

BILL NO. 2019-102

ORDINANCE NO.

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NIXA,
MISSOURI, AUTHORIZING THE MAYOR TO SIGN A NETWORK
OPERATING AGREEMENT WITH SOUTHWEST POWER POOL, INC.
AND THE SOUTHWESTERN POWER ADMINISTRATION**

WHEREAS, ARTICLE II, Section 2.1 of the Home Rule Charter of the City of Nixa, Missouri provides the City of Nixa all powers of the General Assembly of the State of Missouri have authority to confer upon any City, provided such powers are consistent with the Constitution of the state of Missouri and are not limited or denied by the City of Nixa’s Charter or by statute; and

WHEREAS, the Southwestern Power Pool, Inc. (“SPP”) and the Southwestern Power Administration (“Southwestern”) own certain electric transmission facilities; and

WHEREAS, SPP and Southwestern have entered into an agreement which authorizes SPP to: 1) utilize Southwestern’s transmission facilities under SPP’s Open Access Transmission Tariff (“Tariff”), as filed with the Federal Energy Regulatory Commission, for services offered by SPP, and 2) perform certain administrative duties pursuant to the SPP Tariff; and

WHEREAS, The City of Nixa has made a request for Network Integration Transmission Service in accordance with SPP’s Tariff filed with the Commission; and

WHEREAS, Southwestern owns the transmission facilities to which Nixa’s Network Load is physically connected; and

WHEREAS, the City of Nixa, SPP, and Southwestern wish to formalize the agreement between the parties related to operations of the transmission facilities.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NIXA,
MISSOURI, AS FOLLOWS:**

Section I: That the Mayor is hereby authorized and directed to sign the Network Operating Agreement with Southwest Power Pool, Inc. and the Southwestern Power Administration, a copy of which is attached hereto and incorporated herein by reference.

Section II: All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed.

Section III: This ordinance shall be in full force and effect from and after the date of its passage.

**READ TWO (2) TIMES AND PASSED BY THE CITY COUNCIL OF NIXA, MISSOURI
THIS 28TH DAY OF OCTOBER 2019.**

PRESIDING OFFICER

ATTEST:

CITY CLERK

APPROVED THIS _____ DAY OF OCTOBER 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



Nixa Utilities & Public Works
Nixa, Missouri
417.725.2352
www.nixa.com



MEMORANDUM

To: Mayor and City Council
From: Doug Colvin
Date: 10.18.2019
RE: Southwest Power Pool agreements

The attached ordinance(s) will authorize the Mayor to execute three new agreements with Southwest Power Pool (SPP) that in short, update and complete our existing transmission contracts for energy delivery recognizing the transmission asset sale to GridLiance last year. This update has been in the works for quite some time, however since it involves Southwestern Power Administration (SPA), we've been held up on their timeframe. Heather Stearns of Healy Law has been working with staff, SPP, and SPA off and on since we switched to our current SPP network service in 2017. Tim Ricker has also been involved recently to approve these agreements as to form and to create ordinance wording.

As explained at the October 15th meeting, City Council approved our current agreements with SPP for operations beginning June of 2017 when we changed from the historical SPA Point-to-Point Non-Federal Transmission service; a move that was necessary for the divestiture of the transmission assets to GridLiance. At the time of the switch, we still owned the 69Kv transmission assets and thus, references in the existing agreements related to ownership, operational responsibility and energy delivery scheduling and planning were to us. These proposed documents recognize the ownership and operational responsibilities to GridLiance, and we become just a network service customer for delivery of power. We do still maintain the planning and scheduling responsibility associated with our business to obtain the power.

Staff recommends that City Council adopt all three Ordinances.

**NETWORK OPERATING AGREEMENT
AMONG
SOUTHWEST POWER POOL, INC.,
CITY OF NIXA, MISSOURI
AND
SOUTHWESTERN POWER ADMINISTRATION**

This Network Operating Agreement (“Operating Agreement”) is entered into this 1st day of October, 2019, by and between City of Nixa, Missouri (“Network Customer”), Southwest Power Pool, Inc. (“SPP” or “Transmission Provider”) and Southwestern Power Administration (“Southwestern”), as owner of transmission facilities subject to this Operating Agreement. The Network Customer, Transmission Provider and Southwestern shall be referred to individually as a “Party” and collectively as “Parties.”

WHEREAS, SPP and Southwestern have entered into an agreement which authorizes SPP to (1) utilize Southwestern’s transmission facilities under SPP’s Open Access Transmission Tariff (“Tariff”), as filed with the Federal Energy Regulatory Commission (“Commission”), for services offered by SPP, and (2) perform certain administrative duties, all pursuant to Attachment AD of the SPP Tariff;

WHEREAS, the Transmission Provider has determined that the Network Customer has made a valid request for Network Integration Transmission Service in accordance with the Transmission Provider’s Tariff filed with the Commission;

WHEREAS, the Transmission Provider administers Network Integration Transmission Service for Transmission Owners within the SPP Region and acts as an agent for these Transmission Owners in providing service under the Tariff;

WHEREAS, Southwestern owns the transmission facilities to which the Network Customer’s Network Load is physically connected;

WHEREAS, the Network Customer has represented that it is an Eligible Customer under the Tariff;

WHEREAS, the Network Customer and Transmission Provider have entered into a Network Integration Transmission Service Agreement (“Service Agreement”) under the Tariff; and

WHEREAS, Southwestern and Network Customer have entered into a separate agreement, which may be amended from time to time by these entities, with specific terms and conditions,

including, but not limited to, provisions for upgrades, ownership, maintenance, and replacement of facilities that establish the point of delivery and the Balancing Authority Area boundaries of the Parties.

WHEREAS, the Parties intend that capitalized terms used herein shall have the same meaning as in the Tariff, unless otherwise specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, the Parties agree as follows:

1.0 Network Service

This Operating Agreement sets out the terms and conditions under which the Transmission Provider, Southwestern, and Network Customer will cooperate and Southwestern and Network Customer will operate, or cause to be operated, their respective systems and specifies the equipment that will be installed and operated. The Parties shall operate and maintain their respective systems in a manner that will allow Southwestern and the Network Customer to operate, or cause to be operated, their systems and the Transmission Provider to perform its obligations consistent with Good Utility Practice. The Transmission Provider may, on a non-discriminatory basis, waive the requirements of Section 4.1 and Section 8.3 to the extent that such information is unknown at the time of application or where such requirement is not applicable.

2.0 Designated Representatives of the Parties

2.1 Each Party shall designate a representative and alternate (“Designated Representative(s)”) from their respective company to coordinate and implement, on an ongoing basis, the terms and conditions of this Operating Agreement, including planning, operating, scheduling, redispatching, curtailments, control requirements, technical and operating provisions, integration of equipment, hardware and software, and other operating considerations.

2.2 The Designated Representatives shall represent the Transmission Provider, Southwestern, and Network Customer in all matters arising under this Operating Agreement and which may be delegated to them by mutual agreement of the Parties hereto.

2.3 The Designated Representatives shall meet or otherwise confer at the request of any Party upon reasonable notice, and each Party may place items on the meeting

agenda. All deliberations of the Designated Representatives shall be conducted by taking into account the exercise of Good Utility Practice. If the Designated Representatives are unable to agree on any matter subject to their deliberation, that matter shall be resolved pursuant to Section 14.0.

3.0 System Operating Principles

- 3.1 The Network Customer must design, construct, and operate, or cause to be designed, constructed, and operated, its facilities safely and efficiently in accordance with Good Utility Practice, North American Electric Reliability Corporation (“NERC”), SPP, or any successor requirements, industry standards, criteria, and applicable manufacturer’s equipment specifications, and within operating physical parameter ranges (voltage schedule, load power factor, and other parameters) required by Southwestern and Transmission Provider.
- 3.2 Southwestern and Transmission Provider reserve the right to inspect the facilities and operating records of the Network Customer upon mutually agreeable terms and conditions.
- 3.3 Electric service, in the form of three phase, approximately sixty hertz alternating current, shall be delivered at designated delivery points and nominal voltage(s) listed in the Service Agreement. When multiple delivery points are provided to a specific Network Load identified in Appendix 3 of the Service Agreement, they shall not be operated in parallel by the Network Customer without the approval of Southwestern and Transmission Provider. The Designated Representatives shall establish the procedure for obtaining such approval. The Designated Representatives shall also establish and monitor standards and operating rules and procedures to assure that transmission system integrity and the safety of customers, the public and employees are maintained or enhanced when such parallel operations are permitted either on a continuing basis or for intermittent switching or other service needs. In addition, the Network Customer shall not connect the transmission system of Southwestern to the transmission system of another entity, including to the transmission system of the Network Customer, through any designated point of delivery in Appendix 3 of the Service Agreement without the written approval of Southwestern. Each Party shall exercise due diligence and

reasonable care in maintaining and operating its facilities so as to maintain continuity of service.

- 3.4 The Network Customer shall operate, or cause to be operated, its systems and delivery points in continuous synchronism and in accord with applicable NERC Standards, SPP Criteria, and Good Utility Practice.
- 3.5 Southwestern shall operate, or cause to be operated, its systems and delivery points in continuous synchronism and in accordance with applicable NERC Standards, SPP Criteria as incorporated into Attachment AD of the Transmission Provider's Tariff, and Good Utility Practice. As applicable to Southwestern only, the term "SPP Criteria" as used herein shall be the SPP Criteria attached as an exhibit in the currently effective agreement between Southwestern and SPP identified as Attachment AD to the SPP Tariff. In the event of a conflict between this Agreement and the SPP Criteria as defined in this Section 3.5, the provisions of this Agreement shall control except as provided in this Section 3.5. Any changes to the SPP Criteria that SPP proposes to be applicable to this Agreement shall be evidenced by an executed amendment to this Agreement to include such modified SPP Criteria.
- 3.6 If the function of any Party's facilities is impaired or the capacity of any delivery point is reduced, or synchronous operation at any delivery point(s) becomes interrupted, either manually or automatically, as a result of force majeure or maintenance coordinated by the Parties, the Parties will cooperate to remove, or cause to be removed, the cause of such impairment, interruption or reduction, so as to restore normal operating conditions expeditiously.
- 3.7 The Transmission Provider and Southwestern, if applicable, reserve the sole right to take any action necessary during an actual or imminent emergency to preserve the reliability and integrity of the Transmission System, limit or prevent damage, expedite restoration of service, ensure safe and reliable operation, avoid adverse effects on the quality of service, or preserve public safety.
- 3.8 In an emergency, the reasonable judgment of the Transmission Provider and Southwestern, if applicable, in accordance with Good Utility Practice, shall be the sole determinant of whether the operation of the Network Customer loads or equipment adversely affects the quality of service or interferes with the safe and

reliable operation of the transmission system. The Transmission Provider or Southwestern, if applicable, may discontinue transmission service to such Network Customer until the power quality or interfering condition has been corrected. Such curtailment of load, redispatching, or load shedding shall be done on a non-discriminatory basis by Load Ratio Share, to the extent practicable. The Transmission Provider or Southwestern, if applicable, will provide reasonable notice and an opportunity to alleviate the condition by the Network Customer to the extent practicable.

- 3.9 Services provided by the Transmission Provider for the Network Customer in accordance with the Service Agreement requires the utilization of SPP facilities not owned by Southwestern and interconnected to Southwestern through a separate contract among Southwestern, SPP, and GridLiance High Plains, LLC, formerly South Central MCN, LLC. If, for any reason, the separate contract between Southwestern, SPP and GridLiance High Plains, LLC, is terminated, rescinded, cancelled, rendered inoperative, or is amended in such a manner which precludes service by the Transmission Provider to the Network Customer, the Network Customer would continue to receive service from the Transmission Provider pursuant to current obligations outlined in the SPP Open Access Tariff and the SPP Governing Documents Tariff.

4.0 System Planning & Protection

- 4.1 No later than October 1 of each year, the Network Customer shall provide the Transmission Provider and Southwestern the following information:
- a) A ten (10) year projection of summer and winter peak demands with the corresponding power factors and annual energy requirements on an aggregate basis for each delivery point. If there is more than one delivery point, the Network Customer shall provide the summer and winter peak demands and energy requirements at each delivery point for the normal operating configuration;
 - b) A ten (10) year projection by summer and winter peak of planned generating capabilities and committed transactions with third parties which resources are expected to be used by the Network Customer to supply the peak

- demand and energy requirements provided in (a);
- c) A ten (10) year projection by summer and winter peak of the estimated maximum demand in kilowatts that the Network Customer plans to acquire from the generation resources owned by the Network Customer, and generation resources purchased from others; and
 - d) A projection for each of the next ten (10) years of transmission facility additions to be owned and/or constructed, or caused to be constructed, by the Network Customer which facilities are expected to affect the planning and operation of the transmission system of Southwestern that may or may not be within Southwestern's Balancing Authority Area.

This information is to be delivered to the Transmission Provider's and Southwestern's Designated Representatives pursuant to Section 2.0.

- 4.2 Information exchanged by the Parties under this article will be used for system planning and protection only, and will not be disclosed to third parties absent mutual consent or order of a court or regulatory agency or unless required by law or regulation applicable to Southwestern.
- 4.3 Southwestern, and Transmission Provider, if applicable, will incorporate this information in its system load flow analyses performed during the first half of each year. Following completion of these analyses, the Transmission Provider or Southwestern will provide the following to the Network Customer:
 - a) A statement regarding the ability of Southwestern's transmission system to meet the forecasted deliveries at each of the delivery points;
 - b) A detailed description of any constraints on Southwestern's system within the five (5) year horizon that will restrict forecasted deliveries; and
 - c) In the event that studies reveal a potential limitation of the Transmission Provider's ability to deliver power and energy to any of the delivery points, a Designated Representative of the Transmission Provider will coordinate with the Designated Representatives of Southwestern and the Network Customer to identify appropriate remedies for such constraints including but not limited to: construction of new transmission facilities, upgrade or other improvements to existing transmission facilities or temporary

modification to operating procedures designed to relieve identified constraints. Any constraints within the Transmission System will be remedied pursuant to the procedures of Attachment O of the Tariff subject to Attachment AD of the Tariff and as limited by Article 22.0 of this Operating Agreement.

For all other constraints Southwestern, upon agreement with the Network Customer and consistent with Good Utility Practice, will endeavor to construct and place into service sufficient capacity to maintain reliable service to the Network Customer pursuant to Attachment AD of the Tariff and Article 22.0 of this Operating Agreement.

An appropriate sharing of the costs to relieve such constraints will be determined by the Parties, consistent with the Tariff, and with the Commission's rules, regulations, policies, and precedents then in effect subject to Attachment AD of the Tariff, all laws and regulations applicable to Southwestern, and Article 22.0 of this Operating Agreement. If the Parties are unable to agree upon an appropriate remedy or sharing of the costs, the Transmission Provider shall submit its proposal for the remedy or sharing of such costs to the Commission for approval consistent with the Tariff subject to Southwestern's status as a non-jurisdictional entity before the Commission, Attachment AD of the Tariff, all laws and regulations applicable to Southwestern, and Article 22.0 of this Operating Agreement.

- 4.4 Southwestern and the Network Customer shall coordinate, or caused to be coordinated, with the Transmission Provider: (1) all scheduled outages of generating resources and transmission facilities consistent with the reliability of service to the customers of each Party, and (2) additions or changes in facilities which could affect another Party's system. Where coordination cannot be achieved, the Designated Representatives shall intervene for resolution.
- 4.5 The Network Customer shall coordinate with Southwestern regarding the technical and engineering arrangements for the delivery points, including one-line diagrams depicting the electrical facilities configuration and parallel generation, and shall design and build the facilities, or cause the facilities to be designed and built, to

avoid interruptions on Southwestern's transmission system. The Network Customer shall not modify tap facilities, install additional tap lines, increase tap-line distances, or connect tap lines into other systems thereby causing loop feeds without the express written permission of Southwestern.

- 4.6 The Network Customer shall provide for automatic and underfrequency load shedding of the Network Customer Network Load in accordance with the SPP Criteria related to emergency operations.

5.0 Maintenance of Facilities

- 5.1 The Network Customer shall maintain its facilities necessary to reliably receive capacity and energy from Southwestern's transmission system consistent with Good Utility Practice. The Transmission Provider or Southwestern, as appropriate, may curtail service under this Operating Agreement to limit or prevent damage to generating or transmission facilities caused by the Network Customer's failure to maintain its facilities in accordance with Good Utility Practice, and the Transmission Provider or Southwestern may seek as a result any appropriate relief from the Commission.
- 5.2 The Designated Representatives shall establish procedures to coordinate, or cause to be coordinated, the maintenance schedules, and return to service, of the generating resources and transmission and substation facilities, to the greatest extent practical, to ensure sufficient transmission resources are available to maintain system reliability and reliability of service.
- 5.3 The Network Customer shall obtain, or cause to be obtained: (1) concurrence from the Transmission Provider before beginning any scheduled maintenance of facilities which could impact the operation of the Transmission System over which transmission service is administered by Transmission Provider; and (2) clearance from the Transmission Provider when the Network Customer is ready to begin maintenance on a transmission line or substation. The Transmission Provider shall coordinate clearances with Southwestern. The Network Customer shall notify the Transmission Provider and Southwestern as soon as practical at the time when any unscheduled or forced outages occur and again when such unscheduled or forced outages end.

5.4 Specific terms and conditions for upgrades, ownership, maintenance, and replacement of facilities shall be as specified in a separate agreement between Southwestern and the Network Customer.

6.0 Scheduling Procedures

6.1 The Network Customer will be responsible for providing its Resource and load information to the Transmission Provider in accordance with Attachment AE on such date as Southwestern chooses to participate in the SPP Integrated Marketplace.

6.2 For Interchange Transactions, the Network Customer shall submit, or arrange to have submitted, the schedule of Energy to or from the Transmission Provider and a transaction identification E-Tag for each such schedule where required by NAESB Standard WEQ-004.

6.3 Southwestern is not obligated under this Operating Agreement to satisfy any deficiencies that may occur for the Network Customer as a result of suspension or reduction of schedules by a third party, including but not limited to the Transmission Provider or the Reliability Coordinator, nor is Southwestern obligated to notify any party if such schedules are suspended or reduced due to the action of a third party.

7.0 Ancillary Services

7.1 The Network Customer must make arrangements in appropriate amounts for all of the required Ancillary Services described in the Tariff. The Network Customer must obtain these services from the Transmission Provider or, where applicable, self-supply or obtain these services from a third party.

7.2 When the Network Customer elects to self-supply or have a third party provide Ancillary Services, the Network Customer must demonstrate to the Transmission Provider and Southwestern that it has either acquired the Ancillary Services from another source or is capable of self-supplying the services. Any approval of self-supply or third party Ancillary Services will be subject to Southwestern's technical and operation requirements and have approval from Southwestern prior to self-supply or third-party providing said services.

7.3 The Network Customer must designate the supplier of Ancillary Services.

7.4 The Network Customer and Southwestern recognize that the Network Customer is

obligated to provide all of the Volt-Amperes Reactive (“VARs”) required for its load served at the points of delivery. The compensation paid by the Network Customer due to Southwestern is subject to an adjustment for power factor in accordance with Southwestern's applicable rate schedules and terms and conditions of a contract between Southwestern and the Network Customer to be billed by Southwestern.

- 7.5 The compensation paid by the Network Customer due to Southwestern is subject to a charge for conditions of service and/or transformation for deliveries in accordance with Southwestern’s applicable rate schedules and terms and conditions of a contract between Southwestern and the Network Customer to be billed by Southwestern.

8.0 Metering

- 8.1 The Network Customer shall provide for the installation of meters, associated metering equipment and telemetering equipment as set forth in a separate agreement between Southwestern and the Network Customer. The Network Customer shall permit (or provide for, if the Network Customer is not the meter owner) the Transmission Provider’s and Southwestern’s representative to have access to the equipment at all reasonable hours and for any reasonable purpose, and shall not permit unauthorized persons to have access to the space housing the equipment. Network Customer shall provide to (or provide for, if the Network Customer is not the meter owner) Southwestern access to load data and other data available from any delivery point meter. If the Network Customer does not own the meter, Southwestern shall make available, upon request, all load data and other data obtained by Southwestern from the relevant delivery point meter, if available utilizing existing equipment. The Network Customer will cooperate on the installation of advanced technology metering in place of the standard metering equipment at a delivery point at the expense of the requestor; provided, however, that the meter owner shall not be obligated to install, operate or maintain any meter or related equipment that is not approved for use by the meter owner and/or Southwestern, and provided that such equipment addition can be accomplished in a manner that does not interfere with the operation of the meter owner’s equipment

or any Party's fulfillment of any statutory or contractual obligation.

- 8.2 The Network Customer shall provide for the testing of the metering equipment at suitable intervals and its accuracy of registration shall be maintained in accordance with standards acceptable to the Transmission Provider and consistent with Good Utility Practice. At the request of the Transmission Provider or Southwestern, a special test shall be made, but if less than two percent inaccuracy is found, the requesting Party shall pay for the test. Representatives of the Parties may be present at all routine or special tests and whenever any readings for purposes of settlement are taken from meters not having an automated record. If any test of metering equipment discloses an inaccuracy exceeding two percent, the accounts of the Parties shall be adjusted. Such adjustment shall apply to records of electric service furnished since the beginning of the monthly billing period immediately preceding the billing period during which the test was made, and such correction, when made, shall constitute full adjustment of any claim between the Parties hereto arising out of such inaccuracy of metering equipment. Should any metering equipment fail to register, the amounts of energy delivered shall be estimated from the best available data.
- 8.3 If the Network Customer is supplying energy to retail load that has a choice in its supplier, the Network Customer shall be responsible for providing all information required by the Transmission Provider for billing purposes. Metering information shall be available to the Transmission Provider either by individual retail customer or aggregated retail energy information for that load the Network Customer has under contract during the billing month. For the retail load that has interval demand metering, the actual energy used by interval must be supplied. For the retail load using standard kWh metering, the total energy consumed by meter cycle, along with the estimated demand profile must be supplied. All rights and limitations between Parties granted in Sections 8.1 and 8.2 are applicable in regards to retail metering used as the basis for billing the Network Customer.

9.0 Connected Generation Resources

- 9.1 The Network Customer's connected generation resources that have automatic generation control and automatic voltage regulation shall be operated and

maintained consistent with regional operating standards, and the Network Customer or the operator shall operate, or cause to be operated, such resources to avoid adverse disturbances or interference with the safe and reliable operation of the transmission system as instructed by the Transmission Provider.

9.2 For all Network Resources of the Network Customer, the following generation telemetry readings shall be submitted to the Transmission Provider and Southwestern:

- 1) Analog MW;
- 2) Integrated MWHRS/HR;
- 3) Analog MVARs; and
- 4) Integrated MVARHRS/HR.

The provision of this data to Southwestern is subject to the request of Southwestern. This data must be provided to Southwestern within twenty (20) Business days upon request. All Network Resources shall be used in the determination of the Network load of the Network Customer.

10.0 Redispatching, Curtailment and Load Shedding

10.1 In accordance with Section 33 of the Tariff, the Transmission Provider may require redispatching of generation resources belonging to the Network Customer or curtailment of loads of the Network Customer to relieve existing or potential transmission system constraints. The Transmission Provider shall redispatch Resources in accordance with the Energy and Operating Reserve Markets operations specified in Attachment AE at such time as Southwestern chooses to participate in the SPP Integrated Marketplace. The Network Customer shall respond immediately to requests for redispatch from the Transmission Provider. The Transmission Provider will bill or credit the Network Customer as appropriate using the settlement procedures specified in Attachment AE at such time as Southwestern chooses to participate in the SPP Integrated Marketplace.

10.2 The Parties shall implement load-shedding procedures to maintain the reliability and integrity of the Transmission System as provided in Section 33.1 of the Tariff and in accordance with applicable NERC and SPP requirements and Good Utility Practice. Load shedding may include (1) automatic load shedding, (2) manual

load shedding, and (3) rotating interruption of customer load. When manual load shedding or rotating interruptions are necessary, Southwestern shall notify the Network Customer's dispatcher or schedulers of the required action and the Network Customer shall comply immediately.

10.3 The Network Customer will coordinate with Southwestern to ensure sufficient load shedding equipment is in place on their respective systems to meet SPP requirements. The Network Customer and Southwestern shall develop a plan for load shedding which may include manual load shedding by the Network Customer.

11.0 Communications

11.1 The Network Customer shall, at its own expense, install and maintain communication link(s) for scheduling. The communication link(s) shall be used for data transfer and for voice communication. Communications requirements and specific details regarding communications and data exchange shall be as set forth in a separate agreement between Southwestern and the Network Customer.

11.2 A Network Customer self-supplying Ancillary Services or securing Ancillary Services from a third-party shall, at its own expense, install and maintain telemetry equipment communicating between the generating resource(s) providing such Ancillary Services and Southwestern's Zone or Balancing Authority Area.

12.0 Cost Responsibility

12.1 The Network Customer shall be responsible for all costs incurred by the Network Customer, Southwestern, and Transmission Provider to implement the provisions of this Operating Agreement including, but not limited to, engineering, environmental, administrative and general expenses, material and labor expenses associated with the specification, design, review, approval, purchase, installation, maintenance, modification, repair, operation, replacement, checkouts, testing, upgrading, calibration, removal, and relocation of equipment or software, so long as the direct assignment of such costs is consistent with Commission policy, with any costs determined to be assigned to Southwestern subject to Attachment AD of the Tariff, Article 22.0 of this Operating Agreement, and a separate agreement between Southwestern and the Network Customer.

12.2 The Network Customer shall be responsible for all costs incurred by Network

Customer, Southwestern, and Transmission Provider for on-going operation and maintenance of the facilities required to implement the provisions of this Operating Agreement so long as the direct assignment of such costs is consistent with Commission policy, with any costs determined to be assigned to Southwestern subject to Attachment AD of the Tariff, Article 22.0 of this Operating Agreement, and a separate agreement between Southwestern and the Network Customer. Such work shall include, but is not limited to, normal and extraordinary engineering, environmental, administrative and general expenses, material and labor expenses associated with the specifications, design, review, approval, purchase, installation, maintenance, modification, repair, operation, replacement, checkouts, testing, calibration, removal, or relocation of equipment required to accommodate service provided under this Operating Agreement.

13.0 Billing and Payments

Billing and Payments shall be in accordance with Attachment AE at such time as Southwestern chooses to participate in the SPP Integrated Marketplace and Section 7 of the Tariff.

14.0 Dispute Resolution

The Parties shall attempt to resolve disputes arising under this Operating Agreement using informal alternative dispute resolution techniques, as provided in Section 12.1 of the Tariff, except that the Parties acknowledge Southwestern cannot submit a dispute to binding arbitration. If a dispute remains unresolved, the Parties acknowledge that any action by or against Southwestern shall be initiated in a Federal court of competent jurisdiction.

15.0 Assignment

This Operating Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, but shall not be assigned by any Party, except to successors to all or substantially all of the electric properties and assets of such Party, without the written consent of the other Parties. Such written consent shall not be unreasonably withheld.

16.0 Choice of Law and Forum

The interpretation, enforcement, and performance of this Operating Agreement shall be governed by the laws of the State of Arkansas for all Parties except Southwestern;

provided, however, that laws and precedent of such jurisdiction concerning choice of law shall not be applied, except to the extent governed by the laws of the United States of America. Federal law shall control all of Southwestern's obligations and procedures established by this Operating Agreement and the performance and enforcement thereof. The forum for any litigation arising from this Operating Agreement in which Southwestern is a party to said litigation, shall exclusively be a Federal court of the United States of America.

17.0 Entire Agreement

The Tariff and Service Agreement, as they are amended from time to time, are incorporated herein and made a part hereof. To the extent that a conflict exists between the terms of this Operating Agreement and the terms of the Tariff, the Tariff, subject to Attachment AD of the Tariff, shall control.

18.0 Unilateral Changes and Modifications

Nothing contained in this Operating Agreement or any associated Service Agreement shall be construed as affecting in any way the right of the Transmission Provider or a Transmission Owner unilaterally to file with the Commission, or make application to the Commission for, changes in rates, charges, classification of service, or any rule, regulation, or agreement related thereto, under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder, or under other applicable statutes or regulations.

Nothing contained in this Operating Agreement or any associated Service Agreement shall be construed as affecting in any way the ability of any Network Customer receiving Network Integration Transmission Service under the Tariff to exercise any right under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder; provided, however, that it is expressly recognized that this Operating Agreement is necessary for the implementation of the Tariff and Service Agreement. Therefore, no Party shall propose a change to this Operating Agreement that is inconsistent with the rates, terms and conditions of the Tariff and/or Service Agreement. To the extent that a conflict exists between the terms of the Service Agreement and the terms of the Tariff, the Tariff, subject to Attachment AD of the Tariff, shall control.

19.0 Term

This Operating Agreement shall become effective on the date assigned by the Commission (“Effective Date”), and shall continue in effect until the Tariff or the Network Customer’s Service Agreement is terminated, whichever shall occur first.

20.0 Notice

20.1 Any notice that may be given to or made upon any Party by any other Party under any of the provisions of this Operating Agreement shall be in writing, unless otherwise specifically provided herein, and shall be considered delivered when the notice is personally delivered or deposited in the United States mail, certified or registered postage prepaid, to the following:

Transmission Provider
Southwest Power Pool, Inc.
Tessie Kentner
Attorney
201 Worthen Drive
Little Rock, AR 72223-4936
Telephone: (501) 688-1782
Email: tkentner@spp.org

Transmission Owner:
Southwestern Power Administration
Doug Hart
Senior Vice President/COO, Office of Corporate Operations
One West Third Street, Suite 1600
Tulsa, OK 74103-3502
Telephone: (918) 595-6631
Telefax: (918) 595-6631
Email: doug.hart@swpa.gov

Network Customer
City of Nixa, MO
Doug Colvin
P.O. Box 395
1111 W. Kathryn Street
Nixa, MO 65714
Telephone: (417) 724-5670
Email: dcolvin@nixa.com

Any Party may change its notice address by written notice to the other Parties in accordance with this Article 20.

20.2 Any notice, request, or demand pertaining to operating matters may be delivered in writing, in person or by first class mail, e-mail, messenger, or facsimile transmission as may be appropriate and shall be confirmed in writing as soon as reasonably practical thereafter, if any Party so requests in any particular instance.

21.0 Execution in Counterparts

This Operating Agreement may be executed in any number of counterparts with the same effect as if all Parties executed the same document. All such counterparts shall be construed together and shall constitute one instrument.

22.0 Availability of Funds to Southwestern

22.1 This Operating Agreement and all rights and obligations hereunder, and any expenditure of funds by Southwestern under the provisions hereof, are expressly conditioned and contingent upon Congress making available (through direct appropriation, authorization of a revolving fund, the authority to borrow funds, or through such other means as it may provide) the necessary funds or the authority to accept funds from others to enable Southwestern to carry out the provisions of this Operating Agreement, and if such funds or authorities are not available, this Operating Agreement shall terminate and have no further force or effect as of the last day for which funds or authorities were available, and the Network Customer hereby releases Southwestern from any and all liability for failure to perform and fulfill its obligations under this Operating Agreement for that reason.

22.2 No obligation contained herein for payment of money by Southwestern, or liability on the part of Southwestern for breach of any of the provisions contained herein, shall be binding upon or enforceable against Southwestern unless and until funds, as provided in Article 22.1 of this Operating Agreement, are available out of which such obligations or liability can be legally paid.

22.3 Nothing in this Operating Agreement may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet any deficiencies or obligations incurred under this Operating Agreement.

IN WITNESS WHEREOF, the Parties have caused this Operating Agreement to be executed by their respective authorized officials, and copies delivered to each Party, to become effective as of the Effective Date.

TRANSMISSION PROVIDER

(SOUTHWESTERN) TRANSMISSION
OWNER

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

NETWORK CUSTOMER

Signature

Printed Name

Title

Date