such motions or protests should be filed on or before August 15, 1995. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18781 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1384–001, ER94–1450–004, ER94–1685–001, ER94–1690–001, ER94–1691–002, ER95–393–001]

Morgan Stanley Capital Group Inc., Coastal Electric Services Company, Citizens Lehman Power Sales, Engelhard Power Marketing, Inc., AIG Trading Corporation, CLP Hartford Sales, L.L.C.; Order Granting Rehearing in Part and Denying Rehearing in Part, Announcing Elimination of Power Marketer Business and Financial Arrangements Reporting Requirement, and Providing Guidance on Determining ''Affiliation'' Under Part II of the Federal Power Act

Issued July 26, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Background

In a November 8, 1994 order issued in Docket No. ER94–1384–000, *Morgan Stanley Capital Group, Inc.*, 69 FERC ¶ 61,175 (1994) (November 8 Order), the Commission accepted for filing the application of Morgan Stanley Capital Group Inc. (MS Capital) for authorization to engage in wholesale electric energy transactions as a marketer at market-based rates. In the November 8 Order, the Commission denied MS Capital's request for relaxed reporting requirements and imposed the same filing and reporting requirements as those applicable to other power marketers. The Commission announced that it would reconsider these reporting requirements in a future generic proceeding applicable to all public utilities selling power at market-based rates. The Commission also denied MS Capital's request for waiver of the annual charge obligation and clarified that such obligation is applicable to all power marketers.

These cases present an appropriate vehicle for addressing the major issues in the November 8 Order. The Commission will address other issues as they become ripe for resolution.

Requests for Rehearing of November 8 Order

On December 8, 1994, MS Capital filed a request for rehearing and modification of and for interim relief from the November 8 Order. MS Capital seeks relief from the November 8 Order in two respects. First, MS Capital asks the Commission to reverse its decision to require MS Capital to report business and financial arrangements between it (or an affiliate) and any entity that buys from or sells power to it, or at least to grant interim relief from that reporting requirement pending the outcome of the generic proceeding announced in the November 8 Order. MS Capital argues, among other things, that compliance with the requirement to report business and financial arrangements would be needlessly onerous and would inhibit the participation of experienced and highly qualified financial companies such as MS Capital in the markets for wholesale sales of electricity. MS Capital also questions whether the business and financial arrangements reporting requirement would provide the Commission and its staff with any meaningful data that could be used to detect reciprocal dealing. If the Commission does not reverse or stay application of the business and financial arrangements reporting requirement, MS Capital proposes several limitations to the scope of that requirement.

Second, MS Capital asks the Commission to reverse, or defer, its holding that power marketers are subject to the Commission's annual charge requirement. MS Capital asks the Commission, at a minimum, to defer its decision to collect annual charges from power marketers for a start-up (*e.g.*, three-year) period ''until power marketers are better established,'' after which time the Commission could evaluate ''whether power marketers impose regulatory burdens on the Commission comparable to the burdens created by regulation of utilities with cost-based rates.'' MS Capital Rehearing Request at 3, 18.

On December 8, 1994, the Electric Power Monitoring Group and its individual members [1] filed a motion to intervene out-of-time and a request for rehearing of the November 8 Order. The Electric Power Monitoring Group seeks rehearing of the Commission's ruling requiring all power marketers to pay annual charges. The Electric Power Monitoring Group argues, among other things, that: (1) The Commission has not adequately justified its departure from past policy and precedent pursuant to which it previously declined to assess power marketers annual charges; (2) the Commission has limited jurisdiction over power marketers, which does not warrant subjecting them to the annual charge requirement; (3) the Commission does not devote significant resources to the regulation of power marketers as to justify subjecting them to the annual charge requirement; [2] and (4) subjecting power marketers to the annual charge requirement effectively discriminates against power marketers, which will not be able to recover the annual charges in a cost of service rate as do other public utilities subject to the annual charge requirement.

On December 8, 1994, Citizens Lehman Power Sales (CL Sales) also filed a motion for leave to intervene out-of-time and a request for rehearing of the November 8 Order. CL Sales asks the Commission, pending its generic proceeding, to drop the business and financial arrangements reporting requirement and to rely upon existing complaint procedures. If the Commission decides to maintain the reporting requirement in the interim, CL Sales asks the Commission to clarify that its decision to exclude transitory holdings in connection with investment or merchant banking, market-making, or asset management activities for purposes of determining generation dominance [3] also applies to the business and financial arrangements reporting requirement.

On December 9, 1994, Calpine Power Marketing Inc. (Calpine) filed a motion for leave to intervene out-of-time and a request for clarification of the November 8 Order. Like CL Sales, Calpine asks the Commission to clarify that the November 8 Order's exclusion of transitory holdings for purposes of assessing market power is equally applicable to reciprocal dealing concerns and thus also applies to the business and financial arrangements reporting requirement.

On July 7, 1995, MS Capital filed a motion for interim relief from the

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[1] The members of the Electric Power Monitoring Group joining in the pleading are Enron Power Marketing, Inc., Valero Power Services Company, Electric Clearinghouse, Inc., Intercontinental Energy Corporation, and KCS Energy Management Services, Inc.

[2] The Electric Power Monitoring Group argues that the Commission has failed to supply documentation to support its claim that it ''can spend as much (if not more) time evaluating power marketer requests as it can other types of rate applications.'' 69 FERC at 61,697. The Electric Power Monitoring Group submits that such an analysis should be performed in a rulemaking proceeding of general applicability.

[3] See 69 FERC at 61,693.

business and financial arrangements reporting requirement and for prompt initiation and completion of the generic reporting requirements proceeding. MS Capital again asks the Commission, pending the outcome of the generic proceeding announced in the November 8 Order, to stay the business and financial arrangements reporting requirement or to limit its scope.

As we explain below, we will grant MS Capital's request for rehearing concerning the business and financial arrangements reporting requirement.[4] With the issuance of this order, we will no longer require MS Capital, or any power marketer with market-rate authority, to report business and financial arrangements between the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. We also provide guidance in this order concerning the determination of affiliation under Part II of the Federal Power Act (FPA). Further, we will deny the requests for rehearing of our decision in the November 8 Order to apply the annual charge obligation to all power marketers.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1995), the Commission finds that the late interventions in this proceeding of CL Sales, the Electric Power Monitoring Group (and its individual members identified *supra* note 1), and Calpine will not prejudice the interests of any party and that good cause exists to permit the late interventions.

Business and Financial Arrangements Reporting Requirement

We will grant MS Capital's request for rehearing with regard to the business and financial arrangements reporting requirement. We will, effective as of the date of issuance of this order, no longer require power marketers to comply with that reporting requirement.

As the Commission explained in the November 8 Order, the Commission has required power marketers, as a condition of market rate approval, to report business and financial arrangements involving the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. 69 FERC at 61,694.[5] This reporting requirement was designed to assist the Commission in detecting reciprocal dealing.

We have given careful consideration to the concerns voiced by MS Capital (and other power marketers) that the costs and burdens of the business and financial arrangements reporting requirement far outweigh any possible benefits of such reporting. We find that MS Capital has raised valid concerns as to, among other things, the breadth of such reporting requirement, the ''potentially impossible compliance burden'' that the requirement imposes on marketers such as MS Capital that are ''involved in numerous, disparate investments and business arrangements pertaining to thousands of different business matters,'' [6] and the adequacy of the resulting data in detecting reciprocal dealing.

On this basis, we conclude that the business and financial arrangements reporting requirement imposes costs and burdens on power marketers (in terms of compiling and filing the data) as well as on the Commission (in terms of reviewing the data for the purpose of detecting reciprocal dealing) that are not justified by the potential benefits of such reporting. As a result, although the possibility of reciprocal dealing remains a valid concern, we do not believe that the business and financial arrangements reporting requirement is an effective means of detecting such behavior by power marketers. Rather, we believe that this matter can be appropriately addressed through a complaint mechanism.

In several orders issued in the other dockets that are captioned in this order, we indicated that the same reporting requirements and reporting options that the Commission imposed on MS Capital apply to other power marketers with market-based rate authority.[7] Consistent with our holdings in that regard, we clarify that our decision to eliminate the business and financial arrangements reporting requirement, effective on the date of issuance of this order, applies not just to MS Capital, but to all other power marketers with authorization to engage in wholesale electric energy transactions at market-based rates, including, but not limited to, the power marketer applicants in Docket Nos. ER94–1450, ER94–1685, ER94–1690, ER94–1691, and ER95–393.[8]

Determination of Affiliation

In the November 8 Order, the Commission directed MS Capital, as a condition to authorization to transact at market-based rates, to report, among other things, affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 69 FERC at 61,695. The Commission also directed MS Capital to revise its proposed rate schedule to eliminate all sales to affiliates at market-based rates.[9] Indicating that it has not yet determined affiliation under Part II of the FPA based on a bright line test, the Commission directed MS Capital, ''until the Commission provides more guidance,'' to determine affiliation by applying the definition set forth in the Uniform System of Accounts. 69 FERC at 61,693 n.4. Under that definition, ''affiliated companies'' are defined as ''companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the [subject] company.'' 18 CFR Part 101, Definitions, 5.

We take this opportunity to provide further guidance to MS Capital, and to all public utilities,[10] concerning the determination of affiliation under Part II of the FPA. The Commission believes that it is appropriate, in the move toward competitive bulk power markets, to adopt a definition of affiliation that

[4] In light of our decision to eliminate altogether the business and financial arrangements reporting requirement for power marketers, we will dismiss as moot the requests of CL Sales and Calpine for rehearing and clarification, respectively, as to the scope of that requirement.

[5] See, *e.g.*, Louis Dreyfus Electric Power, Inc., 61 FERC ¶ 61,303 (1992). In Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994), the Commission limited the reporting requirement to the activities of any affiliates located or doing business in the United States, Puerto Rico, Canada, and Mexico.

[6] MS Capital Rehearing Request at 4, 5.

[7] See Engelhard Power Marketing, Inc., 70 FERC ¶ 61,250 (1995) (*Engelhard*); CLP Hartford Sales, L.L.C., 71 FERC ¶ 61,127 (1995) (*CLP Hartford*); AIG Trading Corporation, 71 FERC ¶ 61,148 (1995) (*AIG*); Citizens Lehman Power Sales, 71 FERC ¶ 61,149 (1995) (*Citizens Lehman*); Coastal Electric Services Company, 71 FERC ¶ 61,374 (1995) (*Coastal*).

[8] Of course, the elimination of the business and financial arrangements reporting requirement should not be construed as affecting, in any way, a power marketer's obligation to file quarterly transaction reports. See *infra* note 15 (discussing the need for power marketers to file reports of jurisdictional transactions).

[9] The Commission noted that its decision in this regard was consistent with recent orders in which the marketer voluntarily agreed to a ban on sales to affiliates in order to ameliorate any possible concern for affiliate abuse. 69 FERC at 61,694 n.5. See Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,063 (1994) (*Heartland*); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,133 (1994); LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,123 (1994). At the same time, the Commission explained that the general ban on sales to affiliates ''is without prejudice to MS Capital filing in the future a specific proposal to sell power to an affiliate, which would provide the Commission with an opportunity to consider the possibility of affiliate abuse in the context of a specific transaction.'' 69 FERC at 61,694.

[10] See 16 U.S.C. 824(e) (1988).

will provide greater certainty to all market participants. To this end, we announce that all non-EWG public utilities should, effective as of the date of this order, define ''affiliate'' as that term is used in the Commission's regulations regarding Standards of Conduct for Interstate Pipelines with Marketing Affiliates, for matters arising under Part II of the FPA.[11] Under § 161.2 of the Commission's regulations, a voting interest of 10 percent creates a rebuttable presumption of control for purposes of determining the existence of an affiliate relationship.

We recognize that Congress, in promulgating section 214 of the FPA,[12] as added by the Energy Policy Act of 1992, specified that the Commission must use the Public Utility Holding Company Act of 1935 (PUHCA) section 2(a) definition of ''affiliate'' (which, *inter alia,* contains a 5 percent voting interest test) for purposes of determining whether an electric utility is an affiliate of an EWG for purposes of evaluating EWG rates. Therefore, all EWG public utilities should, as of the effective date of this order, use the PUHCA section 2(a) definition of ''affiliate'' for matters arising under Part II of the FPA. However, we do not believe there is any reason for the Commission to adopt the same affiliation standard for public utilities that are not EWGs. Instead, we believe that the 10 percent rebuttable presumption that the Commission has adopted for determining affiliation of natural gas marketers with interstate pipelines is also appropriate for determining affiliation for non-EWG public utilities.

We reiterate here our holding in the November 8 Order that, for purposes of complying with the requirement to report affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, MS Capital ''need not report the mere transitory holdings of its affiliates in electric facilities and inputs.'' 69 FERC at 61,695. However, MS Capital must ''report all of its own investments in electric facilities and inputs.'' *Id.* As we stated in the November 8 Order, ''there is no reason to ascribe generation ownership or control to MS Capital because of transitory holdings of electric utility stocks by Morgan Stanley[13] in connection with investment or merchant banking, market-making, or asset management activities.'' *Id.* at 61,693.

Annual Charge Requirement

We will deny rehearing of the requests of MS Capital and the Electric Power Monitoring Group for waiver of the Commission's annual charge requirement established in Part 382 of the Commission's regulations. We addressed this issue in detail in the November 8 Order, where we stated:

> There is no reason that public utilities that are power marketers should not pay their fair share of the Commission's annual charges. Indeed, waiver of annual charges for power marketers would give them a benefit that other public utilities do not enjoy and would result in such utilities picking up those costs incurred by the Commission in regulating power marketers.

69 FERC at 61,697.[14]

Neither MS Capital nor the Electric Power Monitoring Group has presented any persuasive reasons for us to depart from this conclusion or to defer our decision to collect annual charges from power marketers. We disagree with MS Capital's and the Electric Power Monitoring Group's assertions that Commission jurisdiction over power marketers somehow is more ''limited'' than its jurisdiction over other FERC-jurisdictional public utilities, and their belief that the time and resources expended on regulation of power marketers are so insignificant as to compel waiver of the annual charge requirements for this entire class of public utilities (to the detriment of other classes of public utilities).[15]

We also disagree with the contention of the Electric Power Monitoring Group that the Commission has not adequately justified its decision to overturn its earlier statement in *Howell Gas Management Company,* 40 FERC ¶ 61,336 (1987) (*Howell Gas*) that ''annual charges are not occasioned if a utility is exempt from the requirements to file Form No. 1'' (40 FERC at 62,025 n.8). As the Commission explained in the November 8 Order:

> At the time of Commission action in *Howell Gas,* annual charges comprised only a small portion of the Commission's fee assessment program, while most of the Commission's revenues were collected as filing fees assessed on individual applications. Since then, the Commission has eliminated most of its filing fees and now recovers the bulk of its revenues as annual charges established in section 382 of the regulations. Therefore, a material change in circumstances has occurred subsequent to *Howell Gas,* and we specifically overturn our statement quoted above.

69 FERC at 61,697.

The Electric Power Monitoring Group objects that the Commission, in ''conclusory fashion,'' determined that the shift in emphasis from filing fees to annual charges constitutes a ''material change in circumstances'' and ''offered no analysis supporting'' this determination.[16] We find this argument to be without support. We believe that the shift from filing fees to annual charges on its face constitutes a material change in circumstances. Moreover, as we made clear in the November 8 Order, the annual charges at issue in *Howell Gas* were assessed under the now-deleted section 36.1 of the Commission's regulations, the predecessor to current section 382. As we noted, ''[a]t no time has any marketer successfully requested, or has the Commission granted, waiver of section 382.'' *Id.* at 61,697 n.12. In these circumstances, we believe that the Commission has amply explained its decision to subject power marketers to the annual charge requirement.

The Commission Orders

(A) The motions to intervene out-of-time of CL Sales, the Electric Power Monitoring Group, and Calpine are hereby granted.

(B) The requests for rehearing and clarification of the November 8 Order are hereby granted in part and denied in

[11] 18 CFR 161.2 (1995). Section 161.2(a) defines ''affiliate'' as ''another person which controls, is controlled by, or is under common control with, such person.'' Section 161.2(b) states that ''control (including the terms 'controlling,' 'controlled by,' and 'under common control with') . . . includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control.''

[12] 16 U.S.C.A. 824m (West Supp. 1995).

[13] As used in the November 8 Order, the term ''Morgan Stanley'' refers to any and all Morgan Stanley Group Inc. affiliates other than MS Capital. *See* 69 FERC at 61,691.

[14] In several orders issued subsequent to the November 8 Order, we have denied rehearing of requests by other power marketers for waiver of the annual charge requirement. *See, e.g., Citizens Lehman,* 71 FERC at 61,475; AIG, 71 FERC at 61,473; *CLP Hartford,* 71 FERC at 61,409.

[15] For example, the Electric Power Monitoring Group incorrectly asserts that the quarterly transaction reports that power marketers are required to file with the Commission ''are collected simply to maintain potential evidence in the event of a complaint being filed against a power marketer.'' Electric Power Monitoring Group Rehearing Request at 7. As the Commission has previously indicated, ''the requirement that marketers file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter is necessary to ensure that contracts relating to rates and services are on file, as required by section 205(c) of the FPA, 16 U.S.C. 824d(c) (1988), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power.'' *Heartland,* 68 FERC at 62,065–66.

[16] Electric Power Monitoring Group Rehearing Request at 4.

part (or dismissed) as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18830 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP95–326–000 and RP95–242–000]

Natural Gas Pipeline Company of America; Continuing Technical Conference

July 25, 1995.

Take notice that the technical conference in this proceeding which was convened on July 13, 1995, will continue on Thursday, August 3, 1995, at 9:30 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18784 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–188–001]

NorAm Gas Transmission Company; Notice of Compliance Filing

July 26, 1995.

Take notice that on April 14, 1995, pursuant to the Commission's order issued on March 30, 1995,[1] NorAm Gas Transmission Company (NorAm), tendered for filing materials supporting its claim of $65 million in take-or-pay and contract reformation costs.

NorAm states that as required by the Order, slip op. at 4 and Ordering Paragraph (C), NorAm is submitting supporting documentation to enable the Commission to determine that the costs proposed for recovery relate to the settlements underlying the two previous filings in Docket Nos. RP93–88–000 and RP94–166–000, along with proof of NorAm's payment of the subject $65 million.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 2, 1995. 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. Copies of this filing are on file with the Commission and are available for public inspection.

[1] 70 FERC ¶ 61,368.

Lois D. Cashell,

Secretary.

[FR Doc. 95–18782 Filed 7–31–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–64–000, et al.]

Freedom Energy Company, et al.; Electric Rate and Corporate Regulation Filings

July 25, 1995.

Take notice that the following filings have been made with the Commission:

1. Freedom Energy Company

[Docket No. EL95–64–000]

Take notice that on July 14, 1995, Freedom Energy Company, (Freedom) tendered for filing a Petition for Declaratory Ruling and Request for Expedition. Freedom states that it seeks a declaratory ruling that: (i) It will be eligible to apply under Transmission Service Tariff No. 1—Long-Term Firm Transmission Service (''Tariff No. 1'') for transmission services of its purchased power over Public Service Company of New Hampshire's (''PSNH'') transmission facilities to Freedom's distribution facilities for resale to Freedom's retail customers and (ii) as a New Hampshire public utility, Freedom will be eligible to apply for an order under Section 211 and 212(h) of the Federal Power Act (FPA) directing PSNH to provide Freedom with transmission services.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy Western Area Power Administration (Salt Lake City Area Office) v. Public Service Company of New Mexico)

[Docket No. EL95–65–000]

Take notice that on July 18, 1995, the Western Area Power Administration (Western) of the United States Department of Energy tendered for filing a Complaint for Rate Relief from the Public Service Company of New Mexico (PNM). Western is seeking relief from the rate it presently pays PNM for the firm point-to-point transmission service under Amendment No. 1 to Contract No. 8–07–40–P0695.

Comment date: August 24, 1995, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before August 24, 1995.

3. Northern Indiana Public Service Company

[Docket No. ER95–1140–000]

Take notice that on July 5, 1995, Northern Indiana Public Service Company tendered for filing additional information to its May 31, 1995 filing in the above-referenced docket.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER95–1146–000]

Take notice that on July 17, 1995, PacifiCorp tendered for filing an amendment in the above-referenced docket.

Comment date: August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin))

[Docket No. ER95–1357–000]

Take notice that on July 10, 1995, Wisconsin Electric Power Company (WEPCO), Northern States Power Company (Minnesota) NSP, and Northern States Power Company (Wisconsin) (NSP–W) (together, ''the Applicants'') jointly filed an ''Amended and Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company and Wisconsin Energy Company'' (''Interchange Agreement'').

Since 1970, NSP and NSP–W have coordinated the planning and operation of their combined electric system, and equalized the production and transmission costs of that system, under an Agreement to Coordinate Planning and Operations and Interchange Power and Energy.

On April 28, 1995, NSP and Wisconsin Energy Corporation, the parent company of WEPCO, entered into an agreement to merge. Under the merger agreement, NSP–W and WEPCO will merge to form Wisconsin. Following the merger, WEC and NSP will operate as subsidiaries of Primergy Corp., a registered holding company.

The principal purpose of the filing in this docket is to add WEC as a party to the current NSP Interchange Agreement and thereby permit the Primergy system to operate in the same coordinated manner, and share production and transmission costs on the same basis, as the NSP system currently does.

The Applicants have requested that this proceeding be consolidated with