

Appendix “F” FORM OF SURETY BOND

Surety Bond No. _____

THIS SURETY BOND is issued on [date] by [full legal name of surety] (“Surety”) on behalf of [full legal name of SPP customer] (“Principal”), and in favor of Southwest Power Pool, Inc. (“SPP”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to those terms in SPP’s Open Access Transmission Tariff (“OATT”).

WHEREAS, Principal seeks to satisfy credit or security requirements established in the OATT; and

WHEREAS, Surety is U.S. Treasury-listed with a minimum “A” rating from A.M. Best and has agreed, in exchange for compensation provided by Principal, to provide this Surety Bond on behalf of Principal in accordance with SPP’s credit requirements;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, Surety hereby agrees and covenants as follows:

1. Amount of Bond. Surety unconditionally and irrevocably agrees to pay SPP amounts not to exceed an aggregate of [amount], in accordance with the terms of this Surety Bond.
2. Payment Upon Demand. Surety shall pay such amount as specified by SPP upon receipt of a demand for payment notice (“Demand for Payment Notice”). Such Demand for Payment Notice shall be: (i) signed by an officer or authorized agent of SPP, (ii) dated the date of presentation, and (iii) be in the form as set forth in Exhibit A, Exhibit B, or Exhibit C, as applicable.
3. Validation. SPP may demand payment pursuant to this Surety Bond without prior demonstration of the validity of the demand.
4. Multiple Draws. SPP may demand multiple payments pursuant to this Surety Bond; *provided, however*, that the total amount of Surety’s obligation hereunder shall not exceed an aggregate of [amount].
5. Time and Form of Payment. Surety shall pay amounts owed pursuant to this Surety Bond in full not later than the first business day following receipt of SPP’s written demand for payment to the account designated therein.
6. Obligations Unconditional. This Surety Bond is not conditioned upon SPP first attempting to collect payment, resorting to any other means of security or collateral, or pursuing any other remedies it may have. The obligations of Surety hereunder are independent of the obligations of Principal, and SPP may bring an action against Surety without bringing an action against Principal. SPP may from time to time, without notice or demand, and without affecting Surety’s liability hereunder, take and hold other security for Principal’s obligations to SPP and exchange, waive, release, or apply such security as SPP deems appropriate in its sole discretion. Surety’s liability under this Surety Bond is not conditioned upon the validity or enforceability of Principal’s obligations to SPP.

7. Term of Surety Bond. The term of this Surety Bond shall begin on the date of its issuance, as set forth above, and shall continue in full force and effect until all amounts owed by Principal pursuant to the Agreements, as that term is defined in the OATT, are paid in full, including any amounts owed as a result of true-ups or other corrections to previous settlements; *provided, however,* that Surety may terminate this Surety Bond as provided in Paragraph 8, below.

8. Termination. Surety may terminate this Surety Bond upon ninety (90) days written notice to SPP; *provided, however,* that: (i) Surety's liability hereunder shall survive such termination and remain in full force and effect as to obligations incurred by Principal during the term of this Surety Bond; and (ii) in the event that Principal fails to provide an acceptable form of replacement Financial Security to SPP at least eighty seven (87) days prior to the termination of this Surety Bond, Surety shall, upon demand, without any notice other than such demand, and without any further action by SPP deliver Cash Deposit to SPP not later than the next Business Day in the amount of the full remaining value of this Surety Bond as security for Principal's obligations to SPP. A Cash Deposit provided to SPP by Surety and not applied by SPP to satisfy unpaid obligations of Principal shall be returned to Surety at such time as: (i) Principal provides adequate replacement Financial Security to SPP or (ii) all amounts owed by Principal to SPP are paid in full, including amounts owed as a result of true-ups or other corrections to previous settlements.

9. Principal Pays Bond Costs. Principal shall pay all commissions and charges for this Surety Bond. Principal's failure to pay any such charges shall not be grounds for termination of this Surety Bond, except as provided in Paragraph 8, above.

10. Expenses. Surety shall pay all reasonable costs incurred by SPP in the enforcement of this Surety Bond, including attorney fees and expenses. Surety's obligation to pay such costs shall be in addition to other amounts owed pursuant to this Surety Bond and shall not be limited by the maximum stated amount of this Surety Bond.

11. Communications. Demands, notices, and other communications shall be deemed effective when received, shall be in writing, and shall be delivered by courier with receipt of delivery or by registered mail, certified mail, or facsimile to the following addresses:

- a. If to Surety:
[Surety notice address]

- b. If to SPP:
Attn: Credit and Risk Management Department
Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223-4936
- c. If to Principal:
[Principal notice address]

Surety, SPP, or Principal may change the address provided for receipt of communications pursuant to this Surety Bond by providing written notice to the other parties.

12. Representations and Warranties. Surety represents and warrants to SPP that:

- a. Surety has the legal power to execute and deliver this Surety Bond and to perform in accordance with its terms. All necessary actions have been taken to authorize the execution and delivery of this Surety Bond and performance in accordance with its terms. This Surety Bond is a legal, valid, and binding obligation of Surety.

- b. There is no action or proceeding pending or, to Surety's knowledge, threatened before any court, arbitrator, or governmental agency that may materially adversely affect Surety's ability to perform its obligations under this Surety Bond.

- c. There is no fact that Surety has not disclosed in writing to SPP of which Surety is aware or which Surety can reasonably foresee that would materially adversely affect Surety or the ability of Surety to perform its obligations hereunder.

13. Assignment. SPP may assign its rights under this Surety Bond without in any way diminishing Surety's obligations hereunder. Surety shall not be permitted to assign or transfer its rights under this Surety Bond without prior written consent of SPP.

14. Amendment and Waiver. The terms and provisions of this Surety Bond may not be amended or waived except in a writing signed by SPP and Surety. Election not to exercise, failure to exercise, or delay in exercising any rights under this Surety Bond shall in no way operate as a waiver of any rights of SPP under this Surety Bond.

15. Entire Agreement. This Surety Bond embodies the entire agreement between Surety and SPP with respect to the matters set forth herein and supersedes all prior such agreements.

16. Severability. Should any provision of this Surety Bond be determined by a court of competent jurisdiction to be unenforceable, all of the other provisions shall remain effective.

17. Choice of Law; Jurisdiction; Venue; and Service of Process. This Surety Bond shall be governed by the laws of the State of Arkansas without regard to conflict of laws principles. Surety irrevocably submits to the jurisdiction of any Arkansas court or any United States court sitting in Arkansas over any action or proceeding arising out of or relating to this Surety Bond and irrevocably agrees that all claims in such action or proceeding may be heard and determined by

such court. Surety agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Surety waives any objection to venue on the basis of forum non conveniens. Surety irrevocably consents to the service of process in any action or proceeding by the mailing of copies of such process to Surety at its address set forth herein. Nothing herein shall affect the right of SPP to bring any action or proceeding against Surety or its property in the courts of any other jurisdictions.

18. Waiver of Jury Trial. SURETY IRREVOCABLY, VOLUNTARILY, AND WITH ADVICE OF COUNSEL WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS SURETY BOND.

IN WITNESS WHEREOF, Surety has executed and delivered this Surety Bond this **[date]**.

[Full Legal Name of Surety]

By: _____

Name:

Title:

EXHIBIT A

(Form of Demand for Payment Notice – Principal Failure to Make Payment)

[Date]¹

[Name and Address of Surety]²

*Re: Surety Bond No. _____
Demand for Payment*

To the above named Surety:

The undersigned hereby certifies to **[full legal name of surety]** (“Surety”), with reference to its Surety Bond No. **[bond number]**, dated **[execution date of Surety Bond]**, issued on behalf of **[full legal name of SPP customer]** (“Principal”) and in favor of Southwest Power Pool, Inc. (“SPP”) that Principal has failed to make payment in accordance with the terms of the Agreements as defined in SPP’s OATT. SPP hereby demands payment in the amount of \$ **[amount]** in accordance with the following instructions.

[Wiring Instructions]

Southwest Power Pool, Inc.

By: _____³

Name: _____

Title: _____

¹ The date of the Demand for Payment Notice must be the date for which presentation of the Notice is made.

² This will be the address of the Surety as set forth in the Surety Bond.

³ The undersigned must be an officer or authorized agent of SPP.

EXHIBIT B

(Form of Demand for Payment Notice – Principal Failure to Provide Acceptable Security)

[Date]⁴

[Name and Address of Surety]⁵

Re: *Surety Bond No.* _____

Demand for Payment

To the above named Surety:

The undersigned hereby certifies to [full legal name of surety] (“Surety”), with reference to its Surety Bond No. [bond number], dated [execution date of Surety Bond], issued on behalf of [full legal name of SPP customer] (“Principal”) and in favor of Southwest Power Pool, Inc. (“SPP”) that as of the close of business on [date] [date less than eighty-seven (87) days before the expiration of the Surety Bond],⁶ Principal has failed to renew, replace, or amend this Surety Bond in satisfaction of the credit requirements established pursuant to SPP’s OATT. SPP hereby demands payment in the amount of \$ [amount] in accordance with the following instructions.

[Wiring Instructions]

Southwest Power Pool, Inc.

By: _____⁷

Name: _____

Title: _____

⁴ The date of the Demand for Payment Notice must be the date for which presentation of the Notice is made.

⁵ This will be the address of the Surety as set forth in the Surety Bond.

⁶ Insert date less than eighty-seven (87) days prior to expiration of the Surety Bond.

⁷ The undersigned must be an officer or authorized agent of SPP.

EXHIBIT C

(Form of Demand for Payment Notice – Surety Rating Downgrade)

[Date] ⁸

[Name and Address of Surety] ⁹

Re: *Surety Bond No.* _____
Demand for Payment

To the above named Surety:

The undersigned hereby certifies to [full legal name of surety] (“Surety”), with reference to its Surety Bond No. [bond number], dated [execution date of Surety Bond], issued on behalf of [full legal name of SPP customer] (“Principal”) and in favor of Southwest Power Pool, Inc. (“SPP”) that as of the close of business on [date] [date more than three (3) business days after SPP has requested that Principal replace the Surety Bond because the Surety’s rating by A.M. Best is less than “A”], Principal has failed to replace this Surety Bond in a manner acceptable to SPP. SPP hereby demands payment in the amount of \$ [amount] in accordance with the following instructions.

[Wiring Instructions]

Southwest Power Pool, Inc.

By: _____ ¹⁰

Name: _____

Title: _____

⁸ The date of the Demand for Payment Notice must be the date for which presentation of the Notice is made.

⁹ This will be the address of the Surety as set forth in the Surety Bond.

¹⁰ The undersigned must be an officer or authorized agent of SPP.