

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 21, 2006

Docket No. NJ06-4-000

U.S. Department of Energy-
Southwestern Power Administration
Attn: Laurence J. Yadon, II, Esq.
One West Third Street
Tulsa, Oklahoma 74103-3519

Dear Mr. Yadon:

1. On January 25, 2006, you filed in the above-referenced docket a petition for a declaratory order requesting that the Commission find that Southwestern Power Administration's (Southwestern) open access transmission tariff (OATT or tariff), with proposed revisions, continues to be an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.¹ Southwestern seeks a determination that its revised OATT continues to be an acceptable reciprocity tariff with revisions to its OATT to conform the OATT to the terms and conditions of an agreement dated March 31, 2005, between Southwestern and Southwest Power Pool, Inc. (SPP) (SPP/Southwestern Agreement). The Commission grants Southwestern's petition and finds that Southwestern's revised OATT substantially conforms with or is superior to Order No. 888's *pro forma* OATT, subject to Southwestern filing a revised OATT, as discussed below. In addition, the Commission grants waiver of the filing fee.

¹ 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).

I. Background

2. Southwestern is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act.² Commission Order No. 888 provides a "safe harbor" provision, whereby non-public utilities can file reciprocity transmission tariffs. This procedure permits non-public utilities, such as Southwestern, to voluntarily submit an OATT to the Commission and request a declaratory order on the basis that that tariff satisfies the Commission's comparability (non-discrimination) standards. If the Commission determines that the tariff contains terms and conditions that substantially conform with or are superior to those in the *pro forma* tariff, the tariff will be deemed to be an acceptable reciprocity tariff. This will, in turn, require public utilities to provide reciprocity open access transmission service, upon request, to that non-public utility. Southwestern's OATT was previously determined to be an acceptable reciprocity tariff.³

4. Southwestern has been a transmission-owning member of SPP since June 1, 1998⁴ and, as a result, SPP has administered certain transactions over Southwestern's transmission system under the SPP OATT. On March 31, 2005, Southwestern and SPP entered into the SPP/Southwestern Agreement, which allows SPP to administer Southwestern's OATT and provide scheduling services, regional reliability council services, operating reserve sharing, Open Access Same Time Information System administration, and reliability coordination. The SPP/Southwestern Agreement also allows SPP to use Southwestern's transmission facilities under the SPP OATT while ensuring that Southwestern complies with federal law in participating in the SPP OATT as a transmission owner. The SPP/Southwestern Agreement was accepted as Attachment AD to SPP's OATT on June 30, 2005, with an effective date of April 1, 2005.⁵

II. Instant Filing

5. In the instant filing, Southwestern proposes revisions to its OATT to conform its OATT to the terms and conditions of the SPP/Southwestern Agreement. Southwestern proposes changes to scheduling, transmission service application, available transmission capability, and facilities studies timing requirements under its OATT in order to adopt the regional practices of SPP and facilitate SPP's administration of Southwestern's OATT.

² 16 U.S.C. §§ 824d, 824e (2000).

³ *U.S. Department of Energy – Southwestern Power Administration*, Docket No. NJ98-2-000 (May 13, 1998) (unpublished letter order).

⁴ *Southwest Power Pool, Inc.*, 82 FERC ¶ 61,285 (1998) (establishing June 1, 1998 as the effective date of the SPP OATT).

⁵ *Southwest Power Pool, Inc.*, Docket No. ER05-972-000 (June 30, 2005) (unpublished letter order).

Southwestern proposes to revise the Forms of Service Agreements (Attachments A, B, and F) and tariff billing provisions to reflect SPP's administration of service under those service agreements. Southwestern proposes additional changes to the Methodology to Assess Available Capacity (Attachment C) and the Methodology for Completing a System Impact Study (Attachment D) to clarify, respectively, SPP's role in calculating Southwestern's available transmission capability and SPP's role in performing system impact studies.

6. Southwestern also proposes changes to the provisions of Southwestern's OATT concerning generation redispatch that clarify limitations on Southwestern's generation resources to provide redispatch under its OATT. Southwestern also proposes to add language to the facilities studies procedures documenting Southwestern's obligation to comply with the National Environmental Policy Act.⁶

7. Southwestern files a modified Network Integration Transmission Service monthly agreement demand provision and Schedule 4 to clarify that the monthly agreement demand provision and the compensation for Energy Imbalance Service under Schedule 4 will be calculated pursuant to Southwestern's rate schedules. Southwestern states that these revisions are consistent with its initial reciprocity filing, which removed all sections of the *pro forma* tariff which related to specific rates or rate methodology.⁷ Southwestern also files miscellaneous provisions that have also been modified in order, Southwestern states, to reflect changes since Southwestern's initial reciprocity filing and to make information easier to locate and understand.

8. Southwestern states that the instant filing does not incorporate the Large and Small Generator Interconnection Procedures or Agreements as set forth in Order Nos. 2003⁸ and 2006.⁹ Southwestern states that it intends to submit a further revised OATT containing these provisions at a later date.

⁶ 42 U.S.C. §§ 4321, *et seq.* (2000).

⁷ Southwestern's rates are developed independently of the OATT and in accordance with its public participation process.

⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005).

⁹ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 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, FERC Stats. & Regs., Regulations Preambles, Vol. III, ¶ 31,196 (2005).

III. Notice and Intervention

10. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 7,754 (2006), with interventions and protests due on or before February 15, 2006. A timely motion to intervene was filed by the Missouri Joint Municipal Electric Utility Commission, raising no substantive issues.

IV. Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), Missouri Joint Municipal Electric Utility Commission's timely, unopposed motion to intervene serves to make it a party to this proceeding.

12. We agree that Southwestern's revised OATT, revised to be consistent with the SPP/Southwestern Agreement substantially conforms with or is superior to Order No. 888's *pro forma* tariff.

13. However, at this time, we cannot find that Southwestern has a valid "safe harbor" reciprocity tariff until it achieves formal compliance with Order Nos. 2003 and 2006. Alternatively, Southwestern may request waiver of these Orders, providing sufficient explanation why Southwestern believes their inclusion is not warranted. Thus, we grant Southwestern's petition for a declaratory order, but subject to Southwestern filing a revised OATT in compliance with Order Nos. 2003 and 2006.

14. We will grant Southwestern's request for waiver of the filing fee. As we stated in Order No. 888-A, "[The Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in those circumstances."¹⁰

By direction of the Commission.

Magalie R. Salas,
Secretary.

¹⁰ Order No. 888-A at 30,288-89; *see* 18 C.F.R. §§ 381.108(a), 381.302 (2005).