

124 FERC ¶ 61,300  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Western Systems Power Pool

Docket Nos. ER91-195-051  
EL07-69-001

Western Systems Power Pool Agreement

ORDER ADDRESSING COMMENTS

(Issued September 29, 2008)

1. On February 21, 2008, the Commission issued an order on the WSPP<sup>1</sup> Agreement rates, finding that it is not just and reasonable to allow a seller to use the WSPP-wide “up to” demand charge as a ceiling rate in markets where the seller does not have market-based rate authority, unless such a seller can cost-justify the use of the “up to” demand charge based on its own fixed costs.<sup>2</sup> On March 24, 2008, Arizona Public Service Company (APS) and Xcel Energy Services Inc. (Xcel) filed a joint request for reconsideration of the February 21 Order, requesting that the Commission adopt an alternative implementation of the February 21 Order by incorporating company-specific demand charge caps into the WSPP Agreement, either by cross-reference to a specific cost-based tariff, or by incorporation of company-specific rate schedules into the WSPP Agreement itself. On July 17, 2008, the Commission issued an order denying APS’ and Xcel’s request for reconsideration of the Commission’s February 21 Order with respect to the cross-reference proposal, and provided an opportunity for WSPP and other interested parties to comment on the proposal for incorporating company-specific rate schedules.<sup>3</sup> WSPP, APS and Xcel, and El Paso Electric Company (El Paso) submitted comments.

---

<sup>1</sup> On May 7, 2007, in Docket No. ER07-635-000, Western Systems Power Pool, Inc. filed a notice that it changed its name to WSPP, Inc. (WSPP).

<sup>2</sup> *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008) (February 21 Order).

<sup>3</sup> *Western Sys. Power Pool*, 124 FERC ¶ 61,056 (2008) (July 17 Order).

## I. Background

2. The WSPP Agreement was initially accepted by the Commission on a non-experimental basis in 1991,<sup>4</sup> and provided for flexible pricing for coordination sales and transmission services. In accepting the WSPP Agreement, the Commission rejected WSPP's proposed system of price caps based on the costs of its highest cost participants, and instead developed energy and transmission rate ceilings based on the costs of a subset (18 sellers) of the original parties to the WSPP Agreement.<sup>5</sup> The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's acceptance of the WSPP Agreement.

3. On June 21, 2007, the Commission instituted a section 206 proceeding to investigate whether the WSPP Agreement ceiling rate continued to be just and reasonable for a public utility seller in markets in which such seller was found to have or was presumed to have market power.<sup>6</sup> The Commission limited the investigation to: (1) the justness and reasonableness of WSPP Agreement cost-based ceiling rates for coordination energy sales by public utility sellers that are found to have, or are presumed to have, market power; and (2) if the existing WSPP Agreement rates are unjust and unreasonable for such sellers, how the Commission should establish a just and reasonable rate. The Commission sought comment on whether the Commission should set a just and reasonable "up to" rate based on: (1) individual sellers' costs; (2) a new agreement-wide "up to" rate based on the costs of a representative group of WSPP sellers (including how such agreement-wide rate should be calculated); or (3) a different methodology.

4. In the February 21 Order, the Commission found that it is not just and reasonable to allow such a seller to continue to use the WSPP-wide "up to" demand charge as a ceiling rate unless such a seller can cost-justify the use of the "up to" demand charge based on its own fixed costs. Accordingly, the Commission directed all sellers under the WSPP Agreement that lack market-based rate authorization, or that have lost or relinquished their market-based rate authority (including those sellers currently using the

---

<sup>4</sup> *Western Sys. Power Pool*, 55 FERC ¶ 61,099, *order on reh'g*, 55 FERC ¶ 61,495 (1991) (Initial Order), *aff'd in relevant part and remanded in part sub nom. Environmental Action and Consumer Federation of America v. FERC*, 996 F.2d 401 (D.C. Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994) (*Environmental Action*). Prior to 1991, the WSPP Agreement was used for three years on an experimental basis. *See Western Sys. Power Pool*, 50 FERC ¶ 61,339 (1990) (extending the initial two-year period for an additional year).

<sup>5</sup> *See* Initial Order, 55 FERC ¶ 61,099 at 61,321-25.

<sup>6</sup> Order Instituting Hearing, 119 FERC ¶ 61,302 at P 9.

WSPP Agreement as mitigation), who wish to continue transacting under the WSPP Agreement, to make a filing within 60 days of the date of issuance of that order providing cost justification<sup>7</sup> to demonstrate that use of the WSPP Agreement “up to” demand charge is just and reasonable for that particular seller. The Commission stated that, if a seller provides cost support demonstrating that the “up to” demand charge under the WSPP Agreement does not exceed the demand charge that the seller can cost-justify based on its own fixed costs, the seller may continue to use the WSPP Agreement. Otherwise, such seller must file a separate stand-alone rate schedule, to be effective as of the date of the compliance filing that is cost-justified based on the individual seller’s own costs. In the latter case, such seller could propose to use the non-rate terms and conditions of the WSPP Agreement, but would have to include those provisions as part of its stand-alone rate schedule.

5. In the July 17 Order, the Commission denied APS’ and Xcel’s request for reconsideration with respect to their proposal to cross-reference company-specific cost-based demand charges in the WSPP Agreement. The Commission stated that this proposal was not consistent with the Commission’s requirements that public utilities post full and complete rate schedules and tariffs, rather than incorporating rates by reference. However, with respect to APS’ and Xcel’s proposal that the Commission permit company-specific rate schedules to be incorporated into the WSPP Agreement, the Commission determined that, because this proposal would require amendment of the WSPP Agreement, interested parties should be given the opportunity to submit comments on the proposal. Therefore, the Commission provided WSPP and any other interested party 30 days from the date of issuance of the order, to submit comments. Reply comments were to be submitted 15 days thereafter.

## **II. Comments on the July 17 Order**

6. WSPP supports APS’ and Xcel’s proposal for incorporation of separately-filed company-specific rate schedules in the WSPP Agreement for mitigated members. WSPP notes that the Commission has recognized the efficiency and coordination benefits of the WSPP pooling agreement, its role in facilitating market liquidity and price discovery, and the ease of contracting and transaction cost savings it provides. WSPP states that APS’ and Xcel’s proposal will achieve the Commission’s goal of preserving the efficiencies and other benefits of the WSPP Agreement. WSPP also states that permitting a WSPP mitigated member to submit a section 205 filing to include a separate rate schedule would permit mitigated members to engage in WSPP trading in mitigated markets. WSPP believes that this procedure would benefit not only the mitigated members, but also their

---

<sup>7</sup> The Commission stated that such changes should be filed pursuant to section 35.13 of the Commission’s regulations. 18 C.F.R. § 35.13 (2008).

WSPP counterparties, because those parties would continue to reap the benefits of the WSPP standard terms and conditions.

7. WSPP states that, if the Commission approves the proposal in concept, WSPP would then present amendment language to its members for vote. Upon an affirmative vote of ninety percent, WSPP would file the approved amendment as a compliance filing for Commission approval. If the WSPP members do not approve the amendment, WSPP states that it would inform the Commission, and the Commission could direct an alternative approach. WSPP requests that the Commission adopt the proposal, subject to the WSPP members' approval of an amendment, and direct WSPP to submit within 60 days, either an amendment to the WSPP Agreement or a report that the WSPP members did not adopt the amendment.

8. APS and Xcel argue that the Commission should allow the WSPP Agreement to be amended to allow any WSPP member with restrictions on its market-based rate authority to submit company-specific "up to" rates with accompanying cost justification in a rate schedule incorporated directly into the WSPP Agreement. They state that this approach preserves the efficiencies of the WSPP Agreement, by eliminating the need for any WSPP member with restrictions on its market-based rate authority to enter into bilateral agreements with any other WSPP Member under a stand-alone company-specific agreement with the same terms and conditions as the WSPP Agreement. Additionally, APS and Xcel maintain that, because all of the terms and conditions (except the company-specific cap) will be the same for all WSPP counterparties, there will be no need to verify whether a seller's stand-alone company-specific agreement fully and completely incorporates all terms and conditions of the WSPP Agreement, including any amendments filed by WSPP. They further argue that the proposal eliminates the need for non-mitigated members to use stand-alone service agreements to purchase from mitigated sellers in mitigated markets. APS and Xcel also contend that the proposed amendment would allow the continued consolidated credit obligations for multiple transactions with numerous trading partners under the single, multi-party tariff. Lastly, APS and Xcel state that the proposal increases liquidity in mitigated markets, giving non-mitigated members the opportunity to purchase from more sellers in those markets. They state that this provides non-mitigated sellers with assurances that mitigated sellers are capped at appropriate cost-based rates, preventing the exercise of market power, while retaining the efficiencies and convenience of the standard multi-party agreement that the WSPP Agreement has provided for almost 20 years.

9. El Paso states that APS' and Xcel's proposal would restore El Paso's ability to participate in the southern New Mexico wholesale market. El Paso explains that, prior to the February 21 Order, it utilized the WSPP Agreement's "up to" rate to transact within southern New Mexico with other load-serving entities and generation owners. El Paso states that, because its trading operation lacks administrative resources necessary to carry out transactions under multiple stand-alone, company-specific bilateral agreements,

transacting under the WSPP Agreement enabled El Paso to provide power to its neighbors when those entities were experiencing unexpected capacity shortfalls or other system emergencies. El Paso explains that, after the February 21 Order, it notified the Commission that, because of the inherent difficulty and complexity involved in administering numerous stand-alone rate schedules that would fall outside the WSPP Agreement, it would no longer make wholesale sales in southern New Mexico, except as allowed under existing cost-based tariffs previously approved by the Commission. Thus, El Paso points out that the proposal would allow it to effectively rejoin the southern New Mexico market by removing the administrative burden imposed by the February 21 Order. Additionally, El Paso states that amending the WSPP Agreement so that sellers such as El Paso could sell under company-specific, cost-justified caps within the WSPP Agreement would ensure that rates charged by mitigated sellers are capped at the appropriate cost-based level, thereby preventing the exercise of market power.

### **III. Commission Determination**

10. We agree with the intervenors that allowing company-specific rate schedules to be incorporated into the WSPP Agreement will retain the efficiencies and convenience of the WSPP Agreement. We also note that WSPP supports this proposal. Accordingly, we will direct WSPP to submit a compliance filing, within 60 days of the date of this order, with proposed revisions to the WSPP Agreement to allow for the incorporation in the WSPP Agreement of company-specific rate schedules for mitigated members.

#### **The Commission orders:**

WSPP is hereby directed to make a filing, within 60 days of the date of this order, that allows for the incorporation in the WSPP Agreement of company-specific rate schedules for mitigated members, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.