

187 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Area Power Administration

Docket No. EF23-5-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 12, 2024)

1. On April 19, 2023, Western Area Power Administration (WAPA) submitted revisions to its non-jurisdictional Open Access Transmission Tariff (Tariff) to address the requirements of Order Nos. 676-I,¹ 676-J,² and 881,³ and to make ministerial edits to the text of its Tariff, including its Large Generator Interconnection Procedures and Agreement (LGIP and LGIA, respectively), and Small Generator Interconnection Procedures and Agreement (SGIP and SGIA, respectively). WAPA petitions the Commission for a declaratory order finding that these revisions substantially conform with or are superior to the Commission's *pro forma* Open Access Transmission Tariff (OATT) and that WAPA's revised Tariff satisfies the requirements for reciprocity status.⁴ WAPA explains that it has deferred making Tariff revisions to implement the requirements of Order No. 1000 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.

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

² *Standards for Bus. Pracs. & Commc'n Protocols for Pub. Utils.*, Order No. 676-J, 175 FERC ¶ 61,139 (2021).

³ *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (2021), *order on reh'g*, Order No. 881-A, 179 FERC ¶ 61,125 (2022).

⁴ 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.

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).⁵ WAPA is, however, a transmitting utility subject to sections 210 through 213 of the FPA.⁶

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.⁷ 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

⁵ 16 U.S.C. §§ 824, 824d, 824e.

⁶ *Id.* §§ 824i-824l.

⁷ *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).

service upon request to that particular non-public utility.⁸ WAPA's Tariff was previously determined to be an acceptable reciprocity tariff under Order No. 888.⁹

4. Subsequently, in Order No. 890,¹⁰ 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 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.¹¹ In 2010, WAPA submitted tariff revisions to comply with Order No. 890, and the Commission subsequently found that WAPA had an acceptable reciprocity tariff.¹²

5. In April 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

⁸ 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.

⁹ *W. Area Power Admin.*, 119 FERC ¶ 61,329 (2007).

¹⁰ *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).

¹¹ Order No. 890, 118 FERC ¶ 61,119 at P 191.

¹² *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).

Order Nos. 676-H,¹³ 764,¹⁴ 784,¹⁵ 792,¹⁶ and 828¹⁷ 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."¹⁸

6. In December 2019, WAPA submitted a filing to modify its Tariff to comply with the requirements of Order Nos. 827¹⁹ and 842,²⁰ but deferred addressing the

¹³ *Standards for Bus. Pracs. & Commc'n Protocols for Pub. Utils.*, Order No. 676-H, 148 FERC ¶ 61,205 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015).

¹⁴ *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).

¹⁵ *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).

¹⁶ *Small Generator Interconnection Agreements & Procs.*, Order No. 792, 145 FERC ¶ 61,159 (2013), *clarifying*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

¹⁷ *Requirements for Frequency & Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (2016).

¹⁸ *W. Area Power Admin.*, 168 FERC ¶ 61,022, at P 27 (2019).

¹⁹ *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277, *order on clarification & reh'g*, 157 FERC ¶ 61,003 (2016).

²⁰ *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).

revisions promulgated in Order Nos. 845²¹ and 1000²² 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."²³

7. In December 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."²⁴

8. In October 2020, WAPA submitted a filing to modify its Tariff to address Sierra Nevada Region's planned participation in the Western Energy Imbalance Market administered by the California Independent System Operator Corporation. 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 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

²¹ *Reform of Generator Interconnection Procs. & 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).

²² *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).

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

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

acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to also incorporate changes associated with Order Nos. 845 and 1000.”²⁵

9. In September 2021, WAPA 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 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 “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.”²⁶

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

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, Version 003.2 of the Standards for Business Practices and Communication Protocols for Public Utilities (Business Practice Standards) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB).²⁷ 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 NAESB WEQ Business Practice Standards that the Commission was incorporating by reference.²⁸

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 Business Practice Standards adopted by the NAESB

²⁵ *W. Area Power Admin.*, 174 FERC ¶ 61,097, at P 28 (2021).

²⁶ *W. Area Power Admin.*, 178 FERC ¶ 61,066, at P 17 (2022) (finding that WAPA’s Tariff revisions related to Order Nos. 845 and 845-A substantially conformed with or were superior to the Commission’s *pro forma* OATT, with the exception of certain surplus interconnection service provisions); *W. Area Power Admin.*, 179 FERC ¶ 61,094, at P 7 (2022) (finding that WAPA’s proposed revisions regarding surplus interconnection service substantially conformed with or were superior to the Commission’s *pro forma* OATT).

²⁷ Order No. 676-I, 170 FERC ¶ 61,062 at P 1.

²⁸ *Id.* P 20.

WEQ.²⁹ 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 NAESB WEQ Business Practice Standards that the Commission was incorporating by reference.³⁰

C. Order No. 881

12. In Order No. 881, the Commission adopted reforms 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.³¹ 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.³² 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. 888.³³

II. WAPA's Filing

13. WAPA proposes to revise its Tariff to address the requirements of Order Nos. 676-I, 676-J, and 881. WAPA also proposes ministerial edits to the text of its Tariff, including its LGIP, LGIA, SGIP, and SGIA.³⁴

A. Order Nos. 676-I and 676-J

14. WAPA proposes to revise Attachment N of its Tariff to incorporate without modification the most current versions of the NAESB WEQ Business Practice

²⁹ Order No. 676-J, 175 FERC ¶ 61,139 at P 1.

³⁰ *Id.* P 51.

³¹ Order No. 881, 177 FERC ¶ 61,179 at P 1.

³² *Id.* P 16.

³³ *Id.* P 174.

³⁴ WAPA Transmittal at 1.

Standards references promulgated in Order Nos. 676-I and 676-J³⁵ and specified in the Commission's regulations.³⁶ WAPA requests that the proposed revisions become effective June 20, 2023.³⁷

B. Order No. 881

15. WAPA proposes to incorporate the *pro forma* OATT Attachment M (Transmission Line Ratings) as adopted in Order No. 881 into its Tariff as Attachment U, with one modification. Specifically, WAPA proposes to add the following language: "Effective Date: This Attachment U shall become effective on July 12, 2025." WAPA asserts that this additional language is consistent with Order No. 881's implementation deadline of no later than three years from the public utility compliance filing due date of July 12, 2022.³⁸

C. Ministerial Edits

16. WAPA proposes several ministerial changes to various Tariff records. First, WAPA proposes to correct a typographical error in section 9.8 of its Tariff Attachment T so that the term "market validation" is properly reflected.³⁹ Second, WAPA proposes to revise its Tariff Attachment K (Authorities and Obligations) and Attachment P (Transmission Planning Process) to reflect WAPA Colorado River Storage Project Management Center's organizational relocation from Salt Lake City, Utah, to Montrose, Colorado.⁴⁰ Third, WAPA proposes to revise sections 1.32, 17.2, 18.2, and 29.2 of its Tariff to refer to the Commission's Standards of Conduct regulations in 18 C.F.R. section 358.⁴¹ Fourth, WAPA proposes minor corrections to titles, capitalization, carriage returns, defined terms, grammar, punctuation, and word spacing in its Tariff, including its

³⁵ WAPA's proposed Attachment N includes only the Order No. 676-J version of the NAESB WEQ Business Practice Standards (Version 003.3), the latest version of the NAESB WEQ Business Practice Standards.

³⁶ WAPA Transmittal at 3.

³⁷ *Id.* at 10.

³⁸ *Id.* at 4.

³⁹ *Id.*

⁴⁰ *Id.* at 5.

⁴¹ *Id.*

LGIP, LGIA, SGIP, and SGIA.⁴² WAPA also proposes to move Exhibit 1 to Part II of its Tariff Attachment P to a new record that has the primary Part II record designated as its parent. In addition, WAPA proposes to correct various parent identifiers in the Commission's public eTariff viewer.⁴³

D. Deferral of Order No. 1000

17. WAPA states that it will need to continue to defer the incorporation of any proposed Order No. 1000-related revisions in Part II of Attachment P to its Tariff until such time as WAPA can ensure that the final modifications to the WestConnect transmission 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. WAPA states that it will consider any Tariff planning attachment modifications proposed by the WestConnect public utility transmission providers if and when those modifications are approved by the Commission. WAPA contends that if it is possible to do so, WAPA will then 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.⁴⁴

III. Notice of Filing

18. Notice of WAPA's filing was published in the *Federal Register*, 88 Fed. Reg. 25,393 (Apr. 26, 2023), with interventions and protests due on or before May 19, 2023. None was filed.

IV. Commission Determination

A. Procedural Matters

19. 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.⁴⁵

⁴² *Id.*

⁴³ *Id.* at 6-8.

⁴⁴ *Id.* at 9.

⁴⁵ 18 C.F.R. §§ 381.102(a), 381.108(a), 381.302(c) (2023).

B. Substantive Matters

20. We grant in part and deny in part WAPA's petition for declaratory order.⁴⁶ We find that WAPA's proposed revisions to its Tariff, including its ministerial changes, substantially conform with or are superior to the Commission's *pro forma* OATT, as discussed in more detail below. However, for the Commission to find that WAPA has an acceptable reciprocity tariff, WAPA must submit revisions to its Tariff to incorporate changes the Commission made to the *pro forma* OATT associated with Order Nos. 1000 and 2023.⁴⁷ Because WAPA has determined to defer implementation of Order No. 1000 to a later date, and because WAPA has not submitted revisions associated with Order No. 2023, we cannot find that WAPA's Tariff, as revised here, is an acceptable reciprocity tariff.⁴⁸

1. Order Nos. 676-I and 676-J

21. We find that WAPA's proposed revisions to Attachment N of its Tariff substantially conform with or are superior to the Commission's *pro forma* OATT

⁴⁶ We note that WAPA made its filing using type of filing code 40, which generated an EF docket. In the future, when filing Tariff revisions pursuant to section 35.28(e) of the Commission's regulations, type of filing code 450 should be used, which generates an NJ docket.

⁴⁷ *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at PP 502-503, *order on reh'g*, 185 FERC ¶ 61,063

(2023), *order on reh'g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024). We note that WAPA submitted its filing prior to the issuance of Order No. 2023.

⁴⁸ 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 at P 7 (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 at P 23 (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).

because the revisions incorporate by reference, without modification, the latest version of the NAESB WEQ Business Practice Standards from Order No. 676-J.⁴⁹

2. Order No. 881

22. We find that WAPA's proposed revisions to its Tariff addressing the requirements of Order No. 881 conform with or are superior to the *pro forma* OATT. We find that WAPA's modification to state that Attachment U becomes effective on July 12, 2025 substantially conforms with or is superior to the *pro forma* Attachment M as it reflects the date on which WAPA will begin implementing Attachment U and aligns with the implementation date required in Order No. 881.⁵⁰

3. Ministerial Edits

23. We find that WAPA's ministerial revisions substantially conform with or are superior to the *pro forma* OATT because they correct typographical and other errors, and update certain information.

The Commission orders:

(A) WAPA's petition for declaratory order is hereby granted in part, effective June 20, 2023, 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)

Debbie-Anne A. Reese,
Acting Secretary.

⁴⁹ The Order No. 676-I version of the NAESB WEQ Business Practice Standards (Version 003.2) was superseded by the version incorporated by reference in Order No. 676-J (Version 003.3).

⁵⁰ See Order No. 881, 177 FERC ¶ 61,179 at P 361.

Document Content(s)

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