

Before the Commodity Futures Trading Commission

October 1, 2013 (Updated copy, as of August 1, 2014)

In the Matter of the Application for an Exemptive Order Under Section 4(c) of the Commodity Exchange Act by Southwest Power Pool, Inc.

I. INTRODUCTION

Southwest Power Pool, Inc. (“SPP”), a Regional Transmission Organization (“RTO”) approved by the Federal Energy Regulatory Commission (“FERC”), hereby applies to the Commission under Section 4(c)(6) of the Commodity Exchange Act, 7 U.S.C. §1 et seq. (the “CEA” or the “Act”) and pursuant to Section 712(f)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)¹ for an Order exempting the Transactions and Participants described below from all provisions of the CEA and Commission rules thereunder, except the Commission’s general anti-fraud and anti-manipulation authority and scienter-based prohibitions under CEA Sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6(c), 6(d), 6(e), 6c, 6d, 8, 9, and 13 and any implementing regulations promulgated under these sections including, but not limited to, Commission regulations 23.410(a)-(b), 32.4, and part 180.² The Transactions and Participants for which SPP is seeking exemptive relief are:

1. the transactions defined in this Application, each of which is or will be a class of contract, agreement, or transaction authorized under SPP’s FERC-approved tariff, protocols, or other relevant governing documents (collectively, the “Transactions”), and
2. any persons, including SPP and its members or other market participants, offering, entering into, rendering advice, or rendering other services with respect to the Transactions (collectively, the “Participants”).

Additionally, operation of SPP’s Integrated Marketplace commenced on March 1, 2014, and certain preliminary activities related to SPP’s Transmission Congestion Right (“TCR”)³ market began September 18, 2013, to support the commencement of SPP’s Integrated Marketplace on March 1, 2014. Accordingly, on October 7, 2013, SPP requested interim relief,

¹ Pub. L. No. 111–203, 124 Stat. 1376 (2010).

² See 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, at 19,912 (Apr. 2, 2013) (“Final Order”).

³ As discussed below, “TCR” is SPP’s nomenclature for what is referred to as a “Financial Transmission Right” or “FTR” in other RTO markets and in the Final Order.

pursuant to the Commission's regulation codified at 17 C.F.R. § 140.99, pending the Commission's final action on this application for an exemptive order. On February 20, 2014, the Commission granted SPP's request and issued a No-Action Relief Letter.⁴

SPP is requesting exemptive relief substantially similar to the exemptive relief the Commission granted to a group of RTOs and independent system operators ("ISOs") (collectively, the "Prior Requesters"),⁵ that jointly petitioned the Commission to exempt certain transactions in their respective markets from the Commission's jurisdiction.⁶ SPP's markets and products discussed in this Application are substantially similar to those of other RTOs and ISOs regulated by FERC or the Public Utility Commission of Texas ("PUCT").

SPP submits the following information and discussion in support of its Application. For the reasons discussed below, the requested exemptive Order fulfills the conditions of Sections 4(c)(1), 4(c)(2) and 4(c)(6) of the CEA and is consistent with the public interest and the purposes of the CEA.

II. BACKGROUND

A. Southwest Power Pool, Inc.

SPP was established after the 1941 attack on Pearl Harbor in order to provide reliable power for the processing of aluminum needed to manufacture aircraft for national defense. Following the conclusion of World War II, SPP continued to exist as a voluntary organization because its members recognized the growing interdependence of the electric grid. Over the decades, SPP has worked to develop services that provide increasing regional benefits in the eight-state SPP region, and SPP's early transmission administration activities evolved into the broader responsibilities of an RTO, under the FERC-approved SPP Open Access Transmission Tariff ("Tariff").⁷

⁴ *No-Action Relief with Respect to Certain Commodity Exchange Act Provisions That May Apply to Southwest Power Pool, Inc. and/or Its Participants*, No-Action Letter, CFTC Letter No. 14-18 (Feb. 20, 2014).

⁵ The Prior Requesters consist of: California Independent System Operator Corporation ("CAISO"); Electric Reliability Council of Texas, Inc. ("ERCOT"); ISO New England Inc. ("ISO-NE"); Midcontinent Independent System Operator, Inc. f/k/a Midwest Independent Transmission System Operator, Inc. ("MISO"); New York Independent System Operator, Inc. ("NYISO"); and PJM Interconnection, LLC ("PJM").

⁶ *See* Final Order ; 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").

⁷ In its Order No. 2000, FERC formalized the concept of RTOs to oversee electric transmission and operate wholesale markets across a broad territory. *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). FERC established the concept of ISOs and set forth 11 principles for ISOs in Order No. 888. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting*

SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 76 members serving more than 6 million households in a 370,000 square-mile area. Its Members include 14 investor-owned utilities, 11 municipal systems, 13 generation and transmission cooperatives, 5 state agencies, 11 independent power producers, 12 power marketers, and 10 independent transmission companies. As an RTO, SPP administers open access Transmission Service over more than 48,000 miles of transmission lines covering portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, across the facilities of the SPP Transmission Owners.

SPP applied to FERC for RTO status in 2004 and officially began operating as a FERC-approved RTO in 2005.⁸ As the Commission has recognized, FERC regulations require that an RTO demonstrate (among other things), that it is independent from any market participant, has a scope and regional configuration that enables the RTO to maintain reliability and effectively perform its required functions, has operational authority for its activities, and performs certain self-regulatory and market monitoring functions.⁹

Prior to March 1, 2014, SPP operated a Real-Time Energy Imbalance Service (“EIS”) market, which began in February 2007. On March 1, 2014, SPP commenced operating its Integrated Marketplace that includes a Day-Ahead Market, Real-Time Balancing Market, and TCR markets.

In October 2010, FERC issued its Order No. 741, which established new risk management and credit related regulations for RTO and ISO markets by adopting FERC regulation 35.47, 18 C.F.R. § 35.47.¹⁰ In a series of orders issued from 2011-2013, FERC held that SPP completely

Utilities, Order No. 888, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 31,036, at 31,730-32 (1996) (setting forth ISO principles), *order on reh’g*, Order No. 888-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *reh’g denied*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002). The roles, responsibilities, and services of ISOs and RTOs under FERC’s Order No. 888, Order No. 2000, and other applicable FERC orders and requirements, are substantially similar. In addition to establishing ISOs, Order No. 888 mandated that all public utilities file open access transmission tariffs that contain minimum terms and conditions for non-discriminatory service. As a public utility transmission provider, SPP is obligated to comply with the open access requirements of Order No. 888.

⁸ See *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh’g*, 109 FERC ¶ 61,010 (2004) (conditionally granting SPP’s request for RTO status subject to fulfillment of certain compliance requirements); *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh’g*, 110 FERC ¶ 61,137 (2005).

⁹ Final Order at 19,894.

¹⁰ *Credit Reforms in Organized Wholesale Electric Markets*, Order No. 741, III FERC Stats. & Regs., Regs. Preambles ¶ 31,317 (2010), *order on reh’g*, Order No. 741-A, III FERC Stats. & Regs., Regs. Preambles ¶ 31,320, *reh’g denied*, Order No. 741-B, 135 FERC ¶ 61,242 (2011).

complies with all of the requirements of FERC Order No. 741,¹¹ including SPP's proposal to become a counterparty to market transactions.¹²

B. SPP's Integrated Marketplace

On February 29, 2012, SPP filed with FERC its proposed Tariff revisions to implement its Integrated Marketplace, with a proposed implementation date of March 1, 2014. The Integrated Marketplace consists of Day-Ahead and Real-Time markets for Energy¹³ and Operating Reserve,¹⁴ and TCRs and Auction Revenue Rights ("ARRs"). Like the markets currently operated by the Prior Requesters, SPP's Integrated Marketplace is intended to maximize the cost-effective utilization of energy resources and the regional transmission system.

SPP's Integrated Marketplace represents several years of intense SPP stakeholder efforts to develop a comprehensive market design for the SPP Region. SPP's members defined several objectives for the design of the Integrated Marketplace, including: (1) increase savings to market participants by moving from self-commitment to centralized unit commitment; (2) create a Day-Ahead Market that provides price assurance capability for serving load prior to Real-Time; (3) accommodate TCRs; and (4) establish a market that accommodates price-based procurement of Operating Reserve to support the formation of a single Balancing Authority (through the consolidation of the 16 existing Balancing Authorities) and facilitates reserve sharing.

With these objectives in mind, SPP and its stakeholders developed the Integrated Marketplace after careful study of the FERC-approved market designs of other RTOs and ISOs. This approach facilitated the incorporation of proven-effective design elements while avoiding the problematic elements other RTOs encountered after placing their designs into practice. To the extent possible, SPP modeled its Integrated Marketplace elements on those successfully operating in other RTO markets. In general, SPP's Integrated Marketplace design is substantially similar to the FERC-approved markets operated by other RTOs, particularly the MISO and PJM, both of whom were among the Prior Requesters to whom the Commission granted an exemption similar to the one SPP is requesting. Variations from these other markets, to the extent they exist, were designed to reflect regional differences or to accommodate SPP stakeholder preferences.

¹¹ As detailed in Addendum B to this Application, FERC has found that SPP complies with all aspects of FERC Order No. 741. FERC's orders addressing SPP's compliance with FERC Order No. 741 are final, and not subject to rehearing or appeal.

¹² See *Sw. Power Pool, Inc.*, 136 FERC ¶ 61,189 (2011) (accepting SPP's filing to comply with Order No. 741 subject to a further compliance filing), *reh'g denied*, 138 FERC ¶ 61,182 (2012); *Sw. Power Pool, Inc.*, 138 FERC ¶ 61,187 (2012) (accepting SPP further compliance with Order No. 741); *Sw. Power Pool, Inc.*, 143 FERC ¶ 61,262 (2013) (accepting SPP's proposal to become a counterparty to market transactions as compliant with Order No. 741).

¹³ "Energy" is defined as "an amount of electricity that is bid or offered, produced, purchased, consumed, sold or transmitted over a period of time, which is measured or calculated in Megawatt hours."

¹⁴ "Operating Reserve" is defined as "resource capacity held in reserve for resource contingencies and North American Electric Reliability Corporation ("NERC") control performance compliance that includes the following products: Regulation-Up, Regulation-Down, Spinning Reserve and Supplemental Reserve."

The relevant products in the Integrated Marketplace are substantially similar to the products offered in other RTO and ISO markets for which the Commission previously granted exemption. Specifically, SPP's Integrated Marketplace includes Energy (i.e., "energy transactions" as discussed in the Final Order, including virtual transactions that are cash-settled), TCRs (which are similar to "financial transmission rights" or "FTRs" in other markets), and Operating Reserve ("reserve or regulation transactions").¹⁵ These products are discussed in more detail in Part III.A below.

On October 18, 2012, FERC conditionally accepted SPP's Integrated Marketplace filing, subject to several additional compliance requirements.¹⁶ FERC accepted SPP's overall market design and the products offered in the Integrated Marketplace but directed SPP to make several changes to various aspects of its Integrated Marketplace proposal, including certain modifications of provisions governing ARR and TCRs and additional market monitoring and mitigation provisions. SPP submitted additional Tariff revisions to comply with the majority of FERC's compliance directives on February 15, 2013. On March 28, 2013, SPP submitted additional Tariff revisions to modify aspects of its Integrated Marketplace provisions. On September 20, 2013, FERC issued an order accepting in part and rejecting in part SPP's February 15, 2013 and March 28, 2013 Tariff filings, and directed SPP to submit additional revisions to its Tariff by November 19, 2013.¹⁷ SPP submitted a filing in response to FERC's September 20 Order on November 11, 2013 (which was reflected in FERC's eFiling system on November 12, 2013 because FERC was closed on November 11 for a federal holiday). On January 29, 2014, FERC issued an order conditionally accepting SPP's November 11, 2013 compliance filing, subject to SPP making additional revisions to its Tariff.¹⁸ SPP filed Tariff revisions to comply with the January 29 Order on February 26, 2014. On June 19, 2014, FERC issued an order conditionally accepting SPP's February 26, 2014 compliance filing, subject to SPP submitting an additional compliance filing within 30 days.¹⁹ SPP filed Tariff revisions to comply with the June 19 Order on July 17, 2014. This filing is pending at FERC.

Additionally, on August 1, 2013, SPP filed in FERC Docket No. ER13-2091-000 further revisions to Attachments X and AE of the SPP Tariff that, among other things: (i) incorporated as part of the minimum criteria for market participation the appropriate person requirement set forth in Section VI.2.b of the Final Order;²⁰ and (ii) permit the sharing of information with the Commission without prior notice to market participants. FERC conditionally accepted these proposed Tariff revisions on September 30, 2013, subject to SPP submitting a further revision to

¹⁵ Final Order at 19,882 (discussing the products for which the Prior Requesters requested exemption).

¹⁶ *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) ("Integrated Marketplace Order"), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013).

¹⁷ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,224 (2013) ("September 20 Order").

¹⁸ *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,050 (2014) ("January 29 Order").

¹⁹ *Sw. Power Pool, Inc.*, 147 FERC ¶ 61,212 (2014) ("June 19 Order").

²⁰ Final Order at 19,913.

Tariff language proposed in the filing regarding information sharing.²¹ On October 25, 2013, SPP submitted the further revision to sharing of information language directed by FERC, which FERC accepted on November 22, 2013, to become effective March 1, 2014.²² These provisions are currently in effect and FERC's orders accepting them are final and not appealable.

C. The Dodd-Frank Act

Title VII of the Dodd-Frank Act amended the CEA and expanded the authority of the Commission to include regulation of "swaps."²³ Because of the broad manner in which the term "swap" has been defined in Commission rules, it is possible a party could assert that certain transactions in SPP's Integrated Market would be subject to Commission authority.²⁴

Section 722 of the Dodd-Frank Act added Section 4(c)(6) to the CEA, which provides that if the Commission determines that the exemptions would be consistent with the public interest and the purposes of the CEA, the Commission shall, in accordance with Sections 4(c)(1) and 4(c)(2) of the CEA, exempt from the CEA's requirements an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or by the applicable State authority.²⁵ The Commission explained in the Final Order that "[S]ection 4(c)(6) mandates that the Commission initially determine that the exemption would be in the public interest and consistent with the purposes of the CEA, that the exemption would be applied only to agreements, contracts, or transactions that are entered into solely between appropriate persons, and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA."²⁶

Section 722 of the Dodd-Frank Act also added Section 2(a)(1)(I)(i) to the CEA, providing that nothing in the CEA shall limit the authority of FERC or a State regulatory authority under the Federal Power Act ("FPA"), 16 U.S.C. § 796(21), with respect to an agreement, contract, or transaction that is: (1) entered into pursuant to a tariff or rate schedule approved by FERC or a State regulatory authority that is not executed, traded, or cleared on a Commission-registered entity or trading facility; or (2) executed, traded, or cleared on a registered entity or trading

²¹ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251, at PP 13-14 (2013) (FERC also found the minimum participation criteria to be consistent with Order No. 741 requirements).

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

²³ See Final Order at 19,881.

²⁴ In the Final Order, the Commission explained that the definition of "swap" set forth in the Commission's regulations was beyond the scope of the Final Order. *Id.* at 19,894. Similarly, the definition of "swap" is not within the scope of this request for an exemptive order.

²⁵ See *id.* at 19,881 & n.14 (discussing and quoting the language of Section 4(c)(6) of the CEA).

²⁶ *Id.* at 19,894.

facility owned or operated by an RTO or an ISO.²⁷ Nothing in Section 722 of the Dodd-Frank Act limits or affects any statutory authority of FERC with respect to such agreements, contracts, or transactions.

In making this application, SPP does not presume that the Transactions (defined in Part III.A, below) are subject to the regulatory oversight of the Commission. Indeed, as specifically authorized by Section 4(c) of the CEA and discussed below, SPP asks the Commission not to determine whether the Transactions fall within its jurisdiction.²⁸ SPP's submission of this application should not be interpreted as a suggestion that the Transactions fall beyond the regulatory jurisdiction of FERC. On the contrary, as discussed below, the Transactions are subject to pervasive regulatory oversight by the FERC.

SPP makes this application, as did the Prior Requesters, out of an abundance of caution to address the Transactions entered and the services rendered in SPP's Integrated Marketplace. SPP recognizes the possibility that a party might attempt to assert that all or some aspect of the Transactions implicates law or regulations administered and enforced by the Commission. SPP makes this request for exemptive relief, for its own benefit and for the benefit of its market participants, to avoid the uncertainty that would arise from such an assertion and that would otherwise threaten the orderly operation of SPP's Integrated Marketplace.

D. The Commission's Final Order

On February 7, 2012, with an update on June 11, 2012, the Prior Requesters jointly petitioned the Commission to exempt certain transactions in their respective markets from the Commission's jurisdiction (the "Joint Petition").²⁹ SPP took part in discussions with the Commission along with the Prior Requesters following the passage of the Dodd-Frank Act. Unlike the Prior Requesters, however, SPP at that time operated only a real-time market without the types of transactions potentially impacted by the Dodd-Frank Act. In a letter dated April 25, 2011, the Commission's Staff recommended that SPP wait until six to nine months prior to implementation of the Integrated Marketplace before requesting an exemptive order.³⁰

²⁷ See Final Order at 19,881 & n.13 (discussing and quoting the language of Section 2(a)(1)(I)). In the Final Order, the Commission explained that this provision is part of the savings clause that addresses the roles of the Commission, FERC, and state agencies and that it "repeats the Commission's exclusive jurisdiction and clarifies that the Commission retains its authorities over agreements, contracts, or transactions traded pursuant to FERC- or state-approved tariff or rate schedules." *Id.* at 19,881.

²⁸ The Commission noted in the Final Order that Section 4(c) was added to the CEA by the Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 106 Stat. 3590 (1992), and that in explaining the Commission's authority under that section, the Commission explained that "[t]he Commission is not required to ascertain whether a particular transaction would fall within its jurisdiction prior to exercising its exemptive authority under [S]ection 4(c)." Final Order at 19,881 n.14.

²⁹ *Id.* at 19,880 & n.1.

³⁰ See Letter from Robert B. Wasserman, Chief Counsel, Division of Clearing and Risk, CFTC, to Stacy Duckett, Vice President, Chief Compliance Officer and Corporate Secretary, Southwest Power Pool, Inc. (Apr. 25, 2011).

In the Joint Petition, the Prior Requesters sought exemption for transactions falling into four categories (referred to in the Final Order as the “Covered Transactions”) and entered into pursuant to a tariff that has been approved by FERC or a state agency as well as any persons offering, entering into, rendering advice, or rendering other services with respect to such transactions.³¹ Those transactions included: (1) Financial Transmission Rights, (2) Energy Transactions, (3) Forward Capacity Transactions, and (4) Reserve or Regulation Transactions.³² Prior to the issuance of the Final Order, the Commission issued the Proposed Order, which sought comment on how it proposed to address the request for exemptive relief. The Commission staff also issued a “No-Action” Letter to the Prior Requesters on October 11, 2012.³³

In the Final Order, the Commission granted the Prior Requesters’ requested exemption for the Covered Transactions from all of the Commission’s authority, except for its general anti-fraud and anti-manipulation authority, and scienter-based prohibitions.³⁴ The Commission explained that to be eligible for the exemption, the contract, agreement, or transaction must be offered or entered into in a market administered by one of the Prior Requesters pursuant to its tariff, rate schedule or protocol that has been approved or permitted to take effect by FERC or the PUCT.³⁵

Additionally, the Commission explained that the:

definitions of the Covered Transactions included in the Final Order do not limit the exemption to those products that are currently traded in a [Prior Requester’s] markets. Any products that are offered by a [Prior Requester], presently or in the future, pursuant to a FERC- or PUCT-approved Tariff and that fall within these definitions, as well as any modifications to existing products that are offered by a [Prior Requester] pursuant to a FERC- or PUCT-approved Tariff and that do not alter the characteristics of the Covered Transaction in a way that would cause such products to fall outside these definitions, are intended to be included within the Final Order.³⁶

Further, with respect to the scope of “Energy Transactions,” the Commission confirmed that the definition included Virtual and Convergence Bids and Offers.³⁷ The Commission explained that:

³¹ See Final Order at 19,882.

³² See *id.* at 19,882-83.

³³ *Staff No-Action Relief: Preservation of the Regulatory Status Quo with Respect to Certain CEA Provisions that May Apply to RTOs, ISO, and/or Their Participants*, No-Action Letter, CFTC Letter No. 12-11 (Oct. 11, 2012).

³⁴ See Final Order at 19,880, 19,909-10, 19,912-15. The Commission’s general anti-fraud and anti-manipulation authority, and scienter-based prohibitions, are under CEA Sections 2(a)(1)(B), 4(d), 4b, 4c(b), 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6c, 6(d), 6(e), 6c, 6d, 8, 9, and 13. The Covered Transactions are defined in Section VI.2.a of the Order. *Id.* at 19,912-13.

³⁵ *Id.* at 19,880, 19,909.

³⁶ *Id.* at 19,885.

³⁷ Final Order at 19,887.

[a]lthough there is an apparent financial settlement nature of virtual and convergence bids and offers transacted in the Day-Ahead Market, [the Prior Requesters] represented that they are inextricably linked to the physical delivery of electric energy due to their being subject to the same aggregate physical capabilities of the electric energy transmission grid as other physical Energy Transactions.³⁸

The Commission also clarified in the Final Order that an energy transaction “may occur in the Real-Time Market through ‘[a] cash payment or receipt at the price established in the Day-Ahead Market or Real-Time Market (as permitted by each [Prior Requester] in its Tariff.’”³⁹ The Commission stressed “that any Energy Transaction settling based upon the Day-Ahead Market price must be inextricably linked to the physical delivery of electric energy.”⁴⁰

Further, the Commission explained that its determination to grant the exemption in the Final Order is based on the representations made by the Prior Requesters in various submittals. The Commission also:

note[d] that the following representations are of particular importance and integral to the Commission’s decision to grant the exemption set forth in [the] Final Order: (1) The exemption requested by the [Prior Requesters] relate to Covered Transactions that are primarily entered into by commercial participants that are in the business of generating, transmitting and distributing electric energy; (2) the [Prior Requesters] were established for the purpose of providing affordable, reliable electric energy to consumers within their geographic region; (3) the Covered Transactions are an essential means, designed by FERC and PUCT as an integral part of their statutory responsibilities, to enable the reliable delivery of affordable electric energy; (4) each of the Covered Transactions taking place on the [Prior Requesters’] markets is monitored by MMUs responsible to either FERC or, in the case of ERCOT, PUCT; and (5) each Covered Transaction is directly tied to the physical capabilities of the [Prior Requesters’] electric energy grids.⁴¹

The Commission found that the exemption granted to the Prior Requesters is consistent with the public interest and the purposes of the CEA.⁴² The Commission also explained that the Section 4(c) requirements were satisfied.⁴³ Similarly, as discussed in more detail below, the exemption SPP seeks satisfies these requirements and is consistent with the public interest and the purposes of the CEA.

³⁸ *Id.* at 19,887-88.

³⁹ *Id.* at 19,888 (alteration in original) (emphasis removed); *see also id.* at 19,913 (Order section VI.5.b).

⁴⁰ Final Order at 19,888.

⁴¹ *Id.* at 19,904 (footnotes omitted).

⁴² *Id.* at 19,895.

⁴³ *Id.* at 19,892-904.

The Commission's Final Order made the exemption (or the effectiveness of the exemption) subject to certain conditions. Specifically, the conditions include:

1. Full compliance with FERC regulation 35.47, adopted by FERC Order No. 741, as measured by FERC's acceptance and approval of Tariff provisions necessary to implement the standards.⁴⁴
2. That each Prior Requester provides "a legal opinion or memorandum of outside counsel, that is satisfactory to the Commission, in the Commission's sole discretion, and that provides the Commission with assurance that the netting arrangements contained in the approach selected by the particular [Prior Requester] to satisfy the standards set forth in FERC regulation 35.47(d) . . . will, in fact, provide the [Prior Requester] with enforceable rights of set off against any of its market participants under title 11 of the United States Code in the event of a bankruptcy of the market participant"⁴⁵
3. Each of the Prior Requesters must amend its Tariff to permit the sharing of information with the Commission without prior notice to market participants.⁴⁶
4. The Covered Transactions must be entered into by parties that meet one or more of the following criteria:⁴⁷
 - (a) The parties qualify as "appropriate persons" as that term is defined in Sections 4(c)(3)(A) through (J) of the CEA;
 - (b) The parties qualify as "eligible contract participants" as that term is defined in Section 1a(18)(A) of the CEA and in Commission regulation 1.3(m); or
 - (c) The parties are "in the business of: (1) generating, transmitting, or distributing electric energy or (2) providing electric energy services that are necessary to support the reliable operation of the transmission system."⁴⁸
5. The Commission must be able to obtain through FERC, for the ISOs and RTOs, "positional and transactional data within the [Prior Requesters'] possession for

⁴⁴ Final Order at 19,906; *see also id.* at 19,888-90. FERC regulation 35.47 requires certain risk management and credit practices in organized wholesale electric energy markets. 18 C.F.R. § 35.47.

⁴⁵ Final Order at 19,906 (footnote omitted); *see also id.* at 19,890-91.

⁴⁶ *See id.* at 19,913; *see also id.* at 19,891.

⁴⁷ Final Order at 19,913.

⁴⁸ *Id.* at 19,914; *see also id.* at 19,895-97. Though the term "appropriate person" has specific meaning under the CEA, the Commission also used the term generally in the Final Order to refer to a party meeting any of the criteria specified at Final Order at 19,913. *See, e.g., id.* at 19,896-97.

products in the [Prior Requesters'] markets that are related to markets subject to the Commission's jurisdiction."⁴⁹

III. SPP'S REQUEST FOR EXEMPTION

A. Transactions, Persons, and Services Covered by SPP's Request

SPP seeks an exemption under Section 4(c) of the CEA for three of the four categories of transactions for which the Commission granted exemptive relief in its Final Order to the Prior Requesters.⁵⁰ SPP seeks this exemption to provide greater certainty with respect to the regulatory requirements that apply to: (1) each class of contracts, agreements, or transactions offered or to be offered or entered into under SPP's FERC-approved Tariff; and (2) any person or class of persons offering, entering into, rendering advice, or rendering other services with respect thereto. SPP seeks legal clarity that such contracts will be subject only to the CEA's anti-fraud and anti-manipulation authorities as reserved under the terms of the Commission's Final Order. SPP respectfully requests that the exemptive Order it seeks apply to each relevant class of contracts, agreements or transactions offered or entered into under SPP's FERC-approved Tariff that is in effect in the Integrated Marketplace, as well as any product or any modifications that are offered in the future pursuant to the FERC-approved Tariff that do not alter the characteristics of the Transactions in a way that would cause them to fall outside of the definitions.⁵¹

While SPP and the Prior Requesters operate pursuant to individual tariffs, they share many commonalities in their markets and operations or will upon commencement of SPP's Integrated Marketplace. As discussed above, in developing the design elements and products for the Integrated Marketplace, SPP and its stakeholders thoroughly reviewed the market designs of other FERC-approved RTO markets. Other RTO markets, particularly PJM and MISO, served as a model for the products developed for the SPP Integrated Marketplace, including the transactions for which SPP requests exemptive relief. As SPP explained in its Integrated Marketplace proposal to FERC:

In developing the Integrated Marketplace, SPP has conducted an extensive review of other RTO Day-Ahead and Real-Time Energy, Operating Reserve, and Transmission Congestion Rights markets, in an attempt to identify best practices and incorporate lessons learned. In general, SPP's Integrated Marketplace design is substantially similar to the Commission-approved markets operated by other RTOs, particularly the Midwest Independent Transmission System Operator, Inc. ("MISO") and PJM Interconnection, L.L.C. ("PJM").⁵²

⁴⁹ Final Order at 19,909-10; *see also id.* at 19,913 (Order Section VI.4.a).

⁵⁰ While the Prior Requesters included "Forward Capacity Transactions" in the scope of transactions for which they requested exemption, SPP's Integrated Marketplace does not include Forward Capacity Transactions as defined in the Commission's Final Order.

⁵¹ *See id.* at 19,885.

⁵² Submission of Tariff Revisions to Implement Integrated Marketplace, FERC Docket No. ER12-1179-000, Transmittal Letter at 7 (Feb. 29, 2012); *see also id.* at Exhibit No. SPP-1 (Testimony of Carl A. Monroe, Executive Vice President and Chief Operating Officer) at 13 and Exhibit No. SPP-3 (Testimony of Richard

FERC recognized in its order conditionally approving SPP's Integrated Marketplace that the market "includes market-design components that are similar to ones previously approved by [FERC] and implemented in other RTO/ISO markets. Specifically . . . Day-ahead energy and operating reserve market, which includes a day-ahead market obligation and virtual bidding proposal . . . [and] Market-based congestion management process including a market for TCRs and allocation of ARR."⁵³

The classes of contracts, agreements, or transactions offered under SPP's FERC-approved Tariff within the scope of this Application are for the purchase or sale of any of the following electric energy-related products (including virtual or convergence bids and offers):

1. Transmission Congestion Rights (TCRs):⁵⁴
 - a. A TCR is a transaction that entitles one party to receive, and obligates another party to pay, an amount based solely on the difference between the price for electric energy, established on an electric energy market administered by SPP, at a specified source (i.e., where electric energy is deemed injected into SPP's grid) and a specified sink (i.e., where electric energy is deemed withdrawn from SPP's grid).⁵⁵

Dillon, Director, Market Design) at 2-4; *see generally id.* at Exhibit No SPP-3 (explaining individual market design elements and products).

⁵³ Integrated Marketplace Order at P 17. FERC also noted that, like other FERC-approved RTO markets, SPP's congestion management process "properly recognizes the physical limitations of the existing transmission grid." *Id.* at P 17 n.19; *see also id.* at P 237 ("SPP's proposal is similar to the market-based congestion management constructs successfully implemented by other RTOs.") (citing *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,276 (2003); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004)), *order on reh'g*, 111 FERC ¶ 61,043 (2005).

⁵⁴ As discussed *supra*, the term "Transmission Congestion Right" or "TCR" is SPP's equivalent of the term "Financial Transmission Right" utilized by the Prior Requesters in their petition and by the Commission in the Final Order. Like the organized wholesale energy markets of some Prior Requesters, SPP's Integrated Marketplace also includes ARRs. ARRs are allocated to transmission customers based on historical network load or transmission service reservations (or equivalent service taken under a Grandfathered Agreement between an SPP Transmission Owner and a customer). ARRs are granted exclusively to transmission service customers (i.e., not to other market participants or speculators) based on their transmission service (or grandfathered service) and are subject to SPP's simultaneous feasibility analysis of the capability of the SPP Transmission System. ARRs are not traded in the Integrated Marketplace; instead, ARRs entitle the holder to a share of revenues from SPP-administered TCR auctions or may be "self-converted" at the customer's election into a TCR.

⁵⁵ This definition is similar to the definition used by the Commission in the Final Order. *See* Final Order at 19,913 (Order Section VI.5.a, defining "Financial Transmission Right"). SPP's TCR design does not include TCR options, unlike some of the Prior Requesters' "Financial Transmission Rights" designs.

- b. The TCRs for which SPP seeks an exemptive Order are those where:⁵⁶
- (i) Each TCR is linked to, and the aggregate volume of TCRs for any period of time is limited by, the physical capability (after accounting for counterflow) of SPP's electric energy transmission system for such period;⁵⁷
 - (ii) SPP serves as the market administrator for the market on which the TCRs are transacted;
 - (iii) Each party to the transaction is a Market Participant of SPP that satisfies the minimum participation requirements (or is SPP itself) and the transaction is executed on a market administered by SPP;⁵⁸ and
 - (iv) The transaction does not require any party to make or take physical delivery of electric energy.
2. Energy Transactions: "Energy Transactions" are transactions in the SPP Day-Ahead Market or Real-Time Balancing Market for the purchase or sale of a specified quantity of electric energy at a specified location (including virtual bids and offers) where:⁵⁹
- a. The price of the electric energy is established at the time the transaction is executed;⁶⁰
 - b. Performance occurs in the Real-Time Balancing Market by either⁶¹
 - (i) Delivery or receipt of the specified electric energy, or

⁵⁶ See *id.* at 19,912 (Order Section VI.2.a.(1), containing substantially similar provisions).

⁵⁷ Tariff, Attachment AE §§ 7.2 (stating that 100% of the transmission system capacity is made for potential nomination of ARRs) 7.2.3 (stating that ARR awards are based on a simultaneous feasibility analysis), 7.3.3 (stating that the TCR auction is limited by a simultaneous feasibility analysis).

⁵⁸ Tariff, Attachment AE §§ 1.1 (defining "Eligible Entity" as transmission customers or market participants with firm or non-firm transmission service reservations), 7.1 (stating that only Eligible Entities may nominate candidate ARRs), 7.3.1(1) & 7.4.1(1) (stating that market participants that have satisfied the credit requirements may obtain TCRs in the annual and monthly auctions).

⁵⁹ This definition is similar to the definition used by the Commission in the Final Order. See Final Order at 19,913 (Order Section VI.5.b, defining "Energy Transactions").

⁶⁰ See *id.* (Order Section VI.5.b(1), containing the same provision); see also Tariff, Attachment AE §§ 5.1.3 (stating that SPP will announce the results of the Day-Ahead Market, including resource commitment and market prices, at 4:00 p.m. each day), 6.2.3 (stating that SPP will announce the Real-Time Balancing Market prices and results after running the security-constrained economic dispatch for each five-minute dispatch interval).

⁶¹ See Final Order at 19,913 (Order Section VI.5.b(2), containing the same provisions).

- (ii) A cash payment or receipt at the price established in the Real-Time Balancing Market; and
 - c. The aggregate cleared volume of both physical and cash-settled energy 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.⁶²
- 3. Operating Reserve Transactions:⁶³ Operating Reserve Transactions are transactions:
 - a. In which SPP, for the benefit of load-serving entities and resources, purchases, through auction, or otherwise as permitted in its Tariff, the right, during a period of time as specified in SPP's Tariff, to require the seller of such right to operate electric facilities in a physical state such that the facilities can increase or decrease the rate of injection or withdrawal of a specified quantity of electric energy into or from the electric energy transmission system operated by SPP with:⁶⁴
 - (i) Reserve Transaction: physical performance by the seller's facilities within a response time interval specified in SPP's Tariff;⁶⁵ or
 - (ii) Area Control Error Regulation Transaction: prompt physical performance by the seller's facilities as specified in SPP's Tariff;⁶⁶
 - b. For which the seller receives, in consideration, one or more of the following.⁶⁷

⁶² See *id.* (Order Section VI.5.b(3), containing the same provision).

⁶³ The Prior Petitioners referred generally to "Reserve or Regulation Transactions." SPP's Integrated Marketplace refers collectively to Regulation and Reserves as "Operating Reserve."

⁶⁴ See Final Order at 19,913-14 (Order Section VI.5.d(1), containing the same provisions); see also *e.g.*, Tariff, Attachment AE §§ 6.3.1 & 6.3.2 (stating that SPP will deploy resources to provide reserves as needed based on the amount of reserve product that was cleared in the market for such resources).

⁶⁵ See Tariff, Attachment AE § 1.1 (defining "Spinning Reserve" and "Supplemental Reserve" as the portion of Operating Reserve that is provided by resources that are fully available to serve load within a specified time period following a contingency event).

⁶⁶ See Tariff, Attachment AE § 1.1 (defining "Regulation-Up" and "Regulation-Down" as Operating Reserve products procured from resources that are able to adjust their energy output up or down in response to a regulation deployment instruction).

⁶⁷ See Final Order at 19,914 (Order Section VI.5.d(2), containing the same provisions); see also Tariff, Attachment AE § 8.3.4 ("The [Operating Reserve Market Clearing Price] represents the cost of supplying an increment of Operating Reserve, taking into account lost opportunity cost and is composed of the marginal Operating Reserve costs and marginal costs associated with Operating Reserve scarcity.").

- (i) Payment at the price established in SPP's Day-Ahead Market or Real-Time Balancing Market for electric energy applicable whenever SPP exercises its right that electric energy be delivered;
 - (ii) Compensation for the opportunity cost of not supplying or consuming electric energy or other services during any period during which SPP requires that the seller not supply energy or other services;
 - (iii) An upfront payment determined through the auction administered by SPP for this service;
 - (iv) An additional amount indexed to the frequency, duration, or other attributes of physical performance as specified in SPP's Tariff; and
- c. In which the value, quantity, and specifications of such transactions for SPP for any period of time shall be limited to the physical capability of the electric energy transmission system operated by SPP for that period of time.⁶⁸

Together, these classes of contracts, agreements or transactions for the purchase and sale of a product or service that is directly related to, and a logical outgrowth of, any of SPP's core functions as an RTO and all services related thereto comprise the "Transactions" that are the subject of this Application.

B. Exemption Criteria of Section 4(c)(6) of the CEA

Section 4(c)(6) of the CEA, as amended by the Dodd-Frank Act, provides that the Commission shall exempt contracts, agreements or transactions entered into pursuant to a tariff or rate schedule approved or permitted to take effect by FERC or the regulatory authority of a State if it determines such exemption is consistent with the public interest and the purposes of the CEA.⁶⁹ Specifically, Section 4(c)(6) of the CEA provides that:

If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2) [of Section 4(c) of the CEA], exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

- (A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

⁶⁸ See Final Order at 19,914 (Order Section VI.5.d(3), containing the same provision).

⁶⁹ *Id.* at 19,881 & n.14.

(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

(C) between entities described in Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).⁷⁰

Paragraphs (1) and (2) of Section 4(c) are incorporated by reference in Section 4(c)(6). Paragraph (1) provides that the Commission, after notice and opportunity for hearing, may upon application of any person, exempt any agreement, contract, or transaction and any persons or class of person offering, entering into, rendering advice or rendering other services with respect to that agreement, contract or transaction from any of the requirements of the CEA. Paragraph (2) provides that the Commission shall not grant an exemption unless it determines that:

1. the exemption would be consistent with the public interest and the purposes of this Act;
2. the agreement, contract or transaction will be entered into solely between appropriate persons; and
3. the agreement, contract or transaction will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.⁷¹

The Commission has considerable flexibility in exercising its Section 4(c) exemptive authority. In order to provide legal certainty, SPP asks the Commission to issue the requested exemptive order to SPP without first making a determination as to the Transactions' status or classification under the CEA.⁷² Specifically, SPP requests that the Commission issue the exemptive Order without making a determination whether: (1) the Transactions are swaps, futures, or option contracts within the meaning of Section 1a of the CEA; (2) SPP operates Swap Execution Facilities, or provides clearing services that require registration as a Derivatives Clearing Organization in connection with the Transactions; or (3) Participants in the Transactions are subject to any requirements under the CEA with respect to the Transactions.

⁷⁰ *Id.*

⁷¹ *See id.* at 19,881-82 (stating the exemption language in Section 4(c)(6) and summarizing Sections 4(c)(1) and (2)).

⁷² *See* Final Order at 19,881-82 n.15 (“[T]he Conferees [do] ‘not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the [CEA]. *Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.*”) (emphasis added) (quoting H.R. Rep. No. 102-978, 102d Cong. 2d Sess. at 82-83 (1992)).

C. The Requested Exemption is Consistent with the Public Interest and Purposes of the CEA.

The requested exemption is consistent with the public interest as defined by the CEA. As noted in the Final Order, Section 3 of the CEA provides that transactions subject to the CEA affect the public interest by: providing a means for managing or assuming price risk; discovering prices; and disseminating pricing information through trading in liquid, fair and financially secure trading facilities.⁷³ Section 3 describes the purposes of the CEA as fostering the public interests through a system of effective self-regulation aimed at: deterring and preventing price manipulation or any other disruptions to market integrity; ensuring the financial integrity of all transactions subject to the CEA; and protecting market participants from fraudulent or abusive sales practices.⁷⁴ The FERC regulatory framework that currently governs SPP and SPP's Integrated Marketplace satisfies the three purposes specified in Section 3 of the CEA.

Consistent with the Commission's findings in the Final Order, the Transactions for which SPP seeks exemption and SPP and its Participants have been, are, and will be subject to a long-standing, comprehensive regulatory framework established by FERC for the offer and sale of the Transactions, as well as the creation, auction, and wholesale sale for resale of SPP products, and participant requirements, risk management, and supporting financial arrangements related to the Transactions.⁷⁵ Each of the Transactions is part of, and inextricably linked to, the organized wholesale electric energy markets that are subject to FERC's regulation and oversight.⁷⁶ The Transactions are "entered into primarily by commercial participants that are in the business of generating, transmitting, and distributing electric energy" and, as discussed above, SPP was "established for the purpose of providing affordable, reliable electric energy to consumers within [its] geographic region."⁷⁷ SPP's Transactions are "inextricably tied to [SPP's] delivery of electric energy," which the Commission stated in the Final Order is "fundamental to [its] 'public interest' and 'purposes of the [Act]' analysis."⁷⁸ The Transactions take place on markets that are monitored by both a market administrator (SPP) and an independent market monitor (the SPP Market Monitor), which was another "important factor" in the Commission's public interest and purposes of the CEA analysis in the Final Order.⁷⁹

Additionally, the regulatory framework that FERC administers and that applies to the Transactions, SPP, and the Participants is consistent with the public interest, as defined by Congress in the FPA. As with the Commission's regulatory framework, FERC establishes its

⁷³ See Final Order at 19,894 (describing the Commission's Section 3(a) public interest analysis).

⁷⁴ 7 U.S.C. § 5(b); see also Final Order at 19,894.

⁷⁵ Final Order at 19,894. FERC has exercised comprehensive regulatory oversight over these aspects of the Transactions through a long history of orders, which are detailed in Addendum A.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 19,894 (alteration in original).

⁷⁹ Final Order at 19,895.

regulatory framework through the adoption of broad principles that SPP must meet. While SPP, like other RTOs, establishes the exact terms for its operation through its Tariff, the terms must be approved by FERC. Both the broad principles established by FERC and the SPP Tariff and governing documents that FERC has approved should be considered together in determining that the FERC regulatory framework is consistent with the public interests and purposes of the CEA.

As the Commission observed in the Final Order:

FERC Order No. 2000 (which, along with FERC Order No. 888, encouraged the formation of RTOs and ISOs to operate the electronic transmission grid and to create organized wholesale electric energy markets) requires an RTO or ISO to demonstrate that it has four minimum characteristics: (1) Independence from any market participant; (2) a scope and regional configuration which enables the RTO or ISO to maintain reliability and effectively perform its required functions; (3) operational authority for its activities, including being the security coordinator for the facilities that it controls; and (4) short-term reliability. In addition, the Requesting Parties stated that an RTO or ISO must demonstrate to FERC that it performs certain self-regulatory and/or market monitoring functions.⁸⁰

As a FERC-approved RTO, SPP is required to satisfy these four minimum characteristics, as well as other requirements FERC imposes on RTOs. Like the Prior Requesters, under FERC Order Nos. 888 and 2000, SPP must:

Employ a transmission pricing system that promotes efficient use and expansion of transmission and generation facilities; develop and implement procedures to address parallel path flow issues within its region and with other regions; serve as a provider of last resort of all ancillary services required by FERC Order No. 888 including ensuring that its transmission customers have access to a Real-Time balancing market; be the single OASIS (Open-Access Same-Time Information System) site administrator for all transmission facilities under its control and independently calculate Total Transmission Capacity and Available Transmission Capability; provide reliable, efficient, and not unduly discriminatory transmission service, it must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements; be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades; and ensure the integration of reliability practices within an interconnection and market interface practices among regions).⁸¹

Also, like the Prior Requesters, SPP is “responsible for ‘ensur[ing] the development and operation of market mechanisms to manage transmission congestion” and to establish “market mechanisms [that] must accommodate broad participation by all market participants, and must provide all

⁸⁰ *Id.* at 19,894 nn. 196-97 and accompanying text (citing Proposed Order at 52,144-45).

⁸¹ *Id.* at 19,894 n.197 (citing Joint Petition at 13-14).

transmission customers with efficient price signals that show the consequences of their transmission usage decisions.”⁸²

FERC Order No. 2000 directly addresses a number of goals of the CEA, including: (a) the operation of fair and liquid markets; (b) ensuring financial integrity of transactions and the avoidance of systemic risk; and (c) the protection of market participants from fraudulent or other abusive practices. Further, the Attachments to this Application demonstrate for SPP, the Transactions, and the Participants how SPP’s FERC-approved Tariff and other governing documents are consistent with the public interest and purposes of the CEA as evidenced by the core principles in Sections 5b (registration of derivatives clearing organization (“DCO”)) and 5h (registration of swap execution facilities (“SEF”)), which apply to the clearing and execution of contracts and transactions subject to the Commission’s jurisdiction under the CEA. In the Final Order, the Commission found that:

[T]he extent to which the Final Order is consistent with the public interest and the purposes of the Act can, in major part, be assessed by the extent to which the Tariffs and activities of the [Prior Requesters], and supervision by FERC and PUCT, are congruent with, and sufficiently accomplish, the regulatory objectives of the relevant Core Principles set forth in the CEA for DCOs and SEFs. Specifically, providing a means for managing or assuming price risk and discovering prices, as well as prevention of price manipulation and other disruptions to market integrity, are addressed by the Core Principles for SEFs. Ensuring the financial integrity of the Covered Transactions and the avoidance of systemic risk, as well as protection from the misuse of participant assets, are addressed by the Core Principles for DCOs. . . . Therefore, the Commission has incorporated its DCO and SEF Core Principle Analyses set forth in the Proposed Order, into its consideration of the Final Order’s consistency with the public interest and purposes of the Act.⁸³

The Attachments to this Application demonstrate that, like those of the Prior Requesters, SPP’s governing documents (Tariff, Bylaws, and Membership Agreement) and activities and FERC supervision thereof “are congruent with, and sufficiently accomplish, the regulatory objectives of the relevant Core Principles set forth in the CEA for DCOs and SEFs.”⁸⁴ Therefore, granting SPP’s request for an exemption is consistent with the public interest and the purposes of the CEA.

In the Final Order, the Commission also stated that it “considered how the public interest and the purposes of the CEA are also addressed by the manner in which the [Prior Requesters]

⁸² *Id.* at 19,894 n.200 and accompanying text (citing Proposed Order at 52,144 and 18 C.F.R. § 35.34(k)(2)).

⁸³ *Id.* at 19,895; *see also id.* at 19,901 (stating that “[t]he Commission believes that the analysis drawing from the DCO Core Principles contained in the Proposed Order should be used to determine whether the exemption is consistent with the public interest and the purposes of the CEA” and “the Commission believes its analysis drawing from the SEF Core Principles contained in the Proposed Order should be used to determine whether the exemption is consistent with the public interest and purposes of the Act”).

⁸⁴ *Id.* at 19,895.

comply with FERC's credit reform policy,"⁸⁵ and that "the Commission believes 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."⁸⁶ On that basis, the Commission found that "substantial compliance with such requirements is key to the Commission's determination that the Tariffs and activities of the [Prior Requesters] and supervision by FERC and PUCT are congruent with, and—in the case of the Covered Transactions—sufficiently accomplish, the regulatory objectives of each DCO Core Principle."⁸⁷ As discussed above, FERC has held that SPP completely complies with all of the requirements of FERC Order No. 741 (which adopted FERC regulation 35.47), including SPP's proposal to become a counterparty to market transactions (as discussed in more detail in the Attachments to this Application).⁸⁸

D. The Appropriate Person Requirement

Section 4(c)(2)(B)(i) of the CEA requires that, in order to grant the exemptions requested herein, the Commission must determine that the agreements, contracts, or transactions that will be subject to the exemptions will be "entered into solely between appropriate persons." The term "appropriate persons," is defined for these purposes to include, *inter alia*, corporations or other business entities with net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000." "Appropriate persons," also includes "[s]uch other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections."

In FERC Order No. 741, FERC directed each of the ISOs/RTOs to establish minimum criteria for market participants. FERC did not specify the criteria the ISOs/RTOs should apply but rather directed them to establish criteria through their stakeholder processes.⁸⁹ In compliance with FERC Order No. 741, and accepted by FERC, SPP's Tariff includes minimum capitalization criteria that require market participants to have at a minimum: (a) a tangible net worth of \$1,000,000; (b) assets of \$10,000,000; (c) a credit rating of BBB- or its equivalent; (d) a guaranty through which the Guarantor is used to meet alternatives (a) through (c); or (e) a minimum deposit of \$200,000 in financial security, plus, if the participant's estimated market exposure is greater than \$100,000, double the amount of any financial security required under the SPP Tariff.⁹⁰

⁸⁵ *Id.*

⁸⁶ Final Order at 19,901.

⁸⁷ *Id.* at 19,900-01.

⁸⁸ *See Sw. Power Pool, Inc.*, 136 FERC ¶ 61,189 (accepting compliance filing to comply with Order Nos. 741 and 741-A subject to a further compliance filing); *Sw. Power Pool*, 138 FERC ¶ 61,187 (2012) (accepting SPP further compliance with Order No. 741); *Sw. Power Pool*, 143 FERC ¶ 61,262 (accepting SPP's proposal to become a counterparty to market transactions as compliant with Order No. 741).

⁸⁹ FERC Order No. 741 at P 132.

⁹⁰ SPP Tariff, Attachment X § 3.1.1.8.

Additionally, on August 1, 2013, SPP filed with FERC further revisions to the SPP Tariff to incorporate as part of the minimum criteria for market participation⁹¹ the appropriate person requirement set forth in Section VI.2.b of the Order.⁹² The Commission specifically identified that the requirement included “a person who actively participates in the generation, transmission, or distribution of electric energy,” which is defined as “a person that is in the business of: (1) Generating, transmitting or distributing electric energy or (2) providing electric energy services that are necessary to support the reliable operation of the transmission system.”⁹³ SPP’s proposed Tariff changes, which were filed in FERC Docket No. ER13-2091-000, were conditionally accepted by FERC on September 30, 2013, subject to SPP submitting a further revision to Tariff language proposed in the filing regarding information sharing.⁹⁴ On October 25, 2013, SPP submitted its compliance filing with the further revisions to Attachment AE of the Tariff directed by the September 30, 2013 order, which FERC accepted on November 22, 2013 effective March 1, 2014.⁹⁵

E. SPP Compliance with Other Conditions on Prior Requesters’ Exemption

As discussed in Part II.D above, the Commission placed several conditions, in addition to the appropriate person requirement, on the exemption and the effectiveness of the exemption the Commission granted to the Prior Requesters. SPP has or will comply with these conditions as well. Specifically:

1. SPP fully complies with FERC Regulation 35.47, with Tariff provisions that have been accepted by FERC and became effective prior to, or as of, March 1, 2014. See the discussion in Part II.A, above.
2. SPP intends to provide to the Commission a legal opinion or memorandum of outside counsel regarding SPP being the counterparty to transactions in the Integrated Marketplace, including obligations and rights associated with TCRs and ARRs, and enforceable rights of set off against any of its market participants under title 11 of the United States Code in the event of a bankruptcy of the market participant.

⁹¹ The scope of these minimum criteria includes parties to the Bilateral Settlement Schedule tool for contracts for the transfer of Energy or Operating Reserve obligations in that only SPP Market Participants may utilize the Bilateral Settlement Schedule tool. *See* SPP Tariff, Attachment AE § 1.1.

⁹² Final Order at 19,913.

⁹³ *Id.* at 19,897, 19,913-14; *see also id.* at 19,895-19,900 (the Commission’s full discussion regarding the appropriate person standard regarding the Prior Requesters’ exemption).

⁹⁴ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251, at PP 13-14 (2013) (FERC also found the minimum participation criteria to be consistent with Order No. 741 requirements).

⁹⁵ *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013) (FERC accepting 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).

3. On August 1, 2013, SPP filed with FERC further revisions to the SPP Tariff to permit the sharing of information with the Commission without prior notice to market participants. SPP's proposed Tariff changes, which were filed in FERC Docket No. ER13-2091-000, were conditionally accepted by FERC on September 30, 2013, subject to SPP submitting a further revision to the language.⁹⁶ On October 25, 2013, SPP submitted the further revision to language governing the sharing of information directed by FERC, which FERC accepted in FERC Docket No. ER13-2091-001, effective March 1, 2014.⁹⁷
4. SPP will comply with requests for information related to transactional and positional data from the Commission or FERC pursuant to the Commission's and FERC's information sharing arrangements.

F. The Exemption Will not Have a Material Adverse Effect on the Ability of the Commission or any Contract Market to Discharge its Regulatory Function.

The Commission's ability to discharge its statutory mandates will not be adversely affected by the requested exemptions. Under Section 4(d) of the CEA, the Commission will retain authority to conduct investigations to determine whether SPP is in compliance with any exemption granted in response to this request. As noted above, the requested exemptions would also preserve the Commission's existing enforcement jurisdiction over fraud and manipulation. This is consistent with Section 722 of the Dodd-Frank Act, the existing MOU between the FERC and the Commission, and other protocols for inter-agency cooperation. SPP will continue to retain records related to the Transactions, consistent with existing obligations under FERC regulations.

The regulation of exchange-traded futures contracts and significant price discovery contracts ("SPDCs") will be unaffected by the requested exemptions. Futures contracts based on electric energy prices set in SPP's markets that are traded on a designated contract market and SPDCs will continue to be regulated by and subject to the requirements of the Commission. No current requirement or practice of SPP or of a contract market will be affected by the Commission's granting the requested exemptions.

The Commission found that the Prior Requesters' exemption would not have a material adverse effect on the ability of the Commission or any contract markets to perform regulatory or self-regulatory duties, with some caveats.⁹⁸ Specifically, the Commission noted that: (i) certain

⁹⁶ *Sw. Power Pool, Inc.*, 144 FERC ¶ 61,251, at PP 13, 15.

⁹⁷ *Sw. Power Pool, Inc.*, FERC Docket No. ER13-2091-001, Letter Order (Nov. 22, 2013) (FERC accepting 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).

⁹⁸ Final Order at 19,903-04.

statements regarding a market monitoring unit's "ability to detect and deter manipulation . . . were not meant to be construed as a final and irrevocable approval of the integrity of reference prices derived from the [Prior Requesters'] markets;" (ii) "[t]he Commission retains the authority to question and obtain additional information in a timely manner regarding the underlying prices to which FTRs and other electric energy contracts, which are subject to the Commission's jurisdiction, settle;" and (iii) "the Commission maintains the responsibility of ensuring that exchange-traded and cleared financial electric energy contracts are constructed such that the settlement mechanism produces prices that accurately reflect the underlying supply and demand fundamentals of the RTO and ISO markets and are not readily susceptible to manipulation."⁹⁹ The Commission also noted that these reasons are why the Commission conditioned exemption on access to related transactional and positional data.¹⁰⁰ These findings would apply to SPP in the same manner as they apply to the Prior Requesters.

IV. CONCLUSION

As demonstrated above and set out in more detail in the Attachments hereto, FERC imposes on SPP, the specified Transactions, and the Participants comprehensive regulation that is comparable to that of the Commission's Core Principles. Accordingly, this aspect of the regulatory framework applicable to SPP is consistent with the public interest and the purposes of the CEA as evidenced by the Core Principles with respect to markets and clearing organizations.

While FERC regulation of SPP under the FPA is comparable to that of the CEA's Core Principles, there are differences in the regulatory schemes administered by the Commission and FERC. SPP requests the exemptive order because of these differences in the details of the two regimes, as illustrated in the Attachments. The requested exemptive relief would ensure that the public interest in regulating these markets is met "in a manner so as to ensure effective and efficient regulation."¹⁰¹ For these reasons, the proposed exemption would be consistent with the public interest. Moreover, the Transactions would only be entered into between appropriate persons, and the Transactions will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA.

Furthermore, the exemption SPP is seeking is similar to the exemption that the Commission granted to the Prior Requesters. SPP is similar to the Prior Requesters and is an RTO regulated by FERC in the same manner as the Prior Requesters. For the same reasons the Commission granted exemptions to the Prior Requesters, the proposed exemption for SPP would be consistent with the public interest.

Accordingly, SPP requests that the Commission issue an Order under Section 4(c)(6) of the CEA in order to provide greater certainty with respect to the regulatory requirements that will

⁹⁹ *Id.* at 19,904.

¹⁰⁰ *Id.*

¹⁰¹ *See* Dodd-Frank Act, Section 720.

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apply to the SPP, the Transactions, and Participants. SPP requests that the Commission grant the exemption without determining: (1) whether the Transactions are swap, futures, or option contracts within the meaning of Section 1a of the CEA; and (2) whether SPP operates SEFs or designated contract markets or provides clearing services in connection with the Transactions.

Respectfully submitted,

/s/ Joseph W., Ghormley

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CERTIFICATION PURSUANT TO 17 C.F.R. § 140.99(c)(3)(i) and (ii)

The undersigned hereby certifies that the material facts set forth in the foregoing document are true and complete to the best of my knowledge.

Pursuant to Commodity Futures Trading Commission Rule 140.99(c)(3)(ii), Southwest Power Pool, Inc. hereby undertakes that, if at any time prior to issuance of the order requested therein, any material representation made in this document by Southwest Power Pool, Inc., ceases to be true and complete, it will promptly inform the Commission staff in writing of any change in facts and circumstances.

By: /s/ Joseph W. Ghormley
Name: Joseph W. Ghormley
Title: Senior Attorney
For Southwest Power Pool, Inc.

Dated: August 1, 2014