NAESB WEQ CONTRACT SUBCOMMITTEE
MSA TASK FORCE

SUMMARY OF NOTEWORTHY DIFFERENCES BETWEEN THE WSPP AND EEI AGREEMENTS

WSPP (effective 2/1/03)
EEI v2.1(modified 4/25/00)

EXECUTION OF AGREEMENT AND AMENDMENTS

PROVISION	EEI	WSPP
Preparation of Agreement	Negotiation of EEI Cover Sheet (including all credit and other elections) and any additional terms and conditions.	WSPP agreement is a tariff on file with the FERC.
Execution of Agreement	Bilaterally between an entity and each party.	Each party that is a signatory to the WSPP tariff agreement can transact under that agreement with any other signatory. Each entity may also enter into further agreements with any other signatory party bilaterally to cover additional issues, such as credit.
Amendment of Agreement	Bilaterally between an entity and each party with which it has an EEI.	WSPP agreement may be modified only by a FERC filing.

CONFIRMATION OF TRANSACTIONS

PROVISION	EEI	WSPP
Agreement to a Transaction	Parties may agree on a Transaction in writing (if a party expressly requires) or orally. § 2.1	Parties may agree on a transaction in writing (through the exchange of Confirmation Agreements) or orally, provided the conversation is recorded. § 32.1
Required Confirmation	Seller or Buyer "may" (but is not required to) issue a Confirmation Letter. § 2.3	Written confirmation mandatory for all transactions of one week or more. § 32.1
Process for Issuing Confirmation Letter	Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered. § 2.3 Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt. § 2.3 If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation may be forwarded by Buyer to Seller. § 2.3 If Seller objects to any term(s) Buyer's Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt. § 2.3	Seller shall provide written confirmation which must be received by the Purchaser within five (5) Business Days of the date of the agreement or request. § 32.1 The Purchaser shall have five (5) Business Days from date of receipt to respond to the confirmation, otherwise Seller's written confirmation shall be considered as accepted and final. § 32.1 If the Seller fails to provide confirmation within five (5) Business Days, then the Purchaser may submit a written confirmation to the Seller within the subsequent five (5) Business Days. § 32.1 If the Seller fails to respond to Purchaser's confirmation within five (5) Business Days, then the Purchaser's written confirmation shall be considered as accepted and final. § 32.1
Seller and Buyer Both Issuing Confirmation Letter	If Seller and Buyer each send a Confirmation within two (2) Business Days (and neither Party objects), Seller's Confirmation shall be the controlling Confirmation. § 2.3	WSPP does not specifically address instance whereby Buyer and Seller each send a Confirmation.

Use of Recordings to Prove the Agreement	The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed by both Parties. Upon full execution of a Confirmation, such Confirmation shall control in the event of any conflict. § 2.5	All such recordings may be introduced and admitted into evidence for the purpose of proving agreements to terms, and any objection to such introduction or admission for such purpose is hereby expressly waived. § 32.2
Non-Standard Confirmation Terms	If elected on the EEI Cover sheet, non-standard confirmation terms may be added only by oral or written agreement of the parties. § 2.4	Non-standard confirmation terms may be added only by a recorded oral agreement (for transactions of less than one week) or in a writing signed by both parties. § 32.5

UNCONTROLLABLE FORCES/FORCE MAJEURE

PROVISION	EEI	WSPP

NO NOTABLE DIFFERENCES.

PAYMENT AND NETTING TERMS

PROVISION	EEI	WSPP
Interest Rate Applied to Overdue Payments	Min (Prime Rate plus 2%, maximum interest rate permitted by law) is applied to any overdue payment. § 1.26, § 6.2	Min (1% per month, maximum interest rate permitted by law), is applied to any overdue payment. § 9.3*

*WSPP preparing amendments to change interest rate to Prime plus 2%.

DISPUTES

PROVISION	EEI	WSPP
Payment Dispute Resolution Procedures	The disputing Party must provide a detailed written explanation of the basis for the dispute; no further procedures are specified in EEI. § 5.5, § 6.3	Dispute to be submitted to "Informal Dispute Resolution" (mediation); Parties may subsequently elect for a formal "Binding Dispute Resolution" (arbitration). § 34.2
Payment Portion Due of Disputed Invoice/Bill	Payment of only the undisputed portion of the invoice is due; payment of disputed portion due w/in two business days of dispute resolution. § 6.3	Entire bill shall be paid when due regardless of any disputed portion. Reimbursement of any overpaid amount due "upon determination of the correct amount;" reimbursement due date not explicitly stated. § 9.4
Trial by Jury	Each Party waives its rights to any jury trial with respect to any litigation arising under or in connection with the EEI Agreement. § 10.6	WSPP does not mention trial by jury; hence, the right to a trial by jury is presumably not waived.

LIQUIDATED DAMAGES FOR FAILURE TO DELIVER/RECEIVE

PROVISION	EEI	WSPP
Payment Due	Calculated Amounts due as per normal billing/payment due dates; Accelerated Payments may be applicable. § 4.1, § 4.2	Calculated Amounts due as per normal billing/payment due dates. § 21.3(a)(4)
Mitigation	No express duty to mitigate non-performance damages. No duty to use owned or controlled generation assets or market positions to minimize liability. §§ 1.51 & 1.53	Duty to mitigate damages in a commercially reasonable manner to minimize the damages in incurs as a result of the other party's non-performance. § 21.3(c)
Cover vs. Market	Cover or market price may be used at the performing party's option. §§ 1.51 & 1.53	Market price may be used "absent" a purchase or sale, as applicable, in which case the cover price must be used. §§ 4.16a & 4.16c
Penalties	In no event will damages include penalties, ratcheted demand or similar charges. §§ 1.51 & 1.53	Includes reimbursement for any charges imposed under open access transmission tariffs due to the non-performance. § 21.3(a)(3)

EVENTS OF DEFAULT

PROVISION	EEI	WSPP
Failure to Perform Any (Other) Obligation	Failure to perform any obligation set forth in this Agreement (except for such Party's obligations to deliver or receive the Product), and such failure is not remedied within 3 Business Days. § 5.1 (c)	WSPP includes no "catch-all" event of default. Could effect enforcement of obligations for which there is not specific event of default (eg, assignment or merger without assumption of obligations by successor entity.)
Bankruptcy	Becoming "Bankrupt" is an event of default. Definition of "Bankrupt" includes (i) institution of bankruptcy or similar proceedings, (ii) assignments for the benefit of creditors, (iii) becoming insolvent (however evidenced), (iv) the appointment of a liquidator, receiver or similar entity or (v) generally being unable to pay debts as they fall due. §§ 1.3 and 5.1(d)	The institution of bankruptcy or similar proceedings constitutes a bankruptcy event that would be an event of default. § 22.1 (c)
Cross Default	If Party's designated entity defaults on its own debt obligations; dollar amt. is specified. § 5.1 (g). Must be elected on EEI Cover Sheet.	WSPP does not offer Cross Default Option.

CALCULATION OF TERMINATION PAYMENT

PROVISION	EEI	WSPP
Declaration of Termination Date	Upon Event of Default the Non-Defaulting Party shall designate an Early Termination Date no later than 20 days after such notice if effective. § 5.2	The Non-Defaulting Party has 30 days following the date when Event of Default becomes known to provide a written notice of Termination. § 22.2
Suspension of Performance	Non-Defaulting party may suspend performance for up to 10 NERC Business Days after the occurrence of an Event of Default or a Potential Event of Default and, additionally, through the date that all transactions are liquidated and terminated.	No right to suspend performance prior to termination of transactions.
Determination of Gains/Losses/Costs	Gains, Losses and Costs are each to be calculated in a commercially reasonable manner. (§§ 1.11, 1.24 & 1.28)	Same basic definitions of Gains, Losses and Costs as EEI, but adds that they are to be determined by reference to various third party sources. § 22.3
Close Out Netting	By selection on EEI Cover Sheet, close out netting may be limited to amounts due under the EEI only, or extended to amounts owing between the parties under other agreements or to amounts owing between the parties and their affiliates under other agreements	Close out netting covers amounts due between the parties under the WSPP only.
Termination Payment Due Date	Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective. § 5.4	Termination Payment due by the Defaulting Party within three (3) Business Days of the date notice of termination was received. Termination Payment may be made by the Non-Defaulting Party at its election either within three (3) Business Days of termination or "over the remaining life of the contract(s) being terminated." § 22.3

Dispute of Termination Payment	Defaulting Party can dispute the calculation of Non-Defaulting Party's Termination Payment within two (2) business days of payment receipt; awaiting resolution, Defaulting Party must transfer Performance Assurance to Non-Defaulting Party in amount equal to Termination Payment. § 5.5	No time deadline to file dispute is specified; dispute procedure entails submittal to informal dispute resolution and, if not resolved, submittal to binding dispute resolution; awaiting resolution, Defaulting Party must pay full amount of Termination Payment within three (3) Business Days of the date notice of termination was received. § 22.3

CREDIT AND COLLATERAL REQUIREMENTS

PROVISION	EEI	WSPP
Financial Statements	Options are available so that Parties may be provided with particular financial reports, statements or other information from one another or affiliated companies. § 8.1(a), § 8.2(a)	WSPP does not address the sharing of financial information between Parties and/or affiliated companies.
Acceptable Collateral	Acceptable collateral includes cash, Letter(s) of Credit, and other security acceptable to the Requesting Party. § 1.45.	Acceptable collateral includes (1) a Letter of Credit, (2) cash, (3) the posting of other acceptable collateral/security, (4) a Guarantee Agreement executed by a creditworthy entity or (5) some other mutually agreeable method. § 27
Collateral Threshold	Schedule of unsecured credit, based on credit ratings and collateral threshold dollar amounts, and related issues, is agreed to by Parties and specified on EEI Cover Sheet. § 8.1(c), § 8.2(c)	WSPP does not specifically address lines of unsecured credit.
Downgrade Event	EEI Cover Sheet includes an election for a "downgrade" event for each party, the trigger for which can be a ratings agency downgrade or other event chosen by the parties.	Adequate assurances remedy of WSPP includes a "safe harbor" for parties seeking collateral when the debt rating of the other party falls below investment grade. § 27(3)
Limitations on Amount of Collateral	No express limit on amount of collateral that can be requested under adequate assurances remedy. § 8.1(b), § 8.2(b)	Amount of collateral that can be requested under adequate assurances remedy expressly limited to non-performance damages under Section 31.3 (ie, liquidated damages). § 27
Security Interest in Cash Collateral	Secured party is granted a security interest in cash collateral posted by the pledging party. Secured Party has the right to perfect a first priority security interest with pledging party's assistance.	Not addressed.

GOVERNING LAW

PROVISION	EEI	WSPP
Governing State Law	The EEI Agreement is governed and construed under New York law. § 10.6	The WSPP Agreement is governed and construed in accordance with the laws of Utah. § 24

BUSINESS DAY/HOLIDAYS

PROVISION	EEI	WSPP
Canadian Holidays	EEI does not mention Canadian Holidays.	If one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall be observed. § 4.1b
Mexican Holidays	EEI does not mention Mexican Holidays.	WSPP does not currently mention Mexican Holidays; consideration of Mexican holy days to be discussed during WSPP Contracting Committee meeting on 07/26/02.