October 30, 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) – Second Informal Comment Period

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 draft rulemaking published on October 8, 2023 and the informational meetings on October 12 and 17, 2023. 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]

[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).

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.

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 Designated Market Importer and Related Compliance Obligations

The draft rule proposes to revise WAC 173-441 to add a definition for a "Designated Market Importer" ("DMI"), which the rule proposes to define as a market participant assigned by the market operator to take on the responsibility of reporting and compliance obligations for an electricity transaction from a centralized electricity market.[4] The rule further proposes to define a market participant as an electric power entity that has an agreement with a market operator, participates in the wholesale electricity market, and has an approved tariff that governs the operations of the wholesale electricity market.[5] An electric power entity may be a variety of types of entities, such as an electricity importer/exporter or a retail provider.[6] However, if the market operator does not designate a market participant to serve as the DMI, the draft rule designates the market operator as the DMI by default.[7]

Resources and Imports in Markets+

SPP will be the market operator for the Markets+ wholesale market. As the market operator, SPP will create a marketplace 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.[8] Market participants with load in Markets+ will likewise submit bids to buy energy in the market.

In Markets+, market participants with resources located in Washington must include the costs of compliance under the cap-and-invest program as part of the cost in their offers.

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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 WAC 173-441-124(2)(b).

5 WAC 173-441-124(2)(v).

6 WAC 173-441-020(g). *See also* WAC 173-441-124(1)(a).

7 WAC 173-441-124(3)(a)(v)(F).

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

Additionally, external resources that wish to voluntarily comply with Washington's cap-and-invest program may also include the costs of compliance (the "GHG Adder") as part of their offer to make the energy available to Washington. The market will identify these resources that are eligible to make energy available to Washington as Specified Resources. To maximize available supply of energy to Washington load, the market may also serve Washington load from the pool of energy available in the market. The resources that offer energy into the pool must not have compliance obligations under Washington's cap-and-invest program, but the costs of compliance must be considered in the dispatch of this energy to Washington. In the Washington draft rule, energy from the pool of energy is called "unspecified pathway market electricity."[9]

According to the proposed draft rule, the market operator may assign the compliance obligations for the import of energy from Specified Resources and for "unspecified pathway market electricity." As discussed more fully below, with respect to the "Designated Market Importer," SPP suggests the following revisions to the proposed rule which will better reflect the parameters under which SPP can act as market operator.

1. *Assigning compliance and reporting obligations is not within the authority of the market operator.*

As drafted, the proposed rule contemplates that the market operator, rather than the state of Washington, will be responsible for designating which entities bear the reporting and compliance obligations of the Washington cap-and-invest program. A market operator, however, does not have the legal authority to assign such obligations with respect to state law. Indeed, in its April 15, 2021, Policy Statement, FERC wrote, "Whether and how a state chooses to address GHG emissions is a matter *exclusively* within the state's jurisdiction."[10] Assigning the obligations of complying with a cap-and-invest program is inherently part of how a state chooses to address GHG emissions. Additionally, the Washington state legislature delegated this authority to the Washington Department of Ecology.[11] Therefore, SPP requests that Washington revise its proposed rule to designate the party responsible for reporting and compliance obligations explicitly: for specified source imports, the entity offering the electricity into the market, and for unspecified pathway market electricity, the Washington load receiving the energy.

2. *SPP should not be the Designated Market Importer.*

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 and administering Markets+. SPP is required by law to remain "revenue neutral" at all times, meaning that SPP must "allocate excess revenues to Market Participants or surcharge deficient revenues

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9 WAC 173-441-124(2)(mm).

10 *Carbon Pricing in Organized Wholesale Electricity Markets*, 175 FERC ¶ 61,036, at P 19 (2021) (emphasis added).

11 "[T]he department, in consultation with the department of commerce and the utilities and transportation commission, shall adopt by rule a methodology for addressing imported electricity associated with a centralized electricity market[.]" RCW 70A.65.080(1)(c).

from Market Participants . . . ."[12] The "cost causer" or "beneficiary pays" concept imposed by FERC[13] requires the market operator to allocate costs to the party that caused them. Said another way: the parties that do not cause the costs should not be allocated the costs.

The proposed rule contemplates scenarios in which SPP may be identified as the DMI. If SPP were identified as the "Designated Market Importer" under Washington law, SPP would incur certain administrative expenses, compliance obligations such as purchasing allowances, and costs from potential penalties or fines. Under the "cost causer" principle, such costs would be allocated to Washington load and generation.[14] The better approach is for the relevant market participant, rather than the market operator, to always act as the DMI, as discussed above. Under this approach, there would not be additional expenses resulting from SPP's administration of the program that would be charged to Washington load and generation.

Additionally, designating the market operator as the DMI is not in line with Washington's stated program goal to reduce carbon emissions[15] because SPP does not own, operate, or control any carbon-emitting facility. SPP does not create the carbon emissions that the state of Washington seeks to reduce. SPP is the facilitator for the purchase and sale of electricity within the market. Market participants maintain ownership and operation of the generating facilities, market participants are the electric companies and utilities, and market participants conduct transactions through Markets+. As such, the rules should not contemplate any scenario in which SPP is a DMI.

3. *The market operator must allow a method for a market participant to "opt out" of offering energy to load within the state of Washington.*

The draft rule proposes that an import may only be treated as unspecified pathway market electricity "if the electricity is not eligible to be treated as specified electricity or if it is not possible to identify the resource assigned to supply the electricity through the methodologies and procedures put in place by the market operator."[16] This definition too narrowly restricts the energy that may be imported from the market. The Markets+ tariff must provide a method for market participants to opt out of complying with Washington's cap-and-invest program.[17] Stated differently, a market participant must be able to offer energy into the market without incurring a

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12 *Sw. Power Pool, Inc.*, 141 FERC ¶ 61,048, at P 202 (2012).

13 *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).

14 It would be necessary for SPP to incorporate language into its tariff authorizing the application of a charge to recover these costs, which must be approved through the stakeholder process, and ultimately, FERC.

15 https://ecology.wa.gov/air-climate/reducing-greenhouse-gas-emissions.

16 WAC 173-441-124(3)(a)(v)(E).

17 *See California Independent System Operator Corporation*, 147 FERC ¶ 61,231, at P 240 (2014).

reporting and compliance obligation to the state of Washington.[18] As described above, a market participant that wishes to voluntarily comply with Washington's cap-and-invest program may include a GHG Adder as part of its offer to make the energy available to Washington. The market participant may also choose to not include a GHG Adder in its offer of energy into the market, which should then be treated as unspecified pathway market electricity for reporting to Washington. The omission of the GHG Adder indicates to the market operator that the energy is offered into the pool of energy to serve the entire market. Neither a resource's eligibility "to be treated as specified electricity" by the state of Washington nor the market operator's ability to identify the resource can determine whether energy offered into the market will serve Washington load as unspecified pathway market electricity. The decision to comply with Washington's cap-and-invest program must be made by the market participant.[19] Therefore, SPP recommends that energy not identified as a specified source by the Market Participant be reported as unspecified pathway market electricity.

4. Washington load should be the Designated Market Importer for unspecified pathway market electricity.

Unspecified pathway market electricity is not connected to a specific market participant offering energy into the market, nor to a market participant who purchased energy from the market. The pool of energy from the market will serve Washington load generally – it will not be connected to a specific buyer of energy. Therefore, the compliance obligation should be assigned to Washington load in its *pro rata* share for unspecified pathway market electricity. As suggested above, SPP requests that the rule clearly identify load in Washington as the Designated Market Importer for unspecified pathway market electricity.

5. Washington should set emission factors that are not retroactive.

Under the filed-rate doctrine,[20] SPP must file with FERC a schedule of the rates it intends to charge.[21] 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.[22] The process for calculating the emission factor for unspecified pathway market electricity is provided in the draft rule. The emission factor will be used to calculate the allowances that must be purchased by the DMI. The process contemplates a report provided by the market operator that will allow Ecology to calculate an emission factor based on the types of resources that provided energy to the pool, and therefore contributed to unspecified pathway market electricity. The proposed process allows the market operator to submit this report on February 1 of each year with the reporting and compliance obligation occurring on June 1. This would not allow the market operator to calculate the costs of compliance on an ongoing basis, but would require the costs of compliance to be estimated after the emission factor is determined by Ecology. Therefore, allowances could not be purchased until

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18 *Id.*

19 *Id.*

20 Under the filed-rate doctrine, SPP is "forbidden to charge rates for services other than those on file with the Commission." *See, e.g., Sw. Power Pool, Inc*., 166 FERC ¶ 61,160 (2019).

21 16 U.S.C. § 824d.

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

the emission factor is set by Ecology. Such a process could result in a form of retroactive ratemaking, which is not allowed by FERC under the filed-rate doctrine.[23] If the rule provided a default emission factor for unspecified pathway market electricity that may be used on an ongoing basis, the DMI would be able to more accurately estimate costs of compliance and purchase allowances in a timely manner. However, SPP notes that this request may not be necessary if Ecology designates load in Washington as the DMI for unspecified pathway market electricity.

As a practical matter, a retroactive emission factor for specified sources may also present difficulties for market participants. A market participant must also calculate its costs of compliance on an ongoing basis in the form of its GHG Adder, which is part of its offer into the market. A forward-looking emission factor will allow the market participant to more accurately estimate their costs of compliance.

Relatedly, the Markets+ tariff will allow for re-settlement of an operating day for 365 days after that operating day. If the costs of compliance for unspecified pathway market electricity are estimated due to the unavailability of an emission factor, the actual costs of compliance will likely differ from the estimated costs. If this occurs, SPP would be required to re-settle the market for each operating day that ultimately varied from the estimated compliance costs. In other words, SPP would be unable to comply with the re-settlement rule as currently planned for implementation in Markets+. The provision of a default emission factor that may be used on an ongoing basis would also allow the DMI to purchase allowances in a timely manner to ensure the market can be re-settled if necessary.

SPP's Recommendations

In sum, SPP proposes revisions to the proposed rule as follows: First, SPP should not have the responsibility of assigning reporting and compliance obligations. Rather, Washington law should clearly designate the parties responsible both for specified source imports and unspecified pathway market electricity. Second, a market operator should not be a Designated Market Importer. State-mandated reporting and compliance obligations should be borne by a market participant. Third, for unspecified pathway market electricity, SPP recommends that unspecified pathway market electricity be broadened to include energy transactions for which the market participant has not opted to serve the state of Washington. Fourth, for unspecified pathway market electricity, SPP proposes that the Washington domestic receiving load be the entity responsible for compliance. Fifth, Washington should set a default emission factor for unspecified pathway market electricity that is not retroactive. SPP is not permitted to implement retroactive rates.

SPP stands ready to offer additional comments to assist Ecology in the development of its rules. 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.

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[23] 16 U.S.C. § 824d. The rule against retroactive ratemaking "prohibits the Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods." *Sw. Power Pool, Inc*., 166 FERC ¶ 61,160 (2019) (internal citation omitted).

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,

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