

Comments to the
Markets+ Participant Executive Committee
on Behalf of
the
Markets+ State Committee

December 6, 2023

As the Markets+ Participant Executive Committee (MPEC) meets on December 6 and 7, 2023, the Markets+ State Committee (MSC) wishes to relay some of its thoughts and opinions on several remaining issues.

The MSC is made up of state representatives from 14 states that have an interest in the Markets+ effort. It is a formal organization within the Markets+ tariff dedicated to protecting the public interest and assisting SPP, market participants, and regional stakeholders in enhancing the west's economic vibrancy and assuring the reliability and resiliency of the electric systems in the individual states and the Western region as whole.

The MSC appreciates the stakeholder engagement, the collaboration, and our inclusion in this process. The MSC recognizes that this process is complex and time-consuming. We greatly appreciate the work that all stakeholders have done but want to particularly acknowledge the time spent and effort by the SPP staff: they have worked very, very hard, and we appreciate and recognize their tremendous efforts.

As utility regulators and state officials, the MSC goes beyond serving as just a stakeholder in this process; our role also includes overseeing the IOUs as well as protecting the overall public interest in the states we serve and the West as a region. Thus, our perspective is both wider and larger than some and more specific than others.

It is in this unique role that the MSC developed our [*Guiding Principles And Evaluation Criteria of the Markets+ State Committee*](#) in August 2023 and shared to the broader stakeholder group as the Markets+ tariff was being drafted.

These principles and evaluation criteria have guided the MSC's contributions to the Markets+ Task Forces and Working Groups and to the MPEC; and in the future to the Interim Markets+ Independent Panel (IMIP), the SPP Board of Directors, and FERC. While many issues have been addressed throughout the tariff process, based on these principles, the MSC would like to convey its thoughts on three issues that remain:

1. **Governance.** The MSC greatly appreciates that SPP, participants, and stakeholders have worked to address the MSC's governance concerns, including MSC Phase II funding and how the MSC orients to the market participants, the Markets+ Nominating and Governance Committee (MNGC), the IMIP, and the SPP board. One change the MSC requests, which we hope is not controversial, is to give the MSC ability to appeal a MIP decision (or non-decision) to the SPP Board of Directors. As drafted, Section 4.2.1 of the

proposed Markets+ Governing Document¹ would allow only members of the MIP to appeal a MIP decision to the SPP Board. The MSC agrees that not every stakeholder and member should be able to make an appeal. However, the MSC is not similarly situated as other stakeholders. The MSC is a unique entity representing the overarching public interest and is the only entity that encompasses the entire Markets+ footprint. If there is an issue that rises to a point of concern by a majority of the MSC members, the MSC should have the right codified in the tariff to appeal that issue to the SPP Board of Directors.

2. **GHG Accounting Framework.** Addressing the remaining GHG issues wisely and appropriately, for pricing, non-pricing and unregulated states, is very important to the MSC. We understand that the GHG issues are complicated and nuanced, and that work remains underway on those issues but wish to remind the MPEC that one of MSC's guiding principles continues to be that: *The tariff must be respectful of state authority, responsibility, and policies and support diverse state policy mandates in the Western electricity grid. Any additional costs related to such policies and mandates should remain within that state.*
3. **Market Power and Market Monitoring Issues.** Note that Principle #7 states that *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.* The MSC has observed the dialogue regarding market monitoring and market power mitigation with growing concerns regarding the apparent unequal treatment of types of market participants and resources and weakening of the tools to identify and curb market power. Some improvements have been made, such as the agreement that Markets+ Market Participants must submit resource information. However, all market participants must have the same obligations of disclosure, reporting and to respond to questions by the market operator as well as the market monitor accurately, honestly and fulsomely. The tools and remedies available to the Market Operator and the Market Monitor to correct market power or market distortion must be applicable to all the Markets+ Market Participants fully and equally.

The Market Monitoring Unit (MMU) has identified that the existing SPP tariff has a weakness that, in their opinion, other RTO tariffs do not have. SPP relies on the FERC requirements under 18 CFR 35.41(b)² to compel sellers to provide actual and factual information in non-manipulation investigations. The SPP boilerplate tariff, as a result, allows market participants great latitude with respect to information that they present to SPP. The debate about the 'duty of candor' language has revealed, at least to the MSC, that the MMU does not believe public power entities are subject to 18 CFR 35.41(b), and with wider latitude provided by the tariff, an imbalance in obligations is created that is unhealthy for the market.

¹ SPP Markets+ Governing Documents, Section 4.2.1, p. 5, as of October 19, 2023:

<https://www.westernenergyboard.org/wp-content/uploads/SPP-Markets-Governing-Documents-1.pdf>.

² Federal Energy Regulatory Commission, 18 CFR 35.41 Market Behavior Rules (b) Communications:

[https://www.ecfr.gov/current/title-18/chapter-I/subchapter-B/part-35/subpart-H/section-35.41#p-35.41\(b\)](https://www.ecfr.gov/current/title-18/chapter-I/subchapter-B/part-35/subpart-H/section-35.41#p-35.41(b)).

This market has at least two unique characteristics that make this issue particularly salient. First, those non-jurisdictional entities are both the largest entities engaging in Phase 1 and together make up a substantial minority of Phase 1 and perhaps a majority of the final market. Second, throughout this Markets+ development process, which has been extraordinarily rapid, there has been a refrain that data can be collected, market designs evaluated, and improvements made iteratively. Many design decisions, including on market power mitigation, have been made without comparative analysis of options – both because time is short and because the final footprint is unknown. If a substantial portion of the Markets+ Market Participants do not choose to obligate themselves to full and truthful communication in those efforts through the tariff, the MSC has concerns about the stability and effectiveness of the Markets+ market design.

The fast pace of development has not allowed the MSC the opportunity to review other market monitoring issues closely, such as whether the test for market power remains at the balancing authority level. We cannot, as a result, identify whether the market power mitigation plan is sufficient and whether it applies to all Markets+ Market Participants in an equitable manner. The makeup of this market already poses significant enforcement challenges as non-jurisdictional entities are such a substantial share of the resources. Given that traditional enforcement tools are not as widely available in this market, Markets+ Market Participants should be willing to ensure the integrity and effective functioning of the market through commitments to transparency.

In closing, the pace of this project has been daunting with countless hours of substantive additional meetings scheduled on relatively short notice and limited time for consultation between meetings. There has been significant evolution of issues and design approaches even up to the final working group votes. As a result, the MSC's capacity to review the issues in depth, let alone consult with stakeholders in our respective states, has been limited. As we continue to engage in the Markets+ development process as well as the rapidly emerging content and the comments and perspectives of other stakeholders, we may identify additional, emergent concerns. However, at this time, we are seeking to raise only the concerns we are aware of in our role providing advice to the MPEC. Once again, we thank SPP staff and all Markets+ stakeholders for their ongoing efforts, and we will continue to engage and share our questions and concerns in an effort to be constructive and transparent stakeholders in this process.