



RESOLUTION NO. U-11494

1 A RESOLUTION related to the Department of Public Utilities, Power Division,
2 authorizing the execution of a Phase 2 funding agreement for the
3 Southwest Power Pool's Markets+ Phase 2 Initiative, to pay for Tacoma
4 Power's share of the cost for the Southwest Power Pool to develop an
5 organized day ahead market.

6 WHEREAS Tacoma Power and other entities in the west have hired the
7 Southwest Power Pool ("SPP) to work with then to design a day ahead
8 organized market alternative, and

9 WHEREAS this design phase (Phase 1) is complete, now, participants
10 (including Tacoma Power), are being asked to sign an agreement to fund
11 Phase 2, in which SPP sets up Markets+ and allows the market to go-live, and

12 WHEREAS there are two possible organized day ahead markets that are
13 an option for Tacoma Power to join: the California Independent System
14 Operator's ("CAISO") EDAM and SSP Markets+, and

15 WHEREAS CAISO has a fiduciary responsibility to the citizens of
16 California and a Board appointed by the Governor of California, and

17 WHEREAS joining EDAM would mean accepting that our interactions will
18 be resolved by market rules developed by the CAISO under its governance
19 framework and implemented by a market operator that is also a participant, and

20 WHEREAS a common and rigorous resource adequacy standard
21 enables better reliability - using fewer resources overall and finding savings
22 opportunities - through regional coordination, and

23 WHEREAS a common and rigorous long-term RA standard paired with a
24 short-term minimum bid obligation ensures the market has enough resources to
25
26



1 reliably operate and that all participants bring their fair share of resources to the
2 market, and

3 WHEREAS CAISO relies on the less rigorous California Public Utilities
4 Commission resource adequacy standard, and the broader EDAM footprint will
5 not be required to meet any common resource adequacy standard, therefore,
6 Tacoma Power feels that Market+ provides a better foundation for resource
7 adequacy that EDAM, and

8 WHEREAS Markets+ has been carefully designed through a
9 collaborative process by multiple entities across the Northwest and Southwest
10 United States, with Tacoma helping fund Phase 1 (market design) of the
11 Markets+ initiative and has been an active participant in the design process,
12 and

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14 WHEREAS Phase 2 will allow SPP to fund labor, vendor and
15 professional services, administration, new staff, software and hardware in order
16 to bring Markets+ to the point where it is a functioning market, and

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18 WHEREAS Markets+ is expected to become operational in 2027 or
19 2028, at which point Tacoma plans to be a participant in the Markets+ day
20 ahead and sub-hourly energy imbalance markets, and

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22 WHEREAS SPP is requesting that participants execute a funding
23 agreement that will be very similar to the draft version on file with the Clerk of
24 the Board, however, a final agreement is not expected until or about November
25 20, 2024, and

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WHEREAS the funding agreement will commit participants, including Tacoma Power, to a certain level of funding and participants are committed to paying their funding amount even if they leave Markets+, and

WHEREAS Tacoma's share of the \$150 million funding requirement is estimated to be about \$3 million based on the required commitment of 200,000 GWh of 2022 net energy for load ("NEL"), and

WHEREAS due to the nature of the agreement, it is possible the amount will increase if participants drop out before critical mass is achieved or if costs are higher than expected, and

WHEREAS participants are not intended to commence paying their funding commitment until Markets+ is operational, the funding agreement will require participants to post 120% of their funding commitment as collateral for SPP, and

WHEREAS the draft funding agreement also requires that Participants agree to pay a pro rata share of a termination fee with Tacoma's anticipated costs being approximately \$400,000 based on its portion of the 2022 NEL, and

WHEREAS the final form of the funding agreement is not expected to materially change from the current draft, particularly with respect to Tacoma Power's financial obligations, and

WHEREAS Tacoma Power requests that the Board authorize Tacoma Power to execute the final form of the funding agreement for SPP Markets+ Phase Two that will commit Tacoma Power to an amount up to \$4,000,000 provided that the Director of Utilities determines that (1) any changes between



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Exhibit A and the final form are acceptable to Tacoma Power; and (2) execution of the final form of the funding agreement is in the best interests of Tacoma Power, and (3) the final form of the funding agreement has been approved as to form by the City Attorney's Office, and

WHEREAS Tacoma Power recommends executing the funding agreement because funding and joining Markets+ is in the best interest of the utility both financially and from a reliability perspective; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That Director of Utilities, or her designee (collectively, the "Director"), is authorized to execute the SPP Markets+ Phase 2 Funding Agreement and to pay its share of the cost for the Southwest Power Pool in an amount up to \$4,000,000 in order to participate in the development an organized day ahead market, provided that the Director determines that (1) any changes between the draft funding agreement and the final form are acceptable to Tacoma Power; and (2) execution of the final form of the funding agreement is in the best interests of Tacoma Power; and (3) the final form of the funding agreement has been approved as to form by the City Attorney's Office.

Approved as to form: _____
Chair

Secretary

Adopted _____
Clerk



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Ray Johnson, Power Manager; Leah Marquez-Glynn, Asst. Power Manager
MEETING DATE: 11/13/2024
DATE: 10/29/2024

GUIDING PRINCIPLE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- | | |
|--|--|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input checked="" type="checkbox"/> GP2 – Financial Sustainability | <input type="checkbox"/> GP9 – Economic Development |
| <input checked="" type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP5 – Environmental Sustainability | <input type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP14 – Resource Planning |
| <input checked="" type="checkbox"/> GP7 – Reliability & Resiliency | |

SUMMARY:

Tacoma Power recommends that the Public Utility Board approve the SPP Markets+ Phase 2 Funding Agreement. This agreement will commit Tacoma Power to paying its share of the cost for the Southwest Power Pool (SPP) to develop Markets+, an organized day ahead market. Tacoma's share of the \$150 million funding requirement is estimated to be about \$3 million. Due to the nature of the agreement, participants are required to post 120% of their funding requirement as collateral. Therefore, we recommend that the Board authorize spending authority for SPP Markets+ Phase Two of up to \$3.6 million.

Tacoma Power and other entities in the west have hired the Southwest Power Pool (SPP) to work with them to design a day ahead organized market alternative. This design phase (Phase 1) is complete. Now participants (including Tacoma Power) are being asked to sign an agreement to fund Phase 2, in which SPP sets up Markets+ and allows the market to go-live. Tacoma Power recommends signing the agreement because funding and joining Markets+ is in the best interest of the utility financially and from a reliability perspective.

BACKGROUND:

There are two possible organized day ahead markets that are an option for Tacoma Power to join: CAISO's EDAM and SSP Markets+. CAISO has a statutory fiduciary responsibility to the citizens of California and a Board appointed by the Governor of California. Joining EDAM would mean accepting that our interactions will be resolved by market rules developed by the CAISO under its governance framework, and implemented by a market operator that is also a participant.

A common and rigorous resource adequacy standard enables better reliability – using fewer resources overall and finding savings opportunities – through regional coordination. A common and rigorous long-term RA standard paired with a short-term minimum bid obligation ensures the market has enough resources to reliably solve and that all participants bring their fair share of resources to the market. CAISO relies on the less rigorous California Public Utilities Commission resource adequacy standard, and the broader EDAM footprint will not be required to meet any common resource adequacy standard. We feel that Markets+ provides a better foundation for resource adequacy than EDAM.



Board Action Memorandum

Markets+ has been carefully designed through a collaborative process by multiple entities across the Northwest and Southwest. Tacoma has helped fund Phase 1 (market design) of the Markets+ initiative and been an active participant in the design process.

Phase 2 will allow SPP to fund labor, vendor and professional services, administration, new staff, software and hardware in order to bring Markets+ to the point where it is a functioning Market. The market is expected become operational in 2027 or 2028, at which point Tacoma plans to be a participant in the Markets+ day ahead and sub-hourly energy imbalance markets.

The funding agreement commits participants, including Tacoma Power, to a certain level of funding based pro-rata on their load size. The funding agreement commits SPP to stand up Markets+. Once participants commit to funding and certain milestones are reached, participants are committed to paying back their funding amount even if they leave the market.

No action has been taken by the board on this topic yet. However, Power Management has presented two Study Session presentations on this topic to the Board this year, one in July 2024 to orient the Board to organized markets and one in October 2024 to explain the recommendation to fund the next phase of Markets+.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

Tacoma Power has the flexibility to fund this expense as an unbudgeted expense (assuming Board approval).

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Yes

ATTACHMENTS: Draft SPP Markets+ Phase 2 Funding Agreement

CONTACT:

Primary Contact: Leah Marquez-Glynn, Assistant Power Section Manager of Energy Resource Planning and Evaluation, 253-345-1688

Supervisor's Name: Ray Johnson

SPP MARKETS+
PHASE 2 FUNDING AGREEMENT

This Phase 2 Funding Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”) by and between Southwest Power Pool, Inc., an Arkansas nonprofit corporation (“SPP”), and the entities identified on the signature page hereto (each, a “Funding Participant”) as of the date hereof or by subsequent joinder from time to time. SPP and the Funding Participants are referred to in the Agreement individually as a “Party” and, collectively, as “Parties.”

RECITALS

- A. SPP, with funding provided by interested parties, is nearing completion of the preliminary phase (“Phase 1”) of creating day-ahead and real-time markets in the U.S. portion of the Western Interconnection (“Markets+”);
- B. On March 29, 2024, SPP filed with the Federal Energy Regulatory Commission (“FERC”) a tariff to establish Markets+ (“Markets+ Tariff”);
- C. “Phase 2” is the period following FERC’s approval of the Markets+ Tariff and satisfaction of Financing Conditions, as defined below, during which SPP will acquire, create, and/or modify the systems and processes required to implement Markets+;
- D. Each Funding Participant is willing to commit funding support for Phase 2 pursuant to the terms of this Agreement;
- E. Using each Funding Participant’s commitment under this Agreement, SPP intends to obtain third-party financing for Phase 2; and
- F. The Parties are entering into this Agreement to set forth the terms upon which SPP will complete Phase 2 and upon which each Funding Participant will provide commitments to secure the funding for Phase 2.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Obligations and Term.

(a) This Agreement incorporates by reference, as if set forth word for word herein, Exhibit 1, as may be revised by SPP from time to time in accordance with, and subject to the terms of, this Agreement. Exhibit 1 identifies and defines the Phase 2 Pro Rata Share and the Phase 2 Obligation of each Funding Participant.

(b) The term of the Agreement (“Term”) will commence on the Effective Date and will terminate upon the date SPP provides notification to the Funding Participants that the Financing, defined below, has been paid in full (including without limitation all principal, interest and fees owed thereunder), subject, however, to earlier termination pursuant to Section 5 of this Agreement. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated prior to the Financing being paid in full, all payment obligations of the Funding Participants owed hereunder shall survive termination until paid in full.

(c) Prior to Markets+ Go Live, SPP will: set up the hardware, software, and systems to implement Markets+; hire and train the staff that will operate Markets+; and lead negotiations for any necessary seams agreements with neighboring balancing authorities or markets. SPP will provide expected timelines to Funding Participants no later January 31, 2025 and a work plan with milestones by [March 31, 2025].

2. Phase 2 Implementation Cost and Definitions.

(a) The Phase 2 Implementation Cost is provided in Exhibit 1.

(b) The Phase 2 Implementation Cost includes an estimate of the following costs that may be incurred during implementation of Markets+.

(i) Labor;

(ii) Vendor and professional services;

(iii) Administrative (including travel, meetings, recruiting);

(iv) Software and hardware (including maintenance);

(v) Shared overhead; and

(vi) Financing charges (including interest).

The Parties acknowledge and agree that shared overhead for the first year in an amount equal to \$10,000,000 will be included in the initial draw request under the Financing immediately following satisfaction of the Financing Conditions. In the event of termination under Section 5(d), this shared overhead expense in an amount equal to \$10,000,000 will be deemed an actual expense incurred.

(c) Following satisfaction of the Financing Conditions, SPP will provide quarterly updates to the Funding Participants setting out, among other relevant information, (i) total amounts drawn down under the Financing, (ii) total Collateral committed by the Funding Participants, and (iii) any material changes to SPP’s estimate of the Phase 2 Implementation Cost. SPP will provide prompt written notice to each Funding Participant if the Funding Participant’s Phase 2 Obligation and Phase 2 Pro Rata Share are projected to increase as a result of an anticipated need to increase the Phase 2 Implementation Cost (*i.e.*, the current Phase 2 Implementation Cost was underestimated and will be insufficient to complete Phase 2) or a Funding Participant’s Event of Default (each, a “Change Notice”). SPP will facilitate scheduling a call among non-Defaulting or remaining Funding Participants within ten (10) Business Days of a Change Notice. Any Change

Notice(s) will identify the new amount of the Phase 2 Implementation Cost(s), Phase 2 Obligation, and Phase 2 Pro Rata Share.

(i) If the Change Notice is provided for any projected cost insufficiency resulting from an underestimate of the Phase 2 Implementation Cost, the Parties will meet promptly and confer in good faith to determine if the projected increased costs are appropriately identified and calculated.

(A) A Funding Participant that provides a Withdrawal Notice (as defined herein) within forty (40) Business Days of the Change Notice date will not be subject to any increase of such Funding Participant's Phase 2 Obligation for purposes of its obligations under this Section; provided that any Funding Participant that is located within the balancing authority area of another Funding Participant ("BA FP") will have an additional five (5) Business Days after a Funding Participant's receipt from SPP of such BA FP's Withdrawal Notice to provide its Withdrawal Notice and not be subject to the increase of such Funding Participant's Phase 2 Implementation Costs.

(B) The non-withdrawing Funding Participants and SPP will execute an amendment to this Agreement to modify the Phase 2 Implementation Costs. SPP will, forty-five (45) Business Days after the Change Notice date, automatically adjust each Funding Participant's Phase 2 Obligation to account for the increased Phase 2 Implementation Costs.

(ii) SPP may issue a Change Notice if there is an Event of Default with respect to a Funding Participant and the defaulting Funding Participant has not paid their Phase 2 Obligation as required by this Agreement (either directly or through a draw on any Collateral posted by the Funding Participant). SPP shall direct the Lender to take all commercially reasonable efforts to draw on and apply the defaulting Funding Participant's Collateral to the Financing prior to issuance of a Change Notice. If the Change Notice is provided as a result of a Funding Participant's Event of Default, subject to Section 5(e), SPP will, within forty (40) Business Days of the Change Notice date, automatically adjust each Funding Participant's Phase 2 Obligation and Phase 2 Pro Rata Share to account for the defaulting Funding Participant's outstanding portion of its Phase 2 Obligation; provided, however, that any adjustment shall not affect the defaulting Funding Participant's obligations under this Agreement.

(iii) Any change to a Funding Participant's Phase 2 Obligation resulting from a Change Notice will be memorialized in a revision to Exhibit 1 following the timelines provided in paragraph (c) above, which will then be posted on the internet website of SPP and will be binding upon the Parties without the need for execution of an amendment to this Agreement effective as of the date that the updated Exhibit 1 is posted to SPP's website. The foregoing does not apply to any changes to the defined terms in Exhibit 1, which may be revised only in an executed amendment to this Agreement. Any removal of a Funding Participant from Exhibit 1 and any corresponding adjustment shall not affect the defaulting Funding Participant's obligations under this Agreement and shall not be deemed a waiver by SPP or any other Funding Participant of its rights hereunder.

(e) In addition to the defined terms provided throughout this Agreement, the following defined terms shall apply:

(i) “Critical Mass” occurs when: (1) entities that are or represent at least two contiguous Balancing Authorities and not less than 200,000 GWh of 2023 NEL have executed this Agreement with SPP and (2) FERC has granted approval of the Markets+ Tariff. Following the date that Critical Mass is achieved, SPP will promptly give written notice to the Funding Participants certifying that Critical Mass has occurred. In the event that withdrawals from this Agreement result in less than 175,000 GWh of 2023 NEL remaining subject to this Agreement, SPP will promptly notify the remaining Funding Participants.

(ii) The “Financing Conditions” have been satisfied when SPP has secured the requisite regulatory approval for the Financing and SPP has entered into a loan agreement for Financing for the Phase 2 Implementation Cost, such loan agreement (including advances thereunder) being satisfactory to SPP and otherwise subject only to customary lending conditions (“**Loan Agreement**”). SPP will promptly notify the Funding Participants upon the Financing Conditions being satisfied and provide a copy of the executed Loan Agreement to the Funding Participants.

(iv) The terms “Phase 2 Obligation” and “Phase 2 Pro Rata Share” are as defined in Exhibit 1.

(v) A “Business Day” is a day on which the Federal Reserve System is open for business.

3. Phase 2 Obligation.

(a) After the Go-Live Date, SPP will bill and collect from all Markets+ market participants the applicable rate pursuant to the Markets+ Tariff Schedule 1-B or other Markets+ Tariff provision(s) effectuated to recover the Phase 2 Implementation Cost.

(b) The Phase 2 Implementation Cost will be financed by SPP with third-party financing with a qualified third-party lender that is acceptable to SPP (the “**Financing**”), and principal and interest payments will be made by SPP. SPP may use the following sources to repay the Financing and/or pay toward the Phase 2 Implementation Costs: (i) the rate recovered under Schedule 1-B, (ii) amounts received under any other Markets+ Tariff provisions effectuated to recover the Phase 2 Implementation Cost, and (iii) amounts received in accordance with this Agreement. Each Funding Participant’s Phase 2 Obligation is provided in Exhibit 1, as it may be updated from time to time in accordance with this Agreement. Beginning on the date on which Markets+ is implemented (the “Go-Live Date”) and at any point thereafter, the balance owed under the Financing (principal, interest, and fees) is referred to as the “**Phase 2 Implementation Cost Remaining**”.

(c) The Phase 2 Implementation Cost and each Funding Participant’s Phase 2 Obligation and Phase 2 Pro Rata Share will be recalculated by SPP from time to time to the extent provided in this Agreement, including as follows (and SPP shall update Exhibit 1 accordingly):

(i) If an additional Funding Participant executes a joinder to this Agreement, resulting in an increase to the total Net Energy for Load (“NEL”).

(ii) Pursuant to a Change Notice as described in Section 2(c).

(iii) Following the **Go-Live Date**, SPP will calculate the Phase 2 Implementation Cost Remaining and each Funding Participant's Phase 2 Obligation will be based on such amount. As the Financing is repaid, SPP will re-calculate the Phase 2 Implementation Cost Remaining and each Funding Participant's Phase 2 Obligation from time to time as provided in this Agreement.

4. Collateral.

(a) Each Funding Participant shall provide Collateral (as defined below) to SPP and to the lender providing the Financing (the "**Lender**") in an amount equal to 120% of the Funding Participant's Phase 2 Obligation to secure its obligations under this Agreement and SPP's payment obligations under the Loan Agreement, and this Agreement may be further assigned to Lender.

(i) Each Funding Participant that executed this Agreement with SPP more than ten (10) Business Days after certification by SPP of Critical Mass shall provide to SPP and Lender (i) Collateral in an amount equal to 120% of the Funding Participant's Phase 2 Obligation to secure its obligations under this Agreement and SPP's payment obligations under this Loan Agreement and (ii) a non-refundable cash payment in an amount equal to 10% of the Funding Participant's Phase 2 Obligation which shall be used by SPP toward Phase 2 Implementation Costs.

(ii) Each Funding Participant shall provide the required Collateral (and non-refundable payment, if applicable) to SPP no later than ten (10) Business Days after SPP notifies the Funding Participants that SPP has secured the requisite regulatory approval for the Financing ("**Initial Collateral Deadline**"); provided that a Funding Participant that signs this Agreement or a joinder hereto after the Initial Collateral Deadline will have ten (10) Business Days after execution of this Agreement or the joinder to provide the required Collateral (and non-refundable payment) to SPP.

(iii) To facilitate posting of Collateral by irrevocable letter of credit, SPP will, promptly after the Effective Date, provide to interested parties a form of irrevocable letter of credit in a form acceptable to SPP and the Lender. SPP, in consultation with the Lender, if required, will use reasonable efforts to respond to and finalize any reasonably requested changes to the form by a Funding Participant.

(b) "**Collateral**" is defined as:

(i) Cash deposited into an account with Lender and subject to the control of and restrictions imposed by Lender; or

(ii) An irrevocable standby letter of credit with Lender as the sole beneficiary, which is at all times in a form and drawn upon a bank acceptable to SPP and its Lender.

A Funding Participant may provide a combination of forms of Collateral. Further, SPP will use commercially reasonable efforts to allow a Funding Participant to replace one acceptable form of Collateral with another acceptable form in an equivalent amount.

(c) Lender (at the direction of SPP or under the Loan Agreement) may draw upon or otherwise exercise its rights to the Collateral posted by a Funding Participant, in the following

circumstances. Proceeds from the Collateral will be used to make a payment on the Financing pursuant to the Loan Agreement.

(i) an Event of Default has occurred and is continuing with respect to the Funding Participant and Funding Participant has not satisfied its payment obligation hereunder; or

(ii) by the Lender if there is a default by SPP of its payment obligations under the Loan Agreement that has occurred and is continuing; or

(iii) by the Lender upon a voluntary or involuntary filing of bankruptcy by SPP.

(d) In the event of a recalculation of a Funding Participant's Phase 2 Obligation hereunder, the amount of Collateral shall not automatically be reduced; provided, however, that:

(i) If a Funding Participant's Phase 2 Obligation is increased pursuant to a Change Notice, the Funding Participant must provide Collateral to SPP in an amount equal to 120% of the Funding Participant's Phase 2 Obligation within ten (10) Business Days of the updated Exhibit 1 being posted to SPP's website.

(ii) If at any point the total Collateral for all Funding Participants does not equal at least 120% of the lesser of the Phase 2 Implementation Cost or the Phase 2 Implementation Cost Remaining, additional Collateral shall be required of the Funding Participants, and

(iii) On or before the third anniversary of the Go-Live Date, the portion of the Collateral that exceeds 120% of the Funding Participant's Pro Rata Share of the Phase 2 Implementation Cost Remaining on such date shall be released.

5. Termination and Effect of Termination.

(a) The Parties may mutually agree to terminate this Agreement in writing at any time.

(b) Termination Prior to Critical Mass Being Met: If Critical Mass has not been achieved by 5:00 pm Central Time on [December 30, 2024] this Agreement shall automatically terminate.

(c) Termination After Critical Mass and Prior to Satisfaction of Financing Conditions.

(i) If a Funding Participant issues a Withdrawal Notice prior to satisfaction of the Financing Conditions, such Funding Participant will be considered in breach of this Agreement and SPP may pursue all legal remedies against the Funding Participant.

(ii) However, a Funding Participant may deliver a Withdrawal Notice after July 1, 2025, if Financing Conditions have not been satisfied. So long as Financing Conditions have not been satisfied as of the date of the delivery of the Withdrawal Notice, this Agreement shall terminate as to such Funding Participant and such Funding Participant will not be considered to be in breach of this Agreement.

(iii) SPP shall have no liability under this Agreement as a result of a failure to obtain Financing.

(d) Termination Occurs After Critical Mass and Financing Conditions Have Been Met and Before the Go-Live Date:

(i) After Critical Mass and Financing Conditions are satisfied but prior to the Go-Live Date, SPP may provide the Funding Participants notice in writing of its intent to terminate this Agreement (“Notice of Intent to Terminate”). SPP may terminate this Agreement under the terms of this Section 5(d) due to a loss of Critical Mass or at its sole discretion for any reason. To terminate this agreement, SPP must obtain approval from the SPP Board of Directors, which will act in accordance with the SPP Bylaws. The Parties will engage in twenty (20) Business Days of good faith negotiations to determine if concerns leading to the issuance of the Notice of Intent to Terminate are capable of resolution and, if so, to resolve such concerns. If the Parties successfully resolve the concerns of SPP, SPP will notify the other Parties in writing that the Notice of Intent to Terminate is rescinded (“SPP Notice of Resolution”).

(ii) Any time after twenty (20) Business Days from the date of the Notice of Intent to Terminate and prior to the date of a SPP Notice of Resolution, SPP may terminate this Agreement with regard to all Funding Participants by providing written notice to all Funding Participant(s) that it is terminating immediately its obligations under this Agreement and that complete termination of this Agreement (“Markets+ Termination Notice”) will be effective immediately upon each Funding Participant’s payment of its Phase 2 Obligation in full.

(A) If SPP terminates this Agreement pursuant to this Section 5(d), SPP will make a good faith effort to avoid any further costs and obligations related to Phase 2, but that shall not relieve each Funding Participant of its obligation to pay its Phase 2 Obligation, which may be reduced as provided in this Section 5(d). Funding Participant will be invoiced within twenty (20) Business Days of the Markets+ Termination Notice for the portion of the Funding Participant’s Phase 2 Obligation consisting of actual expenses incurred to date and known expected additional expenses, and each Funding Participant shall pay this invoice within twenty (20) Business Days.

(B) To the extent feasible, SPP will provide an accounting within 18 months to each Funding Participant of the actual expenses incurred and wind-down costs, which may include severance payments. To the extent of any underpayment by the Funding Participants, each Funding Participant will be invoiced within twenty (20) Business Days of the date when all actual expenses incurred and wind-down costs are known, and each Funding Participant shall pay this invoice within twenty (20) Business Days of receipt. Alternatively, and to the extent of any overpayment, Funding Participants will receive their Pro Rata Share of the positive difference, if any, of the amount SPP received from all Funding Participants minus actual expenses incurred and wind-down costs.

(iii) A Funding Participant may withdraw from this Agreement by delivering to SPP a written notice of withdrawal (“Withdrawal Notice”). SPP will notify the other Funding Participants if it receives a Withdrawal Notice. SPP and the Funding Participant that issued the Withdrawal Notice will engage in twenty (20) Business Days of good faith negotiations to

determine if concerns leading to the issuance of the Withdrawal Notice are capable of resolution and, if so, to resolve such concerns. If the Parties successfully resolve the concerns of the Party issuing the Withdrawal Notice, the Party that issued such notice shall notify SPP in writing that the Withdrawal Notice is rescinded (“Funding Participant’s Notice of Resolution”). If the Funding Participant does not provide a Funding Participant’s Notice of Resolution prior to the end of the twenty (20) Business Days period above, then the withdrawing Funding Participant will be released as a Party to this Agreement (and from any further obligations hereunder) effective upon payment in full to SPP of its Phase 2 Obligation.

(e) Termination After Go-Live Date:

(i) After the Go-Live Date, SPP may deliver a Notice of Intent to Terminate. SPP may terminate this Agreement under the terms of this Section 5(e) at its sole discretion for any reason, and such termination will not relieve such Funding Participant of its obligations hereunder. To terminate this agreement, SPP must obtain approval from the SPP Board of Directors, which will act in accordance with the SPP Bylaws. The Parties will engage in twenty (20) Business Days of good faith negotiations to determine if concerns leading to the issuance of the Notice of Intent to Terminate are capable of resolution and, if so, to resolve such concerns. If the Parties successfully resolve the concerns of SPP, SPP will deliver an SPP Notice of Resolution.

(ii) Any time after twenty (20) Business Days from the date of the Notice of Intent to Terminate and prior to the date of an SPP Notice of Resolution, SPP may terminate this Agreement by providing a Markets+ Termination Notice effective immediately.

(iii) A Funding Participant may withdraw from this Agreement by delivering to SPP a written notice of withdrawal (“Withdrawal Notice”). SPP will notify the other Funding Participants if it receives a Withdrawal Notice. SPP and the Funding Participant that issued the Withdrawal Notice will engage in twenty (20) Business Days of good faith negotiations to determine if concerns leading to the issuance of the Withdrawal Notice are capable of resolution and, if so, to resolve such concerns. If the Parties successfully resolve the concerns of the Party issuing the Withdrawal Notice, the Party that issued such notice shall notify SPP in writing that the Withdrawal Notice is rescinded (“Funding Participant’s Notice of Resolution”). If the Funding Participant does not provide a Funding Participant’s Notice of Resolution prior to the end of the twenty (20) Business Days period above, then the withdrawing Funding Participant will be released as a Party to this Agreement (and from any further obligations hereunder) effective upon payment in full to SPP of its Phase 2 Obligation.

(f) Automatic Termination

This Agreement automatically terminates when the Financing has been repaid in full.

6. Default by a Funding Participant.

(a) The following constitutes an “Event of Default” by a Funding Participant under this Agreement, if not cured as provided below, if applicable:

(i) Failure by a Funding Participant to pay in full its Phase 2 Obligation when due and owing under this Agreement;

(ii) Failure by a Funding Participant to provide and maintain Collateral pursuant to this Agreement, including but not limited to the following circumstances: (A) the issuer fails to meet the requirements of Lender or as provided in Section 7.1.3.2 of Attachment H to the Markets+ Tariff, (B) a satisfactory replacement letter of credit was not provided to SPP and Lender thirty (30) Business Days prior to the expiration of the letter of credit, (C) the issuer fails to comply with or perform its obligations under such letter of credit if such failure continues after the lapse of any applicable grace period, (D) the issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such letter of credit, and (E) any event analogous to an event specified in Section 6(a)(iii) of this Agreement occurs with respect to the issuer of such letter of credit; or

(iii) A Funding Participant's: (i) commencement of a voluntary case under Title 11 of the United States Code; (ii) filing an answer or other pleading admitting or failing to deny the material allegations of a petition filed against it commencing an involuntary case under said Title 11, or seeking, consenting to or acquiescing in the relief therein provided, or by failing to controvert timely the material allegations of any such petition; (iii) the entry of an order for relief in any involuntary case commenced under said Title 11; (iv) seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or to modification or alteration of the rights of creditors, or by its consenting to or acquiescing in such relief; (v) the entry of an order by a court of competent jurisdiction (a) finding it to be bankrupt or insolvent, (b) ordering or approving its liquidation, reorganization or any modification or alteration of the rights of its creditors, or (c) assuming custody of, or appointing a receiver or other custodian for all or a substantial part of its property; (vi) the filing of a petition under Title 11; or (vii) making an assignment for the benefit of, or entering into a composition with, its creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of its property.

(b) If SPP considers that an Event of Default as set forth in Section 6(a)(i) or 6(a)(ii) has occurred, SPP will provide written notice to the defaulting Funding Participant. If the defaulting Funding Participant fails to remedy an Event of Default as set forth in Section 6(a)(i) or 6(a)(ii) of this Agreement within ten (10) Business Days of the date of SPP's written notice to such Funding Participant, such Funding Participant shall be in default and SPP shall have all rights to collect from Funding Participant its Phase 2 Obligation and damages resulting from such failure to pay. Immediately upon the occurrence of an Event of Default as set forth in Section 6(a)(iii) of this Agreement, such Funding Participant will provide notice to SPP.

7. Rights Related to Stakeholder Process. Each Funding Participant will have the right to vote in the stakeholder process during Phase 2. A Funding Participant's right to vote under this Agreement will be removed in the Event of Default by a Funding Participant or termination of this Agreement as to a Funding Participant.

8. Limitation of Liability.

To the extent allowed by law, the Funding Participants acknowledge and agree that no Funding Participant shall be liable to any other Funding Participant for any special, indirect, exemplary, punitive, incidental or consequential loss or damage (including any loss of revenue,

income, profits or investment opportunities or claims of third party customers); provided, however, that the limitations of liability set forth in this sentence do not apply with respect to a Funding Participant's gross negligence, fraud, or willful misconduct, or its violation of applicable law. This Section 8 will survive the expiration or termination of this Agreement.

To the extent allowed by law, the Parties acknowledge and agree that SPP shall not be liable to any Funding Participant for any special, indirect, exemplary, punitive, incidental or consequential loss or damage (including any loss of revenue, income, profits or investment opportunities or claims of third party customers); provided, however, that the limitations of liability set forth in this sentence do not apply with respect to SPP's gross negligence, fraud, or willful misconduct, or its violation of applicable law. This Section 8 will survive the expiration or termination of this Agreement.

9. Force Majeure.

If and to the extent that a Party's performance of any of its obligations (other than payment obligations) pursuant to this Agreement is prevented or delayed directly or indirectly by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, pandemics, rebellions or revolutions (each a "Force Majeure Event"), and such non-performance or delay could not have been prevented by reasonable precautions or diligence by the claiming Party, then such Party shall be excused for such non-performance or delay, as applicable, of those obligations affected by the Force Majeure Event solely for as long as the Force Majeure Event continues to prevent or delay performance and, except as otherwise provided in this Section, the claiming Party continues to use its commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

10. General Provisions.

(a) This Agreement, including Exhibit 1 to this Agreement, constitutes the entire agreement between the Parties, and supersedes any prior written or oral agreements or understandings between the Parties, relating to the subject matter of this Agreement; provided, that nothing in this Agreement shall limit, or in any manner modify, the existing legal rights, privileges, and duties of each of the Parties as provided by any other agreement between the Parties, or by any statute or any other law or applicable court or regulatory decision by which such Party is bound.

(b) Other than as provided in Section 3(c) of this Agreement with regard to Exhibit 1, this Agreement may not be amended except in writing hereafter signed by SPP and the remaining Funding Participants with more than [TBD]) of the Phase 2 Pro Rata Share.

(c) Any waiver by a Party to this Agreement of any provision or condition of this Agreement must be in writing, signed by the Party to be bound by such waiver, shall be effective only to the extent specifically set forth in such writing and shall not limit or affect any rights with respect to any other or future circumstance.

(d) This Agreement is for the sole and exclusive benefit of the Parties and shall not create a contractual relationship with, or cause of action in favor of, any third party other than the Lender(s) to whom this Agreement is assigned.

(e) No Party shall have the right to voluntarily assign its interest in this Agreement, including its rights, duties, and obligations hereunder, without the prior written consent of the other Parties, which consent may be withheld by the other Parties in its sole and absolute discretion. Notwithstanding the foregoing, (i) SPP may assign this Agreement and any and all rights hereunder to the Lender, and (ii) Funding Participant hereby consents to one or more such assignments to any such Lender providing the Financing for Phase 2 and agrees that any such Lender may rely on this consent without the need for a separate consent. If a Lender does so require a separate consent, Funding Participant hereby agrees to execute same in such form as may be reasonably requested by such Lender or Lenders. Any assignment of this Agreement to a Lender shall be for Collateral purposes only, and such Lender shall have no liability or obligation of any kind whatsoever arising from or in connection with any such collateral assignment except as expressly set forth in such assignment. Any assignment made in violation of the terms of this Section 10(e) shall be null and void and shall have no force and effect.

(f) In the event that any provision of this Agreement is determined to be invalid or unenforceable for any reason, in whole or part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by law provided such remaining provisions retain the essence of the bargain struck by the Parties, and such invalid or unenforceable provision shall be replaced by the Parties with a provision that is valid and enforceable and that comes closest to expressing the Parties' intention with respect to such invalid or unenforceable provision.

(g) Whenever this Agreement requires or provides that (i) a notice be given by a Party to the other Party or (ii) a Party's action requires the approval or consent of the other Party, such notice, consent or approval shall be given in writing and shall be given by personal delivery, by recognized overnight courier service, or by certified mail (return receipt requested), postage prepaid, to the recipient thereof at the address given for such Party as set forth below or on the signature page hereto, or to such other address as may be designated by notice given by any Party to the other Party in accordance with the provisions of this Section 10(g):

If to SPP:

Lanny Nickell
Executive Vice President and Chief Operating Officer
201 Worthen Drive
Little Rock, AR 72223-4936
Email: lnickell@spp.org
With a Copy to: legalnotices@spp.org

If to Funding Participant: To the Party and the address provided on the signature page hereto.

For any notice, consent, or approval given by personal delivery, overnight courier, or certified mail, the delivering Party shall send contemporaneously a copy thereof by email to the receiving Party at the address specified above. Each notice, consent or approval shall be effective (a) if given by personal delivery, on the later of the day (1) of such delivery, or (2) that the email copy of such notice, consent, or approval is delivered to the receiving Party; (b) if given by overnight delivery, on the later of the (1) first Business Day following dispatch, or (2) day that the email copy of such notice, consent, or approval is delivered to the receiving Party; or (c) if given by certified mail (return receipt requested), on the later of the (1) third Business Day following mailing, or (2) day that the email copy of such notice, consent, or approval is delivered to the receiving Party. It is the responsibility of each Party to provide, in accordance with this Section, notice to the other Party of any necessary change in the contact or address information herein.

Notwithstanding the foregoing, SPP's notice certifying Critical Mass has been achieved may be provided by email only and Funding Participant's Withdrawal Notice pursuant to Section 6 of this Agreement must be provided to SPP by e-mail only at legalnotices@spp.org and will be deemed effective as of the date and time the e-mail is sent regardless of whether during business hours or on a Business Day.

(h) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, and all of which shall together constitute one and the same instrument, and the Parties may rely on electronic or scanned signatures as originals. Delivery of an executed signature page of this Agreement by electronic mail transmission (in portable document format (PDF) or other format agreed by the Parties) shall be the same as delivery of a manually executed signature page.

(i) Nothing contained in this Agreement shall be construed as creating a corporation, company, partnership, association, joint venture or other entity with the other Party(ies), nor shall anything contained in this Agreement be construed as creating or requiring any fiduciary relationship between the Parties. Except as expressly provided herein, no Party shall be responsible hereunder for the acts or omissions of the other Parties.

(j) Nothing in this Agreement shall preclude a Party from exercising any rights or taking any action (or having its affiliates take any action) with respect to any other matter.

(k) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply: (i) the insertion of headings are for convenience of reference only and do not affect, and will not be utilized in construing or interpreting, this Agreement; (ii) all references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified; (iii) words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement (including Exhibit 1 to this Agreement) as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires; (iv) the word "including" or any variation thereof means "including, without limitation" and does not limit any general statement that it follows to the specific or similar items or matters immediately following it; and (v) the Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties, and no presumption or burden of

proof favoring or disfavoring any Party will exist or arise by virtue of the authorship of any provision of this Agreement.

11. Venue.

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Arkansas without regard to its principles of conflicts of law. Venue for any action hereunder shall be FERC, where subject to its jurisdiction, or otherwise any state or federal court with jurisdiction in Pulaski County, Arkansas.

12. Dispute Resolution. Unless otherwise provided herein, each of the provisions of this Agreement shall be enforceable independently of any other provision of this Agreement and independent of any other claim or cause of action. In the event of any dispute arising under this Agreement, the Parties shall, to the extent practicable, first attempt to resolve the matter through direct good faith negotiation between the Parties, including a full opportunity for escalation to executive management within the Parties' respective organizations. For all other matters, the Parties may pursue action in a state or federal court of competent jurisdiction located in Pulaski County, Arkansas, in which case:

(a) To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation within the federal or state courts specified herein, directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate, or to request the consolidation of, any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

(b) If a waiver of jury trial is deemed by any court of competent jurisdiction specified herein to not be enforceable for any reason, then to the fullest extent permitted by law, the Parties may agree to attempt in good faith to settle amicably through non-binding arbitration. Notwithstanding the foregoing, either Party may seek provisional legal or equitable remedies if, in such Party's reasonable judgment, such action is necessary to avoid irreparable damage or preserve the status quo.

13. Third Party Agreements.

The Parties may engage in discussions with third parties, either jointly or unilaterally, to facilitate the development of Markets+. Each Party may adopt or modify tariffs or enter into or modify binding agreements between such Party and third parties to implement the approved terms and conditions of Markets+ as necessary and appropriate.

[Signature page follows]

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized officer to execute this Agreement as of the __ day of _____, 2024.

Funding Participant Name

Name of Authorized Representative

Title of Authorized Representative

Signature of Authorized Representative

Address:

Southwest Power Pool, Inc.

Name of Authorized Representative

Title of Authorized Representative

Signature of Authorized Representative

DRAFT

Exhibit 1 to SPP Markets+ Phase 2 Funding Agreement

This Exhibit 1 may be modified in accordance with the Phase 2 Funding Agreement.

The Phase 2 Implementation Cost is \$150,000,000.00.

The Markets+ Total Cost equals the sum of all Phase 1 payments, all post Phase 1 payments, the Phase 2 Implementation Cost.

The “**Phase 2 Pro Rata Share**” for each Funding Participant is provided below and is calculated by dividing such Funding Participant’s Obligation Share MWh by the sum of all Obligation Share MWh. The Obligation Share MWh is calculated based on the type of participating entity as detailed below:

- For an entity that is a Balancing Authority (“Participating BA”) the Obligation Share MWh is equal to the Participating BA’s Net Energy for Load (“NEL”) submitted to the Western Electricity Coordinating Council (“WECC”) for 2023 less Participating Sub-Entity NEL, if applicable and less NEL that was removed from the Participating BA prior to January 1, 2024, if applicable. The Obligation Share MWh for Powerex Corp., if a Funding Participant, will be based on BC Hydro’s NEL for 2023.
- For an entity located within a Participating BA with generation and load (“Sub-Entity”), the Obligation Share MWh is equal to the Sub-Entity’s NEL submitted to WECC for 2023. If an entity qualifies as a Sub-Entity in multiple Participating BAs, the Sub-Entity’s Obligation Share MWh will be the aggregated NEL from each Participating BA.

The “**Phase 2 Obligation**” for a Funding Participant is that Funding Participant’s Phase 2 Pro Rata Share of the Markets+ Total Cost less the Funding Participant’s Phase 1 Obligation and Post Phase 1 Monthly Obligation payments. An entity that terminated its Phase 1 Funding Agreement before its term expired will not be credited for its Phase 1 Obligation and Post Phase 1 Monthly Obligation payments. Each Funding Participant’s Phase 2 Obligation and Phase 2 Pro Rata Share is provided below, as may be adjusted from time to time as provided in the Agreement.

[Insert chart]