Market Monitor may request that the

(. . . continued)

Entity ("SPP RE") region. Under FERC order, the SPP RE is required to function independently of the SPP RTO. The SPP RE is governed by three Regional Entity Trustees and supervised by a Regional Entity General Manager. The SPP RE develops and enforces mandatory reliability standards for users, owners, and operators of the bulk power system in the SPP RE region, including SPP RTO operations. The SPP RE function is separate from SPP's RTO operations, and does not impact the SPP RTO's compliance with SEF Core Principle 14: System Safeguards as described in the response. The SPP RTO complies with all applicable reliability requirements established by the SPP RE, NERC, and FERC.

⁵⁷⁹ Bylaws § 6.4.

⁵⁸⁰ *Id.* § 6.4; *see also* Southwest Power Pool, Inc., *Oversight Committee Organizational Group Scope Statement* (Dec. 2010), <http://www.spp.org/publications/OCScope1210.pdf>.

⁵⁸¹ Bylaws § 6.5; *see also* Southwest Power Pool, Inc., *Finance Committee Organizational Group Scope Statement* (last revised Feb. 2, 2006), <http://www.spp.org/publications/FCScopeRev020206.pdf>.

President of SPP authorize an immediate FERC filing to implement a corrective action while the appropriate SPP organizational group considers a solution.⁵⁸²

In the Proposed Order, the Commission stated that the Prior Requesters represented that they have risk analysis and oversight programs to minimize operation risk through the development of appropriate controls and procedures, and that the Prior Requesters maintain reliable automated systems and emergency procedures.⁵⁸³ The Commission acknowledged that due to their obligation to manage the bulk power system reliably, they require additional operational safeguards specifically to address that function.⁵⁸⁴ The Commission also pointed to the Prior Requesters' use of computer systems that incorporate adequate business continuity and disaster recovery functionality, as well as offsite backup computer systems and redundant control centers and data centers. Based on the Prior Requesters' representations and the Proposed Order's discussion regarding DCO Core Principle I, the Commission stated that "it appears that [the Prior Requesters'] practices are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 14 in the context of [Prior Requesters'] activities with respect to the Transactions."⁵⁸⁵ The same is true for SPP. As demonstrated above, SPP has risk analysis and oversight programs to minimize operation risk through the development of appropriate controls and procedures, and SPP maintains reliable automated systems and emergency procedures. SPP has installed redundant primary and back-up control centers in separate secured locations, and redundant communication and computer systems, as well as implemented on- and off-site data storage and back-up. SPP also has emergency preparedness, business continuity, and disaster recovery plans.

⁵⁸² SPP Tariff, Attachment AG § 6.2.

⁵⁸³ Proposed Order at 52,162.

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

Attachment GG

SEF Core Principle 15: Designation of Chief Compliance Officer

(A) IN GENERAL. – Each swap execution facility shall designate an individual to serve as a chief compliance officer.

(B) DUTIES. – The chief compliance officer shall –

- (i) report directly to the board or to the senior officer of the facility;
- (ii) review compliance with the core principles in this subsection;
- (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;
- (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;
- (v) ensure compliance with this chapter and the rules and regulations issued under this chapter, including rules prescribed by the Commission pursuant to this section; and
- (vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

Response:

SPP has a Chief Compliance Officer, who is currently also a Vice President and Corporate Secretary. The Chief Compliance Officer is responsible for overseeing compliance, internal audit, and market monitoring. The Chief Compliance Officer reports directly to the Chief Executive Officer. SPP also has a compliance department.

In addition, the Board of Directors' Oversight Committee is responsible for overseeing the process of monitoring compliance with SPP and NERC policies, including market monitoring and internal compliance with NERC Operating Standards.⁵⁸⁶ The Finance Committee oversees SPP's compliance with financially-based legal and regulatory requirements.⁵⁸⁷

In the Proposed Order's analysis regarding SEF Core Principle 15, the Commission found that the Prior Requesters each represented that they had a Chief Compliance Officer or the

⁵⁸⁶ See Bylaws §§ 3.16, 6.4.

⁵⁸⁷ See *id.* § 6.5.

functional equivalent of such a position, noting that one RTO represented it had two compliance heads, one for compliance with regulatory and legal obligations, including compliance with tariff, FERC regulations and laws, and regulations governing other corporate matters, and another for compliance with regional reliability standards promulgated by regional reliability counsels, NERC, and FERC.⁵⁸⁸ The Commission found that based on these representations, it appears that the Prior Requesters practices “are congruent with, and sufficiently accomplish, the regulatory objectives of SEF Core Principle 15 in the context of [their] activities with respect to the Transactions.”⁵⁸⁹ The same is true for SPP. As demonstrated above, SPP has a Chief Compliance Officer.

⁵⁸⁸ Proposed Order at 52,162 & n.368.

⁵⁸⁹ *Id.* at 52,162.