

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeem G. Kelly.

United States Department of Energy  
Bonneville Power Administration

Docket No. NJ05-2-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER, SUBJECT TO THE  
FILING OF TARIFF MODIFICATIONS, AND GRANTING EXEMPTION FROM  
FILING FEE

(Issued August 17, 2005)

1. On February 4, 2005, Bonneville Power Administration (BPA) filed a petition for declaratory order (Petition) requesting the Commission to approve its proposed Large Generation Interconnection Procedures (LGIP) and Large Generation Interconnection Agreement (LGIA) which BPA intends to add to its Open Access Transmission Tariff (OATT) as Attachment L. BPA requests that the Commission find that its revised OATT is consistent with or superior<sup>1</sup> to the *pro forma* LGIP and LGIA and that BPA will continue to maintain its reciprocity status. In this order, the Commission grants BPA's petition and finds that, subject to the modifications described below, BPA's proposed tariff substantially conforms or is superior to the *pro forma* LGIP and LGIA. In addition, we will exempt BPA from paying the filing fee required by 18 C.F.R. § 381.302 (2005).

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<sup>1</sup> BPA requests that the Commission review its LGIP and LGIA under the "consistent with or superior" standard. However, Order No. 2003 provides that the Commission will evaluate revisions to a safe harbor tariff against the "substantially conform or superior to" standard, and that is what we have done.

## **Background**

2. In Order No. 2003,<sup>2</sup> pursuant to its responsibility to remedy undue discrimination, under sections 205 and 206 of the Federal Power Act (FPA),<sup>3</sup> the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append the *pro forma* LGIP and LGIA (Appendix C to Order No. 2003) to their OATTs. The Commission requires Transmission Providers<sup>4</sup> to justify any variation to the *pro forma* LGIP or LGIA based on either regional reliability requirements or the “consistent with or superior to” rationale.<sup>5</sup>

3. BPA is not a public utility within the Commission’s jurisdiction under sections 205 and 206 of the FPA. It is therefore not subject to the open access requirements of Order Nos. 888<sup>6</sup> and 2003 applicable to public utilities, although it may voluntarily file an OATT with the Commission.

4. In Order No. 888, the Commission required a non-public utility that owns, operates, or controls transmission facilities, as a condition of receiving open access transmission service from a public utility under its OATT, to provide reciprocal

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<sup>2</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005); *see also* Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

<sup>3</sup> 16 U.S.C. §§ 824d, 824e (2000).

<sup>4</sup> The “Transmission Provider” is the entity with which the Generating Facility is interconnecting. The term “Generating Facility” means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the “Interconnection Customer.”

<sup>5</sup> *See* Order No. 2003 at P 826.

<sup>6</sup> *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (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).

transmission service on comparable terms. As one method of satisfying this reciprocity requirement, the Commission allowed non-public utilities to file OATTs with the Commission under the voluntary safe harbor provision. Under this provision, the Commission could issue a declaratory order finding that a non-public utility's proposed OATT is an acceptable reciprocity tariff if its provisions "substantially conform" or are superior to the *pro forma* OATT. Order No. 2003 states that a non-public utility that has a safe harbor tariff may add to its tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the *pro forma* LGIA and *pro forma* LGIP if it wishes to continue to qualify for safe harbor treatment.<sup>7</sup> The Commission determined BPA's safe harbor tariff to be acceptable before Order No. 2003,<sup>8</sup> and in these filings BPA proposes to incorporate its proposed LGIP and LGIA into its reciprocity tariff so that it can continue to qualify for safe harbor treatment.

5. BPA proposes variations to certain provisions in the *pro forma* LGIP and *pro forma* LGIA. It justifies these proposed variations as: (1) based on existing regional reliability standards applicable to it as a member of the Western Electric Coordinating Council (WECC); (2) based on its status as a federal entity; or (3) substantially conforming or superior to the *pro forma* LGIA and LGIP.

#### **Notice of Filing and Responsive Pleadings**

6. Notice of BPA's February 4, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 7,931 (2005), with interventions and protests due on or before February 25, 2005. None were filed.

#### **Discussion**

7. As discussed below, the Commission finds that, with certain modifications, BPA's provisions substantially conform or are superior to the requirements of the *pro forma* LGIP and LGIA and that BPA continues to have a valid safe harbor tariff.

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<sup>7</sup> Order No. 2003 at P 842.

<sup>8</sup> See *United States Department of Energy-Bonneville Power Administration*, 94 FERC ¶ 61,317 (2001) (accepting BPA's reciprocity tariff).

**A. Proposed Variations Based on BPA’s Status as a Non-Jurisdictional Entity and a Federal Agency**

8. BPA proposes a number of changes to the *pro forma* LGIP and LGIA due to its status as a non-public utility.<sup>9</sup> For example, as a non-public utility, it is not required to file contracts with the Commission, and BPA proposes to remove references to filing contracts or Commission approval of contracts from its proposed LGIP and LGIA.<sup>10</sup>

9. BPA also proposes a number of changes to the *pro forma* LGIP and LGIA based upon its status as a federal agency.<sup>11</sup> For example, BPA proposes to amend *pro forma* LGIA article 5.13 so that its obligations to procure licenses, rights of way, and easements must be consistent with federal rather than state law. BPA asserts that, as a federal agency, its actions are largely governed by federal law and it exercises its authority pursuant to federal law.

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<sup>9</sup> BPA seeks a variation using the non-jurisdictional entity argument for the following *pro forma* LGIP sections: section 5.1.1.3 (Queue Position for Pending Requests); section 5.1.2 (Transition Period); section 11.3 (Execution and Filing); section 11.4 (Commencement of Interconnection Activities); section 13.5.3 (Arbitration Decisions). BPA seeks a variation using the non-jurisdictional entity argument for the following *pro forma* LGIA articles: article 1 (Definitions, Effective Date); article 2.1 (Effective Date); article 2.3.3 (Termination Procedures); and article 2.4 (Termination Costs. BPA proposes two changes to this section, one of which is discussed below in the Miscellaneous Section. As a non-jurisdictional entity, it proposes to delete a reference to the Commission being able to order changes to the LGIA in the event of termination.).

<sup>10</sup> For example, BPA proposes to amend *pro forma* LGIP section 5.1.1.3 to provide that grandfathered LGIAs are those that have been executed before the effective date of the LGIP rather than those submitted to the Commission for approval before such date. BPA notes that as a non-jurisdictional entity, BPA does not submit its contracts to the Commission for approval.

<sup>11</sup> BPA seeks a variation using the non-jurisdictional entity argument for *pro forma* LGIP section 11.2 (Negotiation). BPA seeks a variation using the non-jurisdictional entity argument for the following *pro forma* LGIA articles: article 1 (Definitions, delete definition of “IRS”); article 5.13 (Lands of Other Property Owners); article 5.17 (Taxes); article 5.18 (Tax Status); article 11.5 (Provision of Security); article 14.2.1 (Governing Law); article 18.3 (Insurance); article 21.1 (Comparability); article 22.1.2 (Scope); article 23 (Environmental Releases); article 28.1.1 (Good Standing); and article 30.11 (Reservation of Rights).

10. Consistent with Order No. 2003, which explained that the Commission would consider the legal obligations of non-public utilities and federal entities when we evaluate their reciprocity filings,<sup>12</sup> we will accept BPA's proposed modifications.<sup>13</sup>

**B. Miscellaneous**

**1. Article 1, Definitions**

11. BPA added definitions for "WECC [Western Electric Coordinating Council]" and "WECC Reliability Criteria Agreement" to article 1 of the LGIA. BPA notes in its petition that the Reliability Management System Agreement (RMS) entered into between Western Systems Coordinating Council (the predecessor to WECC) and major Pacific Northwest transmission providers, including BPA, transmission providers must include certain language in each new generation interconnection agreement. This language includes these additional terms and, therefore, BPA has added those terms to the definitions section.

12. Although BPA notes that the terms it seeks to define are used in a provision that is required by the RMS Agreement, the definitions themselves are not also required. The Commission previously has rejected attempts to amend the Definitions in the LGIP and LGIA to include similar terms.<sup>14</sup> Accordingly, the Commission cannot find that BPA has a valid safe harbor tariff unless it removes these proposed revisions from the Definitions in the LGIP and LGIA. However, we will allow BPA to include the definitions of these terms in the relevant LGIP and LGIA provisions where they appear.

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<sup>12</sup> Order No. 2003 at P 616, 844.

<sup>13</sup> While we accept BPA's proposed changes to *pro forma* LGIA article 5.18 regarding tax status, we note that BPA appears to have inadvertently deleted the period at the end of this article. We direct BPA to make this change in its compliance filing.

<sup>14</sup> See *Puget Sound Energy, Inc.*, 107 FERC ¶ 61,287 at P 16 (2004); *Arizona Public Service Co.*, 107 FERC ¶ 61,255 at P 29 (2004).

## 2. Article 2.4, Termination Costs

13. *Pro forma* article 2.4 allocates cost responsibility upon termination of the agreement. BPA proposes to modify the first sentence of article 2.4<sup>15</sup> to replace the phrase “that are the responsibility of the Terminating Party” with “for which it is responsible.” BPA explains that such a change is necessary because it suggests that both Parties will share the terminating party's costs. To minimize potential disputes, BPA requests that it be permitted to incorporate this revised provision into the interconnection agreements that it will execute in the meantime.

14. We will accept the proposed change because it clarifies the provision and, as a result, substantially conforms or is superior to the original provision.

## 3. Article 4.3.1, Compliance with WECC Reliability Criteria

15. *Pro forma* LGIA article 4.3 requires each party to perform its obligations under the LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and compliance with such requirements will not constitute a breach of the LGIA. BPA proposes additional language in new LGIA article 4.3.1 to satisfy its RMS Agreement, which requires BPA to include certain language in all new generation interconnection agreements. BPA states that the Commission has previously accepted the addition of this language in compliance filings by public utilities.<sup>16</sup>

16. Consistent with Commission precedent, we will accept this amendment to the *pro forma* LGIA because it is adequately supported by existing regional reliability standards.<sup>17</sup>

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<sup>15</sup> "If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such termination, that are the responsibility of the Terminating Party under this LGIA." *Pro forma* LGIA article 2.4.

<sup>16</sup> BPA cites *Puget Sound Energy, Inc.*, 107 FERC ¶ 61,287 at P 14 (2004) and *Arizona Pub. Serv. Co.*, 107 FERC ¶ 61,255 at P 28 (2004) to support this assertion.

<sup>17</sup> *Puget Sound Energy, Inc.*, 107 FERC ¶ 61,287 at P 14.

#### 4. Article 5.12, Access Rights

17. BPA states that *pro forma* LGIA article 5.12 requires each party to grant the other party rights of use, licenses, rights of way, and easements necessary for the performance of that party's duties under the LGIA. It adds additional language stating that the granting of such rights is "at no cost" to the other party. BPA claims that this amendment carries out the apparent intent of the section while removing the prospect of disputes over one party attempting to charge for the grant of a license or right of way, and the potential that the parties will end up in dispute resolution.

18. BPA's proposed modification is consistent with Order No. 2003<sup>18</sup> and therefore we will accept it.

#### 5. Article 9.4, Interconnection Customer Obligations

19. *Pro forma* LGIA article 9.4 requires, among other things, that the Interconnection Customer operate its Large Generating Facility and Interconnection Facilities in a safe and reliable manner and in accordance with the LGIA and all applicable requirements of the Control Area of which it is part as set forth in Appendix C. BPA proposes to modify article 9.4 to state that the Transmission Provider will modify Appendix C. BPA asserts that this change clarifies which party is responsible for modifying Appendix C, thereby removing the potential for the Interconnection Customer to argue that it must agree to changes in the Control Area reliability requirements. As such, BPA states that this amendment ensures that the Control Area has the right to determine its reliability requirements, thereby avoiding disputes between the parties on this issue.

20. An executed LGIA is a service agreement under a Transmission Provider's OATT and, as such, the Transmission Provider is primarily responsible for identifying the applicable reliability criteria. While the Interconnection Customer does have the right to agree to modifications to the agreement, the LGIA should be read as granting the Transmission Provider the right to determine the applicable reliability criteria. Moreover, under LGIA article 9.3 (Transmission Provider Obligations), the Transmission Provider has the responsibility for establishing the Interconnection Customer's operating instructions and operating protocols and procedures. Because these instructions, protocols, and procedures will include reliability requirements, article 9.3 already gives the Transmission Provider responsibility for modifications to Appendix C. The same provision gives the Interconnection Customer the right to propose changes for the

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<sup>18</sup> Order No. 2003 LGIA article 5.12.

Transmission Provider to consider, but not the right to make unilateral changes. In light of this provision, we conclude that BPA's proposed change is unnecessary and the Commission cannot find that BPA has a valid safe harbor tariff unless it removes this proposed modification.

## **6. Article 18.1, Indemnity**

21. BPA proposes to delete article 18.1, which requires each Party to indemnify the other Party for damages resulting from actions the other Party takes in furtherance of its obligations under the LGIA. BPA asserts that it is a party to a comprehensive agreement under the Western Interconnection Electric Systems (WIES), which establishes parties' liability in the event of damage to any member's electric system. BPA states that article 18.1 would disrupt the WIES system by establishing a separate and contradictory liability regime and by re-introducing fault, which the WIES system was designed to avoid.

22. BPA states that the WIES Agreement specifically limits liability. Reintroducing the concept of fault would require a determination of causation in a complex, interconnected electric system. According to BPA, the fundamental principle of the WIES Agreement is that every party shoulders the cost of damage to its electric system, no matter what the cause. BPA asserts that article 18.1 is unclear whether this provision applies to harm to the systems of the Parties to the LGIA or to harm to third parties. If article 18.1 applies to harm to the systems of the Parties to the LGIA, the WIES Agreement and the LGIA will create a contrary assignment of liability in those cases where an Interconnection Customer is also a member of WIES. Under WIES, each party bears the cost of damage to its electric system. Under the LGIA, if a Party's actions damage its own electric system, the other Party must indemnify it and thus the other party would bear the loss. Even if article 18.1 only applies to third-party damage, the same contradictory assignment of liability will apply anytime the third party is a member of WIES.

23. The WIES Agreement creates a no-fault insurance system to compensate third parties harmed by an electric disturbance. The WIES system has a joint no-fault policy that insures all WIES members against harm to entities or persons that are not members of WIES. Each member pays a portion of the premium and is insured against an occurrence. The WIES insurance policy covers damage to third parties caused by electric disturbances, whether they originate on a transmission system or on generation facilities. One policy covers all members and therefore, for purposes of liability, it is not necessary to determine the system on which the condition originated or which party caused the damage. BPA notes that the assignment of liability will be particularly hard because no LGIA operates in isolation. BPA asserts that it manages the transmission system as a

whole and almost all subsequent actions are system-wide with system management rarely aimed at a particular generator. As such, tracing causation to BPA's actions taken under a particular LGIA will create difficulty.

24. Finally, BPA questions why one Party should indemnify the other Party for the other Party's actions taken in furtherance of its obligations under the LGIA. It believes that the transfer of liability from the Party whose actions cause harm to the other Party is inappropriate and would disproportionately harm the Transmission Provider. BPA asserts that there is an absence of a true reciprocal obligation between the Generator and the Transmission Provider. When a third party is harmed and the Parties are able to trace causation to a particular LGIA, it is much more likely that they will be able to trace it to the Generator's actions than to the Transmission Provider's actions. Because there are multiple Generators and it is difficult to trace the Transmission Providers to a specific LGIA, article 18.1's reciprocity is illusory.

25. With respect to BPA's question whether article 18.1 applies only to harm to the systems of the Parties to the LGIA, we clarify that the indemnification afforded in article 18.1 is not limited to the Parties' systems, and applies more generally to harm or liability that may arise as a result of fulfilling obligations under the LGIA. Therefore, there is a conflict between the WIES Agreement and the indemnification provisions of the LGIA. More to the point, BPA's proposal raises concerns regarding whether the protections afforded by the WIES Agreement substantially conform or are superior to the protection afforded to the Transmission Provider and all Interconnection Customers in article 18.1. For example, BPA does not discuss how its proposal substantially conforms or is superior to article 18.1 when an Interconnection Customer is not a signatory to the WIES Agreement. Accordingly, in order to maintain a valid safe harbor tariff, we find that BPA should modify its proposal to state that Interconnection Customers who are signatories to the WIES Agreement will be subject to the indemnification provisions included in the WIES Agreement and those Interconnection Customers who are not WIES members will be subject to the Order No. 2003 liability provisions. By making this modification, the amended safe harbor tariff will substantially conform to the provisions of the *pro forma* LGIA and Order No. 2003.

## **7. Section 4.2, Clustering**

26. BPA states that it has amended section 4.2 to provide that the Transmission Provider may study as one cluster all Interconnection Requests for which a System Impact Study (SIS) Agreement has been executed within a period not to exceed 180 days (the "Queue Cluster Window"), rather than all Interconnection Requests received during such period, as set forth in the *pro forma* LGIP. BPA offers two reasons for this amendment. First, the Transmission Provider will gain the full benefit of Clustering – the ability to consolidate studies – only if the Queue Cluster Window is based on the execution date of the SIS Agreement. Second, because section 4.2 refers to both the date

of receipt of the Interconnection Request and the date of execution of the SIS Agreement, it leaves unclear which Interconnection Requests are included in a given Queue Cluster Window. BPA believes that the reference in section 4.2 to both dates will either render Clustering ineffective or, at least, cause confusion.

27. Section 4.2 enumerates the parameters of studying Interconnection Requests in clusters. Because section 4.2 states that a cluster includes all Interconnection Requests received within a 180-day window, and mentions the SIS Agreement only to clarify the deadline for completing an individual study, we disagree that the section is unclear. BPA has failed to demonstrate that its proposed variation to the *pro forma* LGIP is adequately supported by existing regional reliability standards or is substantially conforming to or superior to the *pro forma* provisions. Therefore, we cannot find that BPA has a valid safe harbor tariff unless it removes its proposed modification of *pro forma* LGIP section 4.2.

#### **8. Section 10.2, Scope of Optional Interconnection Study**

28. Section 10.2 of BPA's proposed LGIP provides in part that the Optional Interconnection Study will identify the Interconnection Facilities and Network Upgrades, and the cost thereof, "that may be required to provide transmission service or Interconnection Service." BPA proposes deleting the reference to "transmission service," arguing that its amendment is consistent with the LGIP because the LGIP includes procedures for Interconnection Service only. BPA further states that the amendment is superior to existing section 10.2 because it avoids the diversion of resources to studies of hypothetical delivery service unrelated to the interconnection itself.

29. We agree with BPA that the Optional Study should not be used as a means to identify facilities required to provide transmission service, since the LGIP addresses only interconnection service. Because the proposed change substantially conforms to or is superior to the original provision, we accept it.

#### **9. Section 11.3, Execution and Filing**

30. BPA notes that the first paragraph of section 11.3 provides that, within 15 days of receipt of the final LGIA, Interconnection Customer must provide reasonable evidence of continued Site Control or post an additional security deposit. The second paragraph, which includes no timeline, provides that Interconnection Customer shall either execute and return the LGIA or request the filing of an unexecuted LGIA with the Commission. As the section is drafted, the timeline in the first paragraph does not apply to the second paragraph, and therefore section 11.3 includes no timeline within which Interconnection Customers must execute the LGIA. BPA has amended section 11.3 to provide that Interconnection Customers must execute the final LGIA within 15 days after its receipt.

BPA contends that its amendment ensures that there is a timeline, which will be essential to the Transmission's Provider's ability to efficiently process the queue and will avoid disputes over the provision's meaning.

31. BPA's proposed modification to the *pro forma* LGIP section 11.3 sets a 15-day deadline for Interconnection Customers to act upon the final LGIA. We find that 15 days is inadequate to meet the obligations set forth in the second paragraph of section 11.3 and, as a result, BPA has failed to support its proposed modification as substantially conforming to or superior to the *pro forma* LGIP. Therefore, we cannot find that BPA has a valid safe harbor tariff unless it removes its proposed modification of *pro forma* LGIP section 11.3.

**C. Filing Fee**

32. BPA petitions for an exemption from the filing fee application to petitions for declaratory orders because, as an agency of the United States Department of Energy, engaged in the official business of the federal government; it is exempt from filing fees.<sup>19</sup> We agree and, accordingly, grant BPA's petition for an exemption from the filing fee.

The Commission orders:

(A) BPA's petition for declaratory order is granted and its tariff is hereby deemed to be an acceptable reciprocity tariff, conditioned upon BPA revising its tariff, consistent with the discussion in the body of this order, within 30 days of the date of this order.

(B) BPA's request for exemption of the filing fee is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>19</sup> See 18 C.F.R. §§ 381.108(a), 381.302 (2005).