

123 FERC ¶ 61,238
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 2, 2008

In Reply Refer To:
Basin Electric Power Cooperative
Docket No. NJ07-3-001

Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Ave., N.W. Suite 900
Washington, DC 20006-5807

Attention: Robert T. Stroh
Counsel for Basin Electric Power Cooperative

Reference: Request for Rehearing

Dear Mr. Stroh:

1. You filed, on behalf of Basin Electric Power Cooperative (Basin Electric), a request for rehearing of the July 11, 2007 letter order of the Director, Division of Tariffs and Market Development, Central, issued pursuant to delegated authority.¹ This letter order acknowledged Basin Electric's optional submittal of revised tariff sheets to its reciprocity Open Access Transmission Tariff (OATT) as modified by Order No. 890.²

¹ *Basin Electric Power Cooperative*, Docket No. NJ07-3-000, (July 11, 2007) (unpublished letter order) (July 11 Letter Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890). A reciprocity OATT refers to a non-public utility's tariff, submitted for Commission review, that substantially conforms to or is superior to the Commission's *pro forma* OATT. Thus, the non-public utility and public utilities, which have open-access transmission systems, can provide comparable transmission services to each other. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 162-65 & n.113.

The letter order also directed Basin Electric to revise the pagination and identification of the new tariff sheets so as to comply with the Commission's designation requirements in Order No. 614.³

2. On August 10, 2007, you submitted corrected tariff sheets⁴ and also filed the request for rehearing. In the latter, you point out that the July 11 Letter Order directed Basin Electric to make the compliance filing and cited, as its authority to do so, section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824(e) (2000 & Supp. V. 2005), (section 206), a statutory provision that applies to public utilities under the Commission's jurisdiction. You sought rehearing because of the possible inference that Basin Electric, a rural electric cooperative having outstanding debt to the U.S. Department of Agriculture's Rural Utilities Service, is subject to the Commission's jurisdiction and thus can be compelled to act under section 206. You asked the Commission to remove the obligation for Basin Electric to make a section 206 compliance filing.

3. We grant rehearing. Section 201(e) of the FPA, 16 U.S.C. § 824(e), (2000 & Supp. V 2005) states that the provisions of subchapter II of the FPA, Regulation of Electric Utility Companies Engaged in Interstate Commerce, do not apply to an electric cooperative that receives financing under the Rural Electrification Act of 1936, 7 U.S.C. § 901 et seq. (2000). Because Basin Electric falls within this provision, it is therefore not subject to the Commission's jurisdiction. Its filing of a reciprocity tariff and revisions thereto are voluntary filings.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulation Preambles July 1996-December 2000 ¶ 31,096 (2000).

⁴ The Director, Division of Tariffs and Market Development, Central acknowledged receipt of the corrected tariff sheets. *Basin Electric Power Cooperative*, Docket No. NJ07-3-002, (May 22, 2008) (unpublished letter order).