

182 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Western Area Power Administration

Docket No. NJ23-1-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 28, 2023)

1. On November 3, 2022, Western Area Power Administration (WAPA) submitted a petition for declaratory order requesting that the Commission find that proposed revisions to its non-jurisdictional Open Access Transmission Tariff (Tariff) substantially conform with or are superior to the Commission's *pro forma* Open Access Transmission Tariff (OATT) and qualify WAPA's Tariff as an acceptable reciprocity tariff.¹ WAPA states that the purpose of these tariff revisions is to modify its Tariff to address the planned participation of WAPA's Desert Southwest Region in the California Independent System Operator Corporation's (CAISO) Western Energy Imbalance Market (EIM), which is expected to begin on or around April 5, 2023. WAPA, however, explains that it has deferred making Tariff revisions implementing the requirements of certain Commission orders until a later date. In this order, we grant WAPA's petition in part, but we also find that WAPA's Tariff as revised is not yet an acceptable reciprocity tariff, as discussed below.

I. Background

2. WAPA is a federal power marketing administration that markets federal power and owns and operates transmission facilities in 15 western and central states. WAPA has offices in the Desert Southwest Region, Rocky Mountain Region, Sierra Nevada Region, and Upper Great Plains Region, as well as the Colorado River Storage Project Management Center in Montrose, Colorado. WAPA is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).²

¹ WAPA seeks an exemption from the filing fee applicable to petitions for declaratory orders based on its status as an agency of the United States Department of Energy.

² 16 U.S.C. §§ 824, 824d, 824e.

WAPA is, however, a transmitting utility subject to sections 210 through 213 of the FPA.³

A. WAPA's Reciprocity Status

3. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity transmission tariffs by non-public utilities.⁴ Under this procedure, non-public utilities, such as WAPA, may voluntarily submit to the Commission an OATT and petition for declaratory order requesting that the Commission find that the tariff meets the Commission's comparability standards. If the Commission finds that the tariff contains terms and conditions that substantially conform with 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.⁵ WAPA's Tariff was previously determined to be an acceptable reciprocity tariff under Order No. 888.⁶

4. Subsequently, in Order No. 890,⁷ 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. In that order, the Commission also

³ *Id.* §§ 824i-824l.

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *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 Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002).

⁵ 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 and standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁶ *W. Area Power Admin.*, 119 FERC ¶ 61,329 (2007).

⁷ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

stated that any non-public utility with a safe harbor tariff that wished to continue to qualify for safe harbor treatment must amend its tariff so that the provisions therein substantially conform with or are superior to the revised *pro forma* OATT.⁸ In 2010, WAPA submitted tariff revisions to comply with Order No. 890, and the Commission subsequently found that WAPA had an acceptable reciprocity tariff.⁹

5. In 2019, WAPA submitted a petition for declaratory order requesting that the Commission find that revisions to its tariff made to comply with the requirements of Order Nos. 676-H,¹⁰ 764,¹¹ 784,¹² 792,¹³ and 828¹⁴ substantially conform with or are superior to the *pro forma* OATT. WAPA further requested that the Commission find that these revisions qualify WAPA's Tariff as an acceptable reciprocity tariff. The Commission granted WAPA's petition in part but found that WAPA's Tariff, as revised, was not then an acceptable reciprocity tariff. The Commission stated that "to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 827, 842, 845, and 1000."¹⁵

⁸ Order No. 890, 118 FERC ¶ 61,119 at P 191.

⁹ See *W. Area Power Admin.*, 133 FERC ¶ 61,193 (2010); *W. Area Power Admin.*, Docket Nos. EF11-4-000 and EF11-4-001 (Apr. 25, 2011) (delegated order).

¹⁰ *Standards for Bus. Pracs. & Comm'n Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015).

¹¹ *Integration of Variable Energy Res.*, Order No. 764, 139 FERC ¶ 61,246, *order on reh'g & clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification & reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

¹² *Third-Party Provision of Ancillary Servs.; Acct. & Fin. Reporting for New Elec. Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

¹³ *Small Generator Interconnection Agreements & Procs.*, Order No. 792, 145 FERC ¶ 61,159 (2013), *clarifying*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

¹⁴ *Requirements for Frequency & Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (2016).

¹⁵ *W. Area Power Admin.*, 168 FERC ¶ 61,022, at P 27 (2019).

6. Also in 2019, WAPA submitted a filing to modify its Tariff to comply with the requirements of Order Nos. 827¹⁶ and 842,¹⁷ but deferred addressing the revisions promulgated in Order Nos. 845¹⁸ and 1000¹⁹ until a later date. The Commission granted WAPA's petition in part, finding that its revisions substantially conformed with or were superior to the *pro forma* OATT, but also found that "for the Commission to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 845 and 1000."²⁰

7. In 2020, WAPA submitted a filing to modify its Tariff to address the WAPA Colorado River Storage Project Management Center's and WAPA Rocky Mountain Region's planned participation in the Western Energy Imbalance Service (WEIS) Market administered by Southwest Power Pool, Inc. In the filing, WAPA explained that it had deferred addressing the revisions promulgated in Order Nos. 845 and 1000 until a later date. The Commission granted WAPA's petition in part, finding that its WEIS Market-related revisions substantially conformed with or were superior to the *pro forma* OATT, but also found that "for the Commission to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 845 and 1000."²¹

8. In 2021, WAPA submitted a filing to modify its Tariff to address Sierra Nevada Region's planned participation in the EIM. In the filing, WAPA explained that it had

¹⁶ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277, *order on clarification & reh'g*, 157 FERC ¶ 61,003 (2016).

¹⁷ *Essential Reliability Servs. & the Evolving Bulk-Power Sys.—Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128, *order on clarification & reh'g*, 164 FERC ¶ 61,135 (2018).

¹⁸ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *errata notice*, 167 FERC ¶ 61,123, *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *errata notice*, 167 FERC ¶ 61,124, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

¹⁹ *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & 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).

²⁰ *W. Area Power Admin.*, 171 FERC ¶ 61,092, at P 23 (2020).

²¹ *W. Area Power Admin.*, 174 FERC ¶ 61,072, at PP 23-24 (2021).

deferred addressing the revisions promulgated in Order Nos. 845 and 1000 until a later date. The Commission granted WAPA's petition in part, finding that its Tariff revisions substantially conformed with or were superior to the *pro forma* OATT, but also found that "for the Commission to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 845 and 1000."²²

9. WAPA also submitted a filing to modify its Tariff to implement the requirements of Order No. 845. In the filing, WAPA explained that it had deferred addressing the revisions promulgated in Order No. 1000 until a later date. The Commission found that "WAPA's OATT as revised is not yet an acceptable reciprocity tariff because WAPA has not submitted revisions to its OATT to incorporate changes associated with Order No. 1000."²³

B. Order Nos. 676-I, 676-J, and 881

10. In Order No. 676-I, the Commission amended its regulations under the FPA to incorporate by reference into its regulations as mandatory enforceable requirements, with certain enumerated exceptions, the latest version (Version 003.2) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB).²⁴ The Commission stated that, in keeping with the prior practice that the Commission adopted in Order No. 676-H, it was requiring public utilities and those entities with reciprocity tariffs to modify their Tariffs to include the WEQ standards that the Commission was incorporating by reference.²⁵

11. In Order No. 676-J, the Commission amended its regulations under the FPA to incorporate by reference into its regulations as mandatory enforceable requirements, the latest version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by WEQ of NAESB.²⁶ The Commission stated that, in keeping with the prior practice that the Commission adopted

²² *W. Area Power Admin.*, 174 FERC ¶ 61,097, at P 28 (2021).

²³ *W. Area Power Admin.*, 179 FERC ¶ 61,094, at P 7 (2022).

²⁴ *Standards for Bus. Pracs. & Comm'n Protocols for Pub. Utils.*, Order No. 676-I, 170 FERC ¶ 61,062, at P 1 (2020).

²⁵ *Id.* P 20.

²⁶ *Standards for Bus. Pracs. & Comm'n Protocols for Pub. Utils.*, Order No. 676-J, 175 FERC ¶ 61,139, at P 1 (2021).

in Order No. 676-H, it was requiring public utilities and those entities with reciprocity tariffs to modify their Tariffs to include the WEQ standards that the Commission was incorporating by reference.²⁷

12. In Order No. 881, the Commission adopted reforms, pursuant to section 206 of the FPA, to the *pro forma* OATT and the Commission's regulations to improve the accuracy and transparency of electric transmission line ratings used by transmission providers.²⁸ The Commission proposed a new *pro forma* OATT Attachment M (Transmission Line Ratings) to require transmission providers to implement ambient-adjusted ratings on the transmission lines over which they provide transmission service.²⁹ The Commission stated that, to the extent non-jurisdictional entities have reciprocity tariffs on file with the Commission, such reciprocity tariffs will need to implement *pro forma* OATT Attachment M in order to satisfy the Commission's comparability (non-discrimination) standards established in Order No. 888.³⁰

II. WAPA's Filing

13. WAPA proposes to modify its Tariff to address Desert Southwest Region's planned participation in the EIM as a transmission provider and a balancing authority area.³¹ WAPA states that the proposed modifications include changes to the main body of WAPA's Tariff, Attachment K (Authorities and Obligations), and Attachment S (CAISO Energy Imbalance Market Provisions for Sierra Nevada Region), and the addition of a new Attachment T (CAISO Energy Imbalance Market Provisions for Desert Southwest Region). WAPA states that it relied upon Commission-approved EIM Tariff revisions from Public Service Company of New Mexico, PacifiCorp, and NV Energy. WAPA states that it based the structure of proposed Attachment T on Sierra Nevada Region's Commission-approved Tariff Attachment S.³² However, WAPA states that

²⁷ *Id.* P 51.

²⁸ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179, at P 1 (2021), *order on reh'g*, Order No. 881-A, 179 FERC ¶ 61,125 (2022).

²⁹ *Id.* P 16.

³⁰ *Id.* P 174.

³¹ WAPA Transmittal at 2.

³² *Id.* at 2-3 (citing *Pub. Serv. Co. of N.M.*, Docket Nos. ER20-3041-000 and ER20-3041-001 (Jan. 8, 2021) (delegated order); *PacifiCorp*, 147 FERC ¶ 61,227 (2014), *order on reh'g, clarification, & compliance*, 149 FERC ¶ 61,057 (2014); *Nev. Power Co.*,

unlike Sierra Nevada Region, Desert Southwest Region will participate in the EIM as a balancing authority area and EIM entity.³³

14. As discussed below, WAPA explains that it is deferring making Tariff revisions implementing the requirements of Order Nos. 676-I, 676-J, 881, and 1000 until a later date. WAPA petitions the Commission for a declaratory order finding that these modifications satisfy the requirements for reciprocity status. Finally, WAPA seeks an exemption from the filing fee applicable to declaratory orders based on its non-jurisdictional status.

A. Tariff Revisions for Desert Southwest Region's EIM Participation

15. To facilitate Desert Southwest Region's participation in the EIM, WAPA proposes revisions to Tariff sections 16.1(h) and 28.1 to include references to proposed Attachment T.³⁴ WAPA proposes to add a new paragraph at the end of the Desert Southwest Region section of Tariff Attachment K to clarify that Desert Southwest Region participates in the EIM as a balancing authority area, and to indicate that transmission service provided under the Tariff related to Desert Southwest Region's participation in the EIM, pursuant to Attachment T, is solely in excess of the capability Desert Southwest Region requires for the delivery of long-term firm capacity and energy to Desert Southwest Region's project use and electric serviced customers. WAPA also modifies the Sierra Nevada Region section of Tariff Attachment K so that it uses the CAISO EIM acronyms that are now included in the Desert Southwest Region section.³⁵ WAPA proposes to revise the title of Attachment S to indicate its application to the Sierra Nevada Region.³⁶

16. WAPA proposes to add a new Attachment T to its Tariff that contains provisions related to Desert Southwest Region's participation in the EIM. WAPA states that section 1 defines the terms used throughout Attachment T; section 2 sets forth the effective period of the attachment; section 3 establishes resource registration requirements for the EIM; section 4 provides that resources owned or controlled by transmission customers and located within the metered boundaries of WAPA's balancing authority area are

151 FERC ¶ 61,131 (2015), *order on reh'g & clarification*, 153 FERC ¶ 61,306 (2015); *W. Area Power Admin.*, 174 FERC ¶ 61,097 (2021)).

³³ *Id.* at 3.

³⁴ *Id.*; WAPA, Tariff, § 16.1 (Conditions Required of Transmission Customers) (4.0.0); *id.*, § 28.1 (Scope of Service) (4.0.0).

³⁵ WAPA, Tariff, attach. K (Authorities and, Obligations) (6.0.0).

³⁶ *Id.*, attach. S (CAISO Energy Imbalance Market Provisions for SNR) (1.0.0).

eligible to become WAPA EIM participating resources; section 5 sets forth the roles and responsibilities for EIM participation, including those of the transmission provider and transmission customer; section 6 requires that the WAPA EIM entity provide the market operator with information on real-time data for the transmission system and interties, and on any changes to transmission capacity and the transmission system due to operational circumstances; section 7 provides that participation in the EIM shall not modify, change, or otherwise alter the manner in which the WAPA EIM entity operates its transmission system consistent with applicable reliability standards; section 8 addresses transmission and generation outage data requirements; section 9 requires the WAPA EIM entity to settle EIM-related charges through the schedules in the addendums to Attachment T and through the associated Desert Southwest Region rate schedules;³⁷ section 10 requires transmission customers with WAPA EIM participating resources and WAPA EIM participating resource scheduling coordinators to comply with applicable information requests they receive directly from the EIM market monitor or regulatory authorities concerning EIM activities; and section 11 includes provisions for temporary market suspension and termination of participation in the EIM.³⁸

17. WAPA also proposes to include three addendums to Attachment T.³⁹ WAPA states that Addendum 1 contains new Schedule 1T that provides for EIM Administrative Service to recover the administrative costs for participation in the EIM by the WAPA EIM Entity; Addendum 2 contains new Schedule 4T that provides for EIM Energy Imbalance Service; and Addendum 3 contains new Schedule 9T that provides for EIM Generator Imbalance Service.

B. Deferral of Tariff Revisions for Order Nos. 676-I, 676-J, 881, and 1000

18. WAPA states that it is currently reviewing the *pro forma* OATT revisions adopted for Order Nos. 676-I, 676-J, and 881 and will submit one or more subsequent filings to the Commission addressing these orders as soon as practicable after it completes its review and obtains input from affected stakeholders.⁴⁰

³⁷ We note that there is a typo in section 9.8 (Market Validation and Price Correction). The statement should read “If the MO modifies the WAPA EIM Entity’s EIM settlement statement in accordance with the MO’s market validation and price correction procedures in the MO Tariff”

³⁸ WAPA Transmittal at 4-11.

³⁹ WAPA, Tariff, attach. T (CAISO Energy Imbalance Market Provisions for DSR) (0.0.0).

⁴⁰ WAPA Transmittal at 12.

19. WAPA states that it needs to continue deferring the incorporation of any proposed Order No. 1000-related revisions in Part II of Tariff Attachment P (Transmission Planning Process – Western Interconnection of WAPA’s Rocky Mountain, Desert Southwest and Sierra Nevada Regional Offices) until such time as WAPA can ensure the final modifications to the WestConnect planning region documents will not conflict with WAPA’s statutory requirements and WAPA determines whether Desert Southwest Region, Rocky Mountain Region, and Sierra Nevada Region can continue to participate.⁴¹ WAPA further states that it will consider any modifications the WestConnect public utility transmission providers propose to their Tariff planning attachments if and when they are filed, and if it is possible to do so. WAPA states that it will propose statutorily compliant revisions to its Tariff in a subsequent filing to the Commission to address the Order No. 1000 requirements for Desert Southwest Region, Rocky Mountain Region, and Sierra Nevada Region as soon as practicable after WAPA completes its review and obtains input from affected stakeholders.

III. Notice of Filing

20. Notice of WAPA’s filing was published in the *Federal Register*, 87 Fed. Reg. 72,371 (Nov. 25, 2022), with motions to intervene and protests due on or before December 5, 2022. None was filed.

IV. Commission Determination

A. Procedural Matters

21. Because WAPA is an agency of the United States Department of Energy engaged in the official business of the Federal government, we grant WAPA’s request for waiver of the filing fee.⁴²

B. Discussion

22. We grant in part and deny in part WAPA’s petition for declaratory order. We find the revised terms and conditions of WAPA’s Tariff that address Desert Southwest Region’s planned participation in the CAISO EIM substantially conform with or are superior to the Commission’s *pro forma* OATT. We find that WAPA’s proposed Tariff revisions will facilitate Desert Southwest Region’s participation in the EIM, as well as operation of the EIM as a whole, by providing a framework that is consistent with the EIM provisions in CAISO’s Tariff and the tariffs of other EIM Entities.

⁴¹ *Id.* at 13.

⁴² 18 C.F.R. §§ 381.102(a), 381.108(a), 381.302(c) (2022).

23. However, for the Commission to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 676-I, 676-J, 881, and 1000. Because WAPA has determined to defer implementation of these changes to a later date, we cannot find that WAPA's Tariff, as revised here, is an acceptable reciprocity tariff.⁴³ We encourage WAPA to file a further updated Tariff once it completes its stakeholder process and review.

The Commission orders:

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

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴³ The Commission has found that non-jurisdictional entities' tariffs that did not incorporate changes the Commission made to the *pro forma* OATT were not acceptable reciprocity tariffs. See, e.g., *W. Area Power Admin.*, 179 FERC ¶ 61,094 (finding that WAPA's tariff did not meet the requirements to be an acceptable reciprocity tariff because WAPA did not incorporate changes associated with Order No. 1000); *W. Area Power Admin.*, 171 FERC ¶ 61,092 (finding that WAPA's tariff did not meet the requirements to be an acceptable reciprocity tariff because WAPA did not incorporate changes associated with Order Nos. 845 and 1000); *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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