

**SLIDES EXPLAINING
WSPP
OPERATIONS
AND
EEI-WSPP DIFFERENCES**

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SALES UNDER THE WSPP AGREEMENT

General. Available to members only. Copyrighted Agreement. Over 250 members throughout United States and Canada.

FERC approved and filed contract. FERC approved governance structure. Contract has been implemented and interpreted for many years. Updated continuously. Membership generally is happy with contract and process.

Default standardized contract for power sales and physical options. Not required to negotiate separate master agreements with each Party to transact WSPP sales.

Aside from the truly transaction specific terms, such as price and start and stop times, the WSPP Agreement will govern unless the parties agree otherwise.

Parties are able to agree to revised terms for their transactions. This includes product definitions as well as terms of transactions. If either party says no, default to the term or terms of the WSPP Agreement.

Confirmation process allowing parties 5 days to respond to changes proposed by one party. If a party says no, default to WSPP Agreement. Changes to basic terms of WSPP Agreement must be in writing or oral with the oral agreement recorded. Oral agreement only available for transactions of one week or less.

Pricing

Members are allowed to sell at market prices if they have received market pricing authority from FERC or if they are not regulated by FERC.

If the seller cannot sell at market prices, then the price caps set at Seller's Incremental Cost plus up to 21.11 mills/kwh would apply.

Products

Service Schedule A-Economy Energy

Service Schedule B-Unit Contingent

Service Schedule C-Firm

Products can be tailored by mutual agreement of the parties. As a result, products like the Cal ISO product have been sold under WSPP Agreement.

Stipulated damages provision does not apply to Economy unless the parties otherwise agree. Applies to the other products for non-performance.

Economy subject to interruption upon notification.

Unit Contingent-Generally curtailment is allowed due to unavailability of unit, to prevent system separation during emergencies, to meet public utility or statutory obligations to customers, pursuant to agreed to recall provisions, or due to the unavailability of transmission.

Firm-Curtailment allowed based upon agreed to recall provisions, due to Uncontrollable Forces, or to meet Seller's statutory or public utility obligations

(though if this latter excuse is invoked Seller pays stipulated damages). Seller is responsible for ensuring that product delivered at delivery point satisfies regional reliability requirements for being scheduled as firm.

Physically Settled Option-Call option which is the right to buy Service Schedule B or C power. Put option which is the right to sell Service Schedule B or C power.

Force Majeure (Section 10)

In general it is an event beyond a party's control which prevents performance.

Parties have a duty of due diligence to overcome or avoid.

Cannot be sustained if due to causes arising out of own negligence or due to causes which the party could remove or remedy.

Parties are required to remove inability to perform using due diligence.

Price changes are not considered force majeure events.

Special rules governing transmission curtailments. If parties agreed on a specific path and firm transmission was obtained and the firm transmission is cut, then that is a force majeure event. If parties did not agree on a specific path, firm transmission is obtained, and the transmission is cut, then the party which obtained the transmission must obtain alternate energy at the delivery point, alternate transmission services, or alternate means of delivering energy after exercising

due diligence before the cut transmission can become a force majeure event.

Damages (Section 21)

No punitive or consequential damages are allowed.

Cover type damages allowed for failure to perform. Does not include performing party's administrative and legal costs associated with arranging another transaction.

For seller's failure, seller pays damages based on the replacement contract price less the purchaser's original contract price plus or minus the net transmission cost change.

For purchaser's failure, purchaser pays damages based upon original contract price less sales price plus or minus the net change in transmission charges.

Damages include OATT penalties.

As this non-performance is not considered an event of default, parties do not have the ability under the Agreement to suspend all transactions. The creditworthiness section provides the performing party with the ability to ensure the payment of damages.

Default (Section 22)

Events of default include the failure to make any payment when due if such failure is not remedied within two business days after written notice; failure to provide clear and good title or to have made accurate representations; institution of bankruptcy proceedings; failure to provide assurances of creditworthiness.

In the event of default, the non-defaulting party may terminate immediately all WSPP transactions between the parties so long as it exercises this right within 30 days or longer if the parties agree to a different term (no limit for bankruptcy). Upon termination, liquidate as soon as practicable all Service Schedule B and C transactions. Set-off rights for all WSPP transactions.

Present value of transactions out to the date of termination will be estimated to determine the liquidation amounts. Non-defaulting party may pay over the life of the contracts, not required to pay within 3 Business Days.

Revenues based on expected market prices will result in liquidation amounts.

Payment (Section 9)

Unless otherwise agreed, payment is due on the 20th day of the invoicing month of the 10th day after receipt of the bill whichever is later.

Interest for late payment of 1 percent per month unless otherwise agreed. [Likely will be changed soon to 200 basis points above prime.]

Pay full amount in the event of a dispute. [Considering allowing payment of disputed amounts only if amounts are secured.]

Two years to dispute and audit bills.

Creditworthiness (Section 27)

If party has a reasonable basis for questioning the other party's creditworthiness, financial responsibility, or performance viability, it may demand reasonable assurances.

Reasonable assurances include Letter of Credit, cash prepayment, posting of other acceptable collateral, a guarantee agreement, or some other mutually agreeable method.

Level of assurances limited to what the performing party could reasonably expect to receive in damages.

Agreement creates a "Safe Harbor" list of events which would allow questioning of party's performance including: knowledge that the second party or its guarantor are failing to perform or defaulting under other contracts; the second party has exceeded credit or trading limits; debt is downgraded below investment grade or a below investment grade debt is downgraded further; substantial changes in market prices which materially and adversely affect a party's ability to perform.

Event of Default if fail to provide reasonable assurances within three business days.

WSPP Homepage contains two forms of collateral/security agreements developed by membership. Credit is an issue that members address on a bilateral basis with counterparties.

Netting (Section 28)

Netting of payments for all WSPP transactions is not required but is allowed. Certain public entities had legal problems with mandatory netting.

Exhibit A is the WSPP netting agreement. Members can sign Exhibit A to the Agreement and will be included on netting list. If two members on that list are the parties to the transaction, then the parties are obligated to net all WSPP transactions between them. Over 100 members are listed. Many members also have separate netting agreements with counterparties which cover non-WSPP transactions and may include other commodities.

Taxes (Section 29)

Seller is liable for taxes to the delivery point.

Purchaser is liable for taxes from the delivery point.

For long term transactions, parties may negotiate different allocations of risk for taxes.

Confidentiality (Section 30)

Terms of transactions will be confidential unless disclosure is required by law; necessary to be disclosed because of litigation; permitted by consent of the parties; necessary because of regulatory filings or requirements; required to comply with NERC, et al; or necessary to obtain transmission service.

Performance, Title, and Warranties (Section 33)

Seller delivers to delivery point(s) in accordance with WSPP Agreement and Confirmation Agreement.

Purchaser receives at the delivery point(s) in accordance with WSPP Agreement and Confirmation Agreement.

Title to and risk of loss passes to purchaser at the delivery point.

Seller warrants good title but disclaims other warranties including any warranty of merchantability or fitness for a particular purpose.

Mediation and Dispute Resolution (Section 34)

Before binding dispute resolution or any other form resolving disputes, parties must proceed to mediation.

List of mediators on homepage. Parties also may use WSPP OC Chair or General Counsel. Parties also may designate other mediators.

After mediation, binding dispute resolution under WSPP Agreement is required for disputes involving calculation of damages or liquidation amounts.

List of arbitrators on homepage. Parties may designate other arbitrators.

Procedures are Exhibit D to the WSPP Agreement.

WSPP mediation has been used successfully for economical and quick resolution of disputes.

Forward Contracts Exception (Section 35)

Included for bankruptcy set-off purposes.

Trade Option Exception (Section 36)

Included to make clear that the physical options under the WSPP Agreement are exempted from CFTC regulation.

Representations and Warranties (Section 37)

Each party represents that it has the necessary authority to enter into the agreements.

Each party represents that it is solvent. Continuing representation of solvency. As noted before, a breach of this representation would allow a party to declare a default and suspend transactions with a party.

PROCESS FOR DEVELOPMENT OF CONTRACT CHANGES

Contracting Committee made up of any members that choose to participate (generally 40-70 members including marketers, utilities, and customers) develop changes.

Changes then must be approved by Operating and Executive Committees by 90 percent vote and then filed with FERC. These governance procedures have been filed and approved by the FERC.

Successful in achieving consensus in past. Structure requires compromise.

Once changes are accepted by FERC, they become part of the WSPP Agreement and there is no need to renegotiate individual agreements with a multitude of parties. WSPP Agreement is updated twice each year.

No one party or group controls.

REGULATORY ISSUES

The WSPP Agreement is a FERC filed rate schedule. Members can transact under it without filing their own tariffs or receiving any FERC approvals. Any changes to the Agreement are filed with FERC thereby receiving FERC's blessing.

- Simple to use, minimal regulatory issues.
- Having the agreement on file and accepted by FERC aids enforceability and limits antitrust concerns arising from horizontal competitors negotiating terms to be applied industry-wide.

COST

One time \$25k fee.

No additional fees will be assessed for at least five years.

Can save money by avoiding negotiations on master agreements with parties.

WSPP Homepage

www.wspp.org

Contains all WSPP documents, lists of members, scheduling and billing contacts, notices of meetings, pricing reports, member or third party notices, regulatory and judicial updates, and also could contain offers to buy and sell though there is little interest at this time. The homepage also contains a new page showing recent regulatory actions relating to California and a page showing additional products being used by parties today.

EEI/WSPP COMPARISON

Basic commercial terms are similar in most respects. Even some apparent differences may not be differences because of flexibility built into WSPP Agreement and the cover sheet options in the EEI document.

Even when basic terms are similar words differ somewhat. WSPP is somewhat simpler. EEI more legalistic. Due to genesis. WSPP developed largely with system operators and traders; lawyers did not drive process.

STRUCTURAL AND PROCESS

Major differences are structural and process. The WSPP Agreement is a standardized contract (albeit one that can be tailored) that can be used for transactions among the over 250 members without any further negotiations other than on transaction specific terms such as price, quantity, etc. For most transactions, the WSPP Agreement is used without modification. You simply join and begin using the agreement with any other member. The EEI Agreement is a form master agreement between two parties (though it was developed with the intent that many parties would adopt it). As a result, parties using it may have many different versions of the agreement negotiated with differing counter-parties. Extensive negotiations often were involved in putting a master in place.

The WSPP also is a not-for-profit corporation with its own committee structure with the committees made up of its diverse membership. There are FERC approved voting rules and any changes are filed with FERC. However, once the WSPP Agreement is changed, the change applies to

all new transactions without the need to renegotiate agreements with counter-parties.

EEI relies on a detailed cover sheet. WSPP Agreement may be revised in a similar fashion through a master confirmation between the parties.

PRODUCTS

The EEI Agreement contains more product definitions than the WSPP Agreement. The WSPP Agreement contains the three basic products that have been traded for many years: firm, economy, and unit. However, because parties have the flexibility to trade other products under the WSPP Agreement and have done so, this is not a significant difference. In addition, the WSPP Agreement also contains reach through language allowing products from other Agreements to be used.

FORCE MAJEURE

In large part similar with the following differences:

EEI requires that the events or circumstances not be foreseeable. WSPP Agreement does not.

The WSPP Agreement contains a typical list of force majeure events. The EEI Agreement does not.

EEI expressly excludes force majeure based on (i) loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product; (iii) loss or failure to Seller's supply; or (iv) Seller's ability to sell Product at a price greater than the contract price.

WSPP Agreement explicitly excludes: (i) the price of electricity faced by Seller or (ii) Purchaser's inability due to price to use or resell the power. **[Concern on including loss or failure of supply as it would override the effect of typical force**

majeure events; also taken care of by obligation to exercise due diligence to find replacement supplies.]

The WSPP Agreement contains an explicit provision describing when force majeure applies to transmission interruptions: (i) interruption of a designated firm path; or (ii) interruption of firm transmission and the power cannot otherwise make it to the delivery point. EEI does not address with the same specificity. EEI recognizes that force majeure may exist if firm transmission is curtailed due to a force majeure type event under a transmission tariff, provided that there also is “a showing of other facts and circumstances which in the aggregate with such factors establish” that a force majeure event has occurred. **[WSPP members wanted the ability to designate a specific transmission path and to consider other transmission curtailments as force majeure events if the power simply cannot be delivered.]**

CREDIT

Neither document comprehensively addresses credit. Both recognize that the key credit issues; i.e. collateral, need to be addressed between the two parties. EEI contains some cover sheet elections that largely address information sharing. WSPP members do that on a bilateral basis. One difference is that the EEI Agreement requires parties to grant the other party a security interest in collateral and proceeds. WSPP Agreement currently does not. Question as to the enforceability of the EEI provision and how it work without a collateral agreement.

On credit, another difference is that the WSPP Agreement contains a provision limiting the amount of the credit assurance to an amount which would be computed under the damages provision. The EEI agreement does not contain a similar provision. **[Added to the WSPP Agreement to restrain unreasonable demands]**

Finally, the WSPP Agreement contains an explicit, and non-inclusive list, of events which would trigger a demand for reasonable assurances of payment. **[To limit issues.]** The EEI Agreement does not contain similar language.

PAYMENT AND NETTING

Under WSPP, disputing party pays even disputed amounts subject to refund. EEI only requires payment of non-disputed amounts. **[WSPP language included at least in part to protect seller from buyer's bankruptcy by having the seller hold the dollars.]**

EEI Agreement requires that the parties net payment. Applies to the two parties. The WSPP Agreement only requires that parties who are listed on the WSPP Homepage (currently over 100) net. **[Left flexible as certain members did not want to net.]**

Under both documents parties may enter into umbrella netting agreements covering all transactions but such agreements would need to be separately negotiated.

DEFAULT AND TERMINATION

1. **Events of Default:** Largely similar events of default except that EEI Agreement includes the failure to perform any material covenant or obligation while the WSPP Agreement includes failure to provide clear and good title or to have made accurate representations and warranties. **[WSPP provision limited to those items in the contract which members considered material in order to limit discretion of party to take draconian step of declaring a default.]**
2. **Termination:** WSPP - Terminate upon notice through 30-days unless extended (bankruptcy-no 30 day limit).

EEI – More general limitation on time.

3. **Liquidation Calculation:** WSPP - More detailed calculation method for calculating present value of Gains and Losses by reference to market price.

EEI - More general language as to calculation method. EEI also language also allows costs relating to brokerage fees, commissions, and

other similar third party transaction costs and expenses.

4. Suspension-EEI allows suspension without termination in the event of default. WSPP does not given concerns regarding gaming.
5. Payment time by non-defaulting party-WSPP Agreement allows non-defaulting party to pay termination payment over the life of the contract. EEI does not.

CONFIRMATION

Somewhat different confirmation times; 5 days versus 3 days. WSPP Agreement contains limits on what can be agreed to orally and for oral agreements requires a recording. EEI does not contain such limitations.

DAMAGES FOR NON-PERFORMANCE

Both provisions provide for similar calculations of “cover” damages; e.g. the increased cost of entering a new contract including net transmission costs.

EEI contract; however, may allow recovery of attorney’s costs or perhaps other administrative costs.

Limitations on other damages are basically the same; i.e. no punitive or consequential.

WSPP Agreement recovers OATT penalties.

REPS AND WARRANTIES

One key difference is that the WSPP Agreement requires a continuing representation of solvency. If this representation is not correct, then it is an event of default.

Another difference is that the EEI Agreement, unlike the WSPP Agreement, requires a representation of no threatened litigation which could materially affect performance. **[Not included in WSPP Agreement because of problems with traders knowing of threatened litigation and enforceability.]**

MEDIATION AND ARBITRATION

The WSPP has its own mediation and arbitration process set up so that disputes can be resolved more quickly, at less cost, by people involved in the field. The EEI contract does not contain arbitration and mediation procedures.

GOVERNING LAW

EEI - NY

WSPP - Utah (but may be changed by the parties)

[WSPP chose Utah in part because the WSPP is incorporated in Utah and utilizing Utah law establishes a sufficient nexus (we hope) to prevent a state court from applying another state's law. Also, the WSCC is incorporated in Utah.]