

EEI/WSPP STANDARDIZED MASTER POWER CONTRACTS COMPARISON CHART

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
Article 2: Transaction Terms & Conditions		
<p><u>Transactions</u> 2.1</p> <p>Paragraph 2.1 of the EEI states that a Transaction between the Parties may be done either orally or through written means. This Paragraph also says that each Party will not contest or assert any defense pertaining to the validity or enforcement of the Transaction made pursuant to the Master Agreement based (i) on any law requiring agreements to be made in writing or to be signed by the parties or (ii) on any lack of authority by a Party or employee of the Party to enter into a Transaction.</p>	<p><u>Oral Agreements</u> 32.1, 32.2</p> <p>Section 32.2 of the WSPP says that a Party may not contest the validity or enforcement of any agreement to the terms concerning a specific transaction(s) because such terms fail to comply with the requirements of any statute that agreements be written or signed.</p>	<p>Section 2.1 of the EEI and Section 32.2 of the WSPP prevent each Party from contesting the validity or enforcement of any transaction or agreement, made under the Agreement, due to a Party’s lack of authority or law.</p> <p>However, this corresponding Section of the WSPP does not appear to stop a Party from contesting or raising a defense regarding the validity of an agreement based on the lack of authority of a Party or its employee(s) to enter into such a transaction.</p>
<p><u>Governing Terms</u> 2.2</p> <p>Paragraph 2.2 of the EEI states each Transaction between the Parties shall be governed by the Master Agreement (unless otherwise agreed). This Paragraph also states the Master Agreement (with schedules, exhibits, supplements), Party A Tariff, Party B Tariff, designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall form a single integrated agreement. If the Master Agreement terms conflict with terms of the Transaction, then the Transaction terms control.</p>	<p><u>Transaction Specific Terms</u> 32.2, 32.6, 35</p> <p>Like Paragraph 2.2 of the EEI, which contains a sweeping statement that the Master Agreement governs the transaction between the Parties, Section 2 of the WSPP says that the Agreement (along with any applicable Confirmation Agreement) sets forth the terms and conditions to implement services (such as economy energy transactions, unit commitment service, firm system capacity/energy sales or exchanges) within any applicable rate ceilings (identified in the Service Schedule).</p>	<p>Similar to Paragraph 2.2 of the EEI, which lists a variety of acts that form a single agreement, Section 35 of the WSPP states that all of the Parties transactions, along with the Agreement and related Confirmation Agreement(s) form a single, integrated agreement.</p> <p>Furthermore, Section 32.3 of the WSPP sets out what documents will prevail in the case of an inconsistency, much like Section 2.2 of the EEI.</p>

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<p><u>Confirmation</u> 2.3</p> <p>Paragraph 2.3 of the EEI allows for either Party to confirm a Transaction with the other party by sending such Confirmation via facsimile. The Seller may send Confirmation within three (3) Business Days after the transaction is entered into. The Buyer may object to any term(s) in the Confirmation but must do so by notifying the Seller in writing within two (2) Business Days after receipt of the Confirmation. If the Buyer fails to object within the specified time period, the terms in the Confirmation are deemed accepted.</p> <p>In the EEI, if the Seller does not send a Confirmation within 3 Business Days of the transaction, the Buyer then has the option of sending its own Confirmation. The Seller then has two (2) Business Days to object or the Confirmation terms are deemed accepted.</p> <p>If both Seller and Buyer send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, the Seller's Confirmation is the controlling Confirmation and deemed accepted unless (i) the Seller's Confirmation was sent more than three (3) Business Days after the transaction was entered into and (ii) the Buyer's Confirmation was sent prior to Seller's Confirmation. If these elements are met, then Buyer's Confirmation controls the Transaction and is deemed accepted. Failure to send, return or object to a Confirmation does not invalidate the Transaction.</p>	<p><u>Transaction Specific Terms</u> 32.1</p> <p>The WSPP allows for a Confirmation Agreement, which sets forth terms that are in addition to, substitute, or modify the terms in the Agreement. The Confirmation Agreement may be made in writing or by oral conversation that is electronically recorded.</p> <p>Section 32.1 of the WSPP allows for a Seller (either upon the Purchaser's request or at the election of the Seller) to provide written confirmation within five (5) Business Days. Section 32.1 also allows for a response to a confirmation to be made within five (5) Business Days.</p>	<p>The EEI and the WSPP permit either Party to confirm a Transaction.</p> <p>Section 32.1 of the WSPP requires written confirmation for all transaction of one week or more whereas the EEI does not appear to require a Confirmation under any circumstances. Under the EEI, the Seller must send a Confirmation within three (3) Business Days, and under Paragraph 2.3 of the EEI, a buyer may object to any term in the Confirmation by doing so in two (2) Business Days after receipt of Confirmation. In contrast, the WSPP permits a Party to provide the other Party written confirmation within five (5) Business Days upon the Purchaser's request or Seller's election, and grants the Purchaser five (5) Business Days from the date of receipt of the Confirmation to respond. Similar to the EEI, if the Purchaser fails to make a timely response to the Confirmation, then the Confirmation is deemed accepted.</p> <p>Like the EEI, the WSPP allows the Buyer to send its own Confirmation if the Seller does not send one within its allotted time period. The WSPP then gives the Seller five (5) Business Days to respond to the Buyer's Confirmation whereas the EEI only gives the Seller two (2) days to respond. Like the EEI, if the Seller fails to respond to the Confirmation, then the Confirmation is deemed accepted. Failure of either Party to provide written confirmation shall not invalidate any oral agreement of the Parties (except those prohibited by Section 32.5 of the WSPP).</p>

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<p><u>Additional Confirmation Terms</u> 2.4</p> <p>Paragraph 2.4 of the EEI states if the Parties elect on the Cover Sheet Agreement to make 2.4 applicable to the Master Agreement, then when a Confirmation contains provisions, other than provisions that relate to commercial terms of the Transaction (e.g., price or special transmission conditions), that modify or supplement the general terms and conditions of the Master Agreement, such provisions are not deemed accepted (pursuant to 2.3) unless agreed to orally or in writing by the Parties.</p>	<p><u>Transaction Specific Terms</u> 32.5</p> <p>Section 32.5 of the WSPP says that when a Confirmation Agreement contains Non-Standard Confirmation Provisions that are provisions other than those set forth in Exhibit C, paragraphs (a)-(l) (these paragraphs identify the Parties, period of delivery, schedule, type of service, contract quantity, contract or strike price), then those Non-Standard Confirmation Provision shall not be deemed accepted (pursuant to 32.1) unless agreed to by a recorded oral agreement (this is only available for transactions of less than one week) or in writing by the Parties.</p>	<p>Both the EEI and WSPP appear to limit a Party’s ability to change or add non-standard or non-commercial terms of the model Agreements to the particular Transaction through a Confirmation without an oral or written agreement from the other Party. The EEI only makes this provision applicable if the Parties choose so in the Cover Sheet whereas the WSPP does not appear to allow the Parties to elect whether to make this provision applicable to their Transaction.</p>
<p><u>Recording</u> 2.5</p> <p>Paragraph 2.5 of the EEI states that unless a Party expressly objects to a Recording at the beginning of a telephone conversation, each Party consent to the making of a tape or electronic recording of telephone conversations between the Parties. These recordings may be submitted in evidence in actions related to the Agreement. In the event a Confirmation is not fully executed (or deemed accepted) by the Parties, then the Recording, and the terms and conditions contained therein, are the controlling evidence for the Parties’ agreement (so long as the evidence is admissible). However, if a Confirmation is fully executed (or deemed accepted), then the Confirmation shall control if conflicting with terms of a Recording or with the</p>	<p><u>Oral Agreements</u> 32.2</p> <p>Under Section 32.2 of the WSPP, each Party consents to the recording by the other Party, without any further notice, of telephone conversations between the Parties regarding agreements or terms of a specific transaction. The WSPP also states that all recordings pursuant to 32.2 may be introduced and admitted into evidence in order to prove agreement to terms; this provision further states that the Parties expressly waive any objection to the introduction or admission of such evidence.</p>	<p>Unlike the EEI, which allows a Party to object to a Recording before the telephone conversation begins, the WSPP does not indicate that a Party may object to a Recording. The WSPP states that all recordings pursuant to 32.2 may be introduced and admitted into evidence in order to prove agreement to terms; this provision further states that the Parties expressly waive any objection to the introduction or admission of such evidence. The EEI differs as it says that recordings are controlling in situations where a Confirmation is not fully executed if the recordings are admissible. Therefore, the WSPP appears to waive any evidentiary problems that may arise in introducing Recording evidence while the EEI still subjects the evidence to evidentiary rules. Additionally, unlike the EEI, which discusses the weight of Recording evidence for Confirmations that are both fully executed and incomplete, the WSPP does not reference Confirmation disputes and under what situations the Recording</p>

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<p>Master Agreement.</p>		<p>is controlling evidence.</p> <p>The EEI has a more broad consent to recording provision that may afford additional protection in “dual consent” states; whereas, the WSPP does include consent between the parties, but does not require the obtaining of consent from employees, therefore potentially opening the door to civil claims and criminal charges.</p>
<p>Article 3: Obligations & Deliveries</p>		
<p><u>Seller’s & Buyer’s Obligations</u> 3.1</p> <p>Paragraph 3.1 of the EEI identifies the obligations of both the seller and buyer. Under this provision, the seller shall sell and deliver, and the buyer shall purchase and receive, the Quantity of the Product at the Delivery Point and the buyer shall pay the seller the Contract price. The seller is responsible for any costs related to the Product or its delivery up to the Delivery Point. The buyer becomes responsible for such costs at and from the Delivery Point. This provision also identifies the obligations under an Option (which is the right but not the obligation to purchase or sell a Product) and states that neither seller nor buyer must comply with the obligations of selling/delivering and purchasing/receiving with respect to Options unless the buyer exercises its Option.</p>	<p><u>Performance</u> 33.1, 33.2</p> <p>Similar to the EEI’s requirements of a seller selling and delivering a Product at the Delivery Point, Section 33.1.1 of the WSPP states that a seller shall deliver to the delivery point as agreed to in the applicable Confirmation Agreement and shall sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation Agreement. Likewise, mirroring the EEI’s requirements of a buyer purchasing and receiving for a Product at the Delivery Point, Section 33.1.2 of the WSPP says that the purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation Agreement, at the delivery point and purchase from the seller in accordance with the terms of the Agreement and such Confirmation Agreement.</p>	<p>The EEI is more specific in terms of the buyer’s obligations at the Delivery Point by requiring payment of the Contract Price while the WSPP does not reference payment but only receipt and purchase. Furthermore, the EEI details which party is responsible for charges and costs related to the Product and its delivery pre- and post-delivery while the WSPP does not address this issue. The EEI also discusses the Parties obligations under Options, while the WSPP Section does not address this issue.</p>
<p><u>Transmission and Scheduling</u> 3.2</p> <p>Section 3.2 of the EEI divides the responsibilities of scheduling transmission at the Delivery Point, thereby requiring the Seller to schedule</p>	<p><u>Performance</u> 33.2</p> <p>Section 33.2 of the WSPP provides that title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser</p>	<p>The EEI expressly divides the scheduling of transmission responsibility; whereas the WSPP merely splits title to and risk of loss at the Delivery Point, thus implying the same division.</p>

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<p>transmissions up to the Delivery Point and Buyer to schedule transmissions at and upon delivery to the Delivery Point.</p>	<p>at the delivery point agreed to in the Confirmation Agreement.</p>	
<p><u>Force Majeure</u> 3.3, 1.23</p> <p>Paragraph 3.3 of the EEI excuses a Party from performing its obligations under a Transaction, unless the terms of the Product specify otherwise, when the Party is prevented from performing due to a Force Majeure event. If a Force Majeure event occurs, the Claiming Party must give notice and details of the event to the other party as soon as practicable. However, the Claiming Party is not excused from making payments then due or becoming due for performance made prior to the Force Majeure. The provision requires the Claiming Party to remedy the Force Majeure with all reasonable speed. When a Claiming Party is excused by Force Majeure, the non-Claiming Party is also excused from performing its obligations to the Claiming Party for those duties related to the Force Majeure.</p> <p>Paragraph 1.23 of the EEI defines and identifies Force Majeure events. A Force Majeure is an event or circumstance that prevents one Party from performing its obligations under a Transaction(s). For a party to be excused by Force Majeure, the event can not have been anticipated at the date of entering into the Transaction and was not within the reasonable control of, or the result of the negligence of, the Claiming Party. Finally, the Claiming Party, though due diligence, must be unable to overcome or avoid the event.</p>	<p><u>Uncontrollable Forces</u> 10</p> <p>The WSPP has an Uncontrollable Forces provision in Section 10. The WSPP states that no Party shall be considered in breach of this Agreement or any applicable Confirmation Agreement to the extent that a failure to perform its obligations is due to an Uncontrollable Force. The WSPP defines an Uncontrollable Force to be an event or circumstance that prevents a Party from performing its obligations under a Transaction(s), where the event is not within the reasonable control of, or the result of the negligence of the claiming Party, and claiming Party is unable to avoid or overcome the event through due diligence.</p> <p>The WSPP details the type of events that constitute Uncontrollable Forces. Such Forces include but are not restricted to: flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.</p>	<p>Both agreements have similar elements for Force Majeure but the EEI also requires that the interfering event not be anticipated at the date the Transaction was formed.</p> <p>Unlike the EEI, which does not specify any Force Majeure events, the WSPP provides a list of events. The WSPP identifies two situations that are not considered Uncontrollable Forces: (i) the price of electricity faced by the Seller; or (ii) the Purchaser’s inability due to price to resell the power purchased. These two provisions within the WSPP are more general than the exclusions from the Force Majeure definition contained in the EEI. Regarding the WSPP provision on price of electricity faced by the Seller, the EEI does not allow a Seller to claim Force Majeure for situations that would produce an efficient breach (ie - the ability to sell the Product at a price greater than the Contract Price). The EEI has a similar provision to the WSPP clause that does not include a Purchaser’s inability to use or resell the power purchased due to price within an Uncontrollable Event, but the EEI is more specific in that it excludes from Force Majeure the Buyer’s economic inability to use or resell the Product. The EEI has two other situations that are not in the WSPP: the loss of Buyer’s markets and the loss or failure of Seller’s supply.</p> <p>Like the EEI, which requires the Claiming Party to give notice of the Force Majeure event as soon as practically possible and to remedy the situation with reasonable speed, the WSPP requires the claiming Party to give prompt notice of the event and to exercise due diligence in removing the Uncontrollable Force within a reasonable time period.</p>

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<p>The EI does not identify specific events for Force Majeure. However, the EI does say that Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product as a price greater than the Contract Price. The EI also says that a Party may not claim a Force Majeure based on the curtailment by a Transmission Provider unless certain requirements are met. The provision also states that the applicability of Force Majeure to the Transaction is governed by the terms of the Product and Related Definitions contained in Schedule P.</p>		
<p>Article 4: Remedies for Failure to Deliver/Receive</p>		
<p><u>Seller Failure</u> 4.1</p> <p>Paragraph 4.1 of the EI described the remedies available when a Seller fails to schedule and/or deliver all or part of the Product and such failure is not excused by the terms of the Product or by the Buyer’s failure to perform. If a Seller fails to schedule/deliver the Product in accordance with the Transaction, the Seller is liable to pay the Buyer the positive difference between the Contract Price and the Buyer’s Replacement Price. This payment is due on the normal payment date or, if the Parties selected “Accelerated Payment of Damages” on the Cover Sheet, within five Business Days of receiving the invoice from the Buyer. The invoice shall include a written statement reasonably explaining the amount due.</p>	<p><u>Liability and Damages</u> 21.3(a)(2)</p> <p>Section 21.3(a)(2) of the WSPP provides that if the amount the Seller scheduled or delivered in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount, if any, by which the Replacement Price differed from the Contract Price (Replacement Price – Contract Price) and the amount by which the quantity delivered by the Seller was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if</p>	<p>The EI and WSPP provisions substantially reach the same result. However, the EI allows for such damages to be “Accelerated Damages” if so elected on the Cover Sheet, whereas the WSPP provides that such damages will be paid within the Billing Period.</p>

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<p>Under Section 1.51 of the EEI, “Replacement Price” includes (i) costs reasonably incurred by Buyer in Purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability.</p>	<p>any, in transmission charge(s) achieved as a result of the reduction in the Seller’s schedule or delivery. If the total amounts for all hours calculated under this paragraph are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).</p> <p>Section 21.3 further provides for mitigation of damages and dispute resolution.</p>	
<p><u>Buyer Failure</u> <u>Definition of Sales Price</u> 4.2</p> <p>Paragraph 4.2 of the EEI described the remedies available when a Buyer fails to schedule and/or receive all or part of the Product and such failure is not excused by the terms of the Product or by the Seller’s failure to perform. If a Buyer fails to schedule/receive the Product in accordance with the Transaction, the Buyer is liable to pay the Seller the positive difference between the Sales Price and the Contract Price. This payment is due on the normal payment date or, if the Parties selected “Accelerated Payment of Damages” on the Cover Sheet, within five Business Days of receiving the invoice from the Seller. The invoice shall include a written statement reasonably explaining the amount due.</p> <p>“Sales Price” under Section 1.53 of the EEI includes any (i) costs reasonably incurred by</p>	<p><u>Liability and Damages</u> 21.3(a)(1)</p> <p>Section 21.3(a)(1) of the WSPP provides that if the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the Product of the amount, if any, by which the Contract Price differed from the Sales Price (Contract Price – Sales Price) and the amount by which the quantity received by the Purchaser was less than the hourly contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Sales Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser’s schedule or receipt of electric energy.</p>	<p>The EEI and WSPP provisions substantially reach the same result. However, the EEI allows for such damages to be “Accelerated Damages” if so elected on the Cover Sheet, whereas the WSPP provides that such damages will be paid within the Billing Period.</p>

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<p>Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability.</p>	<p>Section 21.3 further provides for mitigation of damages and dispute resolution.</p>	
Article 5: Events of Default; Remedies		
<p><u>Events of Default</u> 5.1</p> <p><u>Failure to make Payment</u></p> <p>EEI 5.1(a) - Includes a three (3) Business Day cure period after receipt of written notice for failure to make any payment when due.</p>	<p><u>Events of Default</u> 22.1</p> <p><u>Failure to make Payment</u></p> <p>WSPP 22.1(a) - Includes a two (2) Business Day cure period after receipt of written notice for failure to make any payment when due. Written notice is to be provided by the Non-Defaulting Party and sent by facsimile or overnight delivery.</p>	<p>Generally, the EEI permits a three (3) Business Day cure period after receipt of written notice should an Event of Default occur; whereas, the WSPP permits a two (2) to five (5) Business Day cure period for Events of Default.</p> <p>EEI - 3 day cure period WSPP - 2 day cure period</p>

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<p><u>Representation or Warranty</u></p> <p>EEI 5.1(b) - Default occurs when a Party's representation or warranty is materially false or misleading when made or when deemed made or repeated. No cure period.</p>	<p><u>Representation or Warranty</u></p> <p>WSPP 22.1(b) - Unlike the EEI which does not indicate a cure period for default of representation or warranty, the WSPP provides for a five (5) Business Day cure period after receipt of written notice for failure to have made accurate representations and warranties or to provide clear and good title.</p>	<p>EEI - no cure period WSPP - 5 day cure period</p>
<p><u>Breach of Covenant</u></p> <p>EEI 5.1(c) - Includes a three (3) day cure period after receipt of written notice for failure to perform any material covenant or obligation under the agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four).</p>	<p><u>Breach of Covenant</u></p> <p>The WSPP has no corresponding provision.</p>	<p>WSPP participants would require adequate assurance of performance in the event of a covenant breach, but would be subject to the 3 day cure period under Section 27.</p>
<p><u>Bankruptcy</u></p> <p>EEI 5.1(d) – Default occurs if a Party becomes bankrupt.</p>	<p><u>Bankruptcy</u></p> <p>WSPP 22.1(c) - Default occurs if a Party is subject to a bankruptcy or insolvency proceeding that affects the creditor's rights</p>	<p>Both provisions are very similar except that the EEI includes the general inability to pay debts as they become due; whereas, the WSPP only applies to proceedings.</p>

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<p>“Bankrupt” under Section 1.3 of the EEI means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.</p>	<p>or a petition is presented or instituted for a Party’s winding-up or liquidation.</p>	
<p><u>Creditworthiness</u></p> <p>EEI 5.1(e) - A default occurs upon a Party’s failure to satisfy the creditworthiness/collateral requirements agreed to under Article Eight.</p>	<p><u>Creditworthiness</u></p> <p>WSPP 22.1(d) - Unlike the EEI, where a default occurs when a Party does not perform any obligation or material covenant, the WSPP finds a default when a Party fails to provide adequate assurances of its ability to perform all of its outstanding obligations.</p>	<p>The key difference is in the underlying creditworthiness provisions discussed below.</p>
<p><u>Merger without Assumption</u></p> <p>EEI 5.1(f) - Includes if such Party consolidates, amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity (“Merger Act”) and, if at the time of the Merger Act, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement.</p>	<p><u>Merger without Assumption:</u></p> <p>WSPP - Does not have a corresponding section to the EEI.</p>	<p>WSPP participants would require adequate assurance of performance in the event of a covenant breach, but would be subject to the 3 day cure period under Section 27.</p>
<p><u>Cross Default</u></p>	<p><u>Cross Default</u></p>	

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<p>EEI 5.1(g) – Default occurs when the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party relating to the indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount.</p>	<p>WSPP - Does not have a corresponding section to the EEI.</p>	<p>WSPP participants would require adequate assurance of performance in the event of a covenant breach, but would be subject to the 3 day cure period under Section 27.</p>
<p><u>Representation or Warranty by Guarantor:</u></p> <p>EEI 5.1(h)(i) - Default occurs when a Party’s Guarantor’s representation or warranty is materially false or misleading when made or when deemed made or repeated.</p>	<p><u>Representation or Warranty by Guarantor:</u></p> <p>WSPP 22.1(e)(i) - Same as EEI.</p>	<p>The EEI and the WSPP are substantially similar.</p>
<p><u>Breach of Covenant</u></p> <p>EEI 5.1(h)(ii) - Includes a three (3) day cure period after receipt of written notice for failure to make any payment required or to perform any material covenant or obligation in any guaranty made in connection with the Agreement</p>	<p><u>Breach of Covenant</u></p> <p>WSPP 22.1(e)(ii) - Same as EEI.</p>	<p>WSPP participants would require adequate assurance of performance in the event of a covenant breach, but would be subject to the 3 day cure period under Section 27.</p>
<p><u>Bankruptcy</u></p> <p>EEI 5.1(h)(iii) - Default occurs if a Party’s Guarantor becomes bankrupt.</p>	<p><u>Bankruptcy</u></p> <p>WSPP 22.1(e)(iii) - Default occurs if a Party’s Guarantor is subject to a bankruptcy or insolvency proceeding that affects the</p>	<p>Both provisions are very similar except that the EEI includes the general inability to pay debts as they become due; whereas, the WSPP only applies to proceedings.</p>

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	creditor's rights or a petition is presented or instituted for a Guarantor's winding-up or liquidation.	
<p><u>Failure of Guaranty to be in Full Force and Effect</u></p> <p>EEI 5.1(h)(iv) - A default occurs when a Guarantor's guaranty fails to be in full force and effect prior to satisfaction of a Party's obligations under each Transaction to which such guaranty applies; this provision can be bypassed through written consent of the other Party.</p>	<p><u>Failure of Guaranty to be in Full Force and Effect</u></p> <p>WSPP 22.1(e)(iv) - Same as EEI.</p>	<p>The EEI and the WSPP are substantially similar.</p>
<p><u>Repudiating the Guaranty</u></p> <p>EEI 5.1 (v) - A default occurs if a Guarantor repudiates, disaffirms, disclaims, rejects, or challenges the validity of any guaranty.</p>	<p><u>Repudiating the Guaranty</u></p> <p>WSPP 22.1(e)(v) - Same as EEI.</p>	<p>The EEI and the WSPP are substantially similar.</p>
<p><u>Declaration of an Early Termination Date & Calculation of Settlement Amounts</u></p> <p>5.2</p> <p>Paragraph 5.2 of the EEI allows for, in the event of a continuing default, a Non-Defaulting Party to designate a day as an early termination date whereby all amounts owing between the Parties is accelerated and to liquidate and terminate all Transactions (but not less than all) between the Parties. The date chosen by the Non-Defaulting Party can be no early than the date notice is given (e.g., effective) and no later than 20 days after such notice is given. It is the Non-Defaulting Party's responsibility to calculate (in a commercially reasonable manner) a Settlement Amount (the Losses or Gains, and Costs associated with a Terminated Transaction) for each Terminated Transaction as of the early</p>	<p><u>Default of Transactions Under this Agreement and Confirmations</u></p> <p>22.2</p> <p>The WSPP states that upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as possible except Service Schedule A transactions. So, the WSPP may require that if a Non-Defaulting Party elects to terminate under this provision, it must terminate all transactions except Service Schedule A transactions.</p> <p>The WSPP states that the Termination Payment shall be calculated pursuant to Sections 22.2 and 22.3 (explained below) and shall be the Non-Defaulting Party's exclusive remedy for each terminated transaction from the time the termination</p>	<p>Where the EEI refers to "notice" but does not identify what constitutes notice (e.g., in writing, by phone) and when notice occurs (e.g., receipt by Defaulting Party), the WSPP requires written notice by facsimile or other reasonable means and becomes effective upon receipt. Unlike the EEI, the WSPP does not appear to have a twenty (20) day limit from date of notice for an Early Termination Date. However, the WSPP does require that a Non-Defaulting Party exercise its right of termination within thirty (30) days from the time the Event of Default becomes known (although this time period can be extended by agreement from both Parties) or the right of termination as a remedy for Event of Default is waived (however this thirty (30) day limit does not apply to defaults relating to bankruptcy of a Defaulting Party or Guarantor).</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>termination date. The Non-Defaulting Party may also withhold any payments due to the Defaulting Party and suspend performance.</p>	<p>notice is received (prior to such receipt, the Non-Defaulting Party may resort to any remedies available under Section 21.3 (which detail damages for failure to deliver or receive power/energy) of the Agreement or at law). In addition, like the EEI, which allows a Non-Defaulting Party to withhold payments due the Defaulting Party, the Non-Defaulting Party, upon termination, may do likewise until the Defaulting Party pays the Termination Payment.</p>	
<p><u>Net out of Settlement Amounts</u> 5.3</p> <p>Paragraph 5.3 of the EEI states that the Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount. Settlement Amounts are the Losses or Gains and Costs that a Non-Defaulting Party incurs as a result of the liquidation of a Terminated Transaction. To calculate the single amount, the Non-Defaulting Party nets out all Settlement Amounts due the Defaulting Party, plus, at the Non-Defaulting Party's option, any cash or other security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under the Agreement against all Settlement Amounts due the Non-Defaulting Party, plus any or all amount due to the Non-Defaulting Party under the Agreement. This formula results in a single liquidation amount (the Termination Payment) payable by one Party to the other and is due to the appropriate Party.</p>	<p><u>Default of Transactions</u> 22.3</p> <p>Section 22.3 of the WSPP says that the Non-Defaulting Party shall calculate the Termination Payment. Subsection (c) says that the Non-Defaulting Party shall set off or aggregate the Gains and Losses and Costs. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receiving notice, pay the Termination Payment to the Defaulting Party. The Termination Payment shall include interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party (after any set-off as provided in subsection (d)) shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received. This payment from the Non-Defaulting Party</p>	<p>One noticeable difference between the EEI and WSPP is the time in which the owed payment must be made by the appropriate party. The WSPP says it is due within three (3) Business Days of receipt of notice. Paragraph 5.4 of the EEI says that notice shall be given to the Defaulting Party as soon as practicable after liquidation of the amount owed and by which Party and that the Termination Payment must be made with two (2) Business Days after such notice is effective. Further, the WSPP provides a detailed explanation of how a Non-Defaulting Party is to calculate the Gains and Losses whereas the EEI only defines Gains and Losses to be an amount equal to the present value of the economic benefit (or loss) resulting from the termination of a Terminated Transaction determined in a commercially reasonable manner. Both are fairly similar.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p data-bbox="90 310 611 370"><u>Notice of Payment of Termination Payment</u> 5.4</p> <p data-bbox="90 410 678 773">As previously stated in the analysis for Paragraph 5.3 of the EEI, Paragraph 5.4 says that as soon as practicable after liquidation, the Non-Defaulting Party shall give notice to the Defaulting Party of the Termination Payment (whether due to the Defaulting Party or Owed by the Defaulting Party). The notice shall include a written statement explaining in reasonable detail the calculation amount. The owing Party shall submit the Termination Payment within two (2) Business Days after notice becomes effective.</p>	<p data-bbox="709 204 1224 305">includes interest at the Present Value from the time notice of termination was received until the Defaulting Party receives payment.</p> <p data-bbox="709 310 982 370"><u>Default of Transactions</u> 22.3(c)</p> <p data-bbox="709 410 1224 1179">Section 22.3(c) states the Non-Defaulting Party shall set off or aggregate the Gains and Losses and Costs and notify the Defaulting Party. If the Non-Defaulting Party’s aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party’s aggregate Gains exceeded its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value from the time notice of termination was received until the Defaulting Party received payment.</p>	<p data-bbox="1255 410 2011 511">Unlike the EEI, which requires a written explanation as to calculating the Termination Payment, Section 22.3 of the WSPP does not contain such a requirement.</p>
<p data-bbox="90 1187 625 1247"><u>Disputes w/ Respect to Termination Payment</u> 5.5</p> <p data-bbox="90 1287 667 1445">Paragraph 5.5 of the EEI provides for the procedures a Defaulting Party must follow if it disputes the calculation of the Termination Payment. If the Defaulting Party disagrees with the calculation, it must provide the Non-</p>	<p data-bbox="709 1187 972 1247"><u>Liability and Damages</u> 21.3(d); 22.3(d)(i)</p> <p data-bbox="709 1287 1203 1445">Unlike the EEI, which does not contain a dispute resolution mechanism for settling calculation disputes, Section 22.3(d)(i) of the WSPP provides that if the Defaulting Party disagrees with the calculated</p>	<p data-bbox="1255 1287 2016 1445">Pending resolution to the dispute, the WSPP (like the EEI) requires the Defaulting Party to pay the entire Termination Payment. However, the EEI requires this payment to be made before the Defaulting Party gives notice (within two (2) Business Days of receipt of notice of the Termination Payment</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>Defaulting Party a detailed written explanation of its dispute within two (2) Business Days of receipt of the Termination Payment calculation. Additionally, if the Defaulting Party owed the Termination Payment, then it must first transfer to the Non-Defaulting Party cash, Letter(s) of Credit or other security in an amount equal to the Termination Payment.</p>	<p>Termination Payment, and the Parties cannot otherwise resolve their differences, the dispute shall be submitted to informal dispute resolution as provided under Section 34.1 of the Agreement and thereafter binding dispute resolution as provided under Section 34.2. Section 21.3(d) of the WSPP also provides for damages due to a Party’s failure to deliver or receive electric power or energy in violation of the Agreement or Confirmation Agreement. Similar to Section 22.3(d)(i), Section 21.3(d) allows the Non-Performing Party to dispute calculation of damages under Section 21.3 but requires it to pay the full amount of damages pending resolution of the dispute. This Section also requires use of informal and binding dispute resolution and provides for interest paid to the Non-Performing Party if resolution of the dispute is in their favor.</p>	<p>calculation) to the Non-Defaulting Party. In contrast, the WSPP requires payment of the Termination Payment within three (3) Business Days of receipt of notice. The WSPP also explains that depending on the outcome of the dispute, the Non-Defaulting Party may be required to refund, with interest, any amounts deemed overpaid by the Defaulting Party.</p>
<p><u>Closeout Setoffs</u> 5.6</p> <p>Paragraph 5.6 of the EEI provides the Parties three (3) options for closeout setoffs. Option A says that after calculating the Termination Payment, if the Defaulting Party is owed the Termination Payment, then the Non-Defaulting Party may (i) set off against the Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, etc. between the Parties and/or (ii) to the extent the Transactions are not yet liquidated, the Non-Defaulting Party may withhold the Termination Payment. This remedy is without prejudice and in addition to</p>	<p><u>Liquidation Calculation Options</u> 22.3(c)-(d)</p> <p>Section 22.3(d) of the WSPP states that the Non-Defaulting Party may aggregate or set off any amounts owing between the Parties under the Agreement and Confirmation Agreement against the Termination Payment. The net amount from this calculation shall be paid within three (3) Business Days following the date notice of termination is received. Under the WSPP, if the Non-Defaulting Party owes a Termination Payment to the Defaulting Party, the Non-Defaulting Party may, notwithstanding the three (3) Business</p>	<p>The EEI allows the Parties to choose whether to allow setoff with other contracts outside of the EEI. The WSPP does not.</p>

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<p>any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled.</p> <p>Option B contains the same right and calculation of setoff as Option A, but also allows the Non-Defaulting Party to setoff any amounts due and owing by the Defaulting Party’s Affiliates to the Non-Defaulting Party or any of its Affiliates.</p> <p>Option C says that neither Option A nor B applies.</p>	<p>Day payment rule detailed above, decide to pay the amount owed over the remaining life of the contract(s) being terminated. If such an option is elected, the Non-Defaulting Party must notify the Defaulting Party in writing within three (3) Business Days of the notice to terminate.</p>	
<p><u>Suspension of Performance</u> 5.7</p> <p>Section 5.7 of the EEI allows the Non-Defaulting Party upon an Event of Default or Potential Event of Default to suspend performance under any or all Transactions. If the Non-Defaulting Party chooses to suspend performance, it must provide the Defaulting Party written notice and the suspension shall not continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice given. In addition to suspension, in the Event of Default, the Non-Defaulting Party may exercise any remedy available at law or equity.</p>	<p>The WSPP does not include a corresponding provision.</p>	<p>The WSPP does not appear to contain a suspension provision; therefore, leaving open the possibility that a seller must continue to deliver to a defaulting and non-paying buyer (and thereafter submit a claim for damages that will be unsecured).</p>
Article 6: Payment & Netting		
<p><u>Billing Period</u> 6.1</p> <p>Paragraph 6.1 of the EEI states the standard period for all payment (other than Termination Payments and Accelerated Payment of Damages) under the Agreement is the calendar month. At the end of each month, and as soon as</p>	<p><u>Payments</u> 9.1</p> <p>Section 9.1 of the WSPP contains the same one month calendar cycle for billing as the EEI along with the option to the Parties to agree to a different billing cycle.</p>	<p>Paragraph 6.1 of the EEI and Section 9.1 of the WSPP are substantially similar provisions.</p>

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<p>practicable, each Party will send an invoice to the other indicating the payment obligations (if any) incurred during the preceding month. The Parties can agree otherwise.</p>		
<p><u>Timeliness of Payment</u> 6.2</p> <p>Paragraph 6.2 of the EEI requires payment of invoices on or before the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice. If the applicable due date is not a Business Day, then payment must be made on the next Business Day. The Parties may agree upon a different due date as well as the method of payment. The Agreement’s default provision regarding payment requires payment to be made by electronic funds transfer. Any amounts not paid by the due date will be deemed delinquent and will accrue interest calculated from the due date to but excluding the date the amount is paid in full. The interest rate is the lesser of (i) the per annum rate of interest equal to the prime lending rate as may be from time to time published in <i>The Wall Street Journal</i> under “Money Rates” on such day plus two percent (2%) and (ii) the maximum rate permitted by applicable law.</p>	<p><u>Payments</u> 9.2, 9.3</p> <p>Under Sections 9.2 and 9.3 of the WSPP, the WSPP contains a provision for billing and has some slight variations from the EEI. Like the EEI, the WSPP requires payment of invoices on the twentieth (20th) day of the invoicing month or the tenth (10th) day after receipt of the bill, whichever is later (the EEI does not contain the “whichever is later” language). This provision in the WSPP, unlike the EEI, adds that Premiums (amounts for call or put options) shall be paid within three (3) Business Days of receipt of the invoice.</p>	<p>Regarding sending payment, the EEI allows the Parties to determine their own place of payment in substitution for the default requirement of electronic funds transfer, whereas the WSPP says the Party which payment is due gets to decide the location for payment. Like the EEI, the WSPP states that a payment due date that falls on a non-Business Day is extended to the next Business Day. Also, similar to the EEI, which applies interest on delinquent payments, Section 9.3 of the WSPP applies interest accrued at 1% a month, or the maximum interest rate permitted by law (whichever is less) prorated from the due date to the date of payment. Also, the EEI does not allow for interest to be assessed for the day which payment is made while the WSPP appears to allow interest to be assessed on the date payment is made.</p>
<p><u>Disputes and Adjustments of Invoices</u> 6.3</p> <p>Section 6.3 of the EEI permits a Party, in good faith, to dispute the correctness of, and any adjustment to, any invoice within twelve (12) months of the date the invoice or adjustment was rendered.</p> <p>Unlike the WSPP, which does not address interest payments, the EEI requires, upon</p>	<p><u>Payments</u> 9.4</p> <p>Similar to Section 6.3 of the EEI, Section 9.4 of the WSPP permits a Party to object to the accuracy of an invoice. However, under the WSPP, the Parties must exercise their right to dispute the accuracy of a bill or payment before the end of a two (2) year period from the date on which the first bill was delivered for a specific transaction.</p>	<p>Under both the EEI and the WSPP, any dispute with respect to an invoice is waived unless the other Party is notified during the applicable notification period (twelve (12) months under EEI and twenty-four (24) months under WSPP).</p> <p>In addition, under the EEI, the disputing Party is not required to pay the disputed amount until the dispute or objection is resolved. In contrast, the WSPP expressly states that if any</p>

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<p>resolution of the dispute, that payment is made within two (2) Business Days of the resolution, plus interest accrued from and including the due date but excluding the date paid. Inadvertent overpayments must be returned upon request or deducted from the Party receiving such overpayment from subsequent payments, plus interest from and including the due date but excluding the date paid.</p>		<p>portion of any bill is in dispute, the Parties must remit payment of the entire bill when due.</p>
<p><u>Netting of Payments</u> 6.4</p> <p>The EEI expressly permits a party to net amounts related to damages, interest, and payment or credits.</p>	<p><u>Netting</u> 28.1, 28.2</p> <p>Section 28.1 of the WSPP expressly permits a Party to net monthly payments and obligations under the Agreement. Under Section 28.2, the WSPP provides that the Parties shall execute a netting agreement, attached as an exhibit to the Agreement, which confirms that the Parties’ obligation to net must include the netting of all payments received by the Parties in the same calendar month. Therefore, it is not clear whether all payments received should be interpreted to include amounts related to damages, interest, and payment or credits.</p>	<p>Section 6.4 of the EEI and Sections 28.1 and 28.2 of the WSPP permit the netting of payments.</p> <p>However, the WSPP does not expressly permit a Party to net amounts related to damages, interest, and payment or credits.</p> <p>Note that the general definition of “netting” includes a time component, and such definition may lead to the implication that the WSPP will net amounts due and owing at the same time.</p> <p>Also note that not all members of the WSPP have signed the netting agreement.</p>
<p><u>Payment Obligation Absent Netting</u> 6.5</p> <p>Section 6.5 of the EEI provides that if only one Party owes a debt or obligation to the other during the monthly billing period, including but not limited to any related damage amounts (calculated pursuant to Article 4 above under remedies for failure to deliver/receive), there will be no setting off of payments and the obligated Party shall satisfy its obligation when due.</p>	<p><u>Netting</u> 28.2</p> <p>In contrast, a related, but perhaps not identical provision under Section 28.2 of the WSPP provides that if a Party has indicated its desire to net for a given billable month and then later elects to withdraw its election, then the withdrawing Party must provide thirty (30) days notice on the WSPP Homepage of the change in</p>	<p>The EEI is stating the obvious that is implicit under the WSPP.</p>

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	<p>its election to net and also furnish a withdrawal notice to parties with which it has ongoing transactions. The WSPP provision further provides that any changes in netting status will apply beginning thirty (30) days after notice and will only apply to transactions agreed to beginning on or after the date the change in netting status becomes effective.</p>	
<p><u>Security</u> 6.6</p> <p>Section 6.6 of the EEI provides that unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5 above, (governing events of default and remedies), all amounts netted pursuant to the netting provision in the EEI must not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under the Agreement.</p>	<p>The WSPP does not have a corresponding provision.</p>	<p>The WSPP does not appear to address this concept; thus, allowing for a Party to argue that a payment is satisfied by adequate assurance being held by the other Party. Presumably, adequate assurance would not be considered an amount owed or a payment since the WSPP is more limited in its when netting might apply.</p>
<p><u>Payment for Options</u> 6.7</p> <p>Section 6.7 of the EEI provides that the premium amount for the purchase of an Option must be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Further that provision provides that upon exercise of an Option, payment for the Product underlying such Option will be due in accordance with Section 6.1 governing the Billing Period.</p>	<p>The WSPP does not have a corresponding provision.</p>	<p>The WSPP does not appear to address this concept. Presumably, the WSPP participants address options with confirmations.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p><u>Transaction Netting</u> 6.8</p> <p>The EEI permits Transaction netting. Specifically, Section 6.8 provides that if the Parties enter into one or more transactions, which in conjunction with one or more other outstanding Transactions constitute Offsetting Transactions, then all such Offsetting Transactions will, by agreement of the Parties, be netted into a single Transaction. Under such single transaction a) the Party obligated to deliver the greater amount of energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and b) the Party owing the greater aggregate payment will pay the difference owed between the Parties.</p>	<p><u>Netting</u> 28.1, 28.2</p> <p>The WSPP does not consider physical netting.</p>	<p>The EEI allows physical netting of multiple transactions into a single transaction while the WSPP does not consider this.</p>
Article 7: Limitations		
<p><u>Limitation of Remedies, Liability and Damages</u> 7.1</p> <p>Section 7.1 of the EEI provides that express remedies and measures of damages is provided in the agreement and the same shall be the sole and exclusive remedy for the obligee</p>	<p><u>Liability and Damages</u> <u>Performance, Title, and Warranties</u> 21.1(a), 33.3, 21.3(b)</p> <p>Section 21.3(b) of the WSPP provides that the Parties agree that the amounts recoverable under Section 21 governing liability, are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party.</p> <p>Section 21.1 is similar to the beginning of Section 7.1 of the EEI, limiting damages to the express remedies in the Agreement. Section 33.3 limits the warranties of the Seller.</p>	<p>Section 7.1 of the EEI is substantially similar to the limitation of liability provisions of the WSPP as set forth in Sections 21.1(a), 33.3, and 21.3(b). Both the EEI, under Section 7.1, and the WSPP, under Section 33.3, expressly indicate that there is no warranty of merchantability or fitness for a particular purpose, and disclaims any implied warranties. Under Section 7.2 of the EEI and Section 21.1(a) of the WSPP, neither Party may be held liable for consequential, incidental, punitive, exemplary or indirect damages. However, the EEI’s limitation of liability provision also includes “lost profits” and “business interruption damages” and the WSPP’s representations and warranties provision in Section 21.1(a) expressly disclaims liability for damages other than those provided for in the agreement, to the directors, governing body members, officers or employers of both Parties.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>Article 8: Credit and Collateral Requirements</p> <p><u>Financial Information</u> 8.1 & 8.2(a)</p> <p>Under Section 8 of the EEI the applicable credit and collateral requirements are to be specified on the Cover Sheet. Option A of 8.1(a) and 8.2(a) of the EEI permits a Party to request the other Party to deliver within 120 days following the end of each fiscal year, a copy of its annual report containing <u>audited</u> consolidated financial statements, and financial statements for the most recent accounting period, prepared in accordance with GAAP.</p> <p>Option B of 8.1(a) and 8.2(a) of the EEI permits a Party to request the other Party to deliver within 120 days following the end of each fiscal year, a copy of its annual report containing <u>unaudited</u> consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet; and financial statements for the most recent accounting period, prepared in accordance with GAAP.</p> <p>Option C of the EEI, a Party may request from the other Party the information specified on the Cover Sheet. The WSPP does not contemplate this issue.</p>	<p>The WSPP has no corresponding provision.</p>	<p>The WSPP does not appear to have a corresponding provision. Neither Party is required to provide financials (but practically, Parties will require financials to open the trading relationship or a party can pull down financials from EDGAR).</p>
<p><u>Credit Assurances</u> 8.1 & 8.2(b)</p> <p>Under 8.1(b) and 8.2(b) of the EEI, a Party that has reasonable grounds to believe that another Party's creditworthiness has become unsatisfactory, may request written performance assurance from the other Party by providing</p>	<p><u>Creditworthiness</u> 27</p> <p>The WSPP contains the same trigger as the EEI for adequate assurances, and actually lists several triggering events. The WSPP, in Section 27, does not require notice of the other Party's request for performance</p>	<p>The EEI and the WSPP contain substantially similar provisions.</p>

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<p>written notice. Upon receipt of such notice the other Party must comply with the request within three (3) Business Days. If the request is not satisfied within this period an event of default will be deemed to have occurred under the agreement.</p>	<p>assurance. However, the WSPP expressly identifies five “acceptable” forms of collateral or security and indicates that a Party may be required to provide either 1) a posting of a letter of credit; 2) a cash prepayment; 3) other acceptable collateral or security; 4) a guarantee executed by a credit worthy entity; or 5) some other mutually agreeable method. In addition, the WSPP does not expressly require that a requesting Party receive performance assurance within any stated time period.</p> <p>The WSPP also contains various express events where the occurrence of one such event allows one party to question the other’s ability to perform.</p>	
<p><u>Collateral Threshold</u> 8.1 & 8.2(c)</p> <p>The cover page to the EEI requests that each Party complete information concerning the collateral threshold. Sections 8.1 and 8.2(c) of the EEI provides that at any time, and from time to time, during the term of the Agreement, the Termination Payment that would be owed to Party A plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B’s Independent Amount, if any, exceeds the Party B Collateral Threshold, less any Party B Performance Assurance already posted with Party A. Performance Assurance may be given on any Business Day, but no more frequently than</p>	<p>The WSPP does not include a corresponding provision.</p>	<p>The WSPP does not have margin requirements because participants presumably believe everything can be pushed through the adequate assurance provision combined with the default.</p>

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<p>weekly with respect to Letters of Credit and daily with respect to cash.</p> <p>Furthermore, this provision provides that such Party B Performance Assurance must be delivered to Party A with in three (3) Business Days of the date of such request. If Party B fails to provide timely and adequate Performance Assurance within three (3) Business Days, an Event of Default will be deemed to have occurred.</p>		
<p><u>Downgrade Event</u> 8.1 & 8.2(d)</p> <p>Sections 8.1(d) & 8.2(d) of the EEI provides that either Party may require the other Party to provide Performance Assurance, in an amount determined by the requesting Party in a commercially reasonable manner, within three (3) Business Days of receipt of notice if a Downgrade Event occurs with respect to the non-requesting Party. If such Performance Assurance is not provided within the set time period, an Event of Default will be deemed to have occurred.</p>	<p><u>Creditworthiness</u> 27.3</p> <p>Section 27.3 of the WSPP provides that a downgrade event shall be a trigger for requesting adequate assurance of performance. This provision is substantially similar to the Downgrade Event of the EEI.</p>	<p>The EEI and the WSPP are substantially similar, even though the WSPP uses its adequate assurances provision with an express event being a credit rating downgrade below investment grade.</p>
<p><u>Grant of Security Interest/Remedies</u> 8.3</p> <p>Section 8.3 of the EEI secures the obligations of both Parties under the Agreement by providing that each Party grant the other a security interest in, and lien on, and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether ever held for the benefit of such Secured Party.</p>	<p>The WSPP does contain a corresponding provision.</p>	<p>The WSPP does not appear to have a corresponding provision, which begs the question how collateral would be treated in a bankruptcy setting. Having security agreement language strengthens the ability to use the safe harbor and collateral provisions of the Bankruptcy Code.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>Article 9: Governmental Charges</p> <p><u>Cooperation</u> 9.1</p> <p>Section 9.1 of the EEI requires each Party to use reasonable efforts to implement and abide by the provisions of the agreement and in accordance with the intent of the parties to minimize taxes.</p>	<p><u>Taxes</u> 29</p> <p>Section 29 of the WSPP provides that both parties must use reasonable efforts to obtain and cooperate with the other Party if the other Party may be entitled to any exemption from or reduction of any tax.</p>	<p>Although the WSPP does not recognize an affirmative “intent to minimize taxes,” the agreement does contemplate that the Parties will cooperate to minimize tax exposure.</p>
<p><u>Governmental Changes</u> 9.2</p> <p>Section 9.2 of the EEI requires that if any law or regulation requires a Party to pay taxes that is the responsibility of the other Party under this Agreement, that Party may deduct the amount of any such Governmental Charge from sums due the other Party.</p>	<p><u>Taxes</u> 29</p> <p>The WSPP provides that if either party is exempt from taxes such Party, upon written request of the other Party, must provide a certificate of exemption or other reasonably satisfactory evidence of exemption, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption or reduction of any tax.</p>	<p>Section 9.2 of the EEI and Section 29 of the WSPP provide that Seller pay or cause to be paid all taxes imposed by any governmental authority with respect to the Product or a Transaction arising prior to the Delivery Point and Buyer (Purchaser under the WSPP) shall pay or cause to be paid all taxes with respect to the Product at and from the Delivery Point.</p>
<p>Article 10: Miscellaneous</p>		
<p><u>Term of Master Agreement</u> 10.1</p> <p>Under Section 10.1 of the EEI, the term of the Agreement commences on the Effective Date and remains in effect until terminated by either Party upon thirty (30) days prior written notice. Such termination does not affect performance of either Party under any provision of the Agreement that survives termination.</p>	<p><u>Term and Termination</u> 5, 13.2</p> <p>In contrast, Section 5 of the WSPP is effective as of July 27, 1991, or when acceptance or approvals with respect to parties subject to FERC have been obtained. Specifically, the WSPP becomes effective after it is filed with and approved by FERC. FERC will determine whether the agreement, as filed, is just and reasonable and without changes or new conditions unacceptable to either parties.</p>	<p>Like the EEI, the WSPP terminates upon thirty (30) days prior written notice by either party.</p> <p>Also, it is important to note that, unlike the EEI which becomes effective upon the Effective Date, the WSPP becomes effective to a Party once the Party becomes a “member” under the Agreement.</p>
<p><u>Representations & Warranties</u> 10.2</p>	<p><u>Performance, Title & Warranties for Transactions Under Service Schedules</u> 33.3, 37</p>	

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>The EEI expressly provides that no Event of Default or Potential Event of Default with respect to each Party would occur as a result of a Party entering into the Agreement.</p> <p>There are a few minor omissions between the agreements. For instance, the EEI does warrant that each Party is acting on its own account, and has made an independent decision with respect to entering into the Agreement; whereas, the WSPP does not appear to contemplate this issue.</p> <p>Also under the EEI, each Party must warrant that it has the ability to make or take delivery of all Products referred to in the Transaction, and that in each Transaction involving the purchase or sale of a Product or an Option, the Party is a producer, processor, commercial user or merchant handling the Product; and finally, that each Party is entering such Transaction for purposes related to its business. The WSPP does not appear to contemplate these issues.</p>	<p>Section 33.3 of the WSPP provides that the Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation Agreement, free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point and that Seller’s sale is in compliance with all applicable laws and regulations.</p> <p>The WSPP simply states however, that each Party further warrants and represents that entering into and performing the Agreement does not violate any agreement to which it is a party.</p> <p>Also, the WSPP’s representation that each Party is a forward contract merchant is in the separate Section 35, whereas under the EEI that representation is included in its general reps and warranties Section 10.2.</p> <p>But unlike the EEI, the WSPP includes in its reps and warranties provision that the solvency representation will be deemed renewed unless notice to the contrary is given, in writing, by the Purchaser (Buyer under the EEI) to the Seller before delivery.</p>	<p>Section 10.2 of the EEI and Section 33 of the WSPP include fairly identical and standard representations and warranties. Specifically, both agreements include representations to the effect that each Party is 1) duly organized and existing in good standing under its jurisdiction, 2) has all regulatory authorizations necessary for it to legally perform its obligations under the Agreement, 3) the execution delivery and performance of the duties under the Agreement are within its chartered powers and authority, subject to any Equitable Defenses, 4) it is not bankrupt and there are no proceedings threatened against it which would result in it becoming or being bankrupt, 5) it is subject to no court order, judgment, or pending or threatened litigation, and 6) the Agreement constitutes for each Party a legally valid and binding obligation.</p> <p>The language used in the representation and warranty provision of the EEI is more precise than that of the WSPP, but again, both agreements appear to contemplate identical issues with very minor omissions (discussed below).</p> <p>The EEI does not include this representation in its reps and warranties provision but rather in its title and risk of loss provision Section 10.3.</p> <p>Furthermore, under the EEI every representation is deemed effective on the date of entry into a transaction. Under the WSPP, however, each representation will be deemed renewed unless written notice to the contrary is given (it is not clear whether this caveat relates only to the solvency of each Party).</p>
<p><u>Title and Risk of Loss</u> 10.3</p> <p>Title to and risk of loss related to the Party shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear</p>	<p><u>Title and Risk of Loss</u> 33.2, 33.3</p> <p>Section 33.2 of the WSPP provides that title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the</p>	<p>Sections 10.3 of the EEI and 33.2 of the WSPP are substantially similar. Both provisions provide for the transfer of title to and risk of loss of the electric energy (under the WSPP)/ Product (under the EEI) from Seller to Purchaser at the Delivery Point.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>of all liens, security interests, claims and encumbrances of any interest therein or thereto by any person arising prior to the Delivery Point.</p>	<p>Confirmation Agreement; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by applicable law.</p> <p>In addition, Section 33.3 of the WSPP provides that Seller will transfer to Purchaser good title, free and clear of all liens and encumbrances.</p>	<p>However, unlike the EEI which does not address this issue, the WSPP includes that with respect to Federal agencies of the United States Government, title and risk of loss should pass to Purchaser to the extent permitted by applicable law. The WSPP also states that Seller disclaims all other warranties express or implied.</p>
<p><u>Indemnity</u> 10.4</p> <p>Section 10.4 of the EEI provides that each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event first occurring or existing during the period when control and title to the Product is vested in such Party. Each Party shall indemnify and hold harmless the other Party against any Governmental Charges.</p>	<p>The WSPP does not include a corresponding provision.</p>	<p>WSPP does not appear to contemplate this issue, except for taxes in Section 29.</p>
<p><u>Assignment</u> 10.5</p> <p>Section 10.5 of the EEI provides that neither Party shall assign its rights under the Agreement without the prior written consent of the other Party, which consent may be withheld at the Party's sole discretion; provided, however, either Party may, without the consent of the other Party, i) transfer, sell, pledge, encumber or assign the Agreement, accounts, revenues or proceeds in connection with any financial arrangements, ii) transfer or assign the Agreement to an affiliate with creditworthiness equal to or higher than that of such transferring Party, or iii) transfer or assign the Agreement to any person or entity</p>	<p><u>Transfer of Interest</u> 14</p> <p>Section 14 of the WSPP provides that no Party shall voluntarily transfer its membership under the Agreement without the written consent and approval of all other Parties except to a Successor in Operation of such Party. Furthermore, that Section 14 provides that neither Party may assign such rights or obligations unless (a) the other Party provides its written consent which shall not be unreasonably withheld; or (b) the assignment is to a Successor in Operation which provides reasonable creditworthiness assurances if required by</p>	<p>Section 10.5 of the EEI and Section 14 of the WSPP are substantially similar and only differ slightly.</p> <p>Both sections prohibit the assignment of rights (the EEI) or transfer of membership (the WSPP) under the Agreement without the prior written consent of the other Party. However, under Section 10.5 of the EEI, consent of such transfer may be withheld (which is in sole discretion of the Party); whereas under the WSPP, written consent and approval of the other Party in event of an assignment may not be unreasonably withheld.</p> <p>In addition, under the WSPP, an assignment of membership to a successor in interest does not constitute a transfer. Similarly, the</p>

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<p>succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that such assignee shall agree in writing to be bound by the terms of the Agreement.</p>	<p>the non-assigning Party based upon its reasonably exercised discretion. Furthermore, any successor or assignee of the rights of any Party shall be subject to all the provisions and conditions under the Agreement, and no assignment or transfer under the Agreement shall be effective unless and until the assignee or transferee agrees in writing to assume all obligations under the Agreement.</p>	<p>EEI permits the assignment of rights under the Agreement to a Party’s affiliate if such affiliate’s creditworthiness is equal to or higher than that of the Party. Furthermore, a Party may assign its rights to any successor in interest that has acquired substantially all assets of the Party and whose creditworthiness is equal to or higher than that of such Party. In this instance, the EEI requires that such an assignee must agree in writing to be bound by the terms and conditions of the Agreement.</p>
<p><u>Governing Law</u> 10.6 New York</p>	<p><u>Governing Law</u> 24 Utah</p>	<p>Section 10.6 of the EEI provides that the governing law is New York, whereas Section 24 of the WSPP provides that the governing law is Utah. New York law is much more developed than Utah law on matters related to power trading. Another big difference between the two provisions is the EEI contains a waiver of jury trial while the WSPP does not.</p>
<p><u>Notices</u> 10.7 Section 10.7 of the EEI provides that notice by facsimile or hand delivery will be effective at the close of business on the day actually received, if received during business hours on a Business Day. Otherwise, receipt of notice will be effective at the close of business on the next Business Day. Furthermore, the EEI provides that notice by overnight delivery or courier will be effective on the next Business Day after it was sent.</p>	<p><u>Notices</u> 12 Under Section 12 of the WSPP, notice given by personal delivery or mail is deemed effective upon “actual receipt.” The WSPP provision is somewhat outdated in that it provides for notice given by telegram or telecopier but does not mention delivery of communication via overnight service. Finally, the WSPP provides that notice by telegram or telecopier must be confirmed promptly after transmission by certified mail or personal delivery.</p>	<p>The EEI provides for notices to be deemed received, whereas the WSPP only allows for actual receipt. Presumably, the confirming party would rather have deemed receipt apply rather than actual receipt.</p>
<p><u>General</u> 10.8</p>	<p><u>General</u> 6.1, 26, 20, 15, 11, 39</p>	<p>The EEI and WSPP include most of the standard agreement boilerplate provisions.</p>

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<p><u>Entire Agreement</u></p> <p>Section 10.8 of the EEI includes an entire agreement provision (that all exhibits, schedules, collateral, credit support or margin agreement or similar arrangement between Parties and all Transactions constitute the entire agreement between the Parties to the subject matter).</p> <p>The EEI provides that the Agreement was prepared by both Parties and not to be construed against one Party or the other.</p>	<p><u>Complete Agreement</u></p> <p>Section 26 of the WSPP provides that this Agreement and any subsequent amendments, including the Service Schedules and Exhibits incorporated herein constitute the full and complete agreement of the Parties. Further, this provision merges all prior understandings, representations and negotiations into the Agreement.</p>	<p><u>Complete Agreement</u></p> <p>This section 10.8 substantially correlates to the WSPP's complete agreement provision Section 26.</p>
<p><u>Amendments</u></p> <p>The EEI's Amendments provision is extremely brief and states that no amendment or modification to the Agreement may be valid unless such amendment or modification is reduced in writing and agreed to by both Parties.</p>	<p><u>Amendments</u></p> <p>The WSPP's amendment provision Section 39 is more structured than that of the EEI. The WSPP provides that the agreement may only be amended upon the submission to FERC and acceptance by FERC of that amendment. Furthermore, the filing of any amendments by the Parties must be directed through the Executive Committee. Section 39 of the WSPP also states that the Parties agree to be bound to the Agreements as it may be amended, provided that the Parties possess the right to challenge any amendments at FERC.</p> <p>Section 32.5 of the WSPP provides that when a Confirmation Agreement contains Non-Standard Confirmation Provisions which are provisions other than those set forth in paragraphs (a)-(l) of Exhibit C, those Non-Standard Confirmation Provisions shall not be deemed to be accepted pursuant to Section 32.1 unless</p>	<p><u>Amendment</u></p> <p>Section 32.5 of the WSPP permits the Parties to amend the Agreement on a bilateral basis for transaction specific terms.</p>

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	agreed to: (i) orally, with that oral agreement recorded (provided that such oral agreement option only shall be available for transactions of less than one week); or (ii) in a writing executed by both Parties.	
<p><u>Transmission Tariff</u></p> <p>In this boilerplate provision 10.8 of the EEI states that each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with the Agreement.</p>	<p><u>Transmission Tariff</u></p> <p>This provision correlates to Section 31 of the WSPP. Section 31 provides, in pertinent part, that the Parties agree to be bound by the terms of the WSPP Default Transmission Tariff (FERC Order No. 888, issued on 4/24/96).</p>	<p>This Section 10.8 of the EEI includes a standard headings clause that expressly demarcates provision headings used for reference purposes only and the actual substance of the Agreement. The WSPP does not appear to have a corresponding headings provision.</p>
<p><u>Severability</u></p> <p>The EEI provides that if a Regulatory Event occurs, the Parties will use their best efforts to reform the Agreement in order to give effect to the original intention of the Parties.</p>	<p><u>Severability</u></p> <p>Section 10.8 of the EEI provides a severability provision that is substantially similar to the severability Section 15 of the WSPP.</p>	<p><u>Severability</u></p> <p>Although, the language of the two provisions differs slightly, both agreements include a standard severability clause.</p>
<p><u>Waiver</u></p> <p>Under the EEI, waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.</p>	<p><u>Waiver</u></p> <p>Under section 20 of the WSPP, any waiver of any Party with respect to a default will not be deemed a waiver with respect to any subsequent default of the same or any other matter.</p>	<p><u>Waiver</u></p> <p>Both the EEI and the WSPP have substantially similar non waiver of any rights provisions.</p>
<p><u>Third Party Beneficiary</u></p> <p>With respect to third party beneficiaries, the EEI succinctly provides, “the Agreement does not impart any third party rights.”</p>	<p><u>Third Party Beneficiary</u></p> <p>Section 20 of the WSPP is similarly brief and states that the agreement will not be construed to create rights, in or to grant remedies to any third party beneficiaries.</p>	<p><u>Third Party Beneficiary</u></p> <p>The EEI and the WSPP are substantially similar.</p>
<p><u>Survival</u></p> <p>The EEI provides that all indemnity and audit rights shall survive the termination of the</p>	<p><u>Survival</u></p> <p>The WSPP does not appear to have a corresponding provision.</p>	<p><u>Survival</u></p> <p>The WSPP does not appear to have a corresponding provision.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>Agreement for twelve (12) months.</p> <p><u>Headings</u></p> <p>Section 10.8 of the EEI includes a standard headings clause that expressly demarcates provision headings used for reference purposes only and the actual substance of the Agreement.</p>	<p><u>Headings</u></p> <p>The WSPP does not appear to have a corresponding provision.</p>	<p><u>Headings</u></p> <p>The WSPP does not appear to have a corresponding provision.</p>
<p><u>Binding</u></p> <p>The EEI provides that this Agreement shall be binding on each Party’s successors and assigns.</p>	<p><u>Binding</u></p> <p>The WSPP does not appear to have a corresponding provision.</p>	<p><u>Binding</u></p> <p>The WSPP does not appear to have a corresponding binding provision.</p> <p><i>There are several typical standard boilerplate provisions contemplated by the WSPP yet not included in the EEI.</i></p> <p>Section 23 of the WSPP entitled, “Other Agreements,” provides that no provision of the Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties.</p> <p>Unlike the WSPP, the EEI does not include a dispute resolution provision. Section 34 of the WSPP includes language relating to both informal and binding dispute resolution.</p>
<p><u>Audit</u> 10.9</p> <p>Under the EEI, a party seeking to verify the accuracy of the other Party’s records must exercise this right at its sole expense and during normal working hours.</p> <p>Also, under the EEI, a Party, upon request, must provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If such examination reveals an inaccuracy in any statement, necessary adjustments must be made</p>	<p><u>Audit</u> 9.6</p> <p>Under the WSPP, a Party seeking to verify statements and charges must exercise its option to do so, in writing and within a two (2) year period from the date the first bill was delivered from the other Party under the Agreement. To this end, the WSPP further requires that each Party keep complete and accurate records and maintain relevant data, estimates and statements of charges for two (2) years from the date the</p>	<p>Both Section 10.9 of the EEI and Section 9.6 of the WSPP permit each Party, to examine the records of the other Party, to the extent reasonably necessary, to verify the accuracy of any statement, charge or computation made under the Agreement.</p> <p>The agreements, however, are not identical and have divergent limitations on its audit rights.</p> <p>No adjustment, under the EEI, for any statement or payment will be made under the agreement, however, unless an objection to</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
<p>promptly and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.</p>	<p>first bill was delivered for a specific transaction.</p>	<p>the accuracy of the same was made prior to the lapse of twelve (12) months from the date of payment. Any objection made after this twelve (12) month period will be deemed waived.</p> <p>In contrast, the WSPP permits each Party the right to dispute the accuracy of any bill after a period of twenty-four (24) months from the date on which the first bill was delivered for a specific transaction.</p>
<p><u>Forward Contract</u> 10.10</p> <p>Under the EEI the Parties acknowledge and agree that all Transactions under the Agreement constitute “forward contracts.”</p>	<p><u>Forward Contracts</u> 35</p> <p>The WSPP provides that the transactions constitute “forward contracts” and the Parties are “forward merchants.” In addition, the WSPP expressly states that all of their transactions, together with the Agreement and Confirmation Agreement form a single, integrated agreement, and agreements and transactions are entered into on reliance on the fact that the agreements and each transaction form a single agreement between the Parties.</p>	<p>Section 10.10 of the EEI and Section 35 of the WSPP are substantially similar.</p>
<p><u>Confidentiality</u> 10.11</p> <p>Under Section 10.11 of the EEI, each party must use reasonable efforts to limit disclosure of the information contained in the agreement and cover sheet.</p>	<p><u>Confidentiality</u> 30</p> <p>Section 30 of the WSPP expressly prohibits the disclosure of information exchanged by the Parties under the agreement to the extent disclosure is 1) required by law; 2) reasonably deemed by the disclosing party to be required to be disclosed in connection with the dispute between or among the Parties, or the defense of any litigation or dispute; 3) otherwise permitted by consent of the other Party; 4) required to be made in connection with regulatory proceedings relating to FERC, the SEC, or any other</p>	<p>Section 30 of the WSPP is substantially similar to Section 10.11 of the EEI but instead of requiring each Party to use “reasonable efforts” to maintain confidentiality, the WSPP’s confidentiality provision appears to be more structured than the EEI.</p>

EEI Provision	Corresponding WSPP Provision	Analysis/Comments
	regulatory agency; 5) required to comply with the North American Electric Reliability Organization, regional reliability council or successor organization requirements; or 6) necessary to obtain transmission service. The WSPP does provide that in the event of a disclosure the Parties must use reasonable efforts to minimize the scope of any disclosure, including seeking a protective order or similar mechanism.	

The WSPP is available to members only.
Listed below are provisions specific to the WSPP

WSPP Section Number and Title	WSPP Provision	Analysis/Comment
Section 7 Hub and Operating Agent	This provision provides for the duties and the obligations of the Operating Agent. The Operating Agent shall, as directed by the Operating Committee, operate and maintain the necessary equipment to operate the Hub or contract for Hub services. In addition, the Operating Agent is to perform all other administrative tasks necessary to implement the Agreement as directed by the Executive Committee.	The WSPP is a membership agreement; therefore, several provisions discuss this mode of management.
Section 8 Organization and Administration	This provision establishes an Executive Committee as a means of securing effective and timely cooperation and compliance with the obligations under the Agreement.	Same as above.
Section 16 Membership	This provision provides that any Electric Utility, Retail Entity, or Qualifying Facility may become a Party to the Agreement. Furthermore, the Executive Committee shall within sixty (60) days of a request to become a Party to the Agreement, notify such acceptable entity as listed above. A Party may become a Member under the Agreement, inter alia,	Same as above.

WSPP Section Number and Title	WSPP Provision	Analysis/Comment
	by the execution of the Agreement, payment of costs (if such requesting party is not a party to the experimental Western Systems Power Pool Agreement, such party must pay a one time fee of \$25,000 to be credited to future costs of the Operating Agent), and upon conclusion of any necessary (FERC) acceptance or approval.	
Section 17 Relationship of the Parties	This provision represents that each Party shall be individually responsible for its own covenants, obligations and liabilities under the Agreement.	Same as above.
Section 18 No Dedication of Facilities	This provision of the WSPP provides that any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligation under the Agreement.	Same as above.
Section 19 No Retail Services	This provision provides that nothing contained in the Agreement shall grant any rights to or obligate any Party to provide any services thereunder directly to or for retail customers of any Party.	Same as above.