

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

Southwest Power Pool, Inc.

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Docket No. ER24-1658

COMMENTS OF THE MARKETS+ STATE COMMITTEE

The Markets+ State Committee (“MSC”) submits these comments in response to the proposed tariff filed by the Southwest Power Pool, Inc. (“SPP”) with the Federal Energy Regulatory Commission (“Commission”) in the above-captioned proceeding. Nothing in these comments prejudices the merits of any Markets+-related filing that may come before a state commission. With this filing, we explain our role in the development of the Markets+ Tariff (“Tariff”) along with our thoughts and comments.

I. THE MARKETS+ STATE COMMITTEE

The MSC was established in April 2023 in accordance with the governance structure of Markets+. ¹ The MSC works to effectively engage state members in the development and operation of the market and to provide input to the Markets+ Independent Panel (“MIP”), Markets+ Participant Executive Committee (“MPEC”), and any working group or task force on pertinent market matters such as initiative prioritization, market operations, and policy issues. Initial membership of the MSC was broad given the uncertainty about which entities would ultimately participate in Markets+ and included representatives from any of the states or provinces with entities that may plausibly choose to participate in Markets+. Currently, the MSC consists of 13 state representatives from the following states: Arizona, California, Colorado, Idaho, Montana,

¹ See Appendix A.

Nebraska, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. State members are appointed to the MSC by the head of each respective state public utility commission and may include a member from other state agencies such as state energy offices, state environmental offices, or state consumer advocates. The MSC operates in a public setting and welcomes other regional stakeholders to attend committee meetings to better foster engagement and collaboration. The MSC is staffed by the Western Interstate Energy Board (“WIEB”), a non-partisan organization of 11 Western States and 2 Canadian Provinces. WIEB is an instrumentality of the states and provinces with the purpose of providing the framework for cooperative efforts to enhance the economy of the West and contribute to the well-being of the region’s people. WIEB also provides staff support and technical expertise to other established committees, such as the Committee on Regional Electric Power Cooperation (“CREPC”), the Western Interconnection Regional Advisory Body (“WIRAB”), the Western Energy Imbalance Market Body of State Regulators (“WEIM BOSR”), and the Western Resource Adequacy Program Committee of State Representatives (“WRAP COSR”).

II. MSC ENGAGEMENT IN MARKETS+

Early in the tariff development process, the MSC adopted a set of Guiding Principles and Evaluation Criteria.² These principles were the lens through which the MSC viewed the tariff development process and the basis for how the MSC engaged with stakeholders and SPP staff throughout this process.

The MSC members thank the SPP staff and stakeholders for their exceptionally hard work in developing the Tariff. Throughout the process, the MSC, its members, staff, and advisors were

² See Appendix B.

welcomed by SPP and other stakeholders as task force members and contributors to the discussion and actively engaged and contributed throughout the process. For this we express our gratitude and appreciation to the SPP leadership, its staff, and all the stakeholders involved in the Markets+ development.

Driven by potential market participants, this novel tariff was completed in less than one year. This already rapid pace of meetings and information exchange accelerated greatly as the tariff development approached completion, leaving the MSC and other stakeholders struggling to absorb the policy implications of portions of the document. While the MSC attempted to cover as much content as possible, provide feedback in a timely manner, and voice concerns early on, there remain portions of the Tariff where the MSC is not completely certain of the implications and potential impacts on the market. These uncertainties will be discussed further in Section IV of our comments.

The MSC monitored all working groups and task forces and participated as fully as possible. Recognizing that tariffs are living documents that will change with time, the MSC expects to continue to receive educational and technical support from SPP that is responsive to tariff changes and market enhancements and helps facilitate our engagement in Markets+ with stakeholders, SPP, SPP's Market Monitoring Unit ("MMU"), and, when necessary, the Commission. Further, in contrast to the tariff development process, the MSC seeks assurance that schedules will provide adequate time to inform members so that the MSC can develop positions that reflect the MSC's public interest mandates.

III. ISSUE RESOLUTION

The MSC substantially increased its engagement to improve several sections of the Tariff consistent with the Guiding Principles. First, when it came time to review the Governance provisions outlined in the Tariff, the MSC worked with SPP staff to ensure that all consumer advocates were properly represented on the MPEC. In the West, there are different types of consumer advocates: 501(c)(3) organizations and state agencies. The former was already identified as an independent stakeholder at the onset of the Markets+ development, but state consumer advocates could only seek representation through the MSC and required formal appointment by the head of their public utility commission, creating a potential barrier to participation. Through discussions with SPP and stakeholders, resolution was quickly found, and state consumer advocates now have their own independent representation on the MPEC.

Second, the MSC was one of several parties concerned about a difference in the obligation to respond to MMU information requests among market participants based on their business model and legal status. The MSC was gratified when diverse representatives in the Markets+ community came to recognize the nature of the issue and worked constructively to improve the situation. Resolution of this issue improved and clarified access to information for the MMU that will lessen the likelihood of miscommunication or manipulation of the market, and enhance an understanding of the operation, optimization, and dispatch of Markets+.

Lastly, as voting members of the Markets+ Greenhouse Gas Task Force (“MGHGTF”), the MSC participated in creating the proposed methodologies required for states with GHG pricing requirements and received SPP’s assurances that a solution for states with GHG Reduction Programs would be incorporated in a future phase, although to date an acceptable path forward has

still not been developed.³ MSC members and their staff participated in regular MGHGTF meetings and multiple in-person meetings to find resolution with other stakeholders, leading to resolution at the end of 2023. And while MSC issues were largely resolved with the notable exception of a solution for states with GHG Reduction Programs, and a full determination of cost shift from states with GHG pricing to other states, the MSC recognizes that these complex issues will continue to evolve as state programs develop and rulemakings come to completion and will need continuous monitoring.

IV. REMAINING CONCERNS

As previously outlined, many issues of MSC interest were addressed collaboratively and responsively by stakeholders and the Interim Markets+ Independent Panel (“IMIP”). Some other issues remain unresolved, however, or were postponed for discussion in the Markets+ protocols, which are currently under development in the working groups and task forces, and the MSC is trying to remain as engaged in those conversations as possible. While additional time to thoughtfully work through these remaining issues is appreciated, the MSC is concerned about the breadth and depth of issues that still need to be resolved, such as the reasons a market participant may opt-out transmission capability from the market or implementation of the GHG pricing design, that could ultimately have a material impact on retail customers.

Some MSC members have strong concerns about the lack of guardrails around the monthly opt-out provision for transmission and its potential implications for the exercise of market power, particularly given the market participants’ ability to opt-out transmission

³ Per Part I, Section 1 of the Markets+ Tariff, a GHG Reduction Program is defined as “a state regulatory program that mandates reductions in GHG emissions from electricity serving load without pricing GHG emissions”. Currently Colorado, New Mexico, Nevada, and Oregon have emissions programs of this type.

capability monthly with only fifteen days' notice (see Attachment D, Section 1.2).⁴ The Markets+ footprint will likely feature participation by transmission providers or transmission rights holders that may be pivotal transmission suppliers during certain market intervals or seasons. While the MSC members recognize that opting out may be appropriate for approved reasons, it is critical to specify these reasons to safeguard against potential market manipulation. Moreover, given that Markets+ depends on the Western Resource Adequacy Program ("WRAP"), it is also important that any Markets+ Opt-Out parameters align with the WRAP, which itself depends on the availability of sufficient transmission capability.

In light of this, the MSC requests the Commission closely evaluate the current tariff design allowing market participants to opt transmission out of the market on a monthly basis without limitation. It is unclear to the MSC how this option will operate in the context of reliance on the WRAP's transmission requirements to ensure resource sufficiency in the day-ahead and real-time markets. Similarly, the Tariff's permissive opt-out approach without limitation appears to enable an entity to opt out transmission in order to improve the market position of their resources without regard for impacts on customers. We are uncertain if the bid mitigation approach and congestion design sufficiently protects customers from unnecessarily high prices with this transmission availability.

Additionally, some MSC members remain concerned about several issues related to the GHG design. These include how emissions and pricing data will be tracked and reported, and the ability for individual states to access this pricing and emissions data from the market directly. Access to this data will be critical for determining whether market participants are in compliance

⁴ The MSC would object to housing the Opt-Out reasons in the protocols under the Commission's "rule of reason". If it is SPP's intention that each participating transmission provider will file the Opt-Out reasons in their individual Open Access Transmission Tariffs ("OATTs"), SPP should clarify this in the record and explain who will be responsible for ensuring that the Opt-Outs communicated to SPP comply with the individual OATTs.

with state GHG pricing and non-pricing requirements, and whether the market optimization inappropriately raises costs for customers in states without GHG pricing requirements. The MSC will continue to address this issue in further comments to the Commission as the MGHGTF continues its discussions.

The MSC continues to evaluate the Tariff and the Protocol development, looking for resolution to the above issues, and members will watch certain aspects of Markets+ carefully once it is operational to help ensure the market operates efficiently, reliably, and fairly.

V. FUTURE PRIORITIES

Nothing would jeopardize the potential benefits of Markets+ to retail electricity customers more than market failures that destroy economic value or undermine confidence in the Markets+ market. Market failure, whether through an inadvertent construct of the Tariff, mistaken market implementation, or development of adverse market power, remain of significant concern to the MSC as the Markets+ effort goes forward. Accordingly, the MSC will be watchful on these matters; but it is imperative that SPP, the MMU, and the Commission are also proactive and vigilant.

As an ex-officio and non-voting member of the MPEC, the MSC will use its voice to pursue improvements to Markets+ in the future as required. The MSC reserves its right to take its concerns to the MIP, or, consider action under Section 206 of the Federal Power Act, as necessary. The MSC and its members look at all matters through the lenses of potential costs of and potential benefits to retail electricity customers consistent with the MSC Guiding Principles to help ensure the market operates for the public benefit.

The MSC will continue to be actively engaged in the development of the market design to address GHG Reduction Programs, including tracking and reporting methods, ensuring that costs are not disproportionately shifted onto customers in states without GHG pricing programs, and that emissions data is accurately and clearly reported to market participants and states with compliance requirements.

While the impact of the concerns raised in these comments remain unknown, the MSC will continue to be transparent and collaborative stakeholders in the Markets+ process, expressing our concerns in a timely manner and providing constructive feedback when necessary.

VI. CONCLUSION

The MSC respectfully submits these comments and thanks SPP and other Markets+ stakeholders for their ongoing collaboration to establish a day-ahead market offering for the West that is fair and equitable to customers and provides benefit to the region as a whole. The MSC members have jurisdiction over utilities that have expressed an interest in participating in Markets+, and the MSC believes that a well-designed Markets+ day-ahead market could provide benefits to the ratepayers we serve. The MSC thanks the Commission for consideration of these comments and the Tariff.

Individual MSC members reserve the right to file separate comments.

Respectfully submitted,

The Markets+ State Committee

Appendix A

CHARTER OF THE MARKETS+ STATE COMMITTEE

April 28, 2023

Establishment and Authority.

The Markets+ State Committee (MSC) is a standing committee of Markets+, a Western day-ahead market operated by the Southwest Power Pool (SPP), formed to provide state perspectives on pertinent matters related to the market. This charter shall govern the duties and responsibilities of the MSC, and its interactions with Markets+ participants and stakeholders and other established SPP committees.

Purpose and Responsibilities.

The purpose of the MSC is to effectively engage state members in the development and operation of Markets+ and to provide direction and input to the Markets+ Independent Panel (MIP), Markets+ Participant Executive Committee (MPEC), and any working group or task force on all matters deemed pertinent by the MSC and its members, including but not limited to initiative prioritization, market operations, and policy issues. To achieve this purpose, the MSC will:

- a. Provide a forum for Markets+-related education, discussion, and sharing of information between states.
- b. Participate in public meetings and provide input and advice to the MIP on agenda items and other pertinent matters.
- c. Participate in public meetings and provide input and advice to the MPEC on agenda items and other pertinent matters.
- d. Provide input and advice to the SPP Board of Directors on appeals of MIP decisions and other Markets+ matters.
- e. Intervene in proceedings before federal regulatory agencies and in related judicial proceedings to express the MSC's positions.
- f. Assign an MSC member or independent support staff member to attend closed meetings of the MPEC in accordance with reasonable non-disclosure protections.
- g. Select members to participate in and provide advice to ad hoc Markets+ task forces and working groups.
- h. Develop, seek MPEC comment on, and submit MSC annual budgets to the MIP for approval.
- i. Participate as a voting member of the MIP Nominating Committee.

Composition and Governance.

1. Membership.

- a. The MSC will be composed of one member from each state in which a Markets+ market participant has generation or load participating in the market, although initial membership may be broader given the uncertainty about which states will ultimately participate. As such, initial membership may include representatives from any of the states or provinces with entities that may plausibly choose to participate in the

ultimate Markets+ day-ahead market structure, to the extent the states or provinces wish to participate.

- b. State members will be appointed to the MSC by the Chair or President of each respective state public utility commission and may include a member from other state agencies such as state energy offices, state environmental offices, or state consumer advocates, if so appointed by the Chair or President of the state public utility commission.
- c. Each member of the MSC shall serve until a successor is identified.
- d. MSC members may designate an alternate state member to attend meetings if they are unavailable.
- e. If a vacancy occurs at any time, a state member designated by the Chair or President of the state's public utility commission may participate in meetings and other activities of the MSC.

2. Leadership.

- a. The members of the MSC shall select one member to serve as the Chair and one member to serve as the Vice Chair for a term of one year, or a longer term if needed as agreed to by a vote of the MSC.
 - a. The Vice Chair shall assist the Chair as needed and assume the Chair's duties if or when the Chair is unavailable, or if the Chair position becomes vacant.
- b. The MSC Chair, with the assistance of the Vice Chair and independent staff, will coordinate, prepare for, and manage MSC meetings and agendas.
- c. The MSC Chair or Vice Chair will represent the MSC as a voting member of the MIP Nominating Committee and exercise the MSC's vote in matters before the MIP Nominating Committee.

3. Decision Making.

- a. Each member state has one vote.
- b. Action taken by the MSC shall require the affirmative vote of a majority of its members.
- c. The MSC aims to represent the collective interests of its member states and strives for consensus positions when speaking to the MIP, MPEC, any Markets+ committee, working group, or task force, and the Federal Energy Regulatory Commission (FERC), if necessary.
- d. Positions taken by MSC members or the MSC are not binding on state proceedings, before FERC, or in any other forum. Any regulatory agency having rate, siting, or other service jurisdiction over a utility participating in Markets+ reserves the right to exercise all lawful means available to protect its existing state jurisdiction and authority.

4. Meetings.

- a. The MSC shall determine the time and place of its meetings.
- b. The MSC shall determine the procedures for its meetings, except:

1. A quorum for meetings shall be a majority of its members and maintained throughout the meeting in order for the MSC to take any binding action.
 2. Meetings of the MSC may be in person, by telephone, or by web conference, as determined by the MSC Chair.
 3. The MSC may hold meetings or portions of meetings in executive sessions—in which only MSC members, independent staff, and invited guests may attend—to develop policy positions and/or to discuss personnel or other sensitive matters.
 4. Before entering into an executive session, the MSC Chair will publicly announce the purpose of the closed session, identifying the general subject matter to be discussed.
- c. The Chair, with the assistance of the Vice Chair and independent staff, shall provide each member of the MSC with at least seven (7) days advance notice of the time and place of all meetings and provide an agenda that identifies the items on which a vote will be taken at the meeting.
 - d. The Chair, with the assistance of the Vice Chair and independent staff, shall strive to work in concert with the Western Energy Imbalance Market (WEIM) Board of State Regulators (BOSR) Chair, the Western Resource Adequacy Program (WRAP) Committee of State Representatives (COSR) Chair, and the CREPC Co-Chairs to make efficient use of member time and resources.
 - e. Unless a meeting will be held in executive session, the Chair, with the assistance of the independent staff, shall also provide at least seven days (7) advance notice to interested persons by posting the meeting information on the MSC website.

Support and Funding.

The MSC will obtain independent staffing from the Western Interstate Energy Board (WIEB) to support its ability to develop analytical and legal analyses in order to present independent input and advice related to Markets+ to the MIP, MPEC and, if needed, to FERC. WIEB will work with MSC Leadership to develop an annual budget and will solicit input and advice from the MPEC on the MSC budget. The MSC will submit its annual budget to the MIP for approval and SPP will allocate costs and obtain MSC funding from the Markets+ market participants.

Appendix B

Markets+ State Committee Guiding Principles

According to the MSC Charter, the MSC's role is to provide state perspectives on pertinent matters related to the day-ahead tariff development and "effectively engage state members in the development and operation of Markets+ and to provide direction and input to the Markets+ Independent Panel (MIP), Markets+ Participant Executive Committee (MPEC), and any working group or task force on all matters deemed pertinent by the MSC and its members, including but not limited to initiative prioritization, market operations, and policy issues." See *MSC Charter* at <https://www.westernenergyboard.org/wp-content/uploads/MSC-Charter.pdf>.

In addition to the role stated in the MSC Charter, state utility regulators have an overall obligation to evaluate whether any final draft Markets+ tariff is in the public interest for their respective states. Accordingly, and to help guide the MSC's participation in the Markets+ development process, the undersigned members of the MSC wish to articulate the following principles and evaluation criteria upon which state regulators will review any final draft Markets+ tariff language:

1. The tariff must provide meaningful and measurable benefits to customers, in the form of lower costs, enhanced system reliability and resilience, and a more efficient and cleaner grid.
2. The tariff must enable the timely and effective addition of new technologies, such as battery storage, expanded demand response and other resources critical to grid stability in this time of transition.
3. The tariff must provide transparent market pricing including appropriate market power mitigation, fair compensation for resources' attributes and minimal curtailment of least cost resources.
4. Subject to conventional data security concerns, the tariff must give states visibility into pricing determinations as well as unfettered access to the Independent Market Monitor.
5. The management and implementation of the tariff must reflect broad input from stakeholders engaged in the West's bilateral and organized electricity markets.
6. The tariff must be respectful of state authority, responsibility, and policies and support diverse state policy mandates in the Western electricity grid.
7. The tariff must provide fair and equitable treatment of IOU, public power and non-jurisdictional participants, whether transmission owners or transmission customers, load serving entities or generation providers
8. The tariff must be flexible enough to accommodate changes and emergencies effectively, while protecting the grid from the most significant risks.

Before making any determination on the merits of any Markets+ tariff the undersigned will consult with and seek the input of other state representatives, including governors, state energy offices, consumer representatives, and environmental agencies, key stakeholders from their respective states as well as thought leaders with informed perspectives on the regional markets in the West.

The principles and evaluation criteria above are broad to promote inclusiveness in governance, fairness in balancing and representing diverse interests, and ongoing responsiveness of any regional market to all stakeholders, including and particularly states. Furthermore, the principles are intended to be applicable to the question of how any proposed tariff affects the region, any individual state, any market participant and most importantly all electricity consumers in the MSC states, regardless of whether they are served by a rate-regulated utility or not.

These principles are not intended to imply support for any specific multi-state electric organization or regionalization effort.

The individual decision-makers undersigned may also raise additional concerns, take individual positions, or otherwise qualify their support. Additionally, each individual Commission will decide questions before them based on the records developed in their own proceedings and under their unique statutory construct.