

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Missouri Basin Municipal Power Agency

Docket No. TX97-7-000

United States Department of Energy -
Western Area Power Administration

Docket No. NJ98-1-000

ORDER AFFIRMING INITIAL DECISION, DENYING
REQUEST FOR TRANSMISSION SERVICE,
AND GRANTING PETITION FOR
DECLARATORY ORDER

(Issued April 12, 2002)

This order denies a request by Missouri Basin Municipal Power Agency (Missouri Basin)¹ for an order by the Commission, under Sections 211 and 212 of the Federal Power Act (FPA),² directing the United States Department of Energy (DOE) - Western Area Power Administration (WAPA) to transmit power for Missouri Basin using only specific, federal facilities, and affirms an Initial Decision finding that such transmission could not be provided without unreasonably impairing the continued reliability of affected electric systems, in contravention of Section 211 of the FPA³ (Docket No. TX97-7-000).

¹As of May 1, 1998, Missouri Basin began conducting business using Missouri River Energy Services as a trade name. However, Missouri Basin did not change its legal name. See Missouri Basin November 3, 1998 Motion in Docket Nos. TX97-7-000, NJ98-1-000, and EF98-5301-000. For purposes of this order, we will continue to refer to the entity as Missouri Basin.

²16 U.S.C. §§ 824j, 824k (1994).

³Missouri Basin Municipal Power Agency, 82 FERC ¶ 63,015 (1998) (Initial Decision).

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This order also grants a petition by WAPA for a declaratory order concerning its proposed open access transmission tariff (WAPA Tariff) (Docket No. NJ98-1-000).⁴

Background

Until 1995, WAPA provided transmission service to Missouri Basin (which is located in WAPA's Upper Great Plains Region) over a Joint Transmission System (JTS), established under the Missouri Basin Systems Group Pooling Agreement (Pooling Agreement). Under the Pooling Agreement, each of the four members, WAPA, Missouri Basin, Basin Electric Power Cooperative (Basin Electric), and Heartland Consumers Power District (Heartland), paid for its proportional use of the system, most of which consisted of WAPA facilities, with WAPA providing service to all the participants as agent, under separate contracts with each.

In 1995, WAPA signed new contracts with Basin Electric and Heartland, which superseded the Pooling Agreement (IS Bilateral Contracts),⁵ to form an Integrated System, using the transmission facilities of the three entities.⁶ Notwithstanding that its contract with WAPA was due to expire in 1997, Missouri Basin declined to enter into a contract on the same or similar terms as Basin Electric and Heartland. Instead, Missouri Basin made a "good faith request" for transmission service from WAPA⁷ to replace the service under the existing agreement. However, Missouri Basin requested service using only WAPA's federally-owned facilities, rather than the pre-existing arrangement of using all of the JTS facilities, to provide transmission. WAPA refused service on the terms

⁴Additionally, simultaneous with this order, the Commission is issuing an order on rehearing, in Docket No. EF98-5031-001, which affirms the Commission's order approving WAPA's transmission and ancillary service rates for the period August 1, 1998 through July 31, 2003. See United States Department of Energy - Western Area Power Administration, 85 FERC ¶ 61,273 (1998) (Upper Great Plains Rate Order).

⁵Under the IS Bilateral Contracts, the JTS arrangements were extended until 2039.

⁶On September 17, 1998, WAPA, Basin Electric, and Heartland jointly entered into a contract for the management and operation of the Integrated System (Integrated System Contract), to supplement the IS Bilateral Contracts. See Section 6.3 of the Integrated System Contract.

⁷See 16 U.S.C. § 8241 (1994).

Missouri Basin requested; WAPA stated that the federally-owned facilities at issue cannot reliably provide the service. Instead, WAPA offered service over the Integrated System.⁸

Docket No. TX97-7-000

On June 10, 1997, Missouri Basin filed a request for a Commission order directing WAPA to provide firm point-to-point and non-firm point-to-point transmission service on a long-term basis. Missouri Basin argued that the service it requested would use only certain federally-owned facilities, not those of Basin Electric and Heartland, and that WAPA must charge it a rate based on those federal facilities only. Missouri Basin maintained that the Integrated System is not an integrated power pool, but rather that the facilities contributed by the other participants are almost entirely interconnections to WAPA facilities that enable the other participants to deliver power into the system. Missouri Basin also claimed that WAPA's refusal to provide service on this basis violated the principle of comparability, because WAPA itself has used only the federal facilities under the IS Bilateral Contracts and made no payments to the other Integrated System participants. Moreover, Missouri Basin argued that requiring it to pay based on these other entities' facilities as well as WAPA's would result in Missouri Basin subsidizing the transmission systems of these other entities.

WAPA responded that it could not provide the requested service using only its own facilities without impairing the reliability of the transmission system. It also asked the Commission to dismiss the application because Missouri Basin should have requested service from the other owners of transmission facilities that will, in fact, also have to be used to provide the service, and Missouri Basin did not do so. WAPA also stated that, if

⁸WAPA also characterized Integrated System service as "superior" service, and added that service over the JTS is inappropriate for service to third parties. We note that Missouri Basin "does not contest" WAPA's belief that "the JTS is inappropriate for third-party service in the open access era opened by Order No. 888." Missouri Basin January 30, 1998 Answer in Docket No. NJ98-1-000 at 19, n.24.

In this regard, Section 2.7 of the Integrated System Contract states that the "JTS Bilateral Contracts are facility operation and cost sharing arrangements which do not provide for third party transmission use and thus are not appropriate for providing transmission service to others." Similarly, Section 6.2 notes that the signatories "agree that it is in their best interests to allow others to use the available transfer capability (ATC) in the [Integrated System] transmission facilities to deliver power and energy."

the Commission could not summarily conclude that the service would use non-federal facilities, the issue should be set for hearing. However, WAPA argued that the Commission should hold the application in abeyance because WAPA was then in the process of adopting a transmission tariff that would set forth rates for long-term transmission service based on the Integrated System.

Numerous parties intervened and filed comments.

On December 17, 1997, the Commission issued an order establishing hearing procedures on the question of "whether the service at issue here (that is, service only over certain federal facilities) can be provided without unreasonably impairing the continued reliability of electric systems affected by the order, as required by Section 211(b) of the FPA."⁹ In addition, the Commission directed that, if the presiding judge "determines that the requested service can only be reliably provided using more than the federally-owned facilities, the [presiding judge] should also identify the other facilities needed."¹⁰

The Initial Decision issued on March 11, 1998. The presiding judge found that WAPA cannot provide the service Missouri Basin is requesting without unreasonably impairing the reliability of the affected transmission system. He noted that:

Missouri Basin is requesting the same physical transmission service it was receiving under its Expired Contract with one major difference. The difference is that the service it received under the Expired Contract was taken over the integrated JTS and now Missouri Basin is requesting service over only the federally-owned facilities. . . . This is a compelling distinction. [¹¹]

The presiding judge found, based on the joint history of planning and acquisition of supplemental generation and transmission resources dating back to 1963, that the

⁹Missouri Basin Municipal Power Agency, 81 FERC ¶ 61,324 at 62,500 (1997) (Hearing Order), reh'g denied, 82 FERC ¶ 61,138 (1998).

¹⁰Id. at 62,501 n.21.

¹¹Initial Decision, 82 FERC at 65,118 (emphasis in original).

Integrated System is, in fact, integrated.¹² The presiding judge concluded that the lines constructed by Basin Electric were planned to be a part of the integrated system to provide a reliability benefit to the entire system, not primarily for Basin Electric's own benefit.¹³ However, the presiding judge also determined that not all of the Integrated System facilities would be needed, *i.e.*, while the east-side facilities (encompassing facilities of WAPA, Missouri Basin, Basin Electric, and Heartland) are all necessary to provide the requested service without impairing reliability, the asynchronous west-side facilities (encompassing facilities of the same four entities), through which power can only transfer via an AC/DC/AC converter, do not contribute to transmission reliability.¹⁴

Numerous briefs on and opposing exceptions were filed.

Docket No. NJ98-1-000

On December 31, 1997, WAPA filed a petition for a declaratory order approving transmission terms and conditions for the proposed WAPA Tariff. WAPA proposes a system-wide tariff for each of its Regional Offices, with each Regional Office acting only regarding the particular projects and facilities under its ownership, control, or management. For the Upper Great Plains Region, WAPA proposes a single-system rate for service over the Integrated System. In support of its petition, WAPA states that it will provide network integration and point-to-point transmission service to others under the same terms and conditions as are required of public utilities, except as otherwise required by federal laws, and except for its use of processing fees. WAPA also seeks an exemption from paying a filing fee.

Notice of the filing was published in the Federal Register,¹⁵ with comments, protests, and motions to intervene due on or before January 30, 1998.

¹²*Id.* at 65,118-20. The presiding judge also found that "the federal transmission system does not exist alone and cannot be studied apart from the transmission facilities owned by others which are under [WAPA] control." *Id.* at 65,121.

¹³*Id.* at 65,118-19.

¹⁴*Id.* at 65,124-25.

¹⁵63 Fed. Reg. 2381 (1998).

Numerous parties filed timely motions to intervene. Untimely motions to intervene were filed by: Enron Power Marketing, Inc. (Enron); Colorado Springs Utilities (CSU); Basin Electric; Midwest Electric Consumers Association (Midwest Association); Public Service Company of Colorado and Cheyenne Light, Fuel and Power Company (collectively, New Century); Platte River Power Authority (Platte River); and the Bureau of Administration of the State of South Dakota (South Dakota Bureau). Comments in support of WAPA's proposed tariff were filed by: Heartland; Loveland Area Customer Association; and Northern California Power Agency. Protests were filed by: Arizona Public Service Company (Arizona Public Service); Otter Tail Power Company (Otter Tail); Nebraska Public Power District (Nebraska Public Power); Northwestern Public Service Company (Northwestern); Missouri Basin; New Century; and Platte River.

On March 2, 1998, WAPA filed a motion for leave to answer and answer to the protests.¹⁶ On March 17, 1998, separate answers to WAPA's March 2 Answer were filed by Missouri Basin and Nebraska Public Power. On March 30, 1998, WAPA filed an answer to the March 17 Answers of Missouri Basin and Nebraska Public Power. On April 8, 1998 and April 14, 1998, Missouri Basin and Nebraska Public Power, respectively, filed answers to WAPA's March 30 Answer.

On June 12, 1998, New Century filed a motion to lodge the service agreement for network integration transmission service between WAPA and Tri-State Generation and Transmission Association, Inc. (Tri-State). On June 26, 1998 and June 29, 1998, WAPA and Tri-State, respectively, filed answers to New Century's motion to lodge.

As amended on September 15, 1998, WAPA filed an answer opposing the untimely motion to intervene of Platte River, filed on August 25, 1998. In support, WAPA argues that, because Platte River never participated in the public proceedings that preceded submission of the proposed WAPA Tariff, WAPA's customers have not had the opportunity to evaluate Platte River's proposals that WAPA use actual metered losses over a portion of its transmission system, rather than system-wide losses.

¹⁶WAPA's March 2 Answer did not address the protest of Platte River, which had not yet been filed.

Discussion

A. Procedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the timely, unopposed motions to intervene serve to make those who filed them parties to the proceeding in Docket No. NJ98-1-000. We find that good cause exists to grant the untimely motions to intervene in Docket No. NJ98-1-000 of Enron, CSU, Basin Electric, Midwest Association, New Century, and South Dakota Bureau, given their interests, the early stage of this proceeding and the lack of undue prejudice or delay to any party.

We will deny Platte River's untimely motion to intervene in Docket No. NJ98-1-000. Platte River's statement that it "has engaged in extensive discussions with [WAPA] regarding the treatment of transmission losses" does not amount to good cause for failure to timely file its motion to intervene. We also agree with WAPA that allowing Platte River to participate now in Docket No. NJ98-1-000 would result in undue prejudice to WAPA's customers who did participate in WAPA's public proceedings, but did not have the opportunity to respond to Platte River's proposals at that time because Platte River chose not to participate.

Notwithstanding our general prohibition on the filing of answers to protests,¹⁸ we find that good cause exists to grant WAPA's March 2, 1998 motion to file an answer to the protests, in part, in light of additional information provided by WAPA that assists in our understanding and resolution of the issues raised. However, we will reject the March 17, 1998, April 8, 1998, and April 14, 1998 answers to answers by Missouri Basin and Nebraska Public Power, and the March 30, 1998 answer by WAPA, as impermissible answers to answers.

We will deny New Century's June 12, 1998 motion to lodge the service agreement. A service agreement for network integration transmission service between WAPA and Tri-State is not relevant to this proceeding.

¹⁷18 C.F.R. § 385.214 (2001).

¹⁸See 18 C.F.R § 385.213(a)(2) (2001).

B. Filing Fee Exemption

WAPA asks for an exemption, in Docket No. NJ98-1-000, from the filing fee applicable to petitions for declaratory orders, because it is an agency of DOE, engaged in the official business of the federal government. WAPA asserts that it, thus, satisfies the Commission's regulations that exempt federal agencies from filing fees.¹⁹ We agree and, accordingly, will grant WAPA's petition for an exemption from the filing fee.

C. Request for Transmission Service (Docket No. TX97-7-000)

1. Review of Initial Decision

Having reviewed the record, the Initial Decision, and the parties' briefs, we find that the issue of whether WAPA could provide transmission service to Missouri Basin using only federal facilities was properly resolved by the Initial Decision. Additionally, we find that the issue of the ability to provide reliable transmission service without the need to use the west-side facilities was properly determined by the Initial Decision.²⁰ We, therefore, deny the exceptions and summarily affirm and adopt the Initial Decision as our own decision on this issue.

2. Denial of Transmission Service Request

Section 211(b) of the FPA provides:

RELIABILITY OF ELECTRIC SERVICE -- No order may be issued under this section or section 210 if, after giving consideration to consistently applied regional or national

¹⁹See 18 C.F.R. §§ 381.108(a), 381.302 (2001).

²⁰We note, however, that our finding excluding these facilities does not, as alleged by WAPA, run "contrary to FERC policy which recognizes an entity's ability to include all of its facilities in one system through 'rolled-in' rate-making principals which disfavor pancaked transmission rates." WAPA Brief on Exceptions at 3. Rather, the limited issue we set for hearing was simply to identify which facilities would be needed for the transmission service Missouri Basin requested, without unreasonably impairing reliability – the standard for a transmission order under Section 211. As we discuss in greater detail below, regarding the WAPA Tariff, utilities should roll into a single tariff all transmission facilities that they own, operate, or control.

reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order.

In light of our affirmance of the finding by the presiding judge that WAPA cannot satisfy Missouri Basin's request for transmission service (*i.e.*, provide service using only federal facilities) without unreasonably impairing reliability, we will deny Missouri Basin's request for transmission service as not satisfying the requirements of Section 211(b) of the FPA. Moreover, we note that it is not appropriate in this case to ameliorate the reliability constraints by directing WAPA to expand its federal facilities.²¹ Here, as the presiding judge found and we have affirmed, an integrated system already exists which does have the capacity to provide the service Missouri Basin needs at a single, system-wide rate; indeed, Missouri Basin has been receiving service over that integrated system. Nowhere in Section 211 is the applicant permitted to select any particular transmission facilities that the transmitting utility owns, operates or controls from which to receive the requested transmission service.²²

D. Petition for Declaratory Order (Docket No. NJ98-1-000)

In Order No. 888, the Commission established a "safe harbor" procedure for the filing of reciprocity transmission tariffs by non-public utilities, such as WAPA. Under this procedure, a non-public utility may voluntarily submit to the Commission an open access transmission tariff and a request for declaratory order that the tariff meets the

²¹Under Section 211(a), a Commission order directing transmission services may include "any enlargement of transmission capacity necessary to provide such services."

²²We also note that, in light of our acceptance of the WAPA Tariff below, Missouri Basin would have the burden of proof to show why service under the same terms as the WAPA Tariff is not sufficient and why a Section 211 order instead should be granted. See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,761 (1996), Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,243 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part, Transmission Access Policy Study Group, et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S.Ct. 1012 (2002) (Order No. 888).

Commission's comparability (non-discrimination) standards. If the Commission finds that such a tariff contains rates that are comparable to the rates it charges itself, and terms and conditions that substantially conform with or are superior to those in the Order No. 888 pro forma tariff, the Commission will deem the tariff to be an acceptable reciprocity tariff.²³

1. Rates

In its December 31 Petition for Declaratory Order, WAPA states that it "is committed to meeting the Commission's golden rule of comparability - to offer to provide to others the same transmission service it provides to itself."²⁴ However, the Petition did not include actual rates for point-to-point transmission and ancillary services, and Arizona Public Service, Otter Tail, Northwestern, Missouri Basin, and New Century all argue that the actual rates must be included by WAPA and evaluated by the Commission.²⁵ In addition, New Century argues that WAPA "need[s] to include provisions that eliminate the possibility of pancaked rates,"²⁶ and Northwestern argues that, because the CSW

²³See generally id. at 31,760-63. See also Long Island Power Authority, 84 FERC ¶ 61,280 at 62,331, 62,333 (1998); South Carolina Public Service Authority, 75 FERC ¶ 61,209 at 61,695 (1996), order on revised reciprocity tariff filing, 80 FERC ¶ 61,180 (1997).

²⁴WAPA Petition at 1. See also id. at 18. We note that Arizona Public Service argues that WAPA has proposed "significant deviations" from the pro forma tariff, leading Arizona Public Service to have "general concern" and "not believe that comparability, and attendant reciprocity, will unquestionably occur." Arizona Public Service Protest at 3. We can and will address each of the specific deviations raised by Arizona Public Service; we cannot, in contrast, resolve its unspecified "general concern."

²⁵New Century also argues that WAPA should be required to make its service agreements available for public inspection. New Century Protest at 7-8. However, in its March 2 Answer, WAPA states that, in fact, it "makes such information available upon request." WAPA March 2 Answer at 3. Accordingly, this concern is satisfied.

²⁶New Century Protest at 7.

Operating Companies, which have facilities in asynchronous regions, were prohibited from charging pancaked rates, WAPA should similarly be precluded from pancaking.²⁷

In its March 2 Answer, WAPA points out that all of its "existing rates for long-term firm transmission service and ancillary services were published in the Federal Register when DOE placed them in effect and were then filed with FERC and approved by FERC on a project-by project basis,"²⁸ and provides the cites for each rate already approved.²⁹ WAPA also states that if one of its "projects requires transmission over another project, it has to pay the same rate as every other transmission customer for service over the second project. It also pays the same rate for service over its own system, as provided in the [WAPA] Tariff."³⁰ We find that this commitment to

²⁷Northwestern cites to an early CSW Operating Companies case, *Central Power and Light Company, et al.*, 81 FERC ¶ 61,311 (1997), where the Commission permitted the CSW Operating Companies to charge separate rates for service wholly within the Electric Reliability Council of Texas, service wholly within the Southwest Power Pool, and service between both regions, but prohibited pancaking the rates. Subsequent to Northwestern's Protest, however, the approach adopted in that case has been modified. See *Central Power and Light Company, et al.*, 85 FERC ¶ 61,224 (1998), order denying reh'g, 87 FERC ¶ 61,073 (1999), remanded sub nom. East Texas Electric Cooperative, Inc. v. FERC, 218 F.3d 750 (D.C. Cir. 2000), order on remand, 97 FERC ¶ 61,157 (2001), reh'g denied, 98 FERC ¶ 61,069 (2002).

²⁸Id. at 6.

²⁹New rates for sales of transmission and ancillary services from the Salt Lake City Integrated Projects and Loveland Area Project were subsequently approved by the Commission in Docket Nos. EF98-5171-000 and EF98-5181-000, respectively. *United States Department of Energy - Western Area Power Administration*, 84 FERC ¶ 61,039 (1998); *United States Department of Energy - Western Area Power Administration*, 84 FERC ¶ 61,066 (1998). Rates for the UGPR region were accepted in Upper Great Plains Rate Order.

³⁰WAPA March 2 Answer at 5 (emphasis in original).

comparability overcomes New Century's and Northwestern's³¹ concerns about the possibility of pancaked rates.³²

Accordingly, we find that WAPA's proposed rates satisfy our comparability standards.

2. Definitional Ambiguities

Arizona Public Service is concerned that "ambiguities contained in the definitions of Eligible Customer and Federal Customer [i.e., Native Load Customer] leave room for an interpretation that Federal Customers have preference over [WAPA's] entire grid."³³

In its March 2 Answer, WAPA points out that Arizona Public Service was relying on a previous version of its proposed tariff, but that the proposed WAPA Tariff changed the definitions of Native Load Customer and Eligible Customer to match the definitions in the pro forma tariff, and points out that the term "Federal Customer" is not defined. WAPA further explains that this term is only used once, in Attachment K, which contains general information about WAPA and its Regional Offices, and "Federal customer" is only used "in a general listing of types of customers with which the CRSP CSC Region has existing long-term contracts for use of its transmission system. . . . It is not to be somehow construed as amending or altering other provisions of the [WAPA] Tariff."³⁴

We also note that WAPA, in its Petition, committed that it "will provide network integration and point-to-point transmission service to others under the same terms and

³¹Moreover, regarding Northwestern's concern that we did not allow the CSW Operating Companies to charge pancaked rates, we note that, in more recent cases, the Commission's main concern was that the CSW Operating Companies not charge discriminatory rates. See Central Power and Light Company, et al., 97 FERC at 61,698; 98 FERC at 61,183.

³²We are also not concerned by Missouri Basin's and Nebraska Public Power's arguments that WAPA provides transmission to Basin Electric and Heartland, as well as other preference power customers, under an existing bundled rate. Order No. 888 did not require every utility to undo all existing transmission arrangements.

³³Arizona Public Service Protest at 5.

³⁴WAPA March 2 Answer at 19-20.

conditions as are required of public utilities, except as otherwise required by Federal laws . . . [and] use of processing fees."³⁵

Accordingly, we find that Arizona Public Service's concerns are not justified. If, in the future, Arizona Public Service believes that WAPA is, in fact, violating the WAPA Tariff, Arizona Public Service is free to file a complaint.³⁶

3. Processing Fee

Section 7.3 of the Commission's pro forma tariff requires that a transmission customer pay a deposit of one month's charge for reserving capacity, with a refund for the amount above the reasonable costs of processing the application. WAPA proposes instead to require a non-refundable processing fee rather than a deposit for firm service requests of one year or greater. In support, WAPA points out that the Commission approved a similar provision for Bonneville Power Administration (Bonneville).³⁷

Arizona Public Service and New Century dispute the proposed processing fee. New Century argues that WAPA's proposal differs from that in Bonneville because it is not clear that WAPA intends to apply the processing fee to itself. We disagree. WAPA meets this standard by properly allocating costs in developing the proposed rates for transmission and other related services. Additionally, as noted above, WAPA has committed to charging itself the same transmission rates it charges others. Moreover, as

³⁵WAPA Petition at 1.

³⁶See Central Electric Cooperative, Inc., et al., 77 FERC ¶ 61,076 at 61,317 (1996), reh'g denied, Jacksonville Electric Authority, 82 FERC ¶ 61,203 at 61,799 (1998) ("questions about whether a reciprocity provision has been met by a non-public utility can be resolved either when the non-public utility files a reciprocity tariff or when a public utility providing transmission service to that non-public utility asks the non-public utility to provide a specific transmission service and the non-public utility unjustifiably refuses to provide comparable service").

³⁷See United States Department of Energy - Bonneville Power Administration, 80 FERC ¶ 61,119 at 61,373, order on reh'g, 81 FERC ¶ 61,165 (1997) (Bonneville).

we have stated above, if in the future New Century believes that WAPA is, in fact, violating the WAPA Tariff, New Century is free to file a complaint.³⁸

4. Interest on Refunds

Section 19.4 of the proposed WAPA Tariff requires an Eligible Customer to advance funds for the construction of facilities necessary to provide a requested transmission service, rather than submit a letter of credit, as provided for in the pro forma tariff. New Century does not dispute WAPA's claim that this change is required by the Anti-Deficiency Act,³⁹ though New Century points out that Bonneville did not include a similar provision in its tariff. However, New Century argues that WAPA's failure to provide for interest on refunds, when advanced funds exceed actual costs, gives WAPA no incentive to estimate the facilities costs accurately, and denies Eligible Customers the time value of their money.

In its March 2 Answer, WAPA points out that there are three options under the proposed WAPA Tariff that would eliminate New Century's concerns.⁴⁰ First, the Eligible Customer could construct the facilities itself. Second, it could negotiate an agreement to advance the necessary funds in stages, so that it only has to pay amounts shortly before WAPA needs the money on hand. Third, it might be able to pay the money into an escrow account from which the funds would be payable only to WAPA, but where the funds would accrue interest.

We find that the existence of these options is sufficient to conclude that this provision substantially conforms with or is superior to the pro forma tariff.

³⁸See supra note 36.

³⁹See 31 U.S.C. § 1341 (1994).

⁴⁰WAPA also argues that it has different legislation than Bonneville and, if it were to pledge to pay interest, the interest would become an obligation of its existing ratepayers to pay.

5. Loss Factors

Arizona Public Service and New Century argue that WAPA should have explicitly stated the loss factors. In its March 2 Answer, WAPA has provided the loss factors for each of its regions.

Accordingly, this concern has been resolved.

6. Determination of ATC

New Century is concerned that WAPA "appears to have the ability to reserve ATC for its future marketing efforts," which, it argues, is inconsistent with Commission policy that transmission for new sales must be obtained under the transmission provider's tariff.⁴¹ Arizona Public Service is concerned that the methodology for determining ATC is insufficiently detailed, and should be made available upon request.

New Century appears to believe that the Commission, in Order No. 888, precluded any reservation of ATC. This is incorrect. Rather, in Order No. 888, we held that "public utilities may reserve existing transmission capacity needed for native load growth and network transmission customer load growth reasonably forecasted within the utility's current planning horizon."⁴² WAPA should have the same reservation rights as do public utilities. Moreover, we take note of WAPA's clarification, in its March 2 Answer, that "nothing in Attachment C is meant to suggest that new power sales would not be provided under the [WAPA] Tariff."⁴³

Regarding Arizona Public Service's concerns that WAPA has supplied insufficient detail for calculating ATC, we note that Order No. 888 did not prescribe a specific method for ATC calculation; rather, the Commission only requires that the methodology used to determine ATC be consistently applied and conform to "good utility practice," which includes adherence to applicable reliability council guidelines. Regarding Arizona Public Service's desire that the methodology be available upon request, we note that WAPA has posted ATC Indices on its OASIS.

⁴¹New Century Protest at 3.

⁴²Order No. 888, FERC Stats. & Regs. at 31,694.

⁴³WAPA March 2 Answer at 14.

Accordingly, these concerns have been resolved.

7. Termination of Service Agreements

New Century protests that the forms of service agreements included with the proposed WAPA Tariff (Attachments A, B, and F) provide that, in the event that WAPA joins an Independent System Operator (ISO), WAPA and an Eligible Customer can "make any changes necessary to conform to the terms and conditions required by Commission approval of the [ISO]," or, alternatively, that WAPA may "terminate [a] Service Agreement by providing a one-year written notice to the Transmission Customer." New Century argues that the latter requirement is non-comparable, because it gives an entity less protection than it has "with respect to service agreements that it has entered into with jurisdictional transmission providers joining the ISO."⁴⁴

In its March 2 Answer, WAPA explains that, after customer objection to its initial termination proposal, the provision as filed in the WAPA Tariff only applies "if [WAPA] joined an ISO and needed to make changes in its contracts to conform to the terms and conditions required by Commission approval of the ISO."⁴⁵ WAPA points out that the Sierra Nevada Region is required to have such language in its new contracts,⁴⁶ and WAPA is "seriously considering" joining the ISO.⁴⁷

On this basis, we find that this provision substantially conforms with or is superior to the pro forma tariff.

8. Level of Detail

Arizona Public Service alleges that WAPA has provided insufficient detail regarding certain aspects of the general terms and conditions of service and the methodologies for selected computations.

⁴⁴New Century Protest at 6.

⁴⁵WAPA March 2 Answer at 11.

⁴⁶See Pacific Gas & Electric Company, 81 FERC ¶ 61,122 at 61,471, 61,472 (1997).

⁴⁷WAPA March 2 Answer at 12.

We disagree. Our review of WAPA's form of service agreements in Attachments A, B, F, and G indicates that, with respect to the level of detail, they substantially conform with those in the pro forma tariff. Moreover, issues that are customer-specific are more appropriately detailed in customer-specific service agreements, as already provided in the proposed WAPA Tariff.⁴⁸

9. Use of Integrated System

New Century, Missouri Basin, Nebraska Public Power, and Northwestern all protest WAPA's inclusion of the transmission facilities of Basin Electric and Heartland, i.e., the Integrated System. Missouri Basin, Nebraska Public Power, and Northwestern dispute WAPA's position that the facilities are integrated. As Nebraska Public Power argues, "[o]utside the context of a power pool agreement or an agreement for operation of a jointly owned facility, there is no precedent for a transmission provider to require its customers to make payments to other utilities as a condition for open-access use of its transmission system."⁴⁹ Because we have already affirmed the presiding judge's determination that the Integrated System is, in fact, an integrated system, we will not further address this issue in this context.

However, Northwestern also argues that the west-side facilities, in particular, "clearly are not integrated," because they are asynchronous.⁵⁰ We disagree with Northwestern; WAPA's entire transmission system is appropriately included in the WAPA Tariff.

In Montana Power Company, the Commission held in abeyance an application by Montana Power Company (Montana Power), under Section 211 of the FPA, for transmission service from Basin Electric, until Montana Power filed an application against all four JTS participants.⁵¹ In so holding, we determined that the entire JTS, including both east-side and west-side facilities, constitute a "fully integrated

⁴⁸We also note that WAPA has committed, in Attachment H, to set out revenue requirements in a separate rate schedule.

⁴⁹Nebraska Public Power Protest at 4.

⁵⁰Northwestern Protest at 16 (emphasis in original).

⁵¹76 FERC ¶ 61,266 (1996) (Montana Power).

transmission system."⁵² While Montana Power dealt with the JTS, not the Integrated System, the entire Integrated System is equally a "fully integrated transmission system" for purposes of the WAPA Tariff.⁵³

Moreover, our intention in Order No. 888 was that the entire transmission system over which a transmission provider provides service, and certainly its entire control area, should be included in its single open access tariff. Section 1.49 of the pro forma tariff recognizes that a transmission provider's transmission system over which it provides tariff service includes facilities which are controlled by the transmission provider, but which it does not own.⁵⁴ The proposed WAPA Tariff contains exactly the same language as Section 1.49.

Finally, Missouri Basin, Northwestern, and Nebraska Public Power protest a provision in Attachment K, which they believe imposes a stranded cost obligation whenever a transmission customer uses the service to replace power and energy supplied by Basin Electric or Heartland, maintaining that it is not authorized by Order No. 888. Additionally, they argue, WAPA should not be attempting to recover stranded costs of Basin Electric and Heartland for them.

In its March 2 Answer, WAPA points out that these protestors misread Attachment K, and that it "does not propose to collect and has no intention of collecting the stranded costs of any entity other than itself. In fact, it has no immediate needs or plans to collect stranded costs on its own behalf either."⁵⁵ Rather, WAPA explains, Sections 26 and 34.5 of the proposed WAPA Tariff, like those sections of the pro forma tariff, state that "the Transmission Provider may seek to recover stranded costs in a manner consistent with applicable Federal law and regulations."

WAPA's proposed language in Sections 26 and 34.5 matches that of the pro forma tariff, and we agree that WAPA should be entitled to seek to recover any stranded costs permissible under Federal law and regulations.

⁵²Id. at 62,353.

⁵³See supra note 20.

⁵⁴Order No. 888, FERC Stats & Regs. at 31,933; see also Order No. 888-A, FERC Stats. & Regs. at 30,510.

⁵⁵WAPA March 2 Answer at 13.

Accordingly, we find that WAPA's use of the transmission facilities of the Integrated System substantially conforms with or is superior to the pro forma tariff.

10. Conclusion

Accordingly, we find that the proposed WAPA Tariff represents an acceptable reciprocity tariff.

The Commission orders:

- (A) The Initial Decision is hereby affirmed.
- (B) Missouri Basin's request for an order directing transmission service under Section 211 of the FPA is hereby denied.
- (C) The untimely, unopposed motions to intervene of Enron, CSU, Basin Electric Midwest Association, New Century, and South Dakota Bureau in Docket No. NJ98-1-000 are hereby granted.
- (D) The untimely, opposed motion to intervene of Platte River in Docket No. NJ98-1-000 is hereby denied, and its protest hereby rejected.
- (E) WAPA's March 2, 1998 answer in Docket No. NJ98-1-000 is hereby accepted in part, as discussed in the body of this order.
- (F) WAPA's March 30, 1998 answer, Missouri Basin's answers of March 17, 1998 and April 8, 1998, and Nebraska Public Power's answers of March 17, 1998 and April 14, 1998, in Docket No. NJ98-1-000, are hereby rejected.
- (G) New Century's June 12, 1998 motion to lodge is hereby denied.
- (H) WAPA's petition for declaratory order is hereby granted, and its tariff is hereby deemed to represent an acceptable reciprocity tariff.

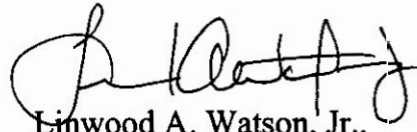
Docket Nos. TX97-7-000
and NJ98-1-000

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(I) WAPA's petition for an exemption from the filing fee is hereby granted.

By the Commission.

(S E A L)



Linwood A. Watson, Jr.,
Deputy Secretary.