

MEMORANDUM

January 19, 2010

To: WSPP

From: Arnie Podgorsky  
Matthew Segers

Re: FERC Rule Requiring Electronic Filing of Tariffs, Rate Schedules and Jurisdictional Contracts and Agreements

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The FERC has adopted new standards for filings of tariffs, essentially converting to an electronic format. The requirements, set out in Order No. 714,<sup>1</sup> are extensive. As described briefly in this memorandum, all tariffs, rate schedules, and other jurisdictional contracts and agreements for all public utilities, natural gas pipelines, oil pipelines and power administrations to be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board (“NAESB”) and the Association of Oil Pipelines (“AOPL”). The requirements cover the WSPP Agreement and Open Access Transmission Tariff.

This memorandum also set out expectations regarding WSPP compliance with Order No. 714.

**I. BACKGROUND**

**A. Applicability of Order No. 714**

On September 19, 2008, the Commission issued Order No. 714, which requires publicly regulated utilities to file tariffs, rate schedules, and other jurisdictional contracts and agreements electronically so the Commission may assemble and organize the disparate pieces of these agreements for display and for use by the Commission and the public. Order No. 714 applies to companies and entities “that submit tariffs, rates, or contracts with the Commission pursuant to the Natural Gas Act (“NGA”), the Natural Gas Policy Act of 1978 (“NGPA”), the Federal Power Act (“FPA”), the Interstate Commerce Act, the Flood Control Act, the Bonneville Power Act, the

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<sup>1</sup> *Electronic Tariff Filings*, Order No. 714, III FERC Stats. & Regs., Regs. Preambles ¶ 31,276 (2008).

Northwest Power Planning Act, and other relevant statutes.”<sup>2</sup> Specifically included are the following entities:

RTOs and independent system operators (ISOs); power authorities and federal power marketing administrations which file rates, contracts, or tariffs at the Commission; intrastate natural gas pipelines that file rates and operating conditions pursuant to the NGPA; interstate natural gas pipelines subject to the NGA which serve only an industrial customer; and companies or entities that may make voluntary tariff filings, such as reciprocity filings pursuant to Order No. 888.<sup>3</sup>

Because WSPP is required to maintain the WSPP Agreement and an Open Access Transmission Tariff (“OATT”) on file with the Commission pursuant to the FPA,<sup>4</sup> WSPP is subject to Order No. 714 and must comply with its requirements.

## **B. Requirements of Order No. 714**

Entities that are subject to Order No. 714 must electronically file all applicable documents in conformance with specific XML schema, which “proscribes the metadata elements and the textual information that must be included in the filing package.”<sup>5</sup> The data elements included in the XML package must “properly identify the nature of the tariff filing, organize the tariff database, and maintain the proper relationship of tariff provisions in relation to other provisions.”<sup>6</sup> “The filing package itself will include the text of tariff changes as well as all filing

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<sup>2</sup> *Id.* at P 15.

<sup>3</sup> *Id.*

<sup>4</sup> *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888 at 31,728, 1991-1996 FERC Stats. & Regs., Regs. Preambles ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *reh’g denied*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002) (requiring public utilities within a loose power pool to file either an individual *pro forma* tariff or a pool-wide *pro forma* tariff, and to take service under that tariff for all pool transactions no later than December 31, 1996); *see also W. Sys. Power Pool*, 55 FERC ¶ 61,099 (1991), *order on reh’g*, 55 FERC ¶ 61,495 (1992) (accepting permanent WSPP Agreement).

<sup>5</sup> Order No. 714 at P 23.

<sup>6</sup> *Id.* The XML package must be submitted as a zip (compressed) file. *See id.* at footnote 18.

attachments, such as transmittal letters. The XML schema is maintained on the Commission's website along with the required codes, descriptions, and other requirements, as well as information that may be useful to entities developing filing software."<sup>7</sup>

Each regulated entity must submit a filing to establish its baseline tariff as of the filing date.<sup>8</sup> As applied to filings by electric utilities, the baseline filing should include OATTs, power sales tariffs available to any customer, and market-based rate tariffs.<sup>9</sup> After an entity submits its baseline filing, all new tariffs and rates schedules must be electronically filed using the NAESB standards.<sup>10</sup> "Existing tariffs and rate schedules not included as part of the baseline filing are required to be filed electronically only when they are revised or amended."<sup>11</sup> The Commission will allow companies to structure their tariffs either using the existing tariff sheet format or as sections.<sup>12</sup> Companies may also determine whether to file tariffs by separating the tariff into sheets or sections or by filing the tariff as an entire document.<sup>13</sup> However, due to their considerable size, electric utility OATT filings must be separated into sheets or sections – filing the OATT as an entire document is not an option.<sup>14</sup>

In order to provide entities subject to Order No. 714 with sufficient time to develop and test software, the Commission set April 1, 2010 as the implementation date for Order No. 714, with a staggered filing schedule for companies over the following six months.<sup>15</sup> A recent Commission notice required each entity subject to Order No. 714 to submit to the Commission a proposed transitional schedule for making its baseline electronic tariff filing no later than January 22, 2010.<sup>16</sup> The Commission will grant a proposed schedule, provided the result of

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<sup>7</sup> *Id.* at P 23. Any changes to the schema will be proposed in a public notice sufficiently in advance to permit companies to revise their software. *See id.* at P 24.

<sup>8</sup> *See* Order No. 714 at P 92.

<sup>9</sup> *See id.* "Individually negotiated rate schedules and agreements will not have to be included as part of the baseline filing." *Id.*

<sup>10</sup> *See id.* at P 93.

<sup>11</sup> *Id.*

<sup>12</sup> *See* Order No. 714 at P 34.

<sup>13</sup> *See id.* at P 35. This determination is to be made by companies based on the nature of the tariff and frequency of filing. *See id.*

<sup>14</sup> *See id.* at P 40.

<sup>15</sup> *See id.* at P 104.

<sup>16</sup> *See Notice of Date for Submission of Transitional Schedules*, Docket No. RM01-5-000 (Dec. 1, 2009).

aggregated schedules are that all filings are generally spread over the six-month transition period.<sup>17</sup> The Commission will issue a notice of the final filing schedule after reviewing the proposed transitional schedules.<sup>18</sup>

## **II. WSPP COMPLIANCE WITH ORDER NO. 714**

Wright & Talisman, P.C. (WT) proposes to use Systrends for WSPP Order No. 714 compliance, subject to reaching final contract terms covering costs and procedures. Because WSPP makes no more than two or three filings annually, the cost is not expected to be material. WT is working out arrangements with Systrends for a group of clients including WSPP.

WSPP will submit to the Commission by January 22, 2010 a proposed baseline filing date of August 9, 2010. This timing will provide WSPP counsel sufficient time to finalize arrangements with Systrends and prepare the filing; we also expect this to be appropriate timing for the FERC; we also want to file after glitches and bugs are worked out.

Both documents will be separated into sections for the baseline filing, as opposed to separate sheets, and all future filings with the Commission making revisions to either document will only include the section being revised. In the future we will address production of the WSPP Agreement and OATT in formats useful for WSPP participants.

Let us know of any questions or concerns.

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<sup>17</sup> *See id.*

<sup>18</sup> *See id.*