

December 18, 2013

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Re: *Southwest Power Pool, Inc.*, Docket No. ER14-\_\_\_\_\_  
Submission of Affected Systems' Facilities Construction Agreement

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and section 35.13 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. § 35.13, Southwest Power Pool, Inc. ("SPP") submits an executed Affected Systems' Facilities Construction Agreement ("FCA") between SPP as Transmission Provider, Abengoa Bioenergy Biomass of Kansas, LLC ("Abengoa") as Interconnection Customer, and Sunflower Electric Power Corporation ("Sunflower") as Transmission Owner ("Abengoa FCA").<sup>1</sup> SPP requests an effective date of December 3, 2013, for the Abengoa FCA.

**I. Description of SPP**

SPP is a Commission-approved Regional Transmission Organization ("RTO"). SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP has 74 members, including 14 investor-owned utilities, 11 municipal systems, 13 generation and transmission cooperatives, 4 state agencies, 11 independent power producers, 12 power marketers, and 9 independent transmission companies. As an RTO, SPP is a transmission provider administering transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP is responsible for providing independent transmission services over the transmission facilities its members have placed under the SPP Open Access Transmission Tariff ("Tariff"). Sunflower has placed its transmission system under the functional control of SPP.

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<sup>1</sup> A copy of the Abengoa FCA, designated as Original Service Agreement No. 2568, is included with this filing. In addition, SPP, Abengoa, and Sunflower are collectively referred to as "the Parties."

## II. Background

Abengoa and Pioneer Electric Cooperative, Inc. (“PECI”) have entered into an Interconnection Agreement (“Abengoa IA”) to facilitate the interconnection of Abengoa’s 22.5 MW generating facility (“Generating Facility”) to PECI’s transmission system. PECI is not a member of SPP, but PECI’s transmission system is interconnected to other SPP Transmission Owning Members transmission systems, which are under SPP’s functional control.

In light of the interconnection of the Generating Facility to PECI’s system, SPP performed a study to analyze the impact of the Generating Facility’s interconnection on the SPP transmission system (“ASGI Study”). Per SPP’s procedures, this study was clustered with other Interconnection Requests in the area of the interconnection and was studied as part of the Definitive Interconnection System Impact Study (DISIS-2012-001). Based on the ASGI Study, SPP determined that as a result of the interconnection of the Generating Facility to PECI’s transmission system, a network upgrade is required on the Sunflower transmission system. While the Abengoa IA governs the interconnection of the Generating Facility to PECI’s transmission system, including specifying any upgrades required on that system, it does not address the network upgrade needed on the Sunflower transmission system. Because Sunflower is an “Affected System,”<sup>2</sup> it also is not a party to the Abengoa IA (nor is SPP). Therefore, in order to memorialize the Parties’ responsibilities with regard to the construction of the upgrade on the Sunflower transmission system, SPP, Abengoa, and Sunflower entered into a FCA.<sup>3</sup>

Currently, SPP does not have a *pro forma* FCA in its Tariff. The Parties used SPP’s *pro forma* GIA and other Commission-accepted Facilities Construction Agreements as guidance in developing the Abengoa FCA. The *pro forma* GIA is an appropriate reference document for SPP’s development of the FCA, because similar to a

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<sup>2</sup> An “Affected System” is “an electric system other than the Transmission System that may be affected by the proposed interconnection.” See Tariff at Attachment V, Section 1, Definitions.

<sup>3</sup> See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49846 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146, at P 739 (2003), *order on reh’g*, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs., ¶ 31,171 (2005), *order on reh’g*, Order No. 2003-C, 70 FR 37661 (Jun. 30, 2005), FERC Stats. & Regs., ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Utils. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) (“When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider.”).

GIA, an FCA facilitates the construction of upgrades necessitated by the interconnection of a generating plant. However, because the upgrades are being constructed on an Affected System, some of the *pro forma* GIA provisions, in particular those regarding operations of the generating plant, are inapplicable and therefore were not included in the Abengoa FCA. Notably, the Abengoa FCA is similar and consistent with other Commission-accepted Facilities Construction Agreements filed by SPP<sup>4</sup> and other transmission providers, pursuant to which interconnection customers are held responsible for the costs of upgrades on Affected Systems required as a result of their interconnections.<sup>5</sup>

### **III. Description of the Abengoa FCA**

As discussed above, the Abengoa FCA is based on the *pro forma* GIA and contains language similar to other Commission-accepted Facilities Construction Agreements. The provisions of the Abengoa FCA are described below.

First, the “Whereas” clauses in the Abengoa FCA delineate the relationship between the Parties, as well as the circumstances that necessitate the Abengoa FCA.<sup>6</sup>

Second, Article 1 contains the definitions of terms used throughout the Abengoa FCA. These definitions are similar to corresponding definitions in the *pro forma* GIA. However, the Abengoa FCA does not include all of the *pro forma* GIA definitions because not all of them are applicable to a facilities construction agreement with an Affected System. In addition, the Parties added a definition for the term “Non-Breaching Party” to provide clarity in the termination provisions of the Abengoa FCA.<sup>7</sup>

Third, Articles 2 and 11, which also are similar to the corresponding provisions of the *pro forma* GIA, contain provisions regarding the term and termination of the Abengoa

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<sup>4</sup> See *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-774-000 (Mar. 5, 2013); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-755-000 (Mar. 5, 2013); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-382-000 (Jan. 9, 2013); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER12-1802-000 (July 10, 2012); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER11-4390-000 (Oct. 13, 2011); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER11-4349-000 (Oct. 12, 2011).

<sup>5</sup> See *Midwest Independent Transmission System Operator, Inc.*, Letter Order, Docket No. ER11-2155-000 (Jan. 13, 2011); *Midwest Independent Transmission System Operator, Inc.*, Letter Order, Docket No. ER10-2540-000 (Nov. 1, 2010); *Duke Electric Transmission*, 113 FERC ¶ 61,139 (2005).

<sup>6</sup> See Abengoa FCA at Recitals.

<sup>7</sup> See *id.* at Article 1.

FCA.<sup>8</sup> Article 2 specifies that the Abengoa FCA shall be effective on the date on which the Abengoa FAC is made and entered into by the Parties. Article 2 of the Abengoa FCA does not include provisions of Article 2 of the *pro forma* GIA pertaining to a “GIA,” the operations of the generating facility, and the disconnection of the generating facility because these provisions are not applicable to the construction of an upgrade on an Affected System. Similar to Article 11 of the *pro forma* GIA, the termination provisions in Article 11 of the Abengoa FCA are necessary to insulate the Parties from financial loss in the event of the termination of the agreement.

Fourth, Article 3 provides the terms and conditions for the construction of network upgrades and system protection facility requirements under the Abengoa FCA.<sup>9</sup> This Article is necessary to ensure that the responsibilities for the construction of the network upgrades are clearly defined, and is largely consistent with the *pro forma* GIA. However, it contains some variations to accommodate the purpose of the Abengoa FCA, which is to govern the construction of an upgrade on an Affected System, not to govern the interconnection of generation to the SPP system. For example, Article 3 contains provisions governing the costs for network upgrades, which vary from the corresponding provisions in the *pro forma* GIA because the Abengoa FCA provisions need only pertain to costs for work on network upgrades on Sunflower’s system as a result of the interconnection of Abengoa’s Generating Facility on PECI’s transmission system and not costs related to interconnection customer interconnection facilities, and transmission owner interconnection facilities associated with interconnecting a generator to the SPP system through a GIA. For the same reason, the other provisions in Article 3 of the Abengoa FCA are similarly more narrow in scope than the *pro forma* GIA.

Fifth, Article 5 provides a mechanism for the exchange of information among the Parties, which will facilitate the implementation of the Abengoa FCA.<sup>10</sup> Similarly, Article 16 contains provisions that facilitate the exchange of notices under the Abengoa FCA.<sup>11</sup>

Sixth, Article 12 provides that Parties to the Abengoa FCA can use affiliates, consultants, contractors, and suppliers, to perform their obligations under the Abengoa FCA, but use by a Party of other entities to perform its obligations will not relieve the Party of its obligations under the Abengoa FCA.<sup>12</sup> This provision is necessary to allow

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<sup>8</sup> See *id.* at Articles 2 and 11.

<sup>9</sup> See *id.* at Article 3.

<sup>10</sup> See *id.* at Article 5.

<sup>11</sup> See *id.* at Article 16.

<sup>12</sup> See *id.* at Article 12.

the Parties to hire subcontractors, but still keep the Parties liable for their obligations under the Abengoa FCA.

Seventh, Article 17 contains miscellaneous provisions that are standard contract provisions including: waiver (Article 17.1 – Waiver); governing law (Article 17.2 – Governing Law); counterparts (Article 17.6 – Counterparts); how to resolve conflicts within the Abengoa FCA (Article 17.8 – Conflicts); and a clause signifying that the Abengoa FCA constitutes the final, complete agreement between the Parties (Article 17.5 – Entire Agreement).<sup>13</sup>

Eighth, Appendix A of the Abengoa FCA, like Appendix A of the *pro forma* GIA, contains detailed information on the network upgrades to be built under the Abengoa FCA, including the pertinent costs estimates and responsibility, transmission credits, construction schedule, and monthly payment schedule.<sup>14</sup> Assigning cost responsibility to Abengoa for the network upgrade on the Sunflower transmission system is just and reasonable because the upgrade would not be necessary but for the interconnection of the Generating Facility to PECI and the resultant impacts on the Sunflower and SPP transmission systems.

Ninth, Appendix B contains a form letter for the notification of completed construction of the network upgrades.<sup>15</sup> This letter is consistent with the type of notification required for interconnection customers interconnecting to the SPP system.<sup>16</sup>

Finally, the Abengoa FCA contains the following provisions that are consistent with, or similar to, the *pro forma* GIA: (1) Article 3.1.2 (Suspension of Work); (2) Article 3.3 (Taxes); (3) Article 4 (Force Majeure); (4) Article 6 (Modification); (5) Article 7 (Invoicing and Payments); (6) Article 8 (Assignment); (7) Article 9 (Indemnity, Consequential Damages and Insurance); (8) Article 10 (Default); (9) Article 13 (Confidentiality); (10) Article 14 (Information Access and Audit Rights); (11) Article 15 (Disputes); and (12) Article 18 (Representations and Warranties).<sup>17</sup> Some of the aforementioned Articles contain slight variations from the *pro forma* GIA because the Abengoa FCA governs upgrades on an Affected System rather than an interconnection on SPP's transmission system. For example, some of the provisions were modified to refer to the FCA instead of the GIA. Other variations remove terms from the *pro forma* GIA that are not applicable to an FCA. For example, the Parties removed Articles 6 (Testing

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<sup>13</sup> See *id.* at Article 17.

<sup>14</sup> See *id.* at Appendix A.

<sup>15</sup> See Abengoa FCA at Appendix B.

<sup>16</sup> See *pro forma* GIA at Appendix E.

<sup>17</sup> See Abengoa FCA at Articles 3.1.2, 3.3, 4, 6, 7, 8, 9, 10, 13, 14, 15, and 18.

and Inspection), 7 (Metering), and 9 (Operations) of the *pro forma* GIA because of each of these Articles are not applicable to the FCA.

#### IV. Effective Date

SPP requests an effective date of December 3, 2013 for the Abengoa FCA. Therefore, pursuant to section 35.11 of the Commission's rules and regulations, 18 C.F.R. § 35.11, SPP requests a waiver of the Commission's 60-day notice requirement set forth at 18 C.F.R. § 35.3. Waiver is appropriate because the Abengoa FCA is being filed within 30 days of its requested effective date.<sup>18</sup> In addition, the Commission previously has granted waiver of the 60-day notice requirement for agreements not contained in the filing entities' Tariff when the agreements were filed within 30 days of the requested effective date.<sup>19</sup>

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<sup>18</sup> See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (the Commission will grant waiver of the 60-day prior notice requirement "if service agreements are filed within 30 days after service commences.").

<sup>19</sup> See *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-755-000 (Mar. 5, 2013); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER13-382-000 (Jan. 9, 2013); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER12-1802-000 (July 10, 2012); *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER11-4349-000 (Oct. 12, 2011); *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,191 (2009) (Granting waiver of the 60-day prior notice requirement and conditionally accepting an Interim Large Generator Interconnection Agreement ("Interim LGIA"), which was not part of the SPP Tariff at the time, that was filed within 30 days of the requested effective date); *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER11-3645-000 (July 15, 2011) (Granting waiver of the 60-day prior notice requirement and accepting a Wholesale Market Participation Agreement, an agreement which is not part of the PJM Tariff, that was filed within 30 days of the requested effective date).

**V. Notice and Communication**

SPP requests that all correspondence and communications with respect to this filing should be sent to, and that the Secretary include on the official service list, the following:

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**VI. Additional Information**

**A. Information Required by Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13:**

**(1) Documents submitted with this filing:**

In addition to this transmittal letter, SPP includes a copy of the Abengoa FCA with this filing.

**(2) Effective date:**

As discussed above, SPP respectfully requests that the Commission accept the Abengoa FCA with an effective date of December 3, 2013.

**(3) Service:**

SPP is serving a copy of this filing on the representatives for the Parties in the Abengoa FCA.

**(4) Basis of Rate:**

All charges will be determined in accordance with the Tariff and the Abengoa FCA.

**VII. Conclusion**

For the foregoing stated reasons, SPP requests that the Commission accept the Abengoa FCA effective December 3, 2013.

Respectfully submitted,

/s/ Tessie Kentner  
Tessie Kentner

**Attorney for Southwest Power  
Pool, Inc.**