This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16929 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC08–7–000]

Constellation Energy Commodities Group, Inc.; Notice of Filing

July 15, 2008.

Take notice that on July 11, 2008, Constellation Energy Commodities Group, Inc. (Constellation) filed a request for appeal from North American Electric Reliability Corporation (NERC) Compliance Registry for the Texas Regional Entity Region. Constellation states that it is a power marketer, an active market participant in the market administered by the independent transmission system operator of the Electric Reliability Council of Texas (ERCOT), sells natural gas and other commodities in the United States and abroad, and holds interest in exploration and production companies, however it does not own any physical assets for the generation, transmission, or distribution of electric power and has no retail electric customers or service territories. Constellation and Power Resources, Ltd. (PRL) are parties to a Tolling Agreement in which Constellation agreed to be the Qualified Scheduling Entity for the PRL facility. Constellation asks that the Commission reverse the NERC's inclusion of its registration as a Generator Operator.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive E-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 11, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16926 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1305–015]

Westar Generating, Inc.; Notice of Filing

July 16, 2008.

Take notice that on July 1, 2008, Westar Generating, Inc. filed a refund report, pursuant to Article IV of its Settlement Agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16927 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–195–051; EL07–69–001]

Western Systems Power Pool; Western Systems Power Pool Agreement; Order Addressing Request for Reconsideration and Providing An Opportunity for Further Comments

Issued July 17, 2008.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. On February 21, 2008, the Commission issued an order on the Western System Power Pool (WSPP) Agreement rates, finding that 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.[1] On March 24, 2008, Arizona Public Service Company (APS) and Xcel Energy Services Inc. (Xcel) filed a joint request for reconsideration of the WSPP Agreement Order, requesting that the Commission adopt an alternative implementation of the WSPP Agreement Order by incorporating company-specific demand charge caps into the WSPP Agreement, either by cross-reference to a specific cost-based tariff, or by incorporation of company-specific rate schedules into the WSPP Agreement itself.[2] In this order, we address the request for reconsideration. We deny APS's and Xcel's request with respect to the cross-reference proposal, and provide an opportunity for WSPP and other interested parties to comment on the proposal for incorporating company-specific rate schedules, as discussed below.

I. Background

2. The WSPP Agreement was initially accepted by the Commission on a non-experimental basis in 1991,[3] and provided for flexible pricing for coordination sales and transmission services. In accepting the WSPP Agreement, the Commission rejected WSPP's proposed system of price caps based on the costs of its highest cost participants, and instead developed energy and transmission rate ceilings based on the costs of a subset (18 sellers) of the original parties to the WSPP Agreement.[4] The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's acceptance of the WSPP Agreement.

3. On June 21, 2007, the Commission instituted a section 206 proceeding to investigate whether the WSPP Agreement ceiling rate continued to be just and reasonable for a public utility seller in markets in which such seller was found to have or was presumed to have market power.[5] The Commission limited the investigation to: (1) the justness and reasonableness of WSPP Agreement cost-based ceiling rates for coordination energy sales by public utility sellers that are found to have, or are presumed to have, market power; and (2) if the existing WSPP Agreement rates are unjust and unreasonable for such sellers, how the Commission should establish a just and reasonable rate. The Commission sought comment on whether the Commission should set a just and reasonable ''up to'' rate based on: (1) Individual sellers'' costs; (2) a new agreement-wide ''up to'' rate based on the costs of a representative group of WSPP sellers (including how such agreement-wide rate should be calculated); or (3) or a different methodology.

4. In the February 21 Order, the Commission found that it is not just and reasonable to allow such a seller to continue to use the WSPP-wide ''up to'' demand charge as a ceiling rate unless such a seller can cost-justify the use of the ''up to'' demand charge based on its own fixed costs. Accordingly, the Commission directed all sellers under the WSPP Agreement that lack market-based rate authorization, or that have lost or relinquished their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), who wish to continue transacting under the WSPP Agreement, to make a filing within 60 days of the date of issuance of that order providing cost justification[6] to demonstrate that use of the WSPP Agreement ''up to'' demand charge is just and reasonable for that particular seller. The Commission stated that, if a seller provides cost support demonstrating that the ''up to'' demand charge under the WSPP Agreement does not exceed the demand charge that the seller can cost-justify based on its own fixed costs, the seller may continue to use the WSPP Agreement.

Otherwise, such seller must file a separate stand-alone rate schedule, to be effective as of the date of the compliance filing that is cost-justified based on the individual seller's own costs. In the latter case, such 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.

II. Request for Reconsideration

5. APS and Xcel state that they are not seeking to reverse the Commission's ruling in the February 21 Order that sellers may not automatically rely upon the capped rates in the WSPP Agreement in markets where they do not have market-based rate authority. Rather, APS and Xcel request that the Commission reconsider how this ruling is to be implemented, so as to preserve the numerous benefits of transacting under the WSPP Agreement for those mitigated sellers that might require company-specific cost caps, and for their counterparties.

6. APS and Xcel argue that the February 21 Order eliminates the efficiencies inherent in the WSPP Agreement for certain WSPP members, because a seller that is unable to provide cost justification for the ''up-to'' demand charge included in the WSPP Agreement would be precluded from selling under the WSPP Agreement. APS and Xcel contend that, even though a seller could seek to mimic the benefits of the WSPP Agreement by filing a separate agreement that contains the same terms and conditions, the seller would still need to enter into bilateral agreements with each WSPP member with which it would want to transact. APS and Xcel argue that each of the counterparties would then need to familiarize itself with the terms and conditions of the seller's stand-alone rate schedule and confirm that the terms and conditions included in the stand-alone rate schedule mirror those contained in the WSPP Agreement. APS and Xcel further state that other process adjustments would be required, such as making advance bilateral arrangements prior to transactions taking place under a stand-alone rate schedule. They also contend that additional credit obligations would necessarily be required by stand-alone rate schedules, as well as possible additional collateral postings. APS and Xcel maintain that such additional steps could take more time than a potential buyer is willing to spend, which they argue could limit the number of potential trading partners.

7. APS and Xcel also argue that the Commission's remedy in the February 21 Order results in inefficient use of company and Commission resources and may result in inconsistent conditions of sales for power and energy. They contend that, in the event revisions are made to the terms and conditions of the WSPP Agreement, each WSPP member that utilizes those terms under a stand-alone rate schedule will be required to propose and file similar conforming revisions to keep the terms and conditions consistent. APS and Xcel further maintain that the Commission could be required to process and evaluate numerous rate

[1] *Western Sys. Power Pool*, 122 FERC ¶ 61,139 (2008) (February 21 Order).

[2] APS and Xcel describe this proposal as incorporating into the WSPP Agreement company-specific schedules of demand charge cost caps. Under APS and Xcel's second proposal, they would continue to use the non-rate terms and conditions of service under the WSPP Agreement.

[3] *Western Sys. Power Pool*, 55 FERC ¶ 61,099, *order on reh'g*, 55 FERC ¶ 61,495 (1992) (Initial Order), aff'd in relevant part and remanded in part sub nom. *Environmental Action and Consumer Federation of America* v. *FERC*, 996 F.2d 401 (DC Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994) (*Environmental Action*). Prior to 1991, the WSPP Agreement was used for three years on an experimental basis. See Western Sys. Power Pool, 50 FERC ¶ 61,339 (1990) (extending the initial two-year period for an additional year).

[4] *See* Initial Order, 55 FERC ¶ 61,099 at 61,321–25.

[5] *Western Sys. Power Pool*, 119 FERC ¶ 61,302 at P 9 (2007) (Order Instituting Hearing).

[6] The Commission stated that such changes should be filed pursuant to section 35.13 of the Commission's regulations. 18 CFR 35.13 (2008).

schedule changes. Additionally, they argue that there may be a lag between the effective date of the revisions to the WSPP Agreement and the effective date of revisions in a company's stand-alone rate schedule, which they claim will create confusion between counterparties. APS and Xcel contend that confusion may also result in transactions between parties if a WSPP member does not incorporate each and every revision to the WSPP Agreement in the company-specific stand-alone rate schedule. They explain that a prospective buyer may have the mistaken impression that the seller has implemented every term and condition of the WSPP Agreement in the stand-alone rate schedule, when, in fact, a seller has not proposed certain revisions.

8. APS and Xcel suggest what they describe as less procedurally complex, alternative approaches to implement the February 21 Order, including allowing cross-referencing of company-specific cost-based demand charges in a separate cost-based tariff. Alternatively, they suggest that the Commission could permit company-specific rate schedules to be incorporated into the WSPP Agreement itself.

III. Commission Determination

9. In the Order Instituting Hearing, the Commission emphasized that it was not investigating whether sellers that are found to have market power, or are presumed to have market power, may continue to use the non-rate terms and conditions under the WSPP Agreement; nor was the Commission investigating the transmission rates under the WSPP Agreement. Moreover, in the February 21 Order, the Commission emphasized that the finding reached would affect only a limited number of sellers. The Commission specifically stated that it was not requiring each WSPP member public utility to cost-justify the use of the WSPP Agreement demand charge or to file an individual cost-based rate. Instead, the Commission required only those jurisdictional sellers that lack market-based rate authorization, or those sellers that lose or relinquish their market-based rate authority (including those sellers currently using the WSPP Agreement as mitigation), to provide cost justification to demonstrate that use of the WSPP ''up to'' demand charge is just and reasonable for those particular sellers. Only if such sellers cannot justify the demand charge would they need to file a separate, stand-alone rate schedule that could mirror the non-rate terms and conditions of the WSPP Agreement. Thus, only a limited number of utilities are affected by the February 21 Order.[7]

10. The proposal by APS and Xcel to cross-reference company-specific cost-based demand charges in the WSPP Agreement is not consistent with Commission requirements. The Commission requires public utilities to post full and complete rate schedules and tariffs, rather than incorporating rates by reference.[8] Accordingly, we will deny APS' and Xcel's request for reconsideration on this proposal.

11. APS and Xcel alternatively propose that the Commission permit company-specific rates in rate schedules to be incorporated into the WSPP Agreement. They argue that the requirement in the February 21 Order that sellers who cannot justify the demand charge must file a separate, stand-alone rate schedule will reduce efficiencies for certain WSPP members and cause potential waste of Commission resources. APS and Xcel cite the need for additional credit checks and postings, as well as potential numerous rate schedule changes, as examples of requirements that will discourage potential trading partners from entering into agreements with WSPP members.

12. The proposal to allow the incorporation of company-specific rates in rate schedules in the WSPP Agreement would require amendment of the WSPP Agreement. To assist us in our analysis of this proposal, we will provide WSPP and any other interested party the opportunity to submit comments on the proposal to incorporate company-specific rate schedules into the WSPP Agreement within 30 days of the date of issuance of this order, with reply comments due 15 days thereafter.

The Commission orders:

(A) APS' and Xcel's request for reconsideration is hereby denied with respect to the proposal to cross-reference company-specific demand charges in the WSPP Agreement, as discussed in the body of this order.

(B) The Commission hereby provides WSPP and interested parties an opportunity to comment on the proposal to incorporate company-specific rate schedules in the WSPP Agreement within 30 days of the date of issuance of this order, and reply comments within 15 days, as discussed above.

(C) The Secretary is directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–16914 Filed 7–23–08; 8:45 am]

BILLING CODE 6717–01–P

[7] We note that two sellers have filed cost justification for continued use of the WSPP Agreement demand charge. Those filings are pending before the Commission. Three others, including APS, filed letters stating that they would not use the WSPP Agreement in balancing authority areas in which they are mitigated.

[8] *See* 18 CFR 35.1(a) (2008); *see also Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, at P 186 (2006).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2008–0213; FRL–8696–7]

Massachusetts Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the state waters of Boston, Braintree, Cambridge, Chelsea, Everett, Hingham, Hull, Milton, Newton, Quincy, Watertown, Weymouth, and Winthrop.

ADDRESSES: *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,