

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Transmission Cooperative, Inc.

Docket No. NJ05-6-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER, SUBJECT
TO MODIFICATIONS

(Issued February 9, 2006)

1. On September 1, 2005, Southwest Transmission Cooperative, Inc. (Southwest Tx) filed revisions to its “safe harbor” reciprocity open access transmission tariff (OATT) in order to incorporate its proposed Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP), among other things. Southwest Tx requests that the Commission find that its revised OATT will continue to be an acceptable reciprocity tariff.¹ In this order, the Commission grants Southwest Tx’s petition for declaratory order, subject to the modifications discussed below.

¹ While Southwest Tx simply requests that the Commission find that its revised OATT continues to be an acceptable reciprocity tariff, its filing is in essence a petition for a declaratory order, and we will treat it as such. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760-61(1996) (Order No. 888), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,288-89 (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 (1997), *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).

Background

2. In Order No. 2003,² based on its responsibility under sections 205 and 206 of the Federal Power Act (FPA)³ to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append the *pro forma* LGIA and LGIP to their OATTs. The Commission requires public utility Transmission Providers⁴ to justify any variation to the *pro forma* LGIA or LGIP based on either regional reliability requirements or the “consistent with or superior to” rationale.⁵

3. Southwest Tx, a Rural Utilities Service (RUS)-financed, rural electric cooperative, 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 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 the public utility’s OATT, to provide reciprocal transmission service on comparable terms.⁶ As one method of satisfying this reciprocity requirement, the Commission allows non-public utilities to file OATTs with the Commission under the voluntary safe harbor provision. Under this provision, the

² *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, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005). *See also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

³ 16 U.S.C. §§ 824d-824e (2000).

⁴ 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.” Independent Transmission Providers can adopt variations on a different basis from non-independent Transmission Providers.

⁵ *See* Order No. 2003 at P 826.

⁶ Order No. 888 at 31,760-61.

Commission issues a declaratory order finding that a non-public utility's proposed OATT is an acceptable reciprocity tariff if the OATT "substantially conforms" or is 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.⁷ The Commission determined Southwest Tx's safe harbor tariff to be acceptable before Order No. 2003 and, in these filings, Southwest Tx proposes to incorporate its proposed LGIA and LGIP into its reciprocity tariff so that it can continue to qualify for safe harbor treatment.⁸

5. Southwest Tx's proposed LGIA and LGIP contain variations from the *pro forma* LGIA and LGIP. Southwest Tx states that the proposed variations: (1) arise from Western Electricity Coordinating Council (WECC) regional reliability standards; (2) substantially conform or are superior to the *pro forma* LGIP and *pro forma* LGIA; or (3) relate to the pricing of network upgrades to ensure comparable treatment.

6. In addition, Southwest Tx has revised other provisions of its OATT, described below.

Notice of Filing and Responsive Pleadings

7. Notice of Southwest Tx's September 1, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 55,365 (2005), with interventions and protests due on or before October 3, 2005. None was filed.

Discussion

8. As discussed more fully below, the Commission finds that, with certain modifications, Southwest Tx's provisions substantially conform or are superior to the requirements of Order No. 888 and the *pro forma* LGIA and LGIP. Accordingly, with the modifications, its safe harbor tariff will remain valid.⁹

⁷ *Id.* at P 842.

⁸ See *Sierra Southwest Cooperative Services, Inc., et al.*, 95 FERC ¶ 61,310 (2001) (finding that reciprocity tariff "substantially conformed" to the *pro forma* tariff in Order No. 888).

⁹ See Order No. 2003-A at P 773.

A. Proposed variations from the *pro forma* LGIA and LGIP based on regional reliability standards

9. Southwest Tx asserts that the following revisions have been proposed by nearby utilities, accepted by the Commission,¹⁰ and generally conform to WECC standards as specified in the WECC Planning Coordination Committee Handbook.¹¹

10. Southwest Tx has modified section 2.4 of the *pro forma* LGIP to refer to WECC's regional reliability council policies for base power flow, short circuit, and stability subject to the confidentiality provisions in section 13.1 of the *pro forma* LGIP. Section 2.4 of the *pro forma* states that the Transmission Provider must provide base power flow, short circuit, and stability databases, including all underlying assumptions and contingency lists, upon request, subject to confidentiality provisions. Southwest Tx proposes to insert "In accordance with the Applicable Reliability Council policies" in the beginning of section 2.4.

11. Southwest Tx has also modified section 4.4.5 of the *pro forma* LGIP with regard to extensions of the commercial operation date of the large generating facility. Section 4.4.5 of the Commission's *pro forma* LGIP states that "Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Large Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing." Southwest Tx proposes to add the following language at the end of the section: "provided, however, that extensions may necessitate a determination of whether the Generating Facility will retain its WECC accepted rating status and whether additional studies are required pursuant to Applicable Laws and Regulations and Applicable Reliability Standards."

12. Southwest Tx has revised section 13.1 of the *pro forma* LGIP to reflect confidentiality restrictions under which Southwest Tx may perform studies using WECC data. Section 13.1 of the Commission's *pro forma* LGIP describes what information is confidential, the process for designating confidential material, and the basis for asserting that certain information should receive confidential treatment. Southwest Tx proposes to add language that allows the Transmission Provider to perform study work using WECC data (power flow, stability, and disturbance monitoring data) for non-WECC members, provided that the WECC data is not given to the non-member. Under such arrangements,

¹⁰ See *Arizona Public Service Company, et al.*, 107 FERC ¶ 61,255 (2004) (Arizona).

¹¹ WECC Planning Coordination Committee Handbook at III-3 to 7, III-9 to 11, and Appendix A, pp. III-75 to 77.

the non-member would be permitted to view the data in the Transmission Provider's office to gain an understanding of the study results, but they would not be permitted to have the data or copy the data. The interconnection customer must also sign the WECC Non-member Confidentiality Agreement in accordance with regional reliability council policies.

13. Southwest Tx has added language to article 5.2 of the Commission's *pro forma* LGIA that requires the interconnection customer to comply with all applicable reliability standard requirements. Article 5.2 provides that the interconnection customer's engineering, procurement, and construction of the Transmission Provider's interconnection facilities and stand-alone network upgrades shall comply with all applicable legal requirements to which the Transmission Provider would be subject in the engineering, procurement, or construction of these facilities. Southwest Tx proposes to revise the *pro forma* provision to provide that in addition to complying with the legal requirements, the engineering and construction practices must also comply with the applicable reliability standards.

14. Southwest Tx has modified article 5.19 of the *pro forma* LGIA to require compliance with applicable reliability standards when making modifications to facilities. Article 5.19 of the *pro forma* LGIA states that any additions, modifications, or replacements made to a party's facilities shall be designed, constructed, and operated in accordance with this LGIA and Good Utility Practice. Southwest Tx proposes that any additions, modifications, or replacements made to a party's facilities shall be designed, constructed, and operated in accordance with applicable reliability standards as well.

15. We find that Southwest Tx's proposed modifications to sections 2.4, 4.4.5, 13.1 of the *pro forma* LGIP and articles 5.2 and 5.19 of the *pro forma* LGIA are based upon WECC regional reliability standards and have been previously accepted by the Commission. Accordingly, we accept those proposed modifications.

16. In addition, we note that Southwest Tx has included the WECC reliability management system agreement in Appendix H of the LGIA, although Southwest does not identify this revision in its transmittal. This modification is acceptable because it is based upon regional reliability requirements and has been previously accepted by the Commission.¹²

¹² *Arizona*, 107 FERC ¶ 61,255 at P 20.

B. Proposed variations from the *pro forma* LGIP and LGIA based on the substantially conforming or superior to standard

17. Southwest Tx states that it is compelled to condition its future compliance with the Commission's open access requirements in a manner similar to that approved in the Santee Cooper Order.¹³ Southwest Tx also states that its ability to take advantage of reciprocal open access under Order No. 888 may, as reflected in article 21.1 of the *pro forma* LGIA, depend upon Southwest Tx's compliance with relevant comparability and code of conduct rules and regulations, as amended by the Commission from time to time.

18. Southwest Tx lists the following factors that may limit its flexibility in the future: (1) as a rural cooperative, it is generally exempt from federal income taxes so long as non-member gross income does not exceed 15 percent of revenues; this may limit Southwest Tx's ability to serve non-members at the same rates;¹⁴ (2) it is subject to some regulation by the Arizona Corporation Commission (Arizona Commission) that could conflict with safe harbor reciprocity requirements; (3) it is subject to the oversight of RUS; and (4) as a consumer-owned cooperative, it is ultimately responsible to its members.

19. Southwest Tx states that the *pro forma* LGIP and LGIA refer to the executed LGIA becoming effective upon filing with and acceptance by the Commission, and also include alternate provisions for the filing of the unexecuted LGIA and/or for the effectiveness of the LGIA being determined through a dispute resolution process. However, Southwest Tx argues that as a non-public utility, it cannot file an executed or an unexecuted LGIA with the Commission; thus, Southwest Tx has modified the definition of "effective date" to eliminate the filing procedure.¹⁵ Also, Southwest Tx has

¹³ See *South Carolina Public Service Authority*, 109 FERC ¶ 61,235 (2004) (Santee Cooper Order) (allowing Santee Cooper to modify article 21.1 of the *pro forma* LGIA, but noting that Santee Cooper knows it cannot rely on an out-of-date safe harbor tariff, and, if changes are not made to Santee Cooper's *pro forma* to follow future changes that the Commission makes, a public utility might refuse to give Santee Cooper transmission service because the safe harbor tariff would no longer be valid).

¹⁴ See Order No. 888 at 31,672 n.499 and Order No. 2003-A at P 782.

¹⁵ *United States Department of Energy Bonneville Power Administration*, 112 FERC ¶ 61,195 (2005).

incorporated the dispute resolution provisions under section 13.5 of the *pro forma* LGIP¹⁶ for instances where it does not reach agreement with the generator in lieu of filing an unexecuted service agreement. Southwest Tx states that it has also made similar changes to the *pro forma* LGIP sections 3.4, 5.1.1.3, 5.1.2, 5.2, 6.2, 7.3, 11.2, 11.3, and 11.4.

20. Under the Orlando Order,¹⁷ Southwest Tx has also added a new section 2.1 and article 2.1 to the *pro forma* LGIP and LGIA, respectively, to state that nothing in the LGIP and LGIA requires Southwest Tx to do that which Southwest Tx is incapable of doing. Southwest Tx reiterates that it may be restricted by the ACC, RUS, and income tax restrictions, among other things.

21. In addition, Southwest Tx has modified articles 4.3 and 30.11 of the *pro forma* LGIA to remove the requirement that amendments to the LGIA be submitted to the Commission for approval. This is a result of its non-jurisdictional status. Southwest Tx states that since the Commission does not have jurisdiction over non-public utilities under section 205 or 206 of the FPA, Southwest Tx has modified this section to: (1) reserve the right to modify the LGIA; (2) note the Commission's lack of jurisdiction; and (3) recognize that modifications can result in the loss of safe harbor and/or reciprocity status. Southwest Tx has also inserted additional language into section 13.7 of the *pro forma* LGIP to note the Commission's lack of jurisdiction over Southwest Tx and to emphasize that Southwest Tx does not accede to the Commission's jurisdiction by amending its non-jurisdictional OATT with the LGIA and LGIP.

22. Southwest Tx has modified *pro forma* LGIA article 11.4.1 to note that it may seek to adopt alternative pricing for network upgrades when its transmission customers, particularly native load, might otherwise be required to pay higher rates to support or subsidize a new generator. Southwest Tx argues that any such future determination would be based on specific facts and circumstances. Its purpose is simply to provide advance notice, rather than to seek advance approval for situations that may never arise. Southwest Tx noted that in Order No. 2003-B,¹⁸ the Commission said that such issues would be more appropriately addressed in the context of a specific interconnection filing and specific facts. Southwest Tx is simply reserving the right to exercise that option.

¹⁶ Southwest Tx incorrectly states that the dispute resolution provisions are under section 13.5 of the LGIA. In fact, these provisions are under section 13.5 of the LGIP.

¹⁷ *Orlando Utilities Commission*, 108 FERC ¶ 61,279 (2004) (Orlando Order).

¹⁸ See Order 2003-B at P 54-57.

23. With respect to Southwest Tx's conditions on future compliance, we note that Southwest Tx has acknowledged that it cannot rely on an out-of-date safe harbor tariff.¹⁹ If changes are not made to Southwest Tx's *pro forma* tariff to follow future changes that the Commission makes, a public utility might refuse to give Southwest Tx transmission service because the safe harbor tariff would no longer be valid.

24. Next, with respect to Southwest Tx's proposed modifications concerning the definition of "effective date," the incorporation of the dispute resolution provisions under article 13.5 of the *pro forma* LGIA in lieu of filing of an unexecuted service agreement, and the similar changes to the *pro forma* LGIP sections 3.4, 5.1.1.3, 5.1.2, 5.2, 6.2, 7.3, 11.2, 11.3, and 11.4, we find that these modifications substantially conform or are superior to the requirements of the *pro forma* LGIA and LGIP. This finding is consistent with our findings in the Santee Cooper Order and the Orlando Order concerning those same provisions.

25. In addition, as we stated in the Orlando Order,²⁰ the revisions to section 2.1 of the LGIP and article 2.1 of the LGIA are acceptable provisions to be included in Southwest Tx's tariff. However, as we stated in the Orlando Order, if the Commission receives complaints alleging that Southwest Tx is abusing its "sole discretion," we will reevaluate whether Southwest Tx's OATT is an acceptable reciprocity tariff.

26. Also, with respect to Southwest Tx's proposed modifications to section 13.7 and articles 4.3 and 30.11, as described in paragraph 21, we find that these provisions substantially conform to the Commission's *pro forma*. However, with regard to Southwest Tx's argument that it is not required to file amendments with the Commission, as in the Orlando Order, we remind Southwest Tx that while it is not required to file amendments, "safe harbor" status is determined based on the tariff sheets that are on file with the Commission. If those tariff sheets change, that could affect the status of its OATT as satisfying the "safe harbor" reciprocity standard.²¹

27. Finally, we find that Southwest Tx's proposed modification to article 11.4.1 is unnecessary. As Southwest Tx pointed out, in Order 2003-B, the Commission indicated that such issues would be appropriately addressed in the context of individual

¹⁹ See Santee Cooper Order, 109 FERC ¶ 61,235 at P 11.

²⁰ Orlando Order, 108 FERC ¶ 61,279 at P 21.

²¹ *Id.* at P 23.

interconnection agreements rather than in the *pro forma* LGIA. Accordingly, we find that Southwest Tx must remove this language from its proposed LGIA in order to maintain a valid safe harbor tariff.

C. Other proposed revisions to the OATT

28. Southwest Tx states that it has included the following revisions to its OATT. Southwest Tx has: (1) revised its rates to reflect the ACC's authorized phase-in of rate increases to cover its increased costs, however, its OATT retains the same rate design structure approved in its previous filing in 2001;²² (2) incorporated the WECC requirements for operating reserves in Schedules 5 and 6; (3) clarified Southwest Tx's implementation of the WECC's load shedding requirements in the standard network operating agreement (Attachment G); (4) provided updated contact information for arranging transmission service with Southwest Tx; (5) modified section 35.3 to establish an alternative timeline for the network operating committee meetings; and (6) made other minor grammatical or typographical corrections to various sections of its OATT.

29. With regard to Southwest Tx's rate increase, Order No. 888 sets out the review standard for reciprocity tariff rates. Under that standard, we require sufficient information to conclude that a non-public utility's rates it charges to others for transmission service are comparable to the rates that it charges itself.²³

30. In *Southwest Cooperative*, the Commission stated that:

We find that Southwest has provided sufficient information for us to conclude that Southwest's proposed rates for transmission service and ancillary services are comparable to the rates it charges itself. Accordingly, we find that the proposed rates meet the standard for a reciprocity tariff.²⁴

31. Similarly, here, we find that Southwest Tx has provided sufficient information for us to conclude that Southwest Tx's proposed rates for transmission and ancillary services remain comparable to the rates it charges itself.²⁵ Southwest Tx has filed to increase its

²² *Southwest Cooperative Services, Inc.*, 95 FERC ¶ 61,310 (2001) (*Southwest Cooperative*).

²³ Order No. 888 at 31,760-61 (1996).

²⁴ *Southwest Cooperative*, 95 FERC ¶ 61,310 at 62,058.

²⁵ Southwest Tx's rates have been revised to reflect its increased costs, as approved by the Arizona Commission. Southwest Tx filing at 5.

rates based upon increased costs and has not modified its rate structure since we last examined and approved it in *Southwest Cooperative*. Accordingly, we find that the proposed rates meet the reciprocity tariff standard.

32. We also find that the other five identified revisions substantially conform to the OATT.

D. Miscellaneous

33. Southwest Tx also states that it has not proposed to adopt the Small Generator and Wind Interconnection rules (Order Nos. 2006²⁶ and 661²⁷) yet because it has not had time to review them. Further, it says that the cost of complying with the constant refinements due to rehearings is not a cost-efficient use of resources. It states that it will achieve formal compliance in a reasonable amount of time, that it has no fundamental objection to either of these orders, and that it will process interconnection requests in accordance with those orders. Southwest Tx states that this should not stop the Commission from granting safe harbor status at this time.²⁸

34. We cannot find that Southwest Tx has a valid safe harbor tariff until it achieves formal compliance with these orders. Therefore, until Southwest Tx fully complies with Order Nos. 2006 and 661, we find that its reciprocity tariff is no longer valid.

²⁶ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 FR 34100 (Jun. 13, 2005), FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,180, at 31,406-31,551 (2005) (Order No. 2006), *order on reh'g*, Order No. 2006-A, 70 FR 71760 (Nov. 30, 2005), FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,196 (2005), *reh'g pending*.

²⁷ *Interconnection for Wind Energy*, Order No. 661, 70 Fed. Reg. 34,993 (June 16, 2005), FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh'g*, Order No. 661-A, 70 Fed. Reg. 75,005 (Dec. 19, 2005), FERC Stats. & Regs. ¶ 31,198 (2005); *see also* Order Granting Extension of Effective Date and Extending Compliance Date, 70 Fed. Reg. 47,093 (Aug. 12, 2005), 112 FERC ¶ 61,173 (2005); Notice Extending Compliance Date, issued Oct. 28, 2005; Notice Extending Compliance Date, issued Dec. 22, 2005.

²⁸ In addition, its states that it maintains its Order No. 889 Open Access Same Time Information System (OASIS) and standards of conduct, it has conformed its standards of conduct to the requirements of Order Nos. 2004 and 2004-A, it participates in the WestTrans OASIS, and that its OASIS can be accessed via the internet (www.westtrans.net).

The Commission orders:

Southwest Tx's petition for a declaratory order is hereby granted, subject to the conditions discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.