

August 25, 2023

VIA ELECTRONIC SUBMISSION

Washington Department of Ecology
Air Quality Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Informal Comments Regarding Electricity Markets Rule (Chapters 173-441 and 173-446
WAC)

Southwest Power Pool (“SPP”) files these Comments in support of the Department of Ecology’s (“Ecology”) initiative to identify and establish compliance obligations for entities that import electricity into Washington from centralized electricity markets. This letter provides preliminary comments in response to Ecology’s July 25, 2023, August 2, 2023, and August 17, 2023, informational meetings. SPP appreciates the opportunity to engage in the rulemaking process.

SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. As a Regional Transmission Organization (“RTO”) approved by the Federal Energy Regulatory Commission (“FERC”), SPP administers: (1) open access transmission service over approximately 72,000 miles of transmission lines covering portions of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, across the facilities of SPP’s Transmission Owners;¹ and (2) the Integrated Marketplace, a centralized day ahead and real-time energy and operating reserve market with locational marginal pricing and market-based congestion management.²

SPP is also the Market Operator for the Western Energy Imbalance Service Market (“WEIS Market”) in the Western Interconnection, a five-minute energy imbalance service market. The WEIS Market is operated on behalf of the entities that signed the Western Joint Dispatch Agreement. SPP also serves as Reliability Coordinator for certain utilities in the Western Interconnection.

¹ See *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,084 (1999); *Sw. Power Pool, Inc.*, 86 FERC ¶ 61,090 (1999); *Sw. Power Pool, Inc.*, 82 FERC ¶ 61,267, *order on reh’g*, 85 FERC ¶ 61,031 (1998).

² See *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,130 (2014) (approving the start-up and operation of the Integrated Marketplace effective March 1, 2014).

In the Markets+³ initiative, SPP will administer and operate a market that shares features of both the Integrated Marketplace and the WEIS Market by providing services to its market participants and facilitating transactions for the purchase and sale of electricity among those market participants. As a market operator, SPP collaborates with participating entities, serving as an interface between reliability and commercial functions in the Markets+ footprint. To assist in reliable operations and competitive wholesale electricity prices, SPP proposes to operate and administer energy and reserve markets.

Identifying the Electricity Importer

In its informational meetings, Ecology described its initial concept to identify the entities that import electricity to Washington from centralized electricity markets. More specifically, Ecology provided an option that the wholesale market operator be identified as the entity responsible for compliance as the Electricity Importer for both resource specific imports and unspecified imports. SPP's comments below explore the interrelationship between SPP's proposed Markets+ program and Ecology's proposed "Hierarchy Approach."

The market operator facilitates the purchase and sale of electricity

SPP will be the market operator for the Markets+ wholesale market. As the market operator, SPP will coordinate and facilitate transactions for the purchase and sale of electricity between generation and load. Market participants offering their supply into Markets+ will submit an offer to sell energy in the market, which includes the supply amount and the corresponding price.⁴ Market participants will include their operating costs in their offer to ensure they can recover their costs through the market. Market participants with resources located in a state with a cap and invest or cap and trade program may include the costs of compliance under that program as an operating cost in their offer. The market clearing engine will be required to find the least cost solution based on energy offers and included costs related to greenhouse gas. Market participants maintain ownership and operation of the generating facilities, market participants are the electric companies and utilities, market participants are the purchasing-selling entities on the e-tags for the physical path segments, and market participants are the buyers and sellers conducting transactions through Markets+. As the market operator, SPP is not an owner or operator of an electric generating facility, a retail provider, marketer, or asset controlling supplier. SPP is the facilitator for the purchase and sale of electricity within the market.

The market operator must allocate costs of compliance and obtain FERC approval of rates charged to market participants

As the market operator, SPP will be regulated by FERC and Markets+ will be subject to FERC approval. FERC provides cost allocation principles that SPP must follow when forming

³ A western energy market in which participants are not required to join the RTO to participate. See <https://www.spp.org/western-services/marketsplus/>.

⁴ SPP notes that SPP has not yet finalized the Markets+ tariff and all proposals herein are subject to market participant and FERC approval.

Markets+. The “cost causer” or “beneficiary pays” concept spans multiple circumstances⁵ and requires the market operator to allocate costs to the party that caused them. Said another way: the parties that do not receive the benefits should not be allocated the costs. SPP is also subject to the “filed rate doctrine.” Under the filed-rate doctrine, SPP must file with FERC a schedule of the rates it intends to charge.⁶ Once filed, these rates carry the force of law, and SPP is prohibited from charging a rate for its services other than the rate on file with FERC.⁷

If SPP were identified as the “Electricity Importer” under Washington law, SPP would be subject to certain compliance obligations and additional costs from potential penalties or fines. Therefore, it would be necessary for SPP to incorporate language into its tariff authorizing the application of a charge to recover these costs. As these costs would result from SPP acting as the “Electricity Importer,” they would likely be allocated to Washington load and generation under the cost causer principle.

Relatedly, if SPP were the “Electricity Importer” under Washington law, SPP would be required to purchase allowances through the cap-and-invest auctions or from other entities on the trading market. Similar to potential penalties or fines, it would be necessary for SPP to incorporate language into its tariff to authorize charges to market participants to recover the cost of purchasing the allowances. It is likely that these charges would also be borne by Washington load and generation, whose participation in the market necessitates the purchase of allowances.

SPP’s Recommendation

As an alternative to the “Hierarchy Approach,” SPP proposes that, relative to resource specific imports, the resource operator importing energy into Washington be identified as the entity directly responsible for compliance. For energy imported into Washington from unspecified resources, SPP proposes that either (1) the Washington domestic receiving load be the entity responsible for compliance; or (2) a third party be appointed to be permitted to undertake the responsibility of compliance. SPP recognizes that, in this scenario, the costs of contracting with a third party would necessarily be borne by market participants, a proposal which would need to be

⁵ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh’g and clarification*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). See also *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014), *reh’g denied en banc*, 2014 U.S. App. LEXIS 19968 (D.C. Cir. Oct. 17, 2014).

⁶ 16 U.S.C. §§ 824d.

⁷ *Associated Elec. Coop., Inc. v. Sw. Power Pool, Inc.*, 2023 WL 1980309, at *4 (W.D. Mo. Jan. 12, 2023).

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approved not only by Markets+ market participants, but also by FERC. For either proposed approach, SPP intends to support the efforts of Ecology and provide all necessary information utilizing an appropriate and agreed-upon mechanism to facilitate seamless communication between the market operator, the designated responsible entity, and the program.

SPP is supportive of Ecology's rulemaking initiative, intends to participate meaningfully and constructively in the process, and appreciates the opportunity to provide these comments.

Sincerely,

/s/ Kim O'Guinn

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