

# IRRIGATION & ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA

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November 27, 2017

Mr. Rodney Bailey, Power Marketing Advisor  
Western Area Power Administration  
299 South Main Street, Suite 200  
Salt Lake City, Utah 84111

Re: IEDA's Comments About WAPA's Recommendation Concerning CRSP Membership in SPP

Dear Rodney:

As you know, the Irrigation & Electrical Districts' Association of Arizona (IEDA) is an Arizona non-profit association which, among other Members and Associate Members, includes 12 contractors of the Colorado River Storage Project (CRSP) hydropower resource within what is referred to as the Southern Division of CRSP. Your current discussions and analyses of the potential for CRSP to join the Southwest Power Pool (SPP) seems to focus on the CRSP transmission system which, as we all know, terminates at the Pinnacle Peak Substation northeast of Scottsdale. Southern Division CRSP customers take their resource at that point and have it transmitted to their loads on other federal and non-federal transmission systems. In the context of WAPA's presentations and discussions, we cannot help but feel like the quintessential stepchild in this process.

Thus, we reviewed the SPP New Member Communication and Integration Process document of October 2017 with some skepticism. Section 4.d. provides that the Federal Service Exemption will apply to all project costs eligible for regional cost allocation, that is, all projects over 200 kV unless screened out of cost allocation eligibility by the planning process, projects less than \$15 million in project costs, or projects otherwise not eligible for cost allocation. The document talks about certain requirements necessary for the Loveland Area Projects (LAP) and CRSP including "limitations on financial penalties". It also talks about the Federal Service Exemption from transmission costs. This would appear to insulate the CRSP transmission system from additional costs that would burden the Southern Division firm electric service contractors. The provision does not discuss the possible difference in application when firm electric service contractors have other arrangements such as firm transmission service on the CRSP system or, as you have already heard from SRP, an exchange arrangement or other similar existing contract. We, of course, agree with SRP that its exchange agreement dealing with Craig and Hayden should be brought under the umbrella of the Federal Service Exemption as an existing arrangement comparable to firm electric service use of the CRSP system.

One might take some comfort from the provisions of the above document were not the very protections articulated in it still subject to change.

The reference to penalties is a direct reference to the issue of whether or not a non-jurisdictional entity such as WAPA could be subjected to mandatory refund obligations by the Federal Energy Regulatory Commission (FERC) or by contract by SPP. One would think the answer to that question is no because neither the agency nor SPP as the contracting entity can obligate the future monies from Congress in the appropriation process. That seemed to have been decided in 2007 in *TANC v. FERC*. However, WAPA's Sierra Nevada Region has signed an Amended and Restated Transmission Control Agreement with the California Independent System Operator (CAISO) and other transmission operators with a mandatory refund provision in it (Subsection 16.2). Additionally, PG&E and others have sued the United States over transactions in 2000 and 2001 in California involving WAPA and the Bonneville Power Administration (BPA), attempting to get the courts to consider mandatory refunds from these agencies by virtue of these transactions even if FERC can't. The utilities involved have lost in both federal district court and the Ninth Circuit Court of Appeals on the basis of standing. The utilities have petitioned the U.S. Supreme Court for a writ of certiorari and the United States has filed a brief in opposition to granting that petition. Now we hear that the parties have asked the Supreme Court to suspend consideration of the petition, which the Court has, while the parties negotiate. What is to negotiate? If the negotiation involves money, who will end up paying? The agencies don't get money from Congress for this sort of thing. Will it come from customers? Which ones?

All of this might seem isolated and, perhaps, the problem of WAPA's California customers if Congress had not amended the Federal Power Act in 2005 to give FERC the authority over refunds associated with voluntary sales defined as short-term sales by the power marketing administrations (PMA's). How that retroactive provision affects the pending cert petition is beyond me. But WAPA apparently is discussing when and under what circumstances it might be subject to pre-2005 refunds.

Our concern is heightened by the fact that FERC has consolidated an existing docket and formed a new docket to explore the very subject of mandatory refunds that might be imposed by SPP by contract against WAPA and other public entities by implication. Here the issue is whether FERC can force SPP to include in its controlling documents a requirement for mandatory refunds from SPP members, including WAPA, under any and all circumstances even though FERC's authority under the 2005 amendment to the Federal Power Act is limited to short-term sales. Again, the question arises: If they have to pay, whose money will they use? If WAPA has to look to its customers for the money, will firm electric service customers be subjected to this additional charge? Is this, then, the gapping hole in the Federal Service Exemption?

Beyond these specific issues, we have been unable to find a review of the relevant studies by any customer or customer group that indicates that this proposal has significant benefit to CRSP customers. It is entirely different than the situation that confronted the Upper Great Plains Division of WAPA when counterparties had already been lost and the squeeze was on. One could hardly not realize a savings from being able to access a market through SPP when the alternative was essentially dried up. There has been no case made of which we are aware that that is the situation here or that there is some predictable, definable number of counterparties that will go away, creating the equivalent situation. Moreover, the assumption that the CAISO will become regional is countered by the political reality that the California Legislature is not disposed to handing over the reins of the CAISO to a regional governing body. Without the regional governing body,

regionalization is impossible. Nor is there a case made for SPP moving West without the CRSP transmission system. Indeed, it is our understanding that the major private utility involved in the current studies will not join SPP unless the CRSP transmission system is brought in as well. Thus, a number of the central driving assumptions that underpin the current recommendation seem to be resting on shaky ground.

Finally, we are concerned about SPP itself. FERC staff, in order to participate in SPP's recent annual meetings, had to file a Federal Register Notice for doing so and list all of the pending dockets that might be discussed if FERC staff showed up in Little Rock. The number totaled 65 dockets. We are aware of at least one complaint that has been filed since the meeting. Several of the complaints go to the essence of the makeup of SPP's open access transmission tariff (OATT). Others are more specific as to specific rates or problems. Central to our concern is Docket No. EL18-19, raising the mandatory refund issue in that 206 proceeding. However, we cannot ignore the fact that a lot of people, including FERC, don't seem to be particularly happy about the way SPP is running. If CRSP is brought into SPP, what will SPP be? Become?

In short, there is enormous uncertainty about the future of SPP as an organization, how it will be allowed to function by FERC and its current customer base and just what WAPA is getting into if LAP and CRSP jump into the pool. This uncertainty and the questionable analyses of potential benefits make us nervous. We hope that WAPA will proceed with extreme caution here. Our nervousness is exasperated by the fact that the "mitigation" agreement that is supposed to temporarily insulate CRSP firm electric service customers from additional costs has not been signed. The need for that mitigation and the need for different treatment of WAPA was spelled out in a 2014 memorandum from one of your attorneys. The analysis seemed to make is quite clear how things needed to proceed. Unfortunately, they are not proceeding that way. Instead we have a dust storm approaching a haboob, at least from our vantage point. In such situations we are told to pull off the road and turn our lights off, lest we become victims. Perhaps WAPA should think similarly.

Thank you for the opportunity to comment on this very important proposal that can have enormous implications for us. We understand from Leslie James that there will be further opportunities to comment on the WAPA proposal to join SPP. We would appreciate some clarification of how many of such opportunities will be available and when they will occur.

Sincerely,



Robert S. Lynch  
Counsel and Assistant Secretary/Treasurer

RSL:psr

cc: Mark Gabriel, Administrator  
John Bremer, General Counsel  
J. Adam Arellano, Attorney Advisor  
IEDA Presidents/Chairmen and Managers