

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwest Power Pool, Inc.)	Docket Nos.	ER21-3-000
)		ER21-4-000
)		
)		

**COMMENTS OF EARTHJUSTICE, NATURAL RESOURCES DEFENSE COUNCIL,
THE SUSTAINABLE FERC PROJECT, WESTERN GRID GROUP, AND WESTERN
RESOURCE ADVOCATES**

Pursuant to Rules 212, 213, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),¹ Earthjustice, Natural Resources Defense Council, Sustainable FERC Project, Western Grid Group, and Western Resource Advocates (collectively, Public Interest Organizations or PIOs) hereby submit the following comments in response to the Southwest Power Pool, Inc.’s (SPP) revised proposal to implement the Western Energy Imbalance Service (WEIS) market.

PIOs appreciate the opportunity to provide comments regarding SPP’s proposal to create a WEIS market in the Western Interconnection.² We support the development of market opportunities in the West. In our comments in Docket Nos. ER20-1059-000 and ER 20-1060-000, SPP’s initial WEIS proposal, we urged the Commission to accept SPP’s proposal subject to SPP

¹18 C.F.R. §§ 385.212, 213, 214 (2019).

² Submission of Western Energy Imbalance Service Market Tariff, Western Joint Dispatch Agreements, and the Western Markets Executive Committee Charter, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020) (WEIS Proposal). Unless otherwise noted, all references herein to the WEIS Proposal shall be to the filing letter submitted in Docket No. ER21-3-000.

making certain revisions regarding governance, market design, and cost-benefit analysis.³ We continue to urge the Commission to require these changes to SPP’s WEIS Revised Proposal. In addition, we recommend that the Commission require SPP to enter into agreements with neighboring non-participants to ensure that the WEIS Market does not result in the unreserved use of transmission rights of non-participants.

COMMENTS

A. PIOs Support the Ongoing Development of Regional Markets in the West

PIOs support the improvement of regional energy markets across the country, and the development of a regional market in the Western Interconnection. Moving from fragmented and manual utility operations to more coordinated and automated operations under a regional market construct has the potential to greatly improve operational efficiencies, reduce costs, and reliably integrate new sources of energy and demand.⁴ The balancing of supply with demand over a broad geographic footprint with security-constrained economic dispatch should reduce the cost of energy, the need for higher reserves, and renewable energy integration costs, while making more efficient use of existing transmission system and enhancing grid reliability. Well-designed organized markets may also prove critical to enabling states and local communities to cost-effectively and reliably achieve their environmental goals.

B. SPP’s Proposed Governance Structure of the WEIS Market Is (Still) Deficient

Given the important functions performed by market operators, it is vital to ensure these organizations operate with full stakeholder participation, rather than being dominated by one class

³ See generally “Comments of Earthjustice, Natural Resources Defense Council, The Sustainable FERC Project, Western Grid Group, and Western Resource Advocates” Docket Nos. ER20-1059-000; ER 20-1060-000 (March 20, 2020).

⁴ See, for example, California ISO, Western EIM Benefits Report, Fourth Quarter 2019 (2019), <https://www.westerneim.com/Documents/ISO-EIMBenefitsReportQ4-2019.pdf>.

of stakeholders. Unfortunately, like SPP’s original WEIS Proposal, the WEIS Revised Proposal envisions a stakeholder process heavily influenced by the WEIS market participants, in sharp contrast to the Western Energy Imbalance Market (WEIM) or any other RTO or ISO’s governance process. Because the WEIS Revised Proposal did not address many of the PIO’s concerns that we raised in our comments on SPP’s initial WEIS Proposal, we repeat our concerns below.

1. The Western Markets Executive Committee Lacks Independence

When examining a market’s governance and culture, the following criteria are especially important: (1) a balanced and transparent stakeholder process where all stakeholders have a meaningful voice, (2) an independent board of directors, (3) fair representation of all stakeholders, including states and public interest organizations, and (4) open and transparent reporting and market oversight by an independent market monitor.⁵ Further, in Order No. 2000, FERC stressed the importance of a “decision-making process that is independent of control by any market participant or class of participants”.⁶

However, contrary to these independence and balanced participation requirements, the committee in charge of tariff design, rules, and practices for the WEIS consists entirely of load-serving entities and other WEIS market participants only. The Western Markets Executive Committee (WMEC) consists of these participants, all of whom are signatories to the Western Joint Dispatch Agreement (WJDA).⁷ The WMEC Charter limits representation and voting on the Committee to “WEIS Participants.”⁸

⁵ FERC Order No. 719, 125 FERC ¶ 61,071 (2008).

⁶ FERC Order No. 2000, 89 FERC ¶ 61,285 (1999) at P 194.

⁷ According to the proposed tariff, the WMEC Charter and the WJDA, a “WEIS Participant” is an entity that has executed the WJDA.

⁸ Exhibit No. SPP-0002 Western Markets Executive Committee Charter, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020): “*In carrying out its purpose, the WMEC will: 1.*

While it is true that the WEIS market will be jointly overseen by the WMEC and the SPP Board of Directors, the WMEC will have a high level of decision-making authority over the WEIS market design protocols and changes to its tariff over time. As proposed, decisions made by the WMEC will determine WEIS market design and operation, and market protocols developed by the WMEC will be deemed to have been approved by SPP unless they are appealed to the SPP Board.⁹

As we stated in our comments on SPP's initial WEIS Proposal, consistent with Order No. 2000 and with governance processes already approved by FERC in the WEIM, participation and voting on the WMEC should not be exclusively limited to market participants that have executed the WJDA.¹⁰ The WMEC Charter should be amended to include representation by entities and stakeholders that have no direct financial interest in the operation of the WEIS. PIOs also continue to recommend that WEIS working groups incorporate a diversity of stakeholder perspectives, including the perspective of consumer and environmental PIOs.

Separately, the question of appealability of WMEC decisions continues to be a concern to the PIOs. The WEIS Revised Proposal is not clear on what entities are allowed to appeal WMEC decisions to the SPP Board and this issue was not addressed in the Commission's July 31, 2020 Order on Proposed Tariff in Docket Nos. ER20-1059 and ER20-1060 (Rejection Order). PIOs continue to support a transparent appeal process, consistent with the requisites of administrative

Provide a forum for entities that have executed a Western Joint Dispatch Agreement with SPP ("WEIS Participants") and other interested stakeholders to discuss issues related to the ongoing administration and advancement of market development in the Western Interconnection...Each WEIS Participant shall appoint one representative to the WMEC... Each representative will have one vote".

⁹ *Id* at P 3. The WEIS Charter enables the WMEC to: 1- Approve or reject proposed amendments to the WEIS tariff; 2- Establish detailed WEIS market protocols to support the tariff; 3- Provide consultation to SPP in determining the administrative rate charged to participants in the WEIS market; and 4- Recommend proposed amendments to the WJDA.

¹⁰ FERC Order No. 2000, 89 FERC ¶ 61,285 (1999).

due process, which would enable all stakeholders to appeal WMEC actions and decisions to the SPP Board.¹¹

2. The WEIS Revised Proposal Continues to Lack a Balanced and Transparent Stakeholder Process Where All Stakeholders Have a Meaningful Voice

Stakeholders play an important role in organized markets. This is because stakeholder governance is one of the primary processes for the development, amendment and proposal of market rules and tariffs for approval.¹² In Order No. 719, FERC established a stakeholder involvement policy in order to improve the responsiveness of RTOs and ISOs to their customers and other stakeholders, and ultimately to the end use customers who benefit from and pay for electricity service. FERC outlined the following four criteria to demonstrate responsiveness: (1) inclusiveness, (2) fairness in balancing diverse interests, (3) representation of minority positions, and (4) ongoing responsiveness.¹³ Stated another way, market stakeholder processes must be balanced and transparent and allow all impacted stakeholder groups to have a meaningful voice in the decision-making process.

Like the initial WEIS Proposal, the WEIS Revised Proposal lacks a framework for public interest advocates and other stakeholders to participate in an advisory capacity with the WMEC and its working groups and task forces. According to the WMEC Charter, the WMEC will provide

¹¹ The SPP Board of Directors shall provide independent oversight of SPP’s administration of the WEIS market under the WJDA. If the WMEC approves an action and such action is not appealed to the SPP Board of Directors, the action is deemed to be approved by the SPP Board of Directors, and SPP staff is authorized to submit any applicable required regulatory filing(s). Any action, or inaction, taken by the WMEC may be brought before the SPP Board of Directors for ultimate resolution.” See WMEC Charter.

¹² See R Street, *RTO Governance Report: How the RTO Stakeholder Process Affects Market Efficiency* (2017), available at: <https://www.rstreet.org/2017/10/05/how-the-rto-stakeholder-process-affects-market-efficiency/>.

¹³ FERC Order No. 719, 125 FERC ¶ 61,071 (2008).

a forum for those entities that have executed the WJDA with SPP and “other interested stakeholders” to discuss issues related to the ongoing administration and advancement of market development in the Western Interconnection. However, the membership of the WMEC – a body with decision- making authority over the WEIS market – will be comprised only of WEIS market participants and only members will be able to vote on decisions of the WMEC. According to the WMEC Charter, the WMEC may establish working groups and task forces as needed. The membership of these working groups and task forces will be determined by the WMEC, but it is not clear whether PIOs and other stakeholders are eligible for appointment to these working groups and task forces. The Commission should direct SPP to establish a clear process for the WMEC to seek input from all interested stakeholders.

Notably, public interest organizations are represented in WEIM working groups and task forces. For example, they play a crucial role in the WEIM’s currently active Governance Review Committee and are considered an integral component of the success of the EIM. No such representation is available in SPP’s proposed WEIS governance structure.

PIOs recommend that the Commission direct SPP to undertake a similar approach as the one used in the California ISO managed WEIM by creating a Governance Review Committee with broad representation of stakeholders to design governance and stakeholder processes for the proposed WEIS market moving forward. PIOs continue to recommend that SPP continue to work with stakeholders to provide remote and online participation in WEIS stakeholder meetings in order to enable robust participation by a broad array of organizations.

Relatedly, like the initial WEIS Proposal, the WEIS Revised Proposal is unclear on the criteria for determining whether a WEIS meeting will be open or closed to the public.¹⁴ PIOs continue to recommend that the Commission require SPP to provide information on the criteria for when a WEIS stakeholder meeting will be open or closed, including a requirement that SPP provide the rationale for why a meeting will be closed in advance of the meeting.¹⁵

3. The WEIS Revised Proposal Lacks a Formal Participation Role for States

Like the initial WEIS Proposal, the WEIS Revised Proposal continues to lack sufficient formal participation opportunities for states. For example, the WEIM’s Body of State Regulators (BOSR) provides a forum for state regulatory commissions to actively learn about the WEIM and to provide consensus-based recommendations to the CAISO Board of Governors, the EIM Governing Body, and CAISO staff and management regarding EIM governance and market rules. While a similar committee exists at SPP’s RTO – the Regional State Committee – such a committee or other similar forum does not exist in the WEIS Revised Proposal.

It is true that the WMEC Charter allows for state commission “liaisons” to the WMEC. State commission liaisons include “one commissioner from the regulatory commission of each state” in which a WEIS market participant has load or generation participating in the market.¹⁶ However, state liaisons will not have a voting role on the WMEC, are only permitted to participate

¹⁴ The WMEC Charter gives WMEC discretion to vote on whether to open or close a meeting for “matters that require confidentiality.”

¹⁵ For example, for SPP’s RTO there is a written policy that outlines a process for the organization’s members to use in determining when a meeting will be open or closed to the public. *See generally*, Southwest Power Pool Governing Documents Tariff - Bylaws, First Revised Volume No. 4 - Bylaws 3.0 Organizational Administration - Bylaws 3.5 Meetings (October 2019).

¹⁶ Exhibit No. SPP-0001 at P 20, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020).

in an advisory capacity, and are not organized as a collective entity. The fragmented nature of the liaison framework means that states will be more challenged to take collective positions on ongoing WEIS market design issues and to ensure that public policy requirements are considered in the WEIS market design and operation, as the BOSR has been able to do currently in the WEIM.

C. The WEIS Revised Proposal Will Not Ensure Open and Transparent Reporting and Market Oversight by an Independent Market Monitor

Open and transparent reporting and effective market monitoring are essential to ensure just and reasonable rates and prevent market manipulation in regional electricity markets. As was the case with SPP's initial WEIS Proposal, the process for submitting complaints and raising issues for further investigation by the SPP's Market Monitoring Unit (MMU) regarding the WEIS market would be limited to market participants and/or eligible government entities.¹⁷ PIOs continue to recommend that the Commission direct SPP to amend its filing to ensure that all entities with necessary security clearance can access market data and have the ability to weigh in on matters related to potential market manipulation, and, in particular, allow all stakeholders to raise complaints and issues with SPP's MMU regarding the operation of the WEIS.

D. The WEIS Revised Proposal Lacks Quantitative Evidence of the Economic and Reliability Benefits of the WEIS

The potential economic and reliability benefits of the proposed WEIS market are important to both market participants as well as the region's impacted retail customers and will help to

¹⁷ Western Energy Imbalance Service Tariff, Attachment C, Section 5, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020): "Any Market Participant or Interested Government Agency may raise any issue with the Market Monitor and request that the Market Monitor consider the issue in its monitoring and reporting. The Market Monitor may include this issue in its monitoring or reporting if it determines it is appropriate to do so. The Market Monitor should not monitor or report on any complaint pertaining to issues not related to the WEIS Market or activities not monitored and overseen by the Market Monitor."

establish whether the WEIS Revised Proposal is just and reasonable. All costs and benefits should be reported in a transparent manner to state utility commissions and public stakeholders. When Tri-State and Western Area Power Administration join WEIS, a market seam will cut across Colorado, because Public Service Company of Colorado and its utility partners are joining the WEIM. The economic implications of a market seam will affect Colorado utility customers both immediately and over the long term. No economic estimates of the costs of operating across this market seam have been made available. There are no realizable benefits from creating such a market seam, and PIOs remain concerned about the unavoidable economic and reliability consequences of creating such a seam. (See below for additional comments on the seams issue.)

As was the case in Docket Nos. ER20-1059 and ER20-1060, SPP has not yet provided a transparent and accessible study on the potential economic benefits of the WEIS in this proceeding. The FERC staff report from 2013 provided by SPP as an exhibit to the filing discusses qualitative benefits of reliability generally, not economic or public policy benefits, and is not specific to the WEIS Revised Proposal. In order to promote transparency and allow for meaningful stakeholder feedback, PIOs continue to urge SPP to provide information and transparent reporting on economic, public policy, and reliability benefits studies conducted during the development of the WEIS market. Additionally, PIOs continue to recommend that SPP enable PIOs, states, and other interested stakeholders to participate “collaboratively” in the development of such studies.¹⁸

¹⁸ As defined by the International Association for Public Participation. *See* International Association for Public Participation website, “Core Values, Ethics, Spectrum – The 3 Pillars of Public Participation”, *available at:* <https://www.iap2.org/page/pillars> (last accessed October 22, 2020).

E. SPP Should Reach Agreements with Non-Participating Neighboring Entities to Ensure the WEIS Market Respects the Rights of Non-Participants.

In our comments on SPP’s initial WEIS proposal, PIOs recommended that SPP engage with stakeholders beyond the utilities represented by the WMEC to evaluate potential market seams issues in the operation of the proposed WEIS. PIOs also recommended that SPP report to the Commission on its work with neighbors in both bilateral and organized markets to prevent market seams inefficiencies and transmission congestion across markets. PIOs argued that doing so would enhance SPP’s case for the WEIS to be a long-term sustaining energy imbalance service market provider.

In its Rejection Order, the Commission found that the initial WEIS Proposal improperly used the transmission capacity of non-participating entities and was therefore inconsistent with the requirements of the *pro forma* OATT and Order Nos. 890 and 890-A.¹⁹ The Rejection Order further found that it was not reasonable “for SPP to conclude that all unused available transmission within the WEIS BAAs is available for use in the WEIS Market on the basis that WAPA currently has access to transmission to meet imbalance needs.”²⁰ The Commission rejected the initial WEIS Proposal on this basis and directed as follows:

Any future proposal for the SPP WEIS Market should include the mechanisms or agreements that will ensure that the SPP WEIS Market respects the transmission capacity of non-participating entities with appropriate constraints in the SCED. If SPP is not able to reach an arrangement with non-participating entities to use their transmission capacity, SPP must include constraints in its market model to appropriately respect the transmission rights of non-participating entities when calculating the market solution.²¹

¹⁹ 127 FERC ¶ 61,115 at 40 (2020).

²⁰ *Id.* at 41.

²¹ *Id.* at 42 (internal footnotes omitted).

Presumably in its rush to meet its internal February 1, 2021 deadline for implementing the WEIS Market, SPP does not appear to have made significant efforts to engage with non-participants on this issue, as the Commission directed. Instead, in its WEIS Revised Proposal, SPP relies solely on changes to its proposed tariff language with respect to constraints in the SCED to comply with the Commission’s directive.²² Specifically, SPP states that its SCED will be “based on the transmission capacity communicated by Market Participants, Joint Dispatch Transmission Service Providers, and participating Balancing Authorities.”²³

It is unclear to the PIOs that SPP’s proposed technical solution to the Commission’s concern is adequate to ensure that SPP will “appropriately respect the transmission rights of non-participating entities.”²⁴ Had SPP entered into agreements with neighboring non-participants as the Commission encouraged it to do, PIOs, along with the Commission and other stakeholders, would be able to determine with more confidence whether SPP’s proposed SCED-based solution will adequately protect non-participants.

This issue illustrates the importance of a governance structure that fully considers the views of all affected stakeholders, including non-participants, rather than relying solely on participating entities for decision-making. If SPP had incorporated the PIOs’ governance recommendations discussed above (which PIOs also made in comments in Docket Nos. ER20-1059 and ER20-1060), SPP likely could have addressed or avoided this issue through direct engagement with non-participants through a more inclusive governance process. Direct engagement and agreements with neighboring non-participants would have provided the Commission with assurance that SPP’s

²² Western Energy Imbalance Service Tariff, Attachment A, Sections 1.2.11 and 4.3, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020).

²³ *Id.* at 1.2.11.1.

²⁴ 127 FERC ¶ 61,115 at 42 (2020).

proposed SCED constraints will not negatively impact these non-participants. Instead, through this proceeding non-participants will effectively have “the obligation to ensure the WEIS Market respects non-participating entities’ transmission rights.”²⁵ Such improper burden-shifting was at the root of the Commission’s concern with the initial WEIS Proposal.

PIOs believe it may ultimately be necessary for SPP to enter into agreements with non-participating entities to ensure that these entities’ rights are respected. Such agreements could also provide a vehicle for addressing any seams issues that may arise in the future. If the non-participating neighboring entities (or public agencies like the Colorado Public Utilities Commission) that raised concerns about this issue in Docket Nos. ER20-1059 and ER20-1060 continue to raise concerns in this proceeding that SPP’s WEIS Revised Proposal may infringe on their transmission rights, PIOs would recommend that the Commission direct SPP to enter into such agreements before approving the WEIS Revised Proposal.

F. PIOs Support SPP’s Proposal to Resubmit Any Future Revisions to its Market Monitoring Thresholds to the Commission.

In its Rejection Order, the Commission discussed SPP’s market power mitigation plan for the WEIS Market and directed that, if SPP submits a new proposal to implement the WEIS, “SPP should either remove the automatic increase provisions [for market mitigation thresholds] or otherwise justify their inclusion.”²⁶ As explained by SPP Witness Kelley, in the WEIS Revised Proposal, “SPP addresses this issue by removing the automatic increase in the mitigation

²⁵ *Id.*

²⁶ *Id.* at 66.

thresholds.”²⁷ SPP further states that if a change to the thresholds is required, it will make a filing with the Commission “with the justification and analysis provided by the MMU.”²⁸

PIOs believe changes to market mitigation thresholds are important issues that require Commission review and stakeholder input before being implemented. Accordingly, PIOs support SPP’s modifications to the WEIS Revised Proposal on this issue.

CONCLUSION

For the aforementioned reasons, PIOs respectfully request that the Commission conditionally accept the WEIS Revised Proposal, while requiring the improvements to governance, market design, costs and benefits, and other issues consistent with the recommendations in these comments.

²⁷ Exhibit No. SPP-0001 at P 26, Docket Nos. ER21-3-000 and ER21-4-000 (October 1, 2020).

²⁸ 127 FERC ¶ 61,115 at 42 (2020).

Respectfully submitted on October 22, 2020 by:

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Certificate of Service

I hereby certify that on this 22nd day of October, 2020, I served a copy of the foregoing via electronic mail on the service list established in this proceeding.

s/ Scott F. Dunbar
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