

# Public Power WSPP Issues

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Options or Changes APPA asks WSPP  
To Consider

2008 Fall OC Meeting

# 1. Non Delivery

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## **Option to Declare Failure to Deliver or Receive an Event of Default (WSPP Section 22.1)**

- They don't power, not money
  - Under Agreement, failure of Seller to deliver is not a default (it is non-performance necessitating payment of damages). This result can be inadequate for a Purchaser needing physical delivery. Default, which could be defined to occur after, for example, a series of failures, would trigger a much stronger remedy.
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## 2. No Default Liquidation Liability for Performing Party

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- ❑ **Change Default Provision to Have Money Due Only From Defaulting Party (Sometimes Known as “One way Termination”) (WSPP Section 22.3)**
  - ❑ Agreement provides for M2M upon Default by either party; even if Seller Defaults, Purchaser may need to pay on liquidation. Note, current Agreement allows payout over time in some circumstances.
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## 3. No Collateral Calls for Publics

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- ❑ **Risk of Collateral Calls (WSPP Sections 22.1, 22.3 & 27)**
  - ❑ Public's can raise their rates to cover, so possibly (??!!) there is no basis in Agreement for demanding credit assurances of them
  - ❑ Seller may call for collateral as credit assurances under § 27, which may arise when Seller is in the money. APPA urges that publics lack assets to comply (and if performing should not be required to post).
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## 4. Governing Law

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- ❑ **Governing Law (WSPP Section 24)**
  - ❑ In some cases, municipalities or other public power entities are precluded by applicable law from agreeing to a contract interpreted according to the law of another state.
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## 5. Recovery for Covering with Own Generation

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- ❑ **The Ability for Purchaser to Run Other Generation to Cover (WSPP Section 21.3(d))**
  - ❑ There is a concern that the WSPP Agreement is unclear whether Purchaser can recover cost of running its own generation to cover Seller's failure to deliver.
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## 6. Easy Technical Fix

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- ❑ **Conform WSPP Agreement Section 4.4 with EAct 2005 Amendments to Federal Power Act**
  - ❑ Existing WSPP Section 4.4 is not technically in conformance with the EAct 2005 amendments to the Federal Power Act as it should also refer to “other cooperatives” rather than just “Rural Utilities Service cooperatives.”
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# Contract Subcommittee

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- Unless there is vociferous objection, we expect to address these at Contract Subcommittee.
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