

Southwest Power Pool, Inc., Western Energy Imbalance Service Tariff, Rate Schedule No. 7

Contract No. 19-UGPR-59  
Amended and Restated  
Southwest Power Pool, Inc

**AMENDED AND RESTATED**  
**WESTERN JOINT DISPATCH AGREEMENT BETWEEN**  
**SOUTHWEST POWER POOL, INC. AND**  
**WESTERN AREA POWER ADMINISTRATION – UPPER GREAT PLAINS REGION**

This Amended and Restated Western Joint Dispatch Agreement (“Agreement”) is entered into by and between Southwest Power Pool, Inc. (“SPP”) and Western Area Power Administration – Upper Great Plains Region (“Western Energy Imbalance Service Participant” or “WEIS Participant”), which may be individually referred to herein as a “Party” and collectively as “Parties”.

In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**Section 1- Definitions**

WEIS Commencement Date is February 1, 2021, or such other date as the Western Markets Executive Committee determines.

WEIS Participant means an entity that has executed an Amended and Restated Western Joint Dispatch Agreement with SPP.

Net Energy for Load (“NEL”) means net generation on or interconnected to the WEIS Market Footprint (as defined in the WEIS Tariff) plus energy received from others less energy delivered to others through interchange and is measured in MWh/year. It includes system losses but excludes energy required for storage of energy at energy storage facilities. The Western Market Executive Committee may develop business practices associated with NEL.

NEL Share means WEIS Participant’s NEL divided by the sum total NEL of all WEIS Participants that have executed an Amended and Restated Western Joint Dispatch Agreement.

Western Energy Imbalance Service or WEIS is the service provided in accordance with the WEIS Tariff.

Western Energy Imbalance Service Tariff or WEIS Tariff is the tariff filed by SPP and approved by the Federal Energy Regulatory Commission (“FERC”), for the provision of WEIS by SPP.

Western Interconnection means the westernmost of the three major alternating-current electrical

grids in North America. The Western Interconnection stretches from Western Canada South to Baja California in Mexico, reaching eastward over the Rockies to the Great Plains.

## **Section 2—Scope of Services, Costs, Compensation, Billing, and Payment**

2.1 Western Energy Imbalance Service Administration: SPP will administer the WEIS pursuant to the WEIS Tariff and SPP will incur certain costs, including without limitation, costs of direct resources, system maintenance, debt service for financing capital expenditures, and other costs associated with administering the WEIS (“WEIS Administration”).

2.2 WEIS Administration Rate: The rate to administer the WEIS for the first year following the WEIS Commencement Date will be equal to \$0.22 per MWh of NEL (“Year One WEIS Rate”). For each subsequent year thereafter, SPP will set the WEIS rate annually as described in Exhibit A (the “WEIS Rate”), subject to the WEIS Rate being modified in consultation with the Western Markets Executive Committee (“WMEC”) and consistent with Exhibit A or Section 2.4.

2.3 Annual Payment: WEIS Participant will pay SPP on an annual basis the higher of: (i) the product of its Billable NEL and the WEIS Rate (both defined in Exhibit A); or, (ii) the WEIS Participant Minimum Annual Payment determined pursuant to Exhibit A (“Annual Payment”).

2.4 Modification of WEIS Expenses for Unforeseen Circumstances: Whenever SPP reasonably determines that, because of unforeseen circumstances or error, the Annual Payment is likely to be inadequate to pay for WEIS Expenses, as defined in Exhibit A during one year, SPP may adjust the next year’s WEIS Expenses in consultation with the WMEC, by providing written notice as soon as practical to all WEIS Participants.

2.5 Invoicing and Payment: Subject to Section 5.1, SPP will render to WEIS Participant a yearly invoice no later than December 1 of each year beginning in 2020, for the next year’s Annual Payment by regular mail, facsimile, electronic mail, or other acceptable means. WEIS Participant will pay the Annual Payment to SPP no later than January 31 each year by electronic means to an account specified by SPP. All such payments will be deemed made when said wire transfer is received by SPP. If the amount due is not paid on or before the due date, WEIS Participant will pay late payment interest penalties consistent with 5 C.F.R. § 1315.10. Payment provisions unique to Federal WEIS Participants are included in Section 12.

2.5.1 WEIS Participant invoices should be sent to the following address:

Finance Manager  
Western Area Power Administration  
P.O. Box 35800  
Billings, MT 59104

2.6 Annual Estimate: No later than October 1 of each year, beginning in 2020, SPP will provide WEIS Participant with an estimate of SPP’s WEIS Expenses as described in Exhibit A that will be used to develop the WEIS Rate for the next year. Notwithstanding the foregoing estimate, the WEIS Expenses that will be used to calculate the WEIS Rate will be the costs approved annually by the SPP Board of Directors consistent with Exhibit A.

### Section 3 – Term and Termination

3.1 Term: This Agreement supersedes any prior agreement on this subject matter between the Parties entered into between SPP and WEIS Participant, and is effective on December 12, 2019, (“Effective Date”). The initial term of this Agreement will commence on the Effective Date and continue for four years after the WEIS Commencement Date (“Initial Term”). Absent a timely notice of Withdrawal, this Agreement will automatically renew after the Initial Term for successive one (1) year terms. SPP’s administration of the WEIS pursuant to the WEIS Tariff shall commence on the WEIS Commencement Date and shall cease on the effective date of WEIS Participant’s Withdrawal, or in accordance with this Section 3.

3.1.1 Upon this Agreement becoming effective on the Effective Date, the Parties mutually agree that the Western Joint Dispatch Agreement effective September 3, 2019, automatically terminates with no further action needed or taken by any Party to it.

3.2 Withdrawal: WEIS Participant may terminate its participation in this Agreement after the Initial Term by giving SPP written notice not less than ninety (90) days prior to the effective date of such termination (“Withdrawal”) unless the Parties mutually agree otherwise, or unless such Withdrawal is pursuant to Section 8.4 of this Agreement. A notice of Withdrawal is irrevocable unless otherwise mutually agreed upon in writing by SPP and WEIS Participant. During the pendency of a Withdrawal notice, WEIS Participant remains subject to all terms and conditions of this Agreement. Upon the effective date of WEIS Participant’s Withdrawal, WEIS Participant is responsible for the Withdrawal Payment pursuant to Section 3.7.

3.2.1 WEIS Participant may terminate its participation in this Agreement prior to or after the Initial Term by giving SPP written notice not less than ninety (90) days prior to the effective date of such termination if: (i) an event described in Section 13.1 occurs; or, (ii) an event described in Section 13.2 occurs. If WEIS Participant terminates this Agreement pursuant to this Section 3.2.1, WEIS Participant will pay SPP its then current NEL Share of Implementation Costs Remaining pursuant to Exhibit A upon the effective date of WEIS Participant’s termination.

3.3 Withdrawal by participating host Balancing Authority (“BA”): Should a WEIS Participant which is a participating host BA notify SPP of its termination of its Amended and Restated Western Joint Dispatch Agreement, and WEIS Participant is within that BA, then WEIS Participant and SPP agree that within 10 business days of the participating BA providing SPP notice of its termination, the WEIS Participant and SPP will discuss such WEIS Participant’s intent to continue its participation in the WEIS. WEIS Participant may terminate its participation in this Agreement after such discussion, by giving SPP written notice not less than ninety (90) business days prior to the effective date of such termination, or the same amount of time prior to the effective date of the participating BA’s termination, whichever is greater.

3.4 Termination upon Mutual Agreement: If the Parties agree in writing to terminate this Agreement any time after the Effective Date, such termination will become effective as of the date specified in such mutual agreement to terminate. Upon such mutual termination, WEIS Participant

is considered to have submitted a notice of Withdrawal and is responsible for the Withdrawal Payment, pursuant to Section 3.7, except as provided in Section 3.2.1.

**3.5 SPP Termination:** If SPP is unwilling to administer the WEIS for all WEIS Participants after the Initial Term, SPP may terminate this Agreement by providing WEIS Participant with twelve (12) months written notice of such termination. The earliest SPP may provide such written notice is twelve (12) months prior to the expiration of the Initial Term. WEIS Participant will pay SPP the Annual Payment during the pendency of the notice of such termination. If SPP terminates this Agreement after the Initial Term but before the expiration of the Initial Term plus four years, WEIS Participant will pay SPP 50% of its NEL Share of Implementation Costs Remaining pursuant to Exhibit A plus the Annual Payment during the pendency of SPP's notice of such termination. If SPP terminates this Agreement after the Initial Term plus four years, the Annual Payment will be pro-rated, if applicable, based on costs incurred by SPP, including costs to cease providing the WEIS Administration provided to WEIS Participant. If the events described in Section 3.8 occur, this Section 3.5 is inapplicable to the termination of this Agreement.

**3.6 Default:** Upon the occurrence of WEIS Participant's material default under this Agreement, including without limitation, Sections 2.3, 2.5, 3.2, and, 3.7, or default as defined in the WEIS Tariff, but expressly excluding a failure of performance due to an Uncontrollable Force in accordance with Section 8, which default is not cured within 90 days, SPP may issue a written notice to WEIS Participant ("Default"). If SPP notifies WEIS Participant that it is in Default and WEIS Participant fails to cure within 90 days, WEIS Participant will be deemed to have provided a notice of Withdrawal and will be responsible for the Withdrawal Payment pursuant to Section 3.7. SPP may pursue collection or enforcement of the WEIS Participant's Withdrawal Payment.

**3.7 Withdrawal Payment:** If the effective date of WEIS Participant's Withdrawal is prior to the expiration of the Initial Term plus four years, WEIS Participant will pay SPP its then current NEL Share of Implementation Costs Remaining pursuant to Exhibit A plus the Annual Payment during the pendency of the notice of Withdrawal, and if the effective date of WEIS Participant's Withdrawal is after the expiration of the Initial Term plus four years, WEIS Participant will only pay the prorated Annual Payment during the pendency of the notice of Withdrawal ("Withdrawal Payment"). Any Withdrawal Payment received by SPP will be applied as a reduction to the Implementation Costs Remaining as defined in Exhibit A.

**3.7.1 Payment:** If the effective date of WEIS Participant's Withdrawal is prior to the expiration of the Initial Term plus four years, SPP will invoice WEIS Participant for the Withdrawal Payment within thirty (30) days of the effective date of the Withdrawal. WEIS Participant will pay SPP the invoiced amount no later than thirty (30) days of the date of the invoice.

**3.8 Termination Due to SPP RTO Membership:** If WEIS Participant becomes a member of the SPP Regional Transmission Organization operating in the Western Interconnection, this Agreement automatically terminates when WEIS Participant begins receiving services from SPP pursuant to an SPP membership agreement or an SPP open access transmission tariff applicable to transmission facilities in the Western Interconnection. WEIS Participant's obligations under this Agreement will be terminated at such time WEIS Participant's SPP membership agreement

becomes effective. If WEIS Participant's Agreement terminates pursuant to this Section 3.8, WEIS Participant's last reported NEL will remain in the Billable Net Energy for Load described in Exhibit A for purposes of calculating the WEIS Rate and the terminating WEIS Participant's NEL Share of Implementation Cost Remaining will be excluded from the calculation of Implementation Cost Remaining for all other WEIS Participants.

#### **Section 4 – Standard of Performance**

4.1 Good Utility Practice: Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted.

4.2 SPP Performance: SPP will perform all obligations specified in this Agreement in accordance with Good Utility Practice and the WEIS Tariff.

4.3 WEIS Participant Performance: WEIS Participant will perform all obligations specified in this Agreement in accordance with Good Utility Practice and the WEIS Tariff.

#### **Section 5 – Data**

5.1 WEIS Participant Data: WEIS Participant will supply to SPP throughout any term of this Agreement all data that SPP deems necessary to perform WEIS Administration under this Agreement. SPP will inform WEIS Participant of the necessary data and the format and manner in which it prefers that such data be provided. SPP consents to allowing WEIS Participant to provide its data to SPP directly or through a third party. Such data provided by the third party will be treated in the same manner under this Agreement as if provided directly by WEIS Participant. Notwithstanding the foregoing, it is WEIS Participant's obligation to ensure that the third party provides all data that SPP deems necessary to perform the functions required to be performed under this Agreement. Calculations of NEL for all purposes under this Agreement will be submitted by WEIS Participant to SPP no later than September 1 of each year and will be the NEL reported to WECC and/or NERC in the most recent calendar year. Any agreed upon transfer between WEIS Participants of the NEL reported to WECC and/or NERC shall be disclosed and shall not impact the overall reported NEL for all WEIS Participants. If WEIS Participant does not submit NEL data to SPP by November 1 of each year beginning in 2020, SPP will use reasonable efforts to estimate WEIS Participant's NEL.

5.2 SPP Data: SPP will supply WEIS Participant throughout the term of this Agreement, all data that WEIS Participant deems necessary to perform its obligations under this Agreement. WEIS Participant will inform SPP of the necessary data and the format and manner in which it prefers that such data be provided.

5.3 Confidentiality: All information received from the other Party in connection with this Agreement, except this Agreement after it is filed with FERC, necessary to perform obligations under this Agreement and identified at the time of communication as confidential, shall constitute “Confidential Information.” The Party receiving such Confidential Information (Recipient) will safeguard the Confidential Information with the same degree of care to avoid unauthorized disclosure as Recipient uses to protect its own confidential and private information. Recipient will not disclose Confidential Information to any person or entity other than its officers, directors, and employees; its agents, consultants; or its affiliates and their respective officers, directors, and employees who have a need to know and who have been advised of the confidentiality of the material and are contractually subject to confidentiality obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement. The obligations with respect to handling and using Confidential Information are not applicable to information that (a) is in the public domain at the time of its disclosure to Recipient; (b) is known by Recipient at the time of disclosure; (c) is independently developed by Recipient without the use of or reference to any Confidential Information received by Recipient; or (d) is required by law, regulation, or order to be disclosed, but only to the extent and for the purposes of such required disclosure.

## **Section 6 – Limitation of Liability and Indemnification**

6.1 Liability: SPP, its directors, officers, agents and employees will not be liable to WEIS Participant for money damages for actions or omissions by SPP in performing its obligations under this Agreement, except to the extent that such act or omission is found to be unlawful, undertaken in bad faith, or are the result of gross negligence or willful misconduct. In addition, neither Party shall be liable to the other Party for any incidental, consequential, punitive, special, exemplary, or indirect damages, attorney’s fees and costs, loss of revenues or profits, arising out of, or connected in any way with, performance or non-performance under this Agreement.

6.2 WEIS Participant Indemnification: To the extent allowed by law, WEIS Participant will indemnify, release, defend, reimburse and hold harmless SPP and its directors, officers, employees, principals, representatives and agents (collectively, the “SPP Indemnified Parties”) from and against any and all claims (including claims of bodily injury or death of any person or damage to real and/or tangible personal property), demands, liabilities, losses, causes of action, awards, fines, penalties, litigation, administrative proceedings and investigations, and costs and expenses (each, an “Indemnifiable Loss”) asserted against or incurred by any of the SPP Indemnified Parties arising out of, resulting from or based upon WEIS Participant’s performance of its obligations pursuant to this Agreement, provided, however, that in no event shall WEIS Participant be obligated to indemnify, release, defend, reimburse or hold harmless the SPP Indemnified Parties from and against any Indemnifiable Loss which is caused by the gross negligence or willful misconduct of an SPP Indemnified Party.

6.3 SPP Indemnification: SPP will indemnify, release, defend, reimburse and hold harmless WEIS Participant and its directors, officers, employees, principals, representatives and agents (collectively, the “WEIS Participant Indemnified Parties”) from and against any and all Indemnifiable Losses asserted against or incurred by any of the WEIS Participant Indemnified

Parties arising out of, resulting from or based upon the gross negligence or willful misconduct of an SPP Indemnified Party.

## **Section 7 - Governance and Dispute Resolution**

7.1 Western Markets Executive Committee ("WMEC"): The WMEC will have the authorities described in the WMEC Charter.

7.2 Dispute Resolution: The Parties will attempt in good faith to achieve consensus with respect to all matters arising under this Agreement and to use reasonable efforts through good faith discussion and negotiation to avoid and resolve disputes that could delay or impede either Party from receiving the benefits of this Agreement. If any dispute arises between SPP and WEIS Participant with respect to this Agreement, and the Parties have not resolved such dispute within ten (10) business days after notice of the dispute, each Party will provide a written description of its position to the other Party, and will designate a senior representative of its management to meet and make a joint effort to resolve the dispute. If the Parties' senior management representatives are unable to resolve the Dispute within thirty (30) business days of the last date for appointment of the representatives, the Parties may present the dispute to the WMEC for its review and non-binding consideration except that no Party to a dispute will have a representative on the WMEC participate in such review and consideration by the WMEC. If the dispute is not resolved by the WMEC within thirty (30) business days of the presentation of the dispute to the WMEC, then each Party shall be free to pursue any remedies available to it and to take any action in law or equity in order to enforce its rights or cause to be fulfilled any of the obligations or agreements of any other Party.

## **Section 8 – Uncontrollable Forces**

8.1 Uncontrollable Forces: Neither Party will be considered to be in Default in the performance of any of its obligations herein, if a failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the affected Party, including without limitation, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Economic hardship expressly is not an Uncontrollable Force.

8.2 Obligation to Notify: If either Party becomes aware of circumstances of an Uncontrollable Force that give rise to or that are likely to give rise to any failure or inability to fulfill any of its obligations under this Agreement, it will notify the other Party within five (5) working days by the most expeditious method then available, will exercise due diligence to remove such failure or inability with all reasonable dispatch, and will inform the other Party of the period that it is estimated that such failure or inability will continue.

8.3 Third Party Impact on SPP Performance: It is expressly agreed that any failure by SPP to perform or any delay by SPP in performing its obligations under this Agreement that results from any failure or delay in the performance of its obligation by any person, firm, or company with which SPP has entered into any contract, supply arrangement, sub-contract, or otherwise, will be regarded as a failure of delay due to an Uncontrollable Force only in the event that: (i) such person, firm, or company is prevented from or delayed in complying with its obligations under such contract, supply arrangement, sub-contract, or otherwise as a result of circumstances of an event involving an Uncontrollable Force; (ii) the contract, supply arrangement, or sub-contract is essential to SPP's performance; and (iii) SPP has exercised its best efforts to find substituted goods or services on terms generally equivalent to those agreed under such contract, supply arrangement, or sub-contract.

8.4 Termination Due to Uncontrollable Force: In the event that an Uncontrollable Force prevents a Party from performing all or a substantial part of its obligation for a consecutive period of ninety (90) calendar days, then the other Party may terminate this Agreement. If this Agreement is terminated pursuant to this Section 8 during the Initial Term plus four years, WEIS Participant will be deemed to have provided notice of Withdrawal from this Agreement and for purposes of this Section 8.4, WEIS Participant will pay SPP its NEL Share of Implementation Costs Remaining, as determined pursuant to Exhibit A, plus the Annual Payment prorated through the last date SPP provides WEIS to WEIS Participant. If termination pursuant to this Section 8.4 occurs after the expiration of the Initial Term plus four years, WEIS Participant will pay SPP the Annual Payment prorated through the last date SPP provides WEIS Administration to WEIS Participant.

## **Section 9 – Amendments to Agreement**

9.1 Amendments to Agreement: This Agreement may be amended if such amendment is agreed to in writing by duly authorized representatives of WEIS Participant and SPP, filed and accepted by FERC. Within five days of such proposed variation or amendment, SPP will notify all other WEIS Participants and provide each with a copy of the varied or amended agreement. Any proposed amendment to this Agreement will be presented to the WMEC for its consideration. The WEIS Participant's execution of any amendment does not affect its right to protest or challenge any amendment at FERC. WEIS Participant may amend this Agreement in the same manner as a proposed amendment to another WEIS Participant's agreement with SPP.

## **Section 10 – Regulatory Approval**

10.1 FERC Approval: This Agreement will be filed with FERC pursuant to Section 205 of the Federal Power Act, and the Parties agree to provide any information required to comply with the applicable filing requirements. Except for WEIS Participant's obligation to pay SPP its NEL Share of Implementation Costs as defined in Exhibit A, this Agreement is conditioned on FERC acceptance for filing or this Agreement becoming effective subject to a FERC order as described in this Section 10.1.



10.1.1 FERC Modification: If, prior to the WEIS Commencement Date, FERC requires modification to this Agreement or imposes other conditions on the acceptance or approval of it, each Party will have ten (10) business days to notify the other Party that such modification or condition is unacceptable to that Party. If neither Party provides such notice, then this Agreement, as modified or conditioned by FERC, will continue to be in effect. If either Party provides such notice to the other Party, the Parties will do any one or more of the following: (a) meet to determine that the modification or conditions imposed by FERC are acceptable; (b) cooperatively seek further available remedies with respect to such FERC order; or, (c) negotiate the accommodation of such FERC order. If the Parties have not agreed on an accommodation on or before the date on which such FERC order becomes a final and non-appealable order, such order is deemed adverse to the Parties and the Parties will have no further rights or obligations under this Agreement, except WEIS Participant must pay SPP its NEL Share of Implementation Costs as defined in Exhibit A, which obligation expressly survives such an adverse order.

10.1.2 FERC Rejection: If, prior to the WEIS Commencement Date, this Agreement is rejected by an order from FERC, the Parties will meet and confer within ten (10) business days to determine that they will cooperatively seek further available remedies with respect to such FERC order, or not pursue such remedies ("Rejection"). Unless otherwise agreed to by the Parties, if Rejection occurs, SPP will take all reasonable efforts to stop incurring Implementation Costs as defined in Exhibit A and WEIS Participant will pay SPP its NEL Share of Implementation Cost as determined pursuant to Exhibit A that have been incurred by SPP.

10.2 State Regulatory Approval: If an entity interested in becoming a WEIS Participant must seek and obtain authorization from a state regulatory authority exercising jurisdiction over that entity prior to executing this Agreement, SPP will meet with that entity to determine whether the modification or condition imposed is acceptable and if so, negotiate the accommodation of such modification or condition.

## **Section 11 – Miscellaneous Provisions**

11.1 Notices: Any notice, demand or request required or authorized by this Agreement to be given by one Party to the other shall be in writing. It will be personally delivered, transmitted by telecopy or electronic mail, sent by overnight courier, or mailed, postage prepaid, to the other Party at the address designated in this Section 11 except as required otherwise under this Agreement. Any such notice, demand, or request so delivered or mailed will be deemed given when so delivered or three (3) days after mailed.

11.2 Addresses of the Parties: Notices and other communications will be addressed to:

WEIS Participant  
Vice President of Operations for Upper Great Plains Region  
Western Area Power Administration  
1330 41<sup>st</sup> Street SE  
Watertown, SD 57201

SPP

Vice President, Operations  
Southwest Power Pool, Inc.  
201 Worthen Drive  
Little Rock, AR 72223

11.3 Governing Law: Arkansas law and applicable federal law shall control the obligations and procedures established by this Agreement and the performance and enforcement thereof, except to the extent preempted by the law and/or unless a court with jurisdiction rules otherwise, provided, however, that any court or regulatory body applying Arkansas law shall give full effect to Sections 12 and 13 of this Agreement regarding WEIS Participant's obligations under federal or state law. The forum for litigation arising from this Agreement shall be a state or federal court located in Arkansas, unless the Parties agree to pursue alternative dispute resolution.

11.4 Successors and Assigns: No Party shall sell, assign, or otherwise transfer any or all of its respective rights herein, or delegate any or all of its respective obligations under this Agreement. WEIS Participant may, without the consent of SPP, assign its rights and obligations under this Agreement to any entity (i) into which WEIS Participant is merged or consolidated, (ii) if required to do so under the terms of a mortgage or indenture to secure general financing of WEIS Participant's assets or operations, or (iii) to which WEIS Participant sells, transfers, or assigns all or substantially all of its electric system, so long as the survivor in any such merger or consolidation, or the purchaser, transferee, or assignee of such electric system provides to SPP a valid and binding written agreement expressly assuming and agreeing to be bound by all obligations of WEIS Participant under this Agreement. Nothing in this Section 11 shall prohibit SPP from contracting with third parties for the provision of services to assist SPP in performing its obligations under this Agreement. This Agreement is binding on and shall inure to the benefit of each Party and to each of their respective successors, permitted assigns, and legal representatives.

11.5 Assignment of Facilities: Nothing herein shall create a security interest of any kind in all or any portion of the transmission system of WEIS Participant.

11.6 Effect of Permitted Assignment: In the event of any permitted sale, transfer, or assignment under this Agreement, the transferor or assignor shall, to the extent of the transferred or assigned obligations, and only to such extent, be relieved of obligations accruing from and after the effective date of such transfer or assignment; provided, however, that under no circumstances shall any sale, transfer, or assignment relieve the transferor or assignor of any liability for any breach of this Agreement occurring prior to the effective date of such transfer or assignment.

11.7 Third Party Beneficiaries: This Agreement does not in any way, and is not intended to, create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties to this Agreement. The obligations assumed herein are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

11.8 No Implied Waivers: The failure of a Party to insist upon or enforce strict performance of any of the specific provisions of this Agreement at any time will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, or remedies in that or any other instance, or as a waiver to any extent of any specific provision of this Agreement; rather the same will be and remain in full force and effect. A Party's execution of this Agreement shall not constitute a waiver of that Party's right to protest or challenge provisions of this Agreement when filed at FERC.

11.9 Severability: Each provision of this Agreement will be considered severable, and if for any reason any provision of this Agreement or the application thereof to any person, entity, or circumstance is determined by a court or regulatory authority of competent jurisdiction to be invalid, void, or unenforceable, then the remaining provisions of this Agreement will continue in full force and effect and shall in no way be affected, impaired, or invalidated.

11.10 Representation and Warranties: Each Party represents and warrants to other signatories that as of the date it executes this Agreement:

11.10.1 It is duly organized, validly existing, and in good standing under the laws of the jurisdiction where organized.

11.10.2 Subject to any necessary approvals by federal or state regulatory authorities, the execution and delivery by each Party, and the performance of its obligation hereunder, have been duly and validly authorized by all requisite action on the part of the signatories. This Agreement has been duly executed and delivered by the Parties, and, subject to the conditions set forth in this Agreement, constitutes the legal, valid, and binding obligation on the part of each Party, enforceable against it in accordance with its terms except insofar as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting the enforcement or creditor's rights generally, and by general principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

11.10.3 There are no actions at law, suits in equity, proceedings, or claims pending or, to the knowledge of each Party, threatened against such Party before or by any federal, state, foreign, or local court, tribunal, or governmental agency or authority that might materially delay, prevent, or hinder the performance by such entity of its obligations hereunder.

11.11 Further Assurances: Each Party agrees that it will hereafter make reasonable good faith efforts to execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.

11.12 Entire Agreement: This Agreement, including applicable appendices, exhibits, and their duly approved replacements, constitute the entire agreement among the Parties with respect to the subject matter of this Agreement, and no previous oral or written representation, agreement, or understanding made by any officer, agent, or employee of a Party will be binding on any such Party unless contained in this Agreement.

11.13 Good Faith Efforts: Each Party agrees that it will in good faith take all reasonable actions necessary to permit it to fulfill their contractual obligations. Where the consent, agreement, or approval of any Party must be obtained hereunder, such consent, agreement, or approval will not be unreasonable withheld, conditioned, or delayed. Where any Party is required or permitted to act, or omit to act, based on its opinion or judgment, such opinion or judgment will not be unreasonably exercised. To the extent that the jurisdiction of any federal or state regulatory authority applies to any part of this Agreement and/or the transaction or actions covered by this Agreement, each Party will cooperate with all other WEIS Participants to secure any necessary or desirable approval or acceptance of such regulatory authorities of such part of this Agreement and/or such transactions or actions.

11.14 Counterparts: This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument, binding upon the Parties, notwithstanding that they may not have executed the same counterpart.

11.15 Survival: The WEIS Participant's obligation to pay SPP its NEL Share of Implementation Costs as determined pursuant to Exhibit A expressly survives and remains binding in the event regulatory approval is not achieved pursuant to Section 10.1 and the payment terms of Section 3.7.1 will govern the payment of the WEIS Participant's NEL Share of Implementation Costs.

## **Section 12 – Participation by the Government of the United States of America**

This Section 12 contains provisions that are necessary for the United States of America, acting by and through the Western Area Power Administration ("WAPA") to enter into this Agreement, and is only applicable to the agreement between SPP and WAPA.

### **12.1 WAPA Entities**

12.1.1 Western Area Power Administration-Colorado River Storage Project Management Center ("WAPA-CRSP"): A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Salt Lake City Area Integrated Projects ("SLCA/IP"). WAPA-CRSP is participating in the SPP WEIS in the following capacities: as CRSP and CRCM. CRSP is the WEIS Participant who represents the SLCA/IP loads and Resources in the WEIS Market Footprint. CRCM is the Joint Dispatch Transmission Provider for the SLCA/IP transmission within the WEIS Market Footprint offered under Schedule 2 of the WEIS Tariff.

12.1.2 Western Area Power Administration-Rocky Mountain Region ("WAPA-RMR"): A division of the Western Area Power Administration that markets and transmits Federal power generated from certain U.S. Bureau of Reclamation hydroelectric facilities collectively known as the Loveland Area Projects (LAP). Western-RMR also operates the Western Area Colorado Missouri Balancing Authority Area, known as WACM, and the

Western Area Lower Colorado Balancing Authority Area, known as WALC, and provides transmission services, including, but not limited to, transmission service across Western-owned transmission facilities within the two Balancing Authority Areas. WAPA-RMR is participating in the SPP WEIS in the following capacities: as LAP, LAPT, and WACM. LAP is the WEIS Participant that represents the Loveland Area Project loads and Resources in the WEIS Market Footprint. LAPT is the Joint Dispatch Transmission Provider for the LAP transmission within the WEIS Market Footprint offered under Schedule 2 of the WEIS Tariff. WACM is a Balancing Authority in the WEIS Market Footprint. Also, as a Balancing Authority in the WEIS Market Footprint, WACM is required to register loads and resources for non-participating entities in WACM. WAPA-RMR is not participating in SPP WEIS on behalf of the WALC Balancing Authority, the Pacific Northwest-Pacific Southwest Intertie Project, the Central Arizona Project, or the Parker-Davis Project. In the WEIS, WAPA-RMR will provide transmission services for LAPT Joint Dispatch Transmission Provider and CRCM Joint Dispatch Transmission Provider.

12.1.3 Western Area Power Administration-Upper Great Plains Region (“WAPA-UGP”): A division of the Western Area Power Administration that markets and transmits Federal power from reservoir projects under the control of the Department of the Army or the U.S. Bureau of Reclamation, collectively known as Pick Sloan Missouri Basin Program--Eastern Division (“PS-ED”). WAPA-UGP operates the Western Area Power Administration, Upper Great Plains West (“WAUW”) Balancing Authority Area, known as WAUW, in the Western Interconnection, where certain of its transmission facilities are located. For purposes of the WEIS Tariff, WAPA-UGP is participating in the SPP WEIS in the following capacities: as PS-ED and WAUW. PS-ED is a WEIS Participant that represents the Pick Sloan Missouri River Basin--Eastern Division loads and Resources in the WEIS Market Footprint. WAUW is a Balancing Authority in the WEIS Market Footprint. As a Balancing Authority in the WEIS Market Footprint, WAUW is required to register loads and resources for non-participating entities in WAUW. Under a separate agreement, WAPA-UGP transferred functional control of its transmission facilities in the western interconnection. Under the terms and as a result of that separate agreement, SPP is the Joint Dispatch Transmission Provider for the WAPA-UGP PS-ED transmission within the WEIS Market Footprint offered under Schedule 2 of the WEIS Tariff for PS-ED transmission within the WEIS Market Footprint.

12.2 Billing: Notwithstanding other provisions in this Agreement, SPP shall submit monthly invoices to WAPA for WEIS Administration provided for the preceding month. The invoice shall contain information specified in 5 C.F.R. § 1315.9(b). The amount of the monthly invoice shall be 1/12 of the Annual Payment calculated for WAPA, and sent to the persons designated by WAPA in Section 2.5.1. WAPA may change the persons designated to receive the invoices at any time by written notice to SPP. WAPA shall pay the monthly invoice within thirty calendar days after receipt of such invoice, and such payments will be in accordance with the Prompt Payment Act, 31 U.S.C. § 3900 *et seq.* WAPA’s failure to perform pursuant to this Section 12.2 is deemed to be a Default pursuant to Section 3.6.

12.3 Subject to Applicable Federal Law: The participation by WAPA in this Agreement is subject in all respects to acts of Congress, regulations of the Secretary of Energy established thereunder,

and to rate schedules promulgated by the Secretary of Energy, and shall be subject to applicable federal laws and regulations, including, but not limited to the statutory limitations on the authority of the Secretary of Energy to submit disputes to arbitration. If any provision of the Agreement is held to be invalid, void, or unenforceable, then WAPA will only be bound by this Agreement consistent with federal law. In the event of a conflict between these federal participation provisions and any other provision of this Agreement, these federal participation provisions shall have precedence with respect to the application of this Agreement to the United States. Nothing contained in this paragraph shall be construed to require or obligate SPP to comply with such federal laws or regulations or have such federal laws or regulations apply to SPP.

**12.4 Projects:** The individual hydroelectric projects from which WAPA markets power and energy are owned and controlled by the U.S. Army Corps of Engineers or the U.S. Bureau of Reclamation. These projects are operated to satisfy multiple purposes such as irrigation, navigation, flood control, fish and wildlife, and recreation, as well as power production. Any operation of, and maintenance, modification or addition to such projects is subject to the express approval of either the U.S. Army Corps of Engineers or the U.S. Bureau of Reclamation. WAPA's transmission systems are integrated with the Department of the Army or U.S. Bureau of Reclamation owned and operated switchyard facilities. Any operation of, and maintenance, modification, or addition to such facilities, including the WEIS of such activities, is subject to the requirements and express approval of the Department of the Army or U.S. Bureau of Reclamation. WAPA shall communicate and coordinate with the Department of the Army or the U.S. Bureau of Reclamation on any operation of, and maintenance, modification, or addition to the Department of the Army or the U.S. Bureau of Reclamation facilities, whichever is applicable, as requested by SPP.

**12.5 Contingent Upon Appropriations:** Where activities provided for in this Agreement extend beyond the current fiscal year, continued expenditures by WAPA are contingent upon Congress making the necessary appropriations required for the continued performance of WAPA's obligations under its Amended and Restated Western Joint Dispatch Agreement with SPP. In case such appropriation is not made, SPP hereby releases WAPA from its contractual obligations and from all liability due to the failure of Congress to make such appropriation. Consistent with this Section 12.5, Section 12.2, and the Anti-Deficiency Act, 31 U.S.C. §§ 1301, 1341-1342, 1349-1351, and 1511-1519, Section 6.2 of this Agreement is inapplicable to WAPA.

**12.5.1 Effect of Lack of Federal Appropriations:** If Congress does not authorize appropriations as described in Section 12.5, WAPA will provide SPP notice of Congress' action as soon as practical. If the lack of appropriations results in WAPA's non-performance of Section 12.2, within 30 days of such occurrence, this Agreement will terminate and WAPA will pay SPP the WAPA Withdrawal Payment defined in Section 12.6.

## **12.6 Withdrawal Payments for WAPA**

**12.6.1 WAPA UGP:** Notwithstanding Section 3.7, the following withdrawal provisions apply to WAPA UGP.

12.6.1.1 If the effective date of WAPA UGP's Withdrawal (pursuant to Sections 3.4, 3.6, 8, 10 or 12), is prior to the expiration of the Initial Term, WAPA UGP will pay SPP: (a) the PS-ED Annual Payment in accordance with Section 12.2, for each year remaining of the Initial Term; and, (b) a withdrawal payment consisting of PS-ED's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$800,000.00.

12.6.1.2 If the effective date of WAPA UGP's Withdrawal is after the Initial Term and prior to the expiration of the Initial Term plus four years, WAPA UGP will pay SPP: (a) the PS-ED Annual Payment in accordance with Section 12.2, prorated through the last date SPP provides WEIS Administration to WAPA UGP; and, (b) a withdrawal payment consisting of PS-ED's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$200,000.00.

12.6.1.3 If the effective date of WAPA UGP's Withdrawal is after the expiration of the Initial Term plus four years, WAPA UGP will only pay the PS-ED Annual Payment prorated through the last date SPP provides WEIS Administration to PS-ED.

12.6.1.4 The effective date of Withdrawal is the date SPP stops providing WEIS Administration to WAPA UGP. WAPA UGP is not subject to the withdrawal obligations contained in Section 12.6.1 if this Agreement terminates pursuant to Section 3.8. If WAPA UGP withdraws under Section 3.2.1, WAPA UGP is only responsible for PS-ED's NEL Share of Implementation Costs, which will not exceed the amounts set forth in this Section 12.6.1. The foregoing may be modified if WAPA UGP agrees to a modification in writing.

12.6.2 WAPA CRSP: Notwithstanding Section 3.7, the following withdrawal provisions apply to WAPA CRSP.

12.6.2.1 If the effective date of WAPA CRSP's Withdrawal (pursuant to Sections 3.4, 3.6, 8, 10 or 12), is prior to the expiration of the Initial Term, WAPA CRSP will pay SPP: (a) the CRSP Annual Payment in accordance with Section 12.2, for each year remaining of the Initial Term; and, (b) a withdrawal payment consisting of CRSP's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$800,000.00.

12.6.2.2 If the effective date of WAPA CRSP's Withdrawal is after the Initial Term and prior to the expiration of the Initial Term plus four years, WAPA CRSP will pay SPP: (a) the Annual Payment in accordance with Section 12.2, prorated through the last date SPP provides WEIS Administration to WAPA CRSP; and, (b) a withdrawal payment consisting of WAPA CRSP's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$200,000.00.

12.6.2.3 If the effective date of WAPA CRSP's Withdrawal is after the expiration of the Initial Term plus four years, WAPA CRSP will only pay the CRSP Annual Payment prorated through the last date SPP provides WEIS Administration to WAPA CRSP.

12.6.2.4 The effective date of Withdrawal is the date SPP stops providing WEIS Administration to WAPA CRSP. WAPA CRSP is not subject to withdrawal obligations contained in Section 12.6.2 if this Agreement terminates pursuant to Section 3.8. If WAPA CRSP withdraws under Section 3.2.1, WAPA CRSP is only responsible for WAPA CRSP's NEL Share of Implementation Costs, which will not exceed the amounts set forth in this Section 12.6.2. The foregoing may be modified if WAPA CRSP agrees to a modification in writing.

12.6.3 WAPA RMR: Notwithstanding Section 3.7, the following withdrawal provisions apply to WAPA RMR.

12.6.3.1 If the effective date of WAPA RMR's Withdrawal (pursuant to Sections 3.4, 3.6, 8, 10 or 12), is prior to the expiration of the Initial Term, WAPA RMR will pay SPP: (a) the LAP Annual Payment in accordance with Section 12.2, for each year remaining of the Initial Term; and, (b) a withdrawal payment consisting of LAP's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$2,500,000.00.

12.6.3.2 If the effective date of WAPA RMR's Withdrawal is after the Initial Term and prior to the expiration of the Initial Term plus four years, WAPA RMR will pay SPP: (a) the LAP Annual Payment in accordance with Section 12.2, prorated through the last date SPP provides WEIS Administration to WAPA RMR; and, (b) a withdrawal payment consisting of LAP's NEL Share of Implementation Cost, which (a) and (b) combined will not exceed \$600,000.00.

12.6.3.3 If the effective date of WAPA RMR's Withdrawal is after the expiration of the Initial Term plus four years, WAPA RMR will only pay the LAP Annual Payment prorated through the last date SPP provides WEIS Administration to LAP.

12.6.3.4 The effective date of Withdrawal is the date SPP stops providing WEIS Administration to WAPA LAP. WAPA RMR is not subject to the withdrawal obligations contained in Section 12.6.3 if this Agreement terminates pursuant to Section 3.8. If WAPA RMR withdraws under Section 3.2.1, WAPA RMR is only responsible for LAP's NEL Share of Implementation Costs Remaining, which will not exceed the amounts set forth in this Section 12.6.3. The foregoing may be modified if WAPA RMR agrees to a modification in writing.

12.6.4 Financial obligations incurred by WAPA must comply with the Anti-Deficiency Act, 31 U.S.C. § 1341, *et seq.*, as amended or supplemented. Therefore, in no event will any of the withdrawal payments defined in Section 12.6 be based on the inclusion of NEL of a non-WAPA entity within a balancing authority operated by WAPA but not registered by another WEIS Participant.

12.6.5 If SPP files without WAPA's consent and FERC approves material changes to any of the provisions in this Section 12, then WAPA may Withdraw and WAPA will pay SPP 50% of applicable withdrawal payment contained in Section 12.6.



12.7 Without modification, SPP will incorporate Sections 12.3, 12.4, 12.5, 12.8 - 12.11, and 12.13 into the WEIS Tariff that is submitted to the FERC for approval.

12.8 Covenant Against Contingent Fees: SPP warrants to WAPA that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by SPP for the purpose of securing business. For breach or violation of this warranty, WAPA shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

12.9 Contract Work Hours and Safety Standards: This Agreement, to the extent it is of a character specified in Section 103 of the Contract Work Hours and Safety Standards Act ("Act"), 40 U.S.C. § 3701, as amended or supplemented, is subject to the provisions of the Act, 40 U.S.C. §§ 3701-3708, as amended or supplemented, and to the regulations promulgated by the Department of Labor pursuant to the Act.

12.10 Equal Opportunity Employment Practices: Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by Executive Order No. 12086, 43 Fed. Reg. 46501 (1978), as amended or supplemented, which provides, among other things, that a federal contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated herein by reference the same as if the specific language had been written into this Agreement, except that Indian Tribes and tribal organizations may apply Indian preference to the extent permitted by Federal law.

12.11 Use of Convict Labor: SPP agrees not to employ any person undergoing sentence of imprisonment in performing this Agreement except as provided by 18 U.S.C. § 3622(c), as amended or supplemented, and Executive Order No. 11755, 39 Fed. Reg. 779 (1973), as amended or supplemented.

12.12 Saving Clause: If, during the term of this Agreement, SPP executes an agreement with another Federal entity that obligates SPP to comply with 40 U.S.C. §§ 3701-3708 and Section 202 of Executive Order No. 11246, SPP agrees to meet with WAPA and attempt to negotiate as soon as reasonably possible for the purpose of arriving at mutually satisfactory language to address such provisions in this Agreement.

12.13 No Expansion of Jurisdiction, Waiver of Defenses, Liability for Penalties, or Inconsistent Obligations. Western Area Power Administration has not waived or conceded any defense, including sovereign immunity, intergovernmental immunity, or lack of subject matter jurisdiction in any action against it by an Enforcement Authority, nor has Western Area Power Administration accepted any liability, responsibility, or obligation to pay any civil monetary penalties or fines imposed by an Enforcement Authority to which it would not have been subject in the absence of this Tariff. "Enforcement Authority" means the Commission, Electric Reliability Organization ("ERO"), or Regional Entities with enforcement authority pursuant to a delegation from an ERO or Commission for the purpose of proposing and enforcing reliability standards. SPP does not

concede or accept responsibility for any portion of a penalty or fine attributable to the actions or omissions of Western Area Power Administration. SPP will identify the amount of any penalty or fine that SPP allocates to Western Area Power Administration or that SPP determines is attributable to Western Area Power Administration and will identify that amount to the Commission as uncollectable and not otherwise owed by SPP.

### **Section 13 – Compliance with Federal or State Law**

13.1 Notwithstanding any other provision of this Agreement, a non-jurisdictional WEIS Participant shall not be required to take any action or do any other thing with respect to rates, charges, terms or conditions of service, the resolution of disputes under this Agreement or any other matter regarding its obligations and performance under this Agreement, that (i) the non-jurisdictional WEIS Participant is not permitted by Federal or state law to undertake or that is prohibited in whole or in part by any Federal or state law or regulation applicable to the non-jurisdictional WEIS Participant; or (ii) would require the non-jurisdictional WEIS Participant to violate a provision of such state or Federal law or regulation in order to comply with this Agreement. Determination of compliance with and permissible action, conduct or obligations under this Section 13.1 by a non-jurisdictional WEIS Participant shall be within the sole jurisdiction of the non-jurisdictional WEIS Participant's governing board, subject to applicable Federal or state court review. A non-jurisdictional WEIS Participant shall not object to SPP's participation in any Federal or state proceedings that impact the non-jurisdictional WEIS Participant's ability to perform under this Agreement or determinations regarding such impact. To the extent possible without violating Federal or state law, a non-jurisdictional WEIS Participant shall notify SPP in advance of any action that the non-jurisdictional WEIS Participant is required to take that the non-jurisdictional WEIS Participant believes would constitute a violation of Federal or state law, and the non-jurisdictional WEIS Participant and SPP shall promptly meet and confer regarding the matter.

13.2 If the Internal Revenue Service or any other Federal, state, or local taxing authority issues, or fails to issue, any ruling, or imposes any requirement or obligation, in connection with this Agreement on WEIS Participant adverse to WEIS Participant (in its sole judgment), or if adherence to this Agreement jeopardizes the tax-exempt status of WEIS Participant or its bonds, then WEIS Participant may, within 30 days of the date of such final order, or a good faith belief of such adverse consequences, terminate this Agreement pursuant to Section 3.2.1 of this Agreement. In such event, WEIS Participant and SPP will, in good faith, negotiate to determine whether changes should be made to this Agreement to address the reasons for WEIS Participant's withdrawal. Nothing in this Agreement, nor WEIS Participant's obligations and performance thereunder, shall affect, or require WEIS Participant to take or refrain from taking any action that would affect the rights and obligations or enforceability of WEIS Participant's present or future bond resolutions, tax-exempt debt covenants and financing agreements. WEIS Participant shall determine in its sole discretion and judgment, in accordance with advice and opinions from its legal counsel, what actions, conduct and performance it is permitted to or must take under its bond resolutions, tax-exempt debt covenants and financing agreements. WEIS Participant and SPP will meet and confer regarding this matter and, as necessary, negotiate in good faith to modify this Agreement to address the matter.

## **Section 14 – No Waiver of Jurisdictional Immunity**

14.1 If WEIS Participant is not subject to the jurisdiction of FERC as a public utility under the Federal Power Act, WEIS Participant shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over WEIS Participant that does not otherwise exist. Any order, decision, rule or regulation issued by FERC to SPP or any other WEIS Participants relating to matters exempt from FERC jurisdiction under Section 201(f) of the Federal Power Act shall not apply directly or separately to a non-jurisdictional WEIS Participant. Without limiting the generality of the foregoing, except as otherwise provided in the Federal Power Act, a non-jurisdictional WEIS Participant shall not be bound or obligated by any FERC order, decision, rule or regulation requiring a change in the rates, terms or conditions for transmission service or compensation for utilizing the transmission facilities of a non-jurisdictional WEIS Participant, which conflicts with applicable Federal or state law, including any order requiring the suspension of the use of such rates, terms or conditions or the payment of refunds of rates or compensation previously collected or received. A non-jurisdictional WEIS Participant and SPP acknowledge that FERC, in the context of its jurisdiction over SPP's rates, may review a non-jurisdictional WEIS Participant's revenue requirement and rates to the extent they comprise or affect the rates charged by SPP or other WEIS Participants. In the case of a Federal Power Marketing Agency, this review shall be consistent with the Delegation Order No. 00-037.00B, as superseded or amended, from the Secretary of Energy to the Power Marketing Administrations and the FERC, including the regulations implementing this review authority. If FERC does not accept a non-jurisdictional WEIS Participant's revenue requirement or rates, the non-jurisdictional WEIS Participant may terminate its participation in this Agreement giving SPP written notice not less than ninety (90) days prior to the effective date of such termination. Upon the effective date of WEIS Participant's termination pursuant to this Section 14.1, WEIS Participant is responsible for the Withdrawal Payment pursuant to Section 3.7 or Section 12, as applicable. In such event, the non-jurisdictional MP and SPP agree to meet and confer prior to any termination of this Agreement. Nothing in this Agreement, or the participation of a non-jurisdictional MP in the WEIS waives any objection to or otherwise constitutes a consent to, the jurisdiction by FERC that does not otherwise exist over the non-jurisdictional MP or its transmission service, facilities and rates.

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**IN WITNESS WHEREOF**, the WEIS Participant has caused its duly authorized representative to execute and attest this Agreement.

WESTERN AREA POWER ADMINISTRATION  
– UPPER GREAT PLAINS REGION  
P.O. Box 35800  
Billings, MT 59104  
WEIS Participant

Jody S. Sundsted  
Name of Authorized Representative

Senior Vice President and Upper Great Plains  
Regional Manager  
Title of Authorized Representative

/s/  
Signature of Authorized Representative

12/06/2019  
Date of Execution

SOUTHWEST POWER POOL, INC.  
201 Worthen Drive  
Little Rock, AR 72223

Bruce Rew  
Name of Authorized Representative

Senior Vice President of Operations  
Title of Authorized Representative

Attest: /s/  
Signature of Authorized Representative

By /s/  
Date of Execution

Title Associate General Counsel

## Exhibit A WEIS Administration Rate

### Summary

This Western Energy Imbalance Service Market Administration Rate (“WEIS Rate”) is intended to recover the costs associated with the initial implementation and ongoing administration of the WEIS.

The WEIS Rate includes charges for Implementation Cost Recovery (“ICR”) and Ongoing Cost Recovery (“OCR”), which are applicable to all WEIS Participants. WEIS Participants that join after the WEIS Commencement Date will also be subject to any outstanding initial implementation costs as well as a New WEIS Participant Incremental Cost Recovery (“NWPICR”) charge, as applicable.

These WEIS Rate components shall be allocated to WEIS Participants based on their NEL or, in the case of New WEIS Participant Incremental Costs, directly assigned to those WEIS Participants, as applicable.

### Calculation

WEIS Charge	=	ICR Charge	+	OCR Charge	+	NWPICR Charge (as applicable)
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Where:

ICR Charge	=	<p><u>Implementation Cost Recovery (“ICR”) Charge:</u></p> <p><u>Basis of Charge</u> Charge to recover the Implementation Costs (“IC”), which shall include the initial system/software/hardware and other associated costs to establish the infrastructure and processes necessary to implement the WEIS. These Implementation Costs will be recovered from WEIS Participants over the first eight (8) rate years of the WEIS. The ICR Charge shall include charges for:</p> <ol style="list-style-type: none"> <li>i. an Implementation Cost Recovery Principal Payment (“ICRPP”) for recovery of the remaining unrecovered principal amount of the implementation cost (“IC-Rem”), and</li> <li>ii. an Implementation Cost Finance Charge (“ICFC”) for finance charges on the unrecovered balance of the implementation cost.</li> </ol> <p><u>Applicability</u> The ICR Charge will apply, during the first eight (8) rate years of the WEIS, to all WEIS Participants.</p>
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		<ul style="list-style-type: none"> <li>WEIS Participants that execute a Western Joint Dispatch Agreement on or prior to October 25, 2019, will be charged for ICR during the initial eight (8) rate years.</li> <li>New WEIS Participants that execute an Amended and Restated Western Joint Dispatch Agreement after October 25, 2019, but prior to the end of the eight (8)-year ICR Period, will be charged the ICR Charge for the remaining rate years during the eight (8)-year ICR Period (“ICRP”). These new WEIS Participants will also be charged a New WEIS Participant Incremental Cost Recovery (“NWPICR”) Charge (see below) for any incremental implementation-related costs required to accommodate the new WEIS Participant. <ul style="list-style-type: none"> <li>New WEIS Participants that join after the end of the eight (8)-year ICRP, will not be charged an ICR Charge. These WEIS Participants will, however, be charged a NWPICR Charge, as applicable.</li> </ul> </li> <li>WEIS Participants that withdraw prior to the end of the eight (8)-year ICRP are obligated to pay their share of the remaining IC as a Withdrawal Payment. <ul style="list-style-type: none"> <li>WEIS Participants that withdraw after the end of the eight (8)-year ICRP will not be charged for withdrawal, because there will be no remaining IC to be paid.</li> </ul> </li> </ul> <p><u>Billing/Cost Allocation</u> The ICR Charge will be billed annually to WEIS Participants based on their annual Billable Net Energy for Load (“BNEL”) multiplied by the ICR Rate (“ICRR”) established for the applicable rate year.</p>
OCR Charge	=	<p><u>Ongoing Cost Recovery (“OCR”) Charge:</u></p> <p><u>Basis of Charge</u> Charge to recover the Ongoing Costs, which shall include the labor and other associated costs necessary to administer the WEIS on an ongoing basis.</p> <p>The OCR Charge shall include charges for:</p> <ol style="list-style-type: none"> <li>the projected Ongoing Costs (“OC-Proj”) for the rate year n, and</li> <li>a true-up (“OC-TU”) (applied in rate year n) for the difference between the actual Ongoing Costs (“OC-Act”) for rate year n-2 and the Ongoing Costs recovered (OC-Rec) through charges to WEIS Participants during rate year n-2.</li> </ol> <p><u>Applicability</u> The OCR Charge will apply to all WEIS Participants for all rate years.</p> <p><u>Billing/Cost Allocation</u></p>

		<p>The OCR Charge will be billed annually to WEIS Participants based on their annual BNEL multiplied by the OCR Rate (“OCRR”) established for the applicable rate year.</p> <p>If, however, the resulting annual OCR Charge described above is less than \$9000 for any WEIS Participant, such WEIS Participant will be billed the WEIS Participant Minimum Annual Payment (“WPMAP”) of \$9000.</p>
NWPICR Charge	=	<p><u>New WEIS Participant Incremental Cost Recovery (“NWPICR”) Charge:</u></p> <p><u>Basis of Charge</u> Charge to recover the New WEIS Participant Incremental Costs, which shall include incremental implementation-related costs, if any, required to accommodate the new WEIS Participant. These New WEIS Participant Incremental Costs may include, but are not necessarily limited to, additional system/software/hardware costs to accommodate the addition of the new WEIS Participant.</p> <p><u>Applicability</u> The NWPICR Charge will apply to new WEIS Participants as a separate charge(s) after the new WEIS Participant has joined the WEIS. The timing and structure of the NWPICR Charges will be determined at the time the new WEIS Participant joins and more information about the specific New WEIS Participant Incremental Costs for that particular new WEIS Participant are known.</p> <p><u>Billing/Cost Allocation</u> The NWPICR Charge will be directly assigned to the new WEIS Participant(s) whose participation necessitates the incremental cost.</p> <p>If more than one new WEIS Participant is joining the WEIS at the same time, when possible, the incremental costs specifically attributable to each new WEIS Participant will be directly assigned to that new WEIS Participant.</p> <ul style="list-style-type: none"> <li>• If specific attribution of the incremental costs for each new WEIS Participant is not possible, the incremental costs will be allocated to those new WEIS Participants, based on the BNEL for the new WEIS Participants for the applicable rate year.</li> </ul>

And:

BNEL	=	<p><u>Billable Net Energy for Load (“BNEL”):</u></p> <p>The WEIS Participant’s BNEL for the rate year n will be the WEIS Participant’s NEL calculated for the most recently ended calendar year. The WEIS Participant shall provide that calendar year NEL information to SPP by September 1 prior to the February 1 – January 31 rate year.</p>
$\Sigma$ BNEL	=	<p>Sum of the BNEL for all WEIS Participants at the time of the calculation of the rates for the applicable rate year (“<math>\Sigma</math>BNEL”):</p> <p>The <math>\Sigma</math>BNEL shall be utilized as the denominator in the calculation of the Implementation Cost Recovery Rate (“ICRR”) and the Ongoing Cost Recovery Rate (“OCRR”).</p>
IC	=	<p><u>Implementation Costs (“IC”):</u></p> <p>Implementation Costs may include, but are not necessarily limited to, the initial system/software/hardware and other associated costs to establish the infrastructure and processes necessary to implement the WEIS.</p> <p>These IC will initially be projected, if not known and/or finalized at the start of the WEIS, and will be trued-up to reflect the actual IC incurred, as soon as administratively feasible following: (i) the Commencement Date of the WEIS; or (ii) if Rejection occurs in accordance with Section 10.1.2.</p>
ICRP	=	<p><u>Implementation Cost Recovery Period (“ICRP”):</u></p> <p>The ICRP is the period over which the IC will be recovered through charges to WEIS Participants.</p> <p>The ICRP shall be the first eight (8) rate years of the WEIS.</p>
ICFR	=	<p><u>Implementation Cost Financing Rate (“ICFR”):</u></p> <p>The ICFR shall be the effective financing rate (interest and fees) incurred by SPP to finance the IC.</p>
IC-Rem	=	<p><u>Implementation Cost Remaining (“IC-Rem”):</u></p> <p>The IC-Rem reflects the remaining balance of the IC (projected and trued-up) when reduced by prior Implementation Cost Recovery Principal Payments (“ICRPP”) and any Implementation Cost Withdrawal Payments paid by former WEIS Participants upon their withdrawal from the WEIS.</p>



ICRPP	=	<p><u>Implementation Cost Recovery Principal Payment (“ICRPP”):</u></p> <p>The ICRPP shall be the calculated amount of IC principal to be paid by WEIS Participants during a rate year based on the Implementation Cost Remaining Balance (“IC-Rem”) and remaining years in the Implementation Cost Recovery Period (“ICRP”).</p>
ICFC	=	<p><u>Implementation Cost Finance Charge (“ICFC”):</u></p> <p>The ICFC shall be the calculated amount of finance charges to be paid by WEIS Participants during a rate year based on the Implementation Cost Financing Rate (“ICFR”) and the Implementation Cost Remaining Balance (“IC-Rem”).</p>
ICRR	=	<p><u>Implementation Cost Recovery Rate (“ICRR”):</u></p> <p>The ICRR is the rate charged to WEIS Participants to recover the IC. The ICRR is calculated by dividing the sum of the Implementation Cost Recovery Principal Payment (“ICRPP”) and the Implementation Cost Finance Charge (“ICFC”) by the <math>\Sigma</math>BNEL.</p>
OC	=	<p><u>Ongoing Costs (“OC”) or (“WEIS Expenses”):</u></p> <p>Ongoing Costs (or WEIS Expenses) include the labor and other associated costs necessary to administer the WEIS on an ongoing basis.</p> <p>These costs do not include Implementation Costs (“IC”).</p>
OC-Proj	=	<p><u>Projected Ongoing Costs (“OC-Proj”):</u></p> <p>The Projected Ongoing Costs for rate year n will be determined by SPP by September 1 prior to the February 1 – January 31 rate year.</p>
OC-Act	=	<p><u>Actual Ongoing Costs (“OC-Act”):</u></p> <p>The OC-Act shall be determined by SPP following rate year n. The OC-Act shall include SPP’s actual costs incurred to administer the WEIS during the rate year n plus the true-up amount calculated for rate year n-2. This sum of the rate year n actual costs and the true-up amount calculated for rate year n-2 reflects the amount that <u>should</u> have been collected from WEIS Participants during rate year n.</p>

OC-Rec	=	<u>Ongoing Costs Recovered (“OC-Rec”):</u>  The OC-Rec is the amount actually recovered from WEIS Participants for the OCR Charges during rate year n.
OC-TU		Ongoing Cost True-Up (“OC-TU”)  The OC-TU reflects the difference, positive or negative, between the Actual Ongoing Costs (“OC-Act”) for rate year n and the Ongoing Costs Recovered (“OC-Rec”) during rate year n. This calculated difference between what <u>should have been</u> recovered and what <u>was</u> recovered during rate year n. This calculated difference will be applied as a True-Up that will be incorporated as a component of the rate year n+2 OCR Charge.  The differences captured in this true-up amount will result from differences between the projected and actual costs and differences, if any, caused by the mid-year withdrawals and or additions of WEIS Participants.
OCRR	=	<u>Ongoing Cost Recovery Rate (“OCRR”):</u>  The OCRR is the rate charged to WEIS Participants to recovery the OC. The ICRR is calculated by dividing the sum of the Projected Ongoing Costs (“OC-Proj”) for rate year n and Ongoing Cost True-Up (“OC-TU”) calculated for rate year n-2 by the $\Sigma$ BNEL.
WEIS Rate	=	ICRR + OCRR  The WEIS Rate is the total rate charged to all WEIS Participants based on their BNEL and is the sum of the Implementation Cost Recovery Rate (“ICRR”) and the Ongoing Cost Recovery Rate (“OCRR”).  This rate does not include New WEIS Participant Incremental Cost Recovery (“NWPICR”) Charges, which are additional charges to new WEIS Participants.
WPMAP		<u>WEIS Participant Minimum Annual Payment (“WPMAP”):</u>  The WPMAP of \$9000 is intended to recover SPP’s costs associated with WEIS administration for a WEIS Participant with little or no BNEL.