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# Explanations of Proposed Agreement Amendments

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# Three Amendments

- I. New 21.3(a)(5) to Provide for Damages Computation When Non-Performance is Attributable to Multiple Contracts (OC Recommends)
- II. Technical Correction to Recall Language in Schedule C, to Eliminate an Indication That Recall Rights are Implicit (OC Recommends)
- III. Changes to Service Schedules A, B & C to accommodate FERC's ruling on cost caps (Not considered by OC, but EC consideration required by FERC)

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# I. Damages Where Non-Performance Is Attributable to Multiple Contracts

## ■ The problem

- Sec 21(a)(1) or (2) provides for damages calculation for non-performance (contract price versus replacement price or resale price). If multiple confirms apply to same date/hour/delivery point, the Agreement does not identify which confirm was not performed (and, therefore, which price is used in the damages calculation).
- Disputes have arisen among some members; said to be difficult to resolve (no contractual guidance) and to be stacking up.

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# Multiple Contracts...

- The struggle for a solution
  - Many member representatives worked hard to attain consensus on a workable solution.
  - The Damages Working Group (of Contract Subcommittee) initiated proposals, defined the problem, and developed a resolution concept.
  - The Contract Subcommittee reviewed and hammered out several proposals, ultimately achieving strong consensus on the proposed approach.

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# Multiple Contracts...

- The proposed solution
  - Counterparties in good faith seek to agree on which Confirm applies to the non-performed transaction, but if no agreement, the following procedures apply.
  - Performing party: 3 steps
    - First, categorize both the Confirms for the hour/date/delivery point, and the non-performed transactions, as real-time, day-ahead, or forward. Any confirm not RT or DA is a forward.

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# Multiple Contracts ...

- Second, (a) match (identify) RT Confirms with RT non-performed transactions (and excess Mwh slide over to DA), (b) match DA Confirms with DA non-performed transactions (and excess Mwh slide over to Forward) and (c) match forward to forward.
- Third, calculate damages in accordance with matches.

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# Multiple Contracts

- When would this Amendment apply (and when not)?  
This amendment will apply only if and when:
  - There is non-performance.
  - There are multiple transactions with identical dates, times, delivery points, and counterparties.
  - Some (not all) of these transactions are not performed.
  - Affected parties have not agreed upon which transactions were cut.
- Over 90% of voting OC approved at Butte.
- Discussion? Motions?

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## II. Technical Correction to Recall Language in Schedule C

- Schedule C refers to recall language. Some see an implication in that language that the Schedule or your Confirm allows recall.
- The amendment would make clear that any recall language is as agreed, and if there is no agreed recall there is no recall right.
- This would be a technical correction to resolve potential ambiguity.
- Over 90% of voting OC approved at Butte.
- Discussion? Motions?



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## III. Cost Cap Amendments

- In a Feb 21, 2008 order, FERC ruled, “it is not just and reasonable to allow a seller to use the WSPP-wide ‘up to’ demand charge as a ceiling rate in markets where the seller does not have market-based rate authority, unless such a seller can cost-justify the use of the ‘up to’ demand charge based on its own fixed costs.” *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008).

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# February 21, 2008 FERC Order

- FERC directed that WSPP sellers lacking market-based rate authority, or that have lost or relinquished their market-based rate authority (including those using WSPP Agreement as mitigation), and who wish to transact under the WSPP Agreement, provide “cost justification to demonstrate that use of the WSPP Agreement ‘up to’ demand charge is just and reasonable for that particular seller.”

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# February 21, 2008 FERC Order

- FERC explained,
  - A seller which received FERC approval for use of the WSPP “up to” demand charge could use the WSPP caps.
  - A seller which did not receive that approval, to use the WSPP Agreement “must file a separate stand-alone rate schedule . . . that is cost-justified based on the individual seller’s own costs.” That seller could propose to use the non-rate terms and conditions of the WSPP Agreement, but would have to include those provisions as part of its stand-alone rate schedule. That rate schedule could mimic the WSPP Agreement, but not be the Agreement itself.

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# Petitions for Clarification

## WSPP Position in Comments

- APS/Xcel asked FERC to allow incorporation of company-specific demand charge caps, approved by FERC, into the WSPP Agreement itself. This would allow these companies to use the WSPP Agreement for cost-based transactions, rather have to use a mimic Agreement.
- WSPP asked FERC to adopt the APS/Xcel approach subject to WSPP members' approval of amendment language. WSPP suggested that FERC direct WSPP to submit, within 60 days of an order, either a proposed implementing amendment to the WSPP Agreement, or a report that the WSPP members declined to amend. FERC Order, 124 FERC ¶ 61,300 (Sep. 29, 2008).

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# The Proposed Amendment

- The proposed language (identical in each service schedule) would implement FERC's Sep. 29 order.
- Each entity trading cost-based would either obtain authority from FERC to use the WSPP caps based on its own costs, or would use other FERC-accepted cost-based rates incorporated into the WSPP Agreement as an attachment, solely for that entity.

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# What Would It Mean?

- WSPP Legal Counsel recommends the amendment as a practical approach to implement FERC's rejection of the cost caps.
- Amendment has direct impact only on members who trade cost-based.
- Amendment has indirect positive impact on these members' counterparties, allowing WSPP trading without negotiation/administration of separate, bilateral WSPP mimic agreements.
- If WSPP does not adopt, FERC will impose a compliance method which could be less agreeable.
- Discussion? Motions?