

168 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Western Area Power Administration

Docket No. NJ19-10-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 18, 2019)

1. On April 1, 2019, Western Area Power Administration (Western) submitted a petition for declaratory order from the Commission finding that proposed revisions to Western's Open Access Transmission Tariff (tariff) substantially conform or are superior to the Commission's *pro forma* Open Access Transmission Tariff (OATT), and qualify Western's tariff as an acceptable reciprocity tariff. Western also requests that the Commission grant it waiver of the declaratory order filing fee. Western, however, explains that it has deferred making tariff revisions implementing the mandates of certain other Commission orders until a later date. In this order, we grant Western's petition in part, but find that Western's tariff, as revised, is not now an acceptable reciprocity tariff, as discussed below.

I. Background

2. Western is a federal power marketing administration that markets federal power and owns and operates transmission facilities in 15 western and central states. Western operates such facilities in the Desert Southwest Region (DSW), Rocky Mountain Region (RMR), Sierra Nevada Region (SNR), and Upper Great Plains Region (UGPR). Western is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).¹ Western is, however, a transmitting utility subject to sections 210 through 213 of the FPA.²

¹ 16 U.S.C. §§ 824, 824d, 824e (2012).

² 16 U.S.C. §§ 824i-824l (2012).

3. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity transmission tariffs by non-public utilities.³ Under this procedure, non-public utilities, such as Western, may voluntarily submit to the Commission an open access transmission tariff and request for declaratory order finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the tariff contains terms and conditions that substantially conform or are superior to those in the Commission's *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open-access transmission service upon request to that particular non-public utility.⁴ Western's tariff was previously determined to be an acceptable reciprocity tariff under Order No. 888.⁵

4. Subsequently, in Order No. 890,⁶ the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis, and required any non-public utility with a safe harbor tariff to amend its tariff so that its provisions substantially conform or are superior to the revised *pro forma* OATT, if it wishes to continue to qualify for safe

³ *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, 75 FERC ¶ 61,080 (1996), *order on reh'g*, Order No. 888-A, 78 FERC ¶ 61,221 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant 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).

⁴ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) and standards of conduct requirements, or obtain waiver of them. *See* Order No. 888-A, 78 FERC ¶ 61,221 at 30,286.

⁵ *Western Area Power Admin.*, 119 FERC ¶ 61,329 (2007).

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119 (2007), *order on reh'g*, Order No. 890-A, 73 FR 2984 (January 16, 2008), 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

harbor treatment.⁷ In 2010, Western submitted tariff revisions to comply with Order No. 890 and the Commission found that Western had an acceptable reciprocity tariff.⁸

II. Western's Revised Reciprocity Tariff Filing

5. In its filing, as discussed below, Western modifies its tariff, Large Generator Interconnection Agreement (LGIA), and Small Generator Interconnection Procedures and Agreement (SGIP and SGIA, respectively) in order to comply with the Commission's mandates in Order Nos. 676-H,⁹ 764,¹⁰ 784,¹¹ 792,¹² and 828.¹³ In addition, Western revises its tariff to address other issues, such as removing the transmission capacity reassignment price cap under section 23.1 of Western's tariff, clarifying the process of implementing changes to tariff-related rate schedules, and addressing Western's UGPR's participation as a transmission owner in the Southwest Power Pool, Inc. (SPP). However,

⁷ Order No. 890, 118 FERC ¶ 61,119 at P 191.

⁸ See *Western Area Power Admin.*, 133 FERC ¶ 61,193 (2010); *Western Area Power Admin.*, Docket Nos. EF11-4-000 and EF11-4-001 (Apr. 25, 2011) (delegated letter order).

⁹ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-H, 79 Fed. Reg. 56,939 (Sept. 24, 2014), 148 FERC ¶ 61,205, as modified, errata notice, 149 FERC ¶ 61,014 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015).

¹⁰ *Integration of Variable Energy Resources*, Order No. 764, 139 FERC ¶ 61,246, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

¹¹ *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

¹² *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), as modified, errata notice, 146 FERC ¶ 61,019 (2014), as modified, errata notice, 148 FERC ¶ 61,215 (2014), *clarified*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

¹³ *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (2016).

Western defers addressing the revisions promulgated in Order Nos. 827,¹⁴ 842,¹⁵ 845,¹⁶ and 1000¹⁷ until a later date. Western petitions the Commission for a declaratory order finding that these modifications to its tariff substantially conform or are superior to the Commission's *pro forma* OATT, and that these modifications satisfy the requirements for reciprocity status. Finally, Western seeks an exemption from the filing fee applicable to declaratory orders based on its non-jurisdictional status.

A. Order No. 676-H

6. In Order No. 676-H, the Commission incorporated by reference Version 003 of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the North American Energy Standards Board's Wholesale Electric Quadrant. The Commission gave transmission providers discretion to determine whether to add specified language or to revise the tariff to explicitly incorporate the modified business practice standards references adopted by and listed in Order No. 676-H.¹⁸ In this filing, Western revised Attachment N to adopt the modified *pro forma* business practice standards references promulgated in Order No. 676-H.¹⁹

¹⁴ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,320 (2016), *order on clarification and reh'g*, 157 FERC ¶ 61,003 (2016).

¹⁵ *Essential Reliability Services and the Evolving Bulk-Power System – Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128 (2018), *order on clarification and reh'g*, 164 FERC ¶ 61,135 (2018).

¹⁶ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g*, Order No. 845-A 166 FERC ¶ 61,137 (2018).

¹⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹⁸ Order No. 676-H, 79 Fed. Reg. 56,939 at P 87 and n.147.

¹⁹ Western Transmittal at 4.

B. Order No. 764

7. In Order No. 764, the Commission amended the *pro forma* OATT to remove barriers to the integration of variable energy resources by requiring public utility transmission providers to submit transmission schedules at 15-minute intervals rather than hourly, and to incorporate provisions into the *pro forma* LGIA requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting.²⁰ Western proposes to modify: (1) its OATT sections 13.8 and 14.6 to accommodate intra-hour scheduling comprised of four intervals of 15-minute schedules, (2) LGIA Article 1 to include the new term “Variable Energy Resource” and (3) LGIA Article 8.4 to require new interconnection customers whose generating facilities are variable energy resources to submit meteorological and forced outage data if the transmission provider is performing power production forecasting.²¹

C. Order No. 784

8. In Order No. 784, the Commission revised certain aspects of its market-based rate regulations, ancillary services requirements under the *pro forma* OATT, and accounting and reporting requirements. Specifically, the Commission revised its policy governing the sale of ancillary services at market-based rates to public utility transmission providers, required each public utility transmission provider to add to its OATT Schedule 3 a statement that it will take into account the speed and accuracy of regulation resources in its determination of reserve requirements for Regulation and Frequency Response service,²² and revised certain accounting and reporting requirements to better account for and report transactions associated with the use of energy storage devices in public utility operations. In this filing, Western adds *pro forma* language to its tariff Schedule 3. Western states that its regional transmission providers already began posting ACE data on their OASIS sites on or before the date that Order No. 784 became effective, and notes that the revisions on accounting and reporting requirements are not applicable to Western insofar as it is not a public utility.²³

²⁰ Order No. 764, 139 FERC ¶ 61,246 at P 2.

²¹ *Id.*

²² Related to this requirement, the Commission required each public utility transmission provider to post certain Area Control Error (ACE) data on its OASIS.

²³ Western Transmittal at 5.

D. Order No. 792

9. In Order No. 792, the Commission amended the *pro forma* SGIP and SGIA to ensure interconnection time and costs for interconnection customers and transmission providers are just and reasonable and help remedy undue discrimination, while continuing to ensure safety and reliability. Order No. 792 required transmission providers to: (1) incorporate provisions that provide an interconnection customer with the option of requesting from the transmission provider a pre-application report providing existing information about system conditions at a possible point of interconnection; (2) revise the two megawatt (MW) threshold for participation in the Fast Track Process included in section 2 of the *pro forma* SGIP; (3) revise the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the interconnection customer and includes minimum load and other screens to determine if a small generating facility may be interconnected safely and reliably; (4) revise the *pro forma* SGIP facilities study agreement to allow the interconnection customer the opportunity to provide written comments to the transmission provider on the upgrades required for interconnection; (5) revise the *pro forma* SGIP and SGIA to include energy storage devices; and (6) clarify certain sections of the *pro forma* SGIP and SGIA.²⁴

10. Western proposes to make the aforementioned revisions, with one exception.²⁵ Western explains that in a previous filing incorporating the SGIP and SGIA into its tariff, Western proposed – and the Commission approved – omission of the SGIP’s fast track and 10 kV inverter processes from Western’s SGIP, partly based on the fact that Western provides open access transmission service only over its high-voltage transmission facilities, and therefore Western would be unable to process requests under the SGIP and SGIA for interconnection to distribution-level facilities.²⁶ Western states that for the same reason here, Western omitted from its SGIP section 3.1 the *pro forma* phrase “or Distribution System” that Order No. 792 inserted into the provision.

E. Order No. 828

11. In Order No. 828, the Commission modified the *pro forma* SGIA to establish the terms and conditions under which public utilities must provide interconnection service to

²⁴ Order No. 792, 145 FERC ¶ 61,159 at P 1.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 7 (citing Western’s Filing dated March 1, 2007, in Docket No. NJ07-2-000; *Western Area Power Admin.*, 119 FERC ¶ 61,329 (2007)).

small generating facilities of no larger than 20 MW.²⁷ The Commission modified the *pro forma* SGIA to require newly interconnecting small generating facilities to ride through abnormal frequency and voltage events and not disconnect during such events.²⁸ Western proposes to add SGIA article 1.5.7 to require frequency ride-through capability and voltage ride-through capability for a new or modified small generating facility, specifying that the small generating facility shall not disconnect automatically or instantaneously for a defined under- or over-frequency condition or a defined under- or over-voltage condition.²⁹

F. Deferral of Tariff Revisions for Order Nos. 827, 842, 845, and 1000

12. Western states that it is not, at this time, revising its tariff to incorporate changes resulting from Order Nos. 827, 842, 845, and 1000. Western commits to submit a subsequent filing to the Commission addressing Order Nos. 827, 842, and 845 as soon as practicable after Western completes its analysis and obtains input from stakeholders. Western plans to begin those subsequent tariff revisions in the second quarter of 2019 for Order Nos. 827 and 842, and the second half of 2019 for Order No. 845.³⁰

13. Following the Commission's issuance of Order No. 1000, Western explains, its regional transmission providers jointly created transmission planning regions and processes with its neighboring transmission providers to address Order No. 1000.³¹ Western states that its DSW, RMR, and SNR regions are currently participating in the WestConnect transmission planning region. Western states that it was prepared to incorporate revisions to Part II of Attachment P to its tariff to reflect the participation of those regions and to address Order No. 1000's requirements in this filing; however,

²⁷ Order No. 828, 156 FERC ¶ 61,062 at P 21.

²⁸ *Id.*

²⁹ Western Transmittal at 7-8.

³⁰ *Id.* at 8-9.

³¹ *Id.* Western's UGPR transferred functional control of all of its eligible transmission facilities to SPP on October 1, 2015. SPP is currently the Transmission Provider for UGPR's transmission facilities under the SPP tariff, and the UGPR transmission system is included in the SPP Transmission Planning Process under Attachment O of the SPP tariff. Western makes proposed revisions to its OATT Attachment P to reflect UGPR addressing the Order No. 1000 requirements in SPP, and to remove the mooted transmission planning process language related to UGPR in Part I of Attachment P to Western's tariff.

Western continues, the public utility transmission providers in the WestConnect transmission planning region have suggested to Western they may terminate their filed tariff planning attachments and refile to remove the Commission-approved coordinating transmission owner provisions. Western states that currently, the jurisdictional entities have appealed the Commission's latest order involving the WestConnect planning region and that appeal is being held in abeyance pending ongoing discussions between the jurisdictional and non-jurisdictional parties.³² Western therefore decided to defer incorporating Order No. 1000-related revisions to Part II of Attachment P to its tariff until such time as Western can ensure the final modifications to the WestConnect planning region documents will not conflict with Western's statutory requirements and Western determines whether DSW, RMR, and SNR can continue to participate.

G. Other Revisions

1. Removal of the Transmission Capacity Reassignment Price Cap

14. Western states that in Order Nos. 890 and 890-A,³³ the Commission removed the price cap under tariff section 23.1 for the resale, reassignment, or transfer of a Point-to-Point Transmission Service for a two-year trial period ending October 1, 2010. However, in its Order No. 890 filing submitted on September 30, 2009, Western proposed to retain the price cap indefinitely. The Commission approved that proposal without modification.³⁴

15. In this filing, Western has reconsidered its position on the price cap based on the issuance of Order No. 739, which permanently lifted the price cap based on a Commission study,³⁵ which found that almost all reassignments were priced below the cap. Furthermore, Western asserts that in Order No. 739-A, the Commission indicated

³² *Id.* at 10.

³³ *Id.* at 11.

³⁴ See Western's Filing in Docket No. NJ10-1-000 at 10-11; *Western Area Power Admin.*, 133 FERC ¶ 61,193, at PP 23-27 (2010).

³⁵ Western Transmittal at 11 (citing *Promoting a Competitive Market for Capacity Reassignment*, Order No. 739, 132 FERC ¶ 61,238 (2010), *reh'g denied*, Order No. 739-A, 135 FERC ¶ 61,137 (2011)).

that entities could file stand-alone rate schedules allowing them to reassign transmission capacity above a price cap, and that Western is aware of at least one such instance.³⁶

2. Other Changes

16. Western makes several other changes to its tariff. First, Western revises its tariff Rate Schedules 1 through 10 to state that any change to the pertinent charge or methodology “shall be as set forth in a subsequent rate schedule promulgated pursuant to applicable Federal laws, regulations and policies and distributed to the Transmission Customer to become attached to and made part of the applicable Service Agreement.”³⁷ Western also adds a business practice describing in detail the process it undertakes to notify customers of changes to its rate schedules, which are promulgated pursuant to Federal law and regulation and subsequently distributed to customers to be attached to and made part of their service agreement.³⁸ Additionally, Western states that in order to transparently clarify the Commission’s direction in Order No. 890 to its transmission customers, it has revised tariff Schedule 10 with an additional modification to indicate that a transmission customer may be charged unreserved use penalties in accordance with the tariff, even if that customer does not have an applicable service agreement.³⁹

17. Western incorporates WestConnect’s Amended and Restated Point-to-Point Regional Transmission Service Participation Agreement,⁴⁰ and UGPR’s participation as a transmission owner in SPP to note the fact that SPP is now the transmission owner for

³⁶ *Id.* (citing Order No. 739-A , 135 FERC ¶ 61,137 at PP 6, 15-16; *Portland Gen. Elec. Co.*, Docket No. ER11-4374-002 (Jan. 6, 2012) (delegated letter order) (accepting a revised transmission reassignment tariff filed by Portland General Electric Company that allowed a public utility to reassign its transmission rights, without limitation, at negotiated rates on non-public utility transmission systems such as that of Bonneville Power Administration)).

³⁷ Western Transmittal at 13.

³⁸ *Id.*

³⁹ *Id.* (citing Order No. 890, 118 FERC ¶ 61,119 at P 834 (stating that a transmission customer “will be subject to an unreserved use penalty if the transmission customer uses transmission service where it does not have a transmission service reservation”)).

⁴⁰ *Id.* at 13-14.

UGPR's eligible transmission facilities, which are now included under the SPP tariff.⁴¹ Western also modifies section 1.0 of its tariff Attachment F to include language related to the revision of charges or losses that is included in the other Commission-approved forms of transmission service agreement under Western's tariff Attachments A and B that were included in its original filing seeking tariff reciprocity.⁴² Finally, Western makes various minor revisions and corrections.

III. Notice of Filing and Responsive Pleadings

18. Notice of Western's filing was published in the *Federal Register*, 84 Fed. Reg. 15,207 (2019), with motions to intervene and protests due on or before April 22, 2019. Duke-American Transmission Company, LLC on behalf of its subsidiary DATC SLTP, LLC, California Department of Water Resources State Water Project, Mid-West Electric Consumers Association, and Modesto Irrigation District filed timely motions to intervene. Southwest Transmission Dependent Utility Group (Southwest Utility Group)⁴³ filed a timely motion to intervene and comments. Arizona Electric Power Cooperative, Inc. (AEPSCO) filed a timely motion to intervene and request for clarification.

19. Southwest Utility Group does not oppose Western's filing, and states that its interest in this filing is limited to Western's removal of the capacity reassignment price cap. Southwest Utility Group does not believe that Western can remove resale price cap from all its various transmission systems, "carte blanche", without a thorough examination of whether the agency has that statutory authority for each system in the first place.⁴⁴ Southwest Utility Group states that there is no evidence, and no case made by Western, that the FPA amended all the various project authorization statutes Western

⁴¹ *Id.* at 14.

⁴² *Id.* at 15 (citing Western's Filing dated December 31, 1997, in Docket No. NJ98-1-000; *Western Area Power Admin.*, 99 FERC ¶ 61,062 (2002)).

⁴³ Southwest Utility Group includes: Aguila Irrigation District, Ak-Chin Energy Services, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 6, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Hohokam Irrigation and Drainage District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, City of Needles, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, and Wellton-Mohawk Irrigation and Drainage District.

⁴⁴ Southwest Utility Group Comments at 4.

inherited.⁴⁵ Southwest Utility Group argues that Western’s directive to file its tariff “came from the Department of Energy, not this Commission, enhanced by the carrot of comparability this Commission dangled in front of [Western] and other non-jurisdictional entities [...]”⁴⁶

20. Southwest Utility Group opines that although Western has declared in documents provided to customers that it is “subject to” sections 210 through 213 of the FPA, review of these statutes reveals that Congress provided tools the Commission can use to benefit non-jurisdictional entities, not regulate them.⁴⁷ Southwest Utility Group notes that one exception is FPA section 211A, which includes a requirement that non-jurisdictional entities provide transmission service at rates comparable to those they charge themselves and with comparable terms and conditions. Southwest Utility Group argues that Western does not explain how this “anti-gouging” requirement relates to lifting the price cap on customer transmission resales.⁴⁸ Southwest Utility Group requests that the Commission “approach this filing gingerly, opining on the adequacy of [Western]’s OATT changes, [...] and specifically the removal of the transmission resale price caps for various project transmission customers, for reciprocity status purposes only, staying its hand concerning [Western]’s own ability to remove its transmission resale price caps, actions that must be examined under different microscopes with differently-sized Congressional lenses.”⁴⁹

21. AEPCO requests that the Commission clarify that Western’s filing of the safe harbor tariff shall not supersede the exercise of its authority under the organic statutes that govern Western’s operations.⁵⁰ AEPCO states that the purpose of Western’s filing is to modify the tariff, LGIA, and SGIP and SGIA, and to address other issues such as removal of the transmission capacity reassignment price cap under section 23.1 of

⁴⁵ *Id.* at 4-5.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 5.

⁵⁰ AEPCO Request for Clarification at 1.

Western's tariff.⁵¹ AEPCO stresses that Western is not a public utility that needs to file a tariff with the Commission.⁵²

22. AEPCO explains that Western has nonetheless stated in the record that the safe harbor filing is an obligation of the Commission's FPA section 211A authority.⁵³ AEPCO argues that neither the statutory language of section 211A nor the record supports this conclusion.⁵⁴ AEPCO includes an attachment indicating that this issue arose in the context of Western responses to customer inquiries during the stakeholder process leading to this filing. AEPCO thus considers that this statement, which is not made in Western's filing, invites clarification from the Commission that any approval of the safe harbor tariff is not an action undertaken pursuant to the Commission's authority provided by Congress under section 211A.⁵⁵ Accordingly, AEPCO asks the Commission to include in any order accepting the safe harbor tariff the following statement: "Nothing in this order should be construed as pre-empting Western's exercise of its authority under its statutory authorities. The Commission's issuance of the declaratory order in this docket is made pursuant to 18 C.F.R. § 35.28(e) and is not made pursuant to Section 211A of the [FPA]."⁵⁶

IV. Commission Determination

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the intervenors' timely, unopposed motions to intervene serve to make them parties to this proceeding.

⁵¹ *Id.* at 3.

⁵² *Id.* at 4.

⁵³ *Id.* at 6-7.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.*

⁵⁶ *Id.* at 9.

24. Because Western is an agency of the United States Department of Energy engaged in the official business of the Federal government, we grant Western's request for waiver of the filing fee.⁵⁷

B. Discussion

25. We grant in part and deny in part Western's petition for declaratory order. We have compared the non-rate terms and conditions of Western's revised tariff to those in the Commission's *pro forma* OATT. We find that the revised terms and conditions of Western's reciprocity tariff that incorporate changes resulting from Order Nos. 676-H, 764, 784, 792, and 828 substantially conform or are superior to those in the Commission's *pro forma* OATT.

26. Additionally, we conclude that Western's removal of the price cap for capacity reassignment to be consistent with Order Nos. 739 and 739-A, in which the Commission lifted these price caps.⁵⁸ In response to concerns raised by Southwest Utility Group over Western's removal of the capacity reassignment price cap, we note that we are only finding that Western's removal of the cap is consistent with prior Commission orders removing the price cap. We make no finding on whether and to what extent Western's governing statutes permit it to remove the cap in its various regions; that matter is beyond the scope of this proceeding.⁵⁹ Finally, we find that Western's other tariff changes provide transparency to Western's customers, or otherwise update stale information. Accordingly, we grant Western's request that the Commission declare that Western's tariff revisions substantially conform or are superior to the Commission's *pro forma* OATT.

27. However, for the Commission to find that Western has an acceptable reciprocity tariff, Western must submit revisions to its tariff to also incorporate changes associated with Order Nos. 827, 842, 845, and 1000. Because Western is currently analyzing the impact of adopting the tariff language implemented by these Commission orders and has determined to defer implementation to a later date, we cannot find that Western's tariff,

⁵⁷ 18 C.F.R. §§ 381.102(a), 381.108(a), 381.302(c) (2018).

⁵⁸ See Order No. 739, 132 FERC ¶ 61,057 at P 25.

⁵⁹ This conclusion also applies to AEPCO's argument that nothing in this order supersedes the organic statutes that govern Western's operations. Western's filing is limited to seeking certain declarations from the Commission on the reciprocity status of its tariff. As discussed herein, we are only making findings on those requests. We are not interpreting or applying Western's governing statutes.

even as revised here, is an acceptable reciprocity tariff.⁶⁰ We encourage Western to file a further updated tariff once it completes its stakeholder process and review.

28. Although Southwest Utility Group and AEPCO are concerned that Western was relying on FPA section 211A in connection with its filing of tariff revisions here, Western does not state in its filing that it is relying on section 211A. We dismiss these concerns as beyond the scope of Western's filing. We are addressing in this order the two questions that Western has posed – whether its tariff revisions substantially conform or are superior to the *pro forma* OATT, and whether its revised tariff is an acceptable reciprocity tariff – similar to filings Western has made in the past seeking a declaratory order on the reciprocity status of its tariff.

The Commission orders:

(A) Western's petition for declaratory order is hereby granted in part, effective June 3, 2019, and denied in part, as discussed in the body of this order.

(B) Western's request for exemption from the filing fee is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁰ The Commission has found that non-jurisdictional entities' tariffs were not acceptable reciprocity tariffs because they did not implement changes to the *pro forma* OATT. See, e.g., *U.S. Dept. of Energy – Bonneville Power Admin.*, 128 FERC ¶ 61,057, at PP 32, 45 (2009), *order denying reh'g*, 135 FERC ¶ 61,023 (2011) (finding that Bonneville Power Administration's tariff did not meet the safe harbor reciprocity requirements because the tariff was incomplete and did not incorporate certain Order No. 890-related provisions).

Document Content(s)

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