CITY OF MARSHALL

COMMISSION AGENDA INFORMATION SHEET:

MEETING DATE: May 14, 2014

PROJECT:
Consider and act on a recommendation to approve entering into an AEP/SWEPCO Load Management Standard Offer Program Agreement to assist in peak electrical demand reduction through an interruption of electric load program in return for monetary incentives. (Public Services Director)

DESCRIPTION:
Once again we have an opportunity to participate with AEP/SWEPCO in their Load Management Program wherein we schedule as much of our heavy pumping of raw water from our Big Cypress Pump Station into energy off-peak periods. The program is beneficial to AEP/SWEPCO since it reduces high peak loads on the electrical grid; the program is also beneficial to the City of Marshall as we are compensated for assisting them in reducing their electric grid load requirements.

Our Water Utilities Division has done a great job working with AEP/SWEPCO in the past to reduce our scheduled pumping during peak energy use periods and rescheduling as much of our pumping into off-peak periods. As a result of our successful participation in the Load Management Program, AEP/SWEPCO has made check presentations to the City each year normally ranging from approximately $12,000 to $18,000; last year the check was $14,770 due to our ability to rearrange our pumping period(s) as often as requested by AEP/SWEPCO. Previously, we participated in their Option B Program which provides for curtailment of up to twelve (12) unscheduled power interruptions of one to four hours, each interruption – we recommend continuing using Option B.

COST:
N/A – Revenue Source

FUNDING:	**Acct. Name & No**	**Original Budget**
	N/A	N/A

RECOMMENDED ACTION:

Approve the attached agreement entering into an agreement with AEP/SWEPCO for a Load Management Standard Offer Program Agreement to assist in peak electrical demand reduction through an interruption of electric load program in return for monetary incentives.

CITY CONTACT:

J. C. Hughes, Public Services Director

ATTACHMENTS:

2015 AEP/SWEPCO Load Management - Standard Offer Program Agreement

LOAD MANAGEMENT
STANDARD OFFER PROGRAM AGREEMENT

This Load Management Standard Offer Program Agreement (the "Agreement") is made and entered into by and between **SOUTHWESTERN ELECTRIC POWER COMPANY**, a Delaware corporation (hereinafter "SWEPCO"), and City of Marshall, (hereinafter "Project Sponsor"). Project Sponsor and SWEPCO are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WHEREAS, SWEPCO has developed a Load Management Standard Offer Program (the "SOP"); and

WHEREAS, the SOP seeks to procure peak demand reduction through the interruption of electric load; and

WHEREAS, Project Sponsor has developed a plan for participation in the SOP through a set of proposed curtailments of interruptible load to produce a controllable and predictable amount of peak demand reduction for the current year performance period.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

DEFINITIONS

1.1 "Baseline Demand Usage" is the benchmark used for calculating the Demand Savings during a Scheduled or Unscheduled Interruption. The Baseline Demand Usage shall be calculated by averaging the corresponding 60 minute period for the Interruption Demand Usage from the four previous weekdays (Monday through Friday), excluding federal holidays and any weekday time periods involving an Interruption.

1.2 "Agreement Documents" shall mean 1) Project Sponsor's approved on-line application ("Application") and Customer Agreement, attached hereto as Attachment A and incorporated by reference herein, 2) the SOP Manual ("SOP Manual"), which is incorporated by reference herein, and 3) this Agreement together with any and all other exhibits, addenda, or amendments referenced in the Agreement Documents or made a part thereof in accordance with this Agreement; as the same may be amended from time to time. To the extent of any conflict between this Agreement and other Agreement Documents, the terms of this Agreement shall prevail.

1.3 "Capacity Interruption Incentive Rate" shall mean $25/kW (Option A), or $30/kW (Option B) per demand (kW) Interrupted.

1.4 "Customer" shall mean a SWEPCO distribution customer that owns or leases facilities at a Project Site.

1.5 "Demand Savings" shall mean the difference between Baseline Demand Usage and Interruption Demand Usage. For the purpose of this Agreement, the use of the term Demand Savings may refer to Unscheduled Interruption Demand Savings and/or Scheduled Interruption Demand Savings, as appropriate.

1.6 "Estimated Demand Savings" shall mean: 1) the amount of demand that Project Sponsor proposes in the Application to save in a one-hour period during Summer Peak Demand Period through Interruptions that are implemented pursuant to the SOP and that SWEPCO approves after review of the Application and receipt of all Customer Agreements, or 2) the amount of approved Scheduled or Unscheduled Interruption Demand Savings from the Interruption, whichever is less.

1.7 "IDR" shall mean interval data recorder.

1.8 "Incentive Budget" shall mean the amount of money budgeted by SWEPCO in each calendar year of the SOP.

1.9 "Interruptible Load" shall mean the equipment, material, or systems at a Project Site that is identified in the Application as electric load that will be interrupted by the Customer at the request of SWEPCO pursuant to the SOP.

1.10 "Interruption" shall mean shutting down the electrical operation of Interruptible Load at the request of SWEPCO pursuant to the SOP.

1.11 "Interruption Demand Usage" shall mean the average demand that occurs during any one-hour (four 15-minute interval) period of an Interruption.

1.12 "Option A" shall include up to four (4) Unscheduled Interruptions per Performance Period.

1.13 "Option B" shall include up to twelve (12) Unscheduled Interruptions per Performance Period.

1.14 "Performance Period" shall mean the period from June 1 through September 30 of each calendar year of the SOP.

1.15 "Performance Period Payment" shall mean the payment made by SWEPCO to Project Sponsor for Demand Savings, as calculated pursuant to Article 7.3 of this Agreement.

1.16 "Program Manager" shall mean the SWEPCO representative assigned as the point of contact for the SOP as identified in Article 14.1 of this Agreement.

1.17 "Project Site" shall mean the location of a Customer's Interruptible Load, as identified in the Application. For the purposes of this Agreement, multiple facilities representing Interruptible Load may be combined into one Project Site as long as they are connected to a single IDR meter. The total Interruptible Load at a Project Site must have a recorded demand history pattern of 500 kW or more and when interrupted in operation must result in a measurable and verifiable reduction in peak demand of at least 50 kW or more.

1.18 "Project Sponsor's Contact Telephone Number(s)" shall be the telephone number(s) identified in the Application as the telephone number(s) that SWEPCO will call to notify Project Sponsor of a required Interruption.

1.19 "PUCT" shall mean the Public Utility Commission of Texas.

1.20 "Scheduled Interruption" shall mean an Interruption that is pre-scheduled by SWEPCO to occur at the beginning of the Performance Period in every calendar year of the SOP as a test to determine the magnitude of interruptible load available at the Project Site. A Scheduled Interruption shall be for a maximum duration of one (1) hour. If an LM Customer has successfully participated in the previous year's program period, and will not alter the method or the amount of curtailment, the previous year's test can be substituted for the current year program period test interruption.

1.21 "Scheduled Interruption Demand Savings" shall mean the difference between the Baseline Demand Usage for a Scheduled Interruption and the Interruption Demand Usage for the same Scheduled Interruption.

1.22 "Summer Peak Demand Period" shall mean 1 p.m. Central Standard Time to 7 p.m. Central Standard Time on Monday through Friday during the months of June through September, excluding federal holidays.

1.23 "Unscheduled Interruption" shall mean an Interruption that is requested by SWEPCO. Such request shall include start and end times of the Unscheduled Interruption. An Unscheduled Interruption shall be for a minimum duration of one (1) hour and shall not exceed a maximum duration of four (4) hours. There shall be no more than three (3) Unscheduled Interruptions during any one calendar month of the Performance Period.

1.24 "Unscheduled Interruption Demand Savings" shall mean the amount of peak demand reduction used to calculate the Performance Period Payment in every SOP calendar year. The Unscheduled Interruption Demand Savings for each SOP calendar year will be the difference between: 1) the Interruption Demand Usage from the Unscheduled Interruption with the highest amount of Interruption Demand Usage, and 2) the Baseline Demand Usage for that same Unscheduled Interruption. If no Unscheduled Interruption occurs during a SOP calendar year, then the Unscheduled Interruption Demand Savings for that SOP calendar year will mean the Estimated Demand Savings amount.

1.25 "Verification Process" shall mean the process described in Article VI of this Agreement wherein SWEPCO calculates and verifies Baseline Demand Usage, Interruption Demand Usage, and Demand Savings.

ARTICLE II - TERM AND TERMINATION

2.1 The term of this Agreement shall commence on the date of execution by SWEPCO (the "Effective Date") and, unless otherwise terminated as set forth herein, shall continue in force and effect until September 30, 2015 or until payment by SWEPCO of the Performance Period Payment due pursuant to

Article VII of this Agreement, whichever is later; provided, however, that the provisions in this Agreement related to confidentiality, warranties, indemnity, audits and records, and intellectual property will survive termination.

2.2 Notwithstanding anything to the contrary, SWEPCO reserves the right to terminate this Agreement and the SOP at any time, for any reason. Termination at will by SWEPCO shall not relieve the parties of any obligations occurring prior to the date of termination.

ARTICLE III - WARRANTIES AND REPRESENTATIONS

3.1 By executing this Agreement, Project Sponsor warrants and represents that it is aware of, is in compliance with, and will continue to comply for the term of this Agreement with, all of the Agreement Documents and all applicable laws and regulations related to the SOP.

3.2 Project Sponsor warrants and represents that the Project meets all federal, state, and local regulatory requirements, including:

- The Project will result in consistent and predictable peak demand savings over the contract term period;
- The Application disclosed all potential adverse environmental or health effects associated with the Project, if any;
- The Project will not result in negative environmental or health effects; and
- The Project would not have been implemented in the absence of the SOP.

3.3 Project Sponsor acknowledges that it received a copy of the SOP Manual prior to submission of its Application. Project Sponsor warrants and represents that its participation in the SOP has at all times been in compliance with, and will continue to comply for the term of this Agreement with, the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOP as described in the SOP Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement. Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the parties. Any such Agreement shall be attached hereto and incorporated herein for all purposes.

3.4 Project Sponsor warrants and represents it may be limited to approximately 30% of the Incentive Budget for any calendar year of the SOP.

3.5 Project Sponsor warrants and represents that any relevant Agreement(s) between a Customer and the Customer's retail electric provider concerning electric service to Interruptible Load do not prohibit or inhibit Interruptions.

3.6 Project Sponsor agrees to verify that the Curtailable Load that is being used in this Application will not be used in any other Curtailable Load or demand

response program during the Summer Peak Demand Period of the Customer Agreement. This can include, without limitation, any ERCOT, PUCT, or any other program that is currently available. Project Sponsor will notify SWEPCO within 15 business days of any change in the status of the Curtailable Load or its inclusion in another demand response program. Failure to notify SWEPCO of any changes in the contracted load can result in the termination of the Program participation. This does not prohibit a Project Sponsor from contracting their existing and/or future electric loads into other programs. SWEPCO reserved the right to cancel any Program participation when that contracted load has been enrolled in any other competing Curtailable Load or demand response program.

ARTICLE IV - CUSTOMER AGREEMENT

4.1 The receipt by SWEPCO of a Customer Agreement concerning every Customer associated with every Project Site is a condition precedent to the effectiveness of this Agreement. SWEPCO will not award incentive payments related to an Interruption at a Project Site if every Customer associated with that Project Site did not sign a Customer Agreement prior to the Interruption.

ARTICLE V - PROJECT IMPLEMENTATION

5.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement the Project without undue delay and otherwise in accordance with the terms of the Agreement Documents. To the extent of any conflict between this Agreement and other Agreement Documents, the terms of this Agreement shall prevail.

5.2 The Project will be implemented in calendar year 2015 and may be continued or discontinued after that date.

5.3 One (1) Scheduled Interruption shall be required to be implemented by Project Sponsor at each Project Site at the beginning of the Performance Period in each calendar year of the SOP. The Scheduled Interruption shall be for a maximum duration of one (1) hour.

5.4 All Interruptions shall be implemented at the time and for the duration specified by SWEPCO.

5.5 SWEPCO will notify Project Sponsor at least one (1) hour prior to the required start-time of any Interruption by calling the Project Sponsor's Contact Telephone Number(s). SWEPCO may utilize a messaging system to provide the notice required by this Article 5.5. A representative of Project Sponsor must be available to personally answer calls made to the Project Sponsor's Contact Telephone Number(s) during the Summer Peak Demand Period.

5.6 Project Sponsor may change the Project Sponsor's Contact Telephone Number(s) by providing notice to the Program Manager of the new Project Sponsor's Contact Telephone Number(s) a minimum of two business days prior to the date that the new Project Sponsor's Contact Telephone Number(s) is to become effective. In order for notice of a new Project Sponsor's Contact

Telephone Number(s) to be valid, Project Sponsor must verify that Program Manager has actually received such notice by the above-mentioned deadline.

5.7 An Unscheduled Interruption shall be for a minimum duration of one hour to a maximum duration of four hours (Option A or Option B). There shall be no more than three (3) Unscheduled Interruptions during any one calendar month of the applicable Performance Period.

ARTICLE VI - VERIFICATION PROCESS

6.1 SWEPCO shall calculate and verify the Baseline Demand Usage, Interruption Demand Usage, and Demand Savings for each Interruption after the Program Manager receives the IDR data related to the Interruption.

6.2 The data used to calculate the Baseline Demand Usage, Interruption Demand Usage, and Demand Savings will be the data from IDR meters that are read, reviewed, and approved by SWEPCO.

ARTICLE VII - INCENTIVE PAYMENTS

7.1 SWEPCO agrees to make an incentive payment to the Project Sponsor based upon the Demand Savings derived from the Project, as further discussed in this Article.

7.2 The applicable incentive rates and cap on Demand Savings and the possible incentive cap are as follows:

Capacity Interruption Incentive Rate per kW ($/kW)			
Option	Performance Period Payment Incentive Rate	Demand Savings Cap	Performance Payment Cap
A	$25.00/kW	2,800 kW	$70,000
B	$30.00/kW	2,333 kW	$70,000

7.3 Unscheduled Interruptions - After the conclusion of the Performance Period and completion of the Verification Process for the SOP Year, SWEPCO shall pay the Project Sponsor the Performance Period Payment. SWEPCO will typically make the Performance Period Payment within thirty (30) days after the completion of the final Verification Process of the Performance Period. If the Unscheduled Interruption Demand Savings are equal to or less than the Estimated Demand Savings, then the Performance Period Payment will be calculated using the following equation:

Performance Period Payment = Performance Period Payment Incentive Rate x Unscheduled Interruption Demand Savings

If the Unscheduled Interruption Demand Savings are greater than the Estimated Demand Savings, then the Performance Period Payment will be calculated using the following equation:

Performance Period Payment = Performance Period Payment Incentive Rate x Estimated Demand Savings

7.4 Notwithstanding anything to the contrary, SWEPCO may, in its sole discretion, revise the calculation of the Performance Period Payment to allow payment to Project Sponsor for an amount of Peak Demand Reduction that exceeds the amount of Estimated Demand Savings.

7.5 The Performance Period Payment in a SOP year may be limited to approximately 30% of the Incentive Budget for that SOP year.

7.6 SWEPCO's Incentive Payment to the Project Sponsor is expressly and specifically conditioned upon SWEPCO receiving all required notices, submittals and materials from Project Sponsor within the applicable period specified in this Agreement. Failure by Project Sponsor to deliver any required notice, submittal, or material within the applicable period specified in this Agreement shall be deemed a material breach of this Agreement.

ARTICLE VIII - INSURANCE

8.1 Project Sponsor represents and agrees that it and its subcontractors will carry all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees.

ARTICLE IX - INDEMNITY

9.1 PROJECT SPONSOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS SWEPCO, AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SWEPCO AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITIES OF ANY KIND INCLUDING ALL EXPENSES OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR INJURIES, DEATH OR PROPERTY DAMAGES OR LOSS (INCLUDING INJURIES, DEATH OR PROPERTY DAMAGES SUFFERED BY PROJECT SPONSOR OR ITS AGENTS, EMPLOYEES OR CONTRACTORS) WHICH OCCURRED, OR ARE ALLEGED TO HAVE OCCURRED DIRECTLY AS A

RESULT OF (i) PROJECT SPONSOR'S OR ITS SUBCONTRACTOR'S PARTICIPATION IN ANY STAGE OF THE SOP; (ii) AN ACT OR OMISSION OF PROJECT SPONSOR IN OR COLLATERAL TO ITS PERFORMANCE OF WORK OR SERVICES UNDER OR IN CONNECTION WITH THIS AGREEMENT; OR (iii) ANY DEFECT (INCLUDING A DESIGN OR MANUFACTURING DEFECT OR THE FAILURE TO PROVIDE PROPER WARNING OR INSTRUCTIONS FOR USE) IN OR MALFUNCTION OF OR FINDING OF STRICT LIABILITY IN TORT ATTRIBUTABLE TO ANY MEASURE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS INDEMNITY OBLIGATION SPECIFICALLY INCLUDES ANY CLAIMS, CAUSES OF ACTION, LAWSUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR STRICT LIABILITY OR OTHERWISE) ALLEGING SWEPCO'S NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY REGARDLESS OF WHETHER SUCH NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY IS A JOINT AND CONCURRING CAUSE OF THE INJURIES, DEATH OR PROPERTY DAMAGE. THIS PROVISION SHALL NOT APPLY TO CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, LOSSES, DAMAGES AND LIABILITIES TO THE EXTENT CAUSED BY THE NEGLIGENCE OF SWEPCO IN THE CONDUCT OF SWEPCO'S ON-SITE INSPECTION OF THE PROJECT SITE PURSUANT TO THIS AGREEMENT.

9.2 IN ADDITION TO THE INDEMNITIES AND OTHER PROTECTIONS PROVIDED UNDER THIS ARTICLE X, PROJECT SPONSOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS SWEPCO, AND ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SWEPCO AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, DAMAGES, LIABILITIES, EXPENSES, CONTRIBUTIONS, REMEDIATION OR CLEANUP COSTS, OR OTHER LOSSES OF ANY KIND INCLUDING ALL EXPENSES OF LITIGATION, COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION, ATTORNEYS' FEES AND EXPERT WITNESS FEES (WHETHER THE SAME ARE BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) ARISING FROM, ASSOCIATED WITH, OR RELATING IN ANY WAY TO:

9.2.1 ANY BREACH OF ANY REPRESENTATION, WARRANTY, OR COVENANT OF PROJECT SPONSOR CONTAINED IN THIS AGREEMENT;

9.2.2 ANY VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, OR POLICY RESPECTING PROTECTION OF THE ENVIRONMENT, HEALTH, AND/OR SAFETY (HEREINAFTER "EHS LAWS") ASSOCIATED WITH OR RELATED IN ANY WAY TO THE PROJECT;

9.2.3 ANY PROPERTY DAMAGE OR IMPAIRMENT OR ANY PERSONAL INJURY ALLEGED TO BE ASSOCIATED WITH ANY EXPOSURE TO MATERIALS REGULATED UNDER ANY EHS LAW RELATING IN ANY WAY TO THE PROJECT; OR

9.2.4 ANY RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS SUBSTANCE OR OTHER MATERIAL OR SUBSTANCE REGULATED UNDER ANY EHS LAW RELATING IN ANY WAY TO THE PROJECT.

9.3 THE ENVIRONMENTAL INDEMNITY PRESCRIBED BY THIS ARTICLE X SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS ARISE FROM THE JOINT OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY IN TORT OR WILLFUL MISCONDUCT OF OR BREACH OF CONTRACT BY SWEPCO, OR ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SWEPCO AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES.

9.4 The representations, warranties, covenants, indemnities, and other obligations or protections provided by Project Sponsor pursuant to this Article X shall not be limited by time and shall survive the completion of the Project or any other completion, expiration or termination of this Agreement.

ARTICLE X - COMPLIANCE WITH LAWS

10.1 Project Sponsor represents and warrants that prior to commencing implementation of the Project, Project Sponsor will, at its own cost and expense, obtain any and all permits, licenses, and/or other authorizations from governmental authorities as then may be required to in order to perform its obligations under this Agreement. If requested by SWEPCO, Project Sponsor shall furnish to SWEPCO copies of each such permit, license or other approval promptly following receipt thereof. Project Sponsor shall maintain in full force and effect all such governmental permits, licenses and other authorizations as may be necessary for the implementation of the Project in accordance herewith. Failure to maintain licenses, permits and other authorizations required to perform the work detailed in this Agreement constitutes a material breach of Project Sponsor's obligations under this Agreement

10.2 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used, installed, or provided by it. Project Sponsor shall defend any suit that may be brought against SWEPCO and shall hold SWEPCO harmless from any liability, damages and costs, including without limitation attorneys' fees, incurred by SWEPCO arising from or related to infringement or alleged infringement of any intellectual property used by Project Sponsor or a Customer in the implementation of the Project.

10.3 All work performed by Project Sponsor or a Customer in connection with the implementation of the Project shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the SOP or any portion of the Project.

ARTICLE XI - DEFAULT AND REMEDIES

11.1 Each of the following events will be deemed to be an Event of Default hereunder:

(a) Failure of Project Sponsor to perform its responsibilities in a timely manner or implement the Project in compliance with the Agreement Documents;

(b) Failure of a representative of Project Sponsor to be available during all Summer Peak Demand Hours to personally answer a call from SWEPCO to the Project Sponsor Contact Telephone Number concerning notice of an Interruption.

(c) Project Sponsor's submission to SWEPCO of any false, misleading or inaccurate information or documentation with respect to the Application, this Agreement, or Project Sponsor's implementation of the Project, when Project Sponsor knew or reasonably should have known that such information was false, misleading or inaccurate;

(d) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Agreement Documents without the prior written consent of SWEPCO; or

(e) Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of the Agreement Documents, which failure materially adversely affects the other party.

If an Event of Default occurs, the non-defaulting party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this Agreement upon written notice to the other party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting party of any obligations accruing prior to the event of termination.

ARTICLE XII - LIMITATION OF LIABILITY

12.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY NOR ANY INDIVIDUAL, CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR OTHER BUSINESS ORGANIZATION OF ANY KIND DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH A PARTY AND ITS AND THEIR RESPECTIVE SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, TRUSTEES, INCORPORATORS, AGENTS, ATTORNEYS, CONSULTANTS, SERVANTS, REPRESENTATIVES, AND EMPLOYEES SHALL NOT BE LIABLE TO THE OTHER PARTY OR ANY CUSTOMER FOR ANY LOSSES, COSTS, INJURIES, LIABILITIES, EXPENSES (INCLUDING ATTORNEY'S FEES), OR CLAIMS FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE CONNECTED WITH OR RESULTING FROM

(i) NEGOTIATION, EXECUTION, OPERATION, OR TERMINATION OF THIS AGREEMENT;

(ii) PERFORMANCE OR NON-PERFORMANCE OF ANY COMMITMENT; OR

(iii) ANY ACTS, OMISSIONS, OR REPRESENTATIONS MADE BY THE OTHER PARTY IN CONNECTION WITH PERFORMING ANY OBLIGATION UNDER THIS AGREEMENT,

INCLUDING WITHOUT LIMITATION, CLAIMS IN THE NATURE OF LOST REVENUES, INCOME OR PROFITS, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON WARRANTY, NEGLIGENCE, STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE AND EACH PARTY SHALL PROTECT, INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM SAME.

12.2 BOTH PARTIES AGREE THAT, IN THE EVENT OF (i) ANY DISPUTE THAT ARISES OUT OF THE NEGOTIATION, EXECUTION, OPERATION, OR TERMINATION OF THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER THE DISPUTE SOUNDS IN CONTRACT OR TORT, OR AS A RESULT OF A CLAIMED STATUTORY OR REGULATORY VIOLATION, OR (ii) ANY OTHER CLAIM THAT MAY ARISE OUT OF THE RELATIONSHIP OF THE PARTIES, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES, EXPERT WITNESS FEES, LITIGATION EXPENSES, AND COSTS OF COURT AND/OR ALTERNATIVE DISPUTE RESOLUTION FROM THE LOSING PARTY.

ARTICLE XIII - NOTICES

13.1 All notices from one party to the other will be deemed to have been delivered on the date actually delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid or sent or delivered by such other method as will ensure evidence of its receipt to the following addresses:

AEP:	Project Sponsor:
Southwestern Electric Power Company	
Attn: Ron Tevebaugh	Attn:
4421 W. Loop 281	
Longview, TX 75604	

13.2 Either party may change its address by written notice to the other in accordance with this Article XIII.

ARTICLE XIV - AMENDMENT

14.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

ARTICLE XV - ALTERNATIVE DISPUTE RESOLUTION

15.1 BOTH PARTIES AGREE TO RESOLVE ANY AND ALL DISPUTES THAT ARISE OUT OF THE NEGOTIATION, EXECUTION, OPERATION OR TERMINATION OF THIS AGREEMENT AND ITS SUBJECT MATTER, WHETHER THE DISPUTE SOUNDS IN CONTRACT OR TORT, OR AS A RESULT OF A CLAIMED STATUTORY OR REGULATORY VIOLATION, OR ANY OTHER CLAIM WHICH MAY ARISE OUT OF THE RELATIONSHIP OF THE PARTIES, THROUGH ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES. BOTH PARTIES AGREE TO FIRST ATTEMPT TO RESOLVE DISPUTES THROUGH MEDIATION. IF, HOWEVER, SUCH DISPUTES CANNOT BE RESOLVED THROUGH MEDIATION, BOTH PARTIES AGREE TO SUBMIT SUCH DISPUTES FOR RESOLUTION THROUGH BINDING ARBITRATION, TO BE CONDUCTED BY ONE QUALIFIED INDEPENDENT ARBITRATOR THAT IS MUTUALLY SELECTED BY BOTH PARTIES, IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES ("RULES")

OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") THEN IN EFFECT. IF THE PARTIES CANNOT AGREE UPON THE SELECTION OF THE ARBITRATOR, THEN EITHER PARTY MAY FILE ITS DEMAND WITH THE AAA AND THE ARBITRATION SHALL BE ADMINISTERED IN ACCORDANCE WITH ITS RULES. VENUE OF THE ARBITRATION SHALL BE THE VENUE SET FORTH IN SECTION 20.5 UNLESS THE PARTIES AGREE OTHERWISE. THIS BINDING ARBITRATION PROVISION SHALL NOT PROHIBIT OR RESTRICT EITHER PARTY FROM SEEKING EMERGENCY INJUNCTIVE OR OTHER EQUITABLE RELIEF IN THE DISTRICT COURTS OF THE COUNTY OF VENUE TO PRESERVE THE STATUS QUO. IF ANY SUCH RELIEF IS SOUGHT AND OBTAINED, THE MATTER WILL THEN BE IMMEDIATELY REFERRED TO ARBITRATION IN ACCORDANCE WITH THE TERMS OF THIS PROVISION FOR A HEARING ON THE MERITS OF THE RELIEF SOUGHT.

15.2 BOTH PARTIES AGREE THAT THE TERMS OF ANY AGREEMENT, SETTLEMENT, JUDGMENT OR AWARD RESULTING FROM ANY MEDIATION OR ARBITRATION PROCEEDINGS DESCRIBED IN SECTION 16.1 SHALL BE CONFIDENTIAL, AND THE PARTIES AGREE NOT TO DISCLOSE SUCH TERMS, OR ANY DRAFTS OR COMMUNICATIONS CONCERNING SUCH TERMS, TO ANY THIRD-PARTY EXCEPT AS FOLLOWS:

15.2.1 THE TERMS MAY BE DISCLOSED, BUT ONLY TO THE EXTENT REASONABLY NECESSARY, TO A PARTY'S ATTORNEYS, INSURERS, AGENTS, EMPLOYEES, AND ACCOUNTANTS, PROVIDED THAT THOSE PERSONS HAVE AGREED TO KEEP SUCH INFORMATION CONFIDENTIAL AND NOT DISCLOSE IT TO ANY OTHER PERSON OR ENTITY; OR

16.2.2 THE TERMS MAY BE DISCLOSED TO A COURT OR TRIBUNAL IN CONNECTION WITH AN ACTION TO ENFORCE ANY AGREEMENT, SETTLEMENT, JUDGMENT OR AWARD RESULTING FROM ANY MEDIATION OR ARBITRATION PROCEEDING DESCRIBED IN SECTION 16.1; OR

15.2.3 THE TERMS MAY BE DISCLOSED TO OTHERS (i) PURSUANT TO AN APPROPRIATE COURT ORDER ENTERED AFTER EVERY OTHER PARTY TO THE AGREEMENT HAS BEEN GIVEN REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD, OR (ii) IF REQUIRED BY A GOVERNMENTAL AGENCY AFTER EVERY OTHER PARTY TO THE AGREEMENT HAS BEEN GIVEN REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD, OR (iii) WITH THE PRIOR WRITTEN APPROVAL OF EVERY OTHER PARTY TO THE AGREEMENT.

ARTICLE XVI - FORCE MAJEURE

16.1 Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligation of the Party so rendered, that is affected by the event of Force Majeure, will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will use its best efforts to remedy its inability as soon as possible and will provide the other Party with prompt notice when it is able to resume the performance of its obligations. Failure to give notice will result in the continuance of the affected Party's obligation regardless of the extent of any existing Force Majeure.

16.2 The term "Force Majeure" as used in this Agreement will mean acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of pipe or other materials or orders, restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, and inability despite reasonable diligence to obtain materials essential to this Agreement. Rain, snow, ice or other adverse weather conditions will not be considered events of Force Majeure.

16.3 The term "Force Majeure" does not include: events or circumstances that affect the Project but do not prevent performance, including, but not limited to, requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local governmental bodies); changes in market conditions; and events or conditions attributable to normal wear and tear or flaws randomly experienced in materials and equipment and their assembly and operation, unless such events and conditions are caused by an occurrence which would fit the definition of Force Majeure set forth in Article 15.2 of this Agreement.

16.4 In no event will any Force Majeure extend this Agreement beyond its stated term.

16.5 If any Force Majeure causes a reduction in the Estimated Demand Savings, the Parties may mutually at any time agree to reduce the Estimated Demand Savings for the duration of the Force Majeure event.

ARTICLE XVII - ARTICLE XVIII – NONDISCLOSURE

17.1 If either Party hereto provides confidential information to the other in writing and identified as such, the receiving Party shall protect the confidential information from disclosure to third parties. Neither Party shall be required to hold confidential any information which (i) becomes publicly available other than through the recipient; (ii) is required to be disclosed by a governmental or judicial

order, rule or regulation; (iii) is independently developed by the receiving Party as evidenced by written records; or (iv) becomes available to the receiving Party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement.

17.2 Should any person or entity seek to legally compel a receiving Party (by oral questions, interrogations, requests for information or documents, subpoena, civil investigative demands, regulation, statute or otherwise) to disclose any confidential information, the receiving Party will provide the disclosing Party prompt written notice so that the disclosing Party may seek a protective order or other appropriate remedy (including participating in any proceeding to which the receiving Party is a party, which receiving Party will use its reasonable business and legal efforts to permit). If, in the absence of a protective order, the receiving Party is, in the opinion of its legal counsel, compelled to disclose the confidential information, the receiving Party may disclose only such of the confidential information to the person or entity compelling disclosure as is required by applicable law, order, regulation or rule.

ARTICLE XVIII - INDEPENDENT CONTRACTOR

18.1 Project Sponsor will act as and be deemed to be an independent contractor. Project Sponsor will not act as, nor be deemed to be, an agent or employee of SWEPCO. Project Sponsor will have the sole right to control and directly supervise the method, manner and details of the Project providing it is in accordance with the Agreement Documents.

ARTICLE XIX - MISCELLANEOUS

19.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties without the prior written approval of SWEPCO. Any assignment or transfer made without the express written approval of SWEPCO will be null and void.

19.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.

19.3 The Agreement Documents constitute the entire Agreement between the parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to such subject matter.

19.4 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.

19.5 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas. Except for matters and disputes with respect to which the PUCT is the sole proper venue for dispute resolution pursuant to applicable law or this Agreement, the Parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Travis County, Texas and the Parties hereto submit to the exclusive jurisdiction of the federal and state courts located in such county with respect to such matters and disputes.

19.6 Project Sponsor shall not use SWEPCO's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in the Project, without SWEPCO's prior written consent. Notwithstanding anything to the contrary, Project Sponsor may use SWEPCO's corporate name in the Customer Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

SOUTHWESTERN ELECTRIC POWER COMPANY		**(PROJECT SPONSOR)**	
By:		By:	
Name:	Paul E Pratt	Name:	JC Hughes
Title:	EE & Consumer Programs Manager	Title:	Public Works Director
Date:		Date:	5-15-2015

ATTACHMENT A

SOUTHWESTERN ELECTRIC POWER COMPANY

LOAD MANAGEMENT
STANDARD OFFER PROGRAM
CUSTOMER AGREEMENT

I. Customer Information

Customer Name City of Marshall

Project Site Name Water Treatment Plant

Project Site Address 605 East End Blvd. S.

City, Zip Code Marshall, TX 75671

Customer ESI ID

(For multiple sites, attach separate list)

II. Customer Relationship with Project Sponsor

I, Customer, hereby acknowledge the following (check appropriate box):

☐ I have entered into an Agreement with_____ (the "Project Sponsor") for interruption of interruptible load at the Project Site(s) identified above (the "Project"). The Project Sponsor is implementing the Project pursuant to the Southwestern Electric Power Company ("SWEPCO") Load Management Standard Offer Program.

☑ I am acting as my own Project Sponsor and am participating in the SWEPCO Load Management Standard Offer Program.

III. Program Option Selection

I, Customer, hereby acknowledge I have selected to participate in the following Program Option (check appropriate box):

☐ OPTION A – includes up to four (4) Unscheduled Interruptions between one and four hours per Performance Period, no more than one call per month.

☑ OPTION B - includes up to twelve (12) Unscheduled Interruptions between one and four hours per Performance Period, no more than 3 calls per month.

IV. Customer Agreement

CUSTOMER ACKNOWLEDGES THAT ANY REVIEW OR ACCEPTANCE BY SWEPCO OF THE PROJECT IS SOLELY FOR THE INFORMATION OF SWEPCO AND THAT, IN PERFORMING ANY SUCH REVIEW OR IN ACCEPTING THE PROJECT, SWEPCO MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, CAPABILITY, SAFETY OR RELIABILITY OF THE PROJECT.

Customer acknowledges that the Project Sponsor is an independent contractor with respect to SWEPCO and the SOP, and that the Project Sponsor is not authorized to make representations or incur obligations on behalf of SWEPCO.

Customer acknowledges that SWEPCO is not a party to this Customer Agreement or any other agreement (if any) between the Project Sponsor and the Customer and that the Project Sponsor is solely responsible for performance hereunder.

Customer agrees that SWEPCO is an intended third-party beneficiary of this Customer Agreement and, as such, may rely on representations made herein by the Customer and enforce Customer's obligations hereunder to the extent same are applicable to SWEPCO.

Customer acknowledges that SWEPCO makes no warranty or representation regarding the qualifications of the Project Sponsor and that the Customer is solely responsible for the selection of the Project Sponsor.

Customer acknowledges that it may file a complaint with the Public Utility Commission of Texas concerning the Project Sponsor, but that SWEPCO will play no role in resolving any disputes that arise between the Customer and the Project Sponsor.

Customer agrees to provide SWEPCO with access to and/or copies of Customer's utility bills, Project documentation, and any other information related to the Project that is necessary for calculation and/or verification of demand savings associated with the Project.

CUSTOMER AGREES TO RELEASE SWEPCO, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, AND EACH OF SWEPCO'S AFFILIATES AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "SWEPCO"), FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, ATTORNEYS' FEES, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY IN TORT, AGREEMENT, OR ANY OTHER BASIS AND OF EVERY KIND AND CHARACTER WHATSOEVER (COLLECTIVELY REFERRED TO AS "CLAIMS"), REGARDLESS OF ANY STRICT LIABILITY OR NEGLIGENCE OF SWEPCO, WHETHER ACTIVE OR PASSIVE, EXCEPTING ONLY SUCH CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, EXPENSES, LIABILITY, OR VIOLATION OF LAW OR REGULATION AS MAY BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SWEPCO.

IN WITNESS WHEREOF, Customer causes this Agreement to be executed by its duly authorized representative.

Signature: _____

Printed Name: JC Hughes

Title: Public Works Director

Company Name: City of Marshall

Date: 5-15-2015