

August 28, 2003

Ms. Veronica Thomason  
North American Energy Standards Board  
1100 Louisiana, Suite 3625  
Houston, TX 77002

**BY FEDERAL EXPRESS**

**RE: Comments of Western Systems Power Pool, Inc.  
("WSPP") Concerning Draft 2004 Annual Plan**

Dear Ms. Thomason:

The North American Energy Standards Board ("NAESB") has requested the submission, on or before August 29, 2003, of comments concerning NAESB's draft 2004 Annual Plan. The WSPP submits the following comments in support of the deletion from the draft 2004 Annual Plan of efforts to develop a NAESB electric master service agreement for the bulk power industry. The WSPP supports cessation of these efforts, but is concerned that the draft unproductively sustains this issue, or at a minimum creates ambiguity, by referring to the interest of some NAESB members in recommencing these efforts.

**I. The WSPP**

The WSPP is the largest wholesale electric trading organization in the United States. It has over 250 members made up of marketers, generators, investor owned utilities, state and federal agencies, and municipals and cooperatives. These members include entities that are primarily power sellers as well as entities that are primarily consumers of power.

The WSPP maintains a master electric trading agreement (the "WSPP Agreement"), which is available to all WSPP members for their use. See WSPP Agreement posted at [www.wspp.org](http://www.wspp.org). The WSPP Agreement is on file with the Federal Energy Regulatory Commission ("FERC") as a WSPP Rate Schedule. All WSPP members are parties to the umbrella WSPP Agreement. WSPP members may transact

with each other under the WSPP Agreement merely by entering into brief and straightforward confirmations of transactions in accordance with the procedures set forth in the Agreement.

The WSPP Agreement also contains procedures and requirements for making revisions to its terms and conditions. Revisions require an affirmative vote of 90 percent, and must be filed by the WSPP with the FERC for acceptance. Pursuant to these procedures, the WSPP, through its Operating and Executive Committees and a Contracting subcommittee, evaluates proposed amendments to the WSPP Agreement at least twice each year. All members are free to participate in these efforts and, indeed, numerous members are actively and productively involved. The Executive Committee, which consists of all members, finally determines what if any revisions are to be submitted to the FERC for review and acceptance. With a 90% approval requirement, only those amendments supported by broad consensus are approved for submission to the FERC..

## **II. NAESB Consideration of Master Agreements**

The WSPP participated in the NAESB Master Service Agreements Task Force. This Task Force included representatives of many other participants in the electric markets. The Task Force considered and then rejected a proposal to merge the Edison Electric Institute (“EEI”) and WSPP Agreement into a single master agreement. It also decided against drafting standards for or addenda to these widely accepted agreements. The recommendations of the Task Force were forwarded to the WEQ Contracts Subcommittee, which did not disturb them. These deliberations and conclusions appear to have fulfilled the item in the 2003 Annual Plan concerning electric master service agreements.

Apparently as a result of these actions and presumably in response to comments received from industry participants, the subject of developing a NAESB electric master service agreement is omitted from the draft 2004 Annual Plan. The draft explains that, “[t]he contract items were deleted as the EEI Contracts Task Force determined to continue development of the EEI Contract through EEI, including any modifications to it including language changes or addenda.” Notwithstanding this clear and positive decision, the draft also states that “several of the WEQ EC members discussed possibly preparing a request that would add an item to the 2004 annual plan to develop a master service agreement.”

## **III. The WSPP Supports Omission of Development of a NAESB Electric Master Service Agreements from the Draft 2004 Annual Plan**

Inclusion of a note in the draft that “several of the WEQ EC members” remain interested in developing a NAESB service agreement could be construed as creating

some ambiguity as to how NAESB intends to proceed. The WSPP submits these comments in support of omission of the item from the draft, but in opposition to any qualification or indication that the action may be renewed in 2004.

Omission of the item from the draft 2004 Annual Plan reflects a sound decision by NAESB. As explained below, the industry has available two widely used master agreements, both of which are sufficiently flexible to evolve to meet changing needs whether those needs are industry-wide or limited to specific arrangements. Companies and their employees are accustomed to these agreements and the procedures and customs that apply to trading under them. Absent a compelling need, and given more pressing needs for the time and resources of industry participants, it is simply not cost effective to burden the industry with the development of a third master agreement or the learning curve associated with trading under it.

More specifically, the WSPP Agreement has served the industry well and continues to evolve to reflect changing needs and markets. The wholesale electric industry has used standardized master electric trading agreements prevalently for years. The WSPP Agreement had its genesis in 1987 as part of a FERC experiment and has had a permanent contract in effect since 1991. As the FERC has recognized, the WSPP Agreement is used very extensively in the industry in many thousands of transactions. The WSPP Agreement facilitates counterparties' prompt agreement to specific transactions through a streamlined and straightforward confirmation process as provided in the Agreement. Because WSPP members may transact under the terms and conditions of the umbrella Agreement by merely agreeing to these confirmations, the Agreement obviates the need of counterparties to agree to a master bilateral form of contract or to negotiate and agree to revisions thereto. The ease of trading available to WSPP members under the WSPP Agreement undoubtedly has promoted trading and added materially to market liquidity.

Moreover, the WSPP provides a continuous forum to address evolving needs for revisions to the Agreement. Proposed revisions typically are first considered by a Contracting Subcommittee, and are then considered by the WSPP Operating Committee and Executive Committee. The efforts of the Contracting Subcommittee are ongoing; the Operating Committee and Executive Committee meet twice annually. The procedures for amending the agreement are FERC-approved, and any agreed revisions to the Agreement are filed with FERC for acceptance. Under these procedures, the WSPP Agreement is constantly reviewed by numerous industry participants and is amended as appropriate to reflect the needs of an evolving industry. The WSPP thereby provides ample opportunity for industry participants to seek and obtain meritorious changes to a widely-accepted master agreement, and changes occur when there is broad consensus. The EEI likewise provides flexibility with respect to its agreement.

Not only is the WSPP Agreement subject to modification through an ongoing amendment process, it also can be modified for any specific transaction by including

transaction-specific terms and conditions in the applicable confirmation. Again, likewise, the EEI agreement is subject to modification in bilateral negotiations preceding execution. Manifestly, a third master agreement would add no material flexibility or options. The existing documents and organizations offer ample options and flexibility to the industry, and obviate the need for a third master agreement.

WSPP members have broadly expressed opposition to the development of a NAESB master service agreement. When the prospect of a NAESB agreement has been discussed at WSPP meetings, WSPP members have consistently stated that any such effort is unnecessary. Some members have indicated that such an effort would be harmful to the industry—the magnitude of the undertaking would distract entities from the challenges of trading today, particular given the lack of any material benefit to be obtained from a third agreement. Members have expended very substantial resources in developing the current documents and in educating employees to use these documents. These members are reluctant to divert employees and incur substantial costs without a compelling reason to develop yet another master agreement. In short, the general view of the WSPP membership is that there is no compelling reason to develop a new master agreement.

It also is clear that the resources and time required to develop a third master agreement indeed would be very substantial. Development of a new agreement would be exceedingly difficult. The WSPP's experience in developing revisions to its Agreement reflects the enormous effort that would be involved in any attempt to develop a new agreement from whole cloth, and also reflects the difficulty in obtaining industry consensus with respect to contract provisions. Over the last eight years, WSPP committees have met frequently to discuss revisions to the WSPP Agreement. While certain revisions have been agreed to, no consensus has been reached with respect to several issues despite thorough discussion and serious effort. These efforts have been quite substantial, even though they were directed to discrete issues in an existing contract. Starting from scratch would involve a much more substantial level of effort. The WSPP's experience is that on numerous issues it simply is infeasible to achieve industry-wide consensus.

Yet another drawback to a new master agreement is that the industry has very substantial experience in transacting under the current documents. Employees are familiar with the terms of those agreements. Companies have become comfortable and have developed clear expectations doing business under them. In addition, with bilateral master agreements like the EEI agreement, industry participants have devoted very substantial resources in negotiating master agreements with their counterparties. The development of an entirely new agreement would be costly and time consuming and would require a very large allocation of precious and limited resources.

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#### IV. Conclusion

Both the WSPP and most of those entities participating in EEI contract development activities have stated that there is no need for NAESB to develop a new master contract and that any benefit to be derived would not justify the cost. The foregoing comments set forth some of the reasons why NAESB should not proceed with such an effort. For all of these reasons, the WSPP urges that the item remain omitted from the 2004 Annual Plan.

We hope that these comments are helpful. We would be pleased to answer any questions relating to them.

Very truly yours,



Michael E. Small, General Counsel to  
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