

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Western Area Power Administration

Docket No. NJ07-2-000

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 28, 2007)

1. On March 2, 2007, Western Area Power Administration (Western) filed proposed revisions to its non-jurisdictional open access transmission tariff (OATT) in order to incorporate certain generator interconnection procedures and agreements consistent with Order Nos. 2003,<sup>1</sup> 2006,<sup>2</sup> and 661,<sup>3</sup> to incorporate specific references to certain standards in Order No. 676,<sup>4</sup> and to revise certain terms of its OATT. Western requests that the

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<sup>1</sup> *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), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>2</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34,189 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, 70 Fed. Reg. 71,760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification*, Order No. 2006-B, 71 Fed. Reg. 42,587 (July 27, 2006), FERC Stats. & Regs. ¶ 31,221 (2006).

<sup>3</sup> *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 (December 19, 2005), FERC Stats. & Regs. ¶ 31,198 (2005).

<sup>4</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 Fed. Reg. 26,199 (2006), FERC Stats. & Regs. ¶ 31,216, *order on reh'g*, Order No. 676-A, 116 FERC ¶ 61,255 (2006).

Commission issue a declaratory order determining that, with this filing, Western's OATT maintains its status as a reciprocity or "safe harbor" tariff. Western also requests waiver of the filing fee.

2. In this order, the Commission conditionally grants the petition for a declaratory order as discussed below.

### **Background**

3. Western is a Federal power marketing agency that markets Federal power and owns and operates transmission facilities in fifteen western and central states. Western is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA). Western is, however, a transmitting utility subject to sections 210 through 212 of the FPA.

4. On January 26, 2005, in Docket No. NJ05-1-000, Western filed proposed revisions to its non-jurisdictional OATT in order to incorporate the Standard Large Generator Interconnection Procedures (LGIP) and the Standard Large Generator Interconnection Agreement (LGIA) and requested that the Commission issue a declaratory order allowing Western to maintain its status as a reciprocity or "safe-harbor" tariff. The Commission conditionally granted Western's petition.<sup>5</sup>

### **Western's Revised Reciprocity Tariff Filing**

5. Western states that the instant filing makes modifications to its tariff filed January 26, 2005 and conditionally approved in the Commission's July 6, 2005 Order. Western states that its filing: (1) incorporates references to certain North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) standards as set forth in Order Nos. 676 and 676-A; (2) incorporates the *pro forma* interconnection procedures from Order Nos. 661 and 661-A; (3) incorporates certain changes required by Order No. 2003-B that were omitted from its previous filing; and (4) incorporates the Small Generator Interconnection Procedures (SGIP) and Small Generator Interconnection Agreement (SGIA) in Order No. 2006, with certain modifications. Western states that the proposed SGIP and SGIA variations accommodate: (1) Western's status as a non-jurisdictional entity; (2) Western's status as a Federal power marketing agency; (3) Western's operation in multiple regional reliability organizations; and (4) ministerial clarifications.

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<sup>5</sup> *Western Area Power Administration*, 112 FERC ¶ 61,044 (2005) (July 6, 2005 Order).

6. Western states that the purpose of the instant filing is to update its reciprocity tariff, so that it can continue to qualify for safe harbor treatment and prepare for a compliance filing to address the changes outlined in Order No. 890.<sup>6</sup> Western states that the majority of the revisions proposed are similar to changes that were submitted in its January 26, 2005 filing. Western states that where applicable, it provides a statement noting where a corresponding change occurs in the January 26, 2005 filing.

### **Notice of Filing**

7. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 12,789 (2007), with motions to intervene and protests due on or before April 2, 2007. Timely motions to intervene were filed by the Transmission Agency of Northern California, Dakota Wind Harvest, LLC, and the Northern California Power Agency.

### **Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the intervenors' timely, unopposed motions to intervene serve to make them parties to this proceeding.

#### **B. Reciprocity – Safe Harbor Status**

9. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity transmission tariffs by non-public utilities.<sup>7</sup> Under this procedure, non-public utilities may voluntarily submit to the Commission a reciprocity tariff and request for declaratory order finding that the tariff meets the Commission's comparability

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<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) reh'g pending.

<sup>7</sup> *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 (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).

(non-discrimination) standards. If the Commission finds that such a reciprocity tariff contains terms and conditions that substantially conform or are superior to those in the Commission's *pro forma* tariff, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open-access transmission service upon request to that particular non-public utility.<sup>8</sup>

10. We have compared the non-rate terms and conditions of Western's proposed revised reciprocity tariff to those in the Commission's *pro forma* tariff. We find that the proposed revised non-rate terms and conditions of Western's reciprocity tariff continue to generally meet the requirements of the *pro forma* tariff; the majority of the proposed revised non-rate terms and conditions of Western's reciprocity tariff substantially conform or are superior to those in the *pro forma* tariff.

11. However, as explained more fully below, we find that to comply fully with the *pro forma* tariff, Western must revise certain aspects of its reciprocity tariff which deviate from the *pro forma* tariff. Western proposes to attach the standard procedures and technical requirements for the interconnection of large wind generation to the SGIA. Western has not provided an explanation demonstrating that this revised provision substantially conforms or is superior to the *pro forma* tariff. The Commission will condition its reciprocity finding on Western conforming this revised provision to the *pro forma* tariff or providing a sufficient explanation as to why the revised provision is necessary to conform with the *pro forma* tariff, as discussed below.

12. Western also proposes to delete language related to the Fast Track and 10 kW Inverter Processes from its SGIP and SGIA. Because Western has provided sufficient explanation as to why the deletion is necessary, we will allow the variation, as discussed below.

**i. Proposed variations from the pro forma SGIA**

13. Western proposes to attach the standard procedures and technical requirements for the interconnection of large wind generation, as set forth in Order No. 661, to the SGIA as a new Attachment 7 and to reference this attachment in SGIA Article 1.8.1. Western argues that this is necessary for reliability, statutory, and cost allocation reasons. Western also contends that there is no technical justification for automatically exempting small

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<sup>8</sup> In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the OASIS and standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, at 30,286.

wind plants from the interconnection requirements of Order No. 661. For example, a 19.5 MW wind plant comprised of thirteen 1.5 MW units creates a reliability burden nearly identical to a 21 MW wind plant comprised of fourteen 1.5 MW units. Western asserts that its proposed new SGIA Attachment 7 protects smaller wind interconnection customers by requiring Western to prove in its System Impact Study that the stated power factor requirement is necessary to ensure safety or reliability.

14. Western contends that, in order to ensure reliable operation across its system, which includes both the Eastern and Western Interconnections, it must treat all existing and prospective generation resources alike without regard to fuel type or size, including those resources proposed for interconnection by the Federal generating agencies. Absent such nondiscriminatory treatment, Western would be forced to implement reliability-related network upgrades as a consequence of numerous smaller wind plants interconnecting to its system, thereby improperly shifting the costs for maintaining reliability from those who would directly cause them (i.e., small wind interconnection customers) to Western's transmission customers and its Federal preference and project use customers. Western argues that its proposed SGIA attachment shields Western's transmission customers from consequent adverse rate impacts.

15. Western also contends that, from a statutory perspective, it cannot allow itself to potentially be forced to construct network upgrades under the circumstances described above because the Anti-Deficiency Act restricts Western from obligating funds for construction which have not been Congressionally appropriated or authorized for expenditure.

16. We find that Western's arguments are not persuasive, as discussed further below. As a result, we cannot find that Western's OATT is a valid reciprocity tariff unless it removes this provision and the accompanying attachment from its tariff. That is, we find that Western must remove the relevant language from its SGIA Article 1.8.1 and delete its proposed Attachment 7 in order to maintain a valid safe harbor tariff.

17. Order No. 2006 states:

The wind generating facilities that will interconnect under this Final Rule [which are no larger than 20 MW] will be small and will have minimal impact on the Transmission Provider's electric system. The reliability requirements proposed for wind powered Large Generating Facilities are not needed for small wind generating facilities.<sup>9</sup>

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<sup>9</sup> Order No. 2006 at P 24.

As a result, Order No. 661's provisions were not required for small wind generating facilities. The Commission, in Order No. 661, concluded that, "the Final Rule Appendix G exceptions to the LGIP and LGIA apply only to large wind plants."<sup>10</sup>

18. Order No. 2003 set forth rules applying to those generators larger than 20 MWs and Order No. 2006 set forth rules applying to those generators no larger than 20 MWs. Those orders established distinct sets of rules for generators based upon their output. Western's argument amounts to an inappropriate request for rehearing of those rules, and accordingly we deny it.

19. In addition, because small wind generating facilities will have minimal impact on the system, we are not persuaded that Western will be required to build reliability-related upgrades. As a result, if there are no additional facilities to be built, then there are no costs implicating the Anti-Deficiency Act. Accordingly, Western's arguments that this revision arises out of statutory necessity and a need to protect its customers from adverse rate impacts do not appear to be valid.

**ii. Proposed variations from the *pro forma* SGIP and SGIA**

20. Western proposes to delete all references to the Fast Track Process and the 10 kW Inverter Process.<sup>11</sup> Western proposes to process all small generator interconnections no larger than 20 MW using the SGIP's default Study Process.<sup>12</sup> Western states that it provides open access transmission service only over its high-voltage transmission facilities, and therefore is unable to process requests for interconnection to distribution-level facilities (i.e., requests pertinent to the Fast Track Process and 10 kW Inverter

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<sup>10</sup> Order No. 661 at P 104.

<sup>11</sup> The Fast Track Process for evaluating an Interconnection Request for a certified Small Generating Facility no larger than 2 MW includes technical screens, a customer options meeting, and supplemental review. *See* Order No. 2006 at P 45. The 10 kW Inverter Process is available to evaluate the interconnection of a certified inverter-based generator no larger than 10 kW. The all-in-one 10 kW Inverter Process document includes a simplified application form, interconnection procedures, and a brief set of terms and conditions (akin to an interconnection agreement). *See* Order No. 2006 at P 46 and P 394-405, Appendix D, and SGIP Attachment 5.

<sup>12</sup> The default Study Process normally consists of a scoping meeting, a feasibility study, a system impact study, and a facilities study. *See* Order No. 2006 at P 44. This process can be used by any Small Generating Facility. *See* Order No. 2006 at P 2.

Process) under its reciprocity tariff. Western contends that the abbreviated procedures applicable to the Fast Track Process do not accommodate the need to perform a substantive environmental review under the National Environmental Policy Act (NEPA). According to Western, the *pro forma* SGIP 10 kW Inverter Process requires the interconnection of generators without the execution of an SGIA and that, “absent any type of formal agreement between the Parties, Western is prohibited from contractually ensuring compliance with” several statutory and budgetary requirements.<sup>13</sup>

21. We find Western’s explanation justifying exclusion of the Fast Track and 10 kW Inverter Processes from its reciprocity tariff because it is unable to perform interconnections to distribution-level facilities under those processes, to be persuasive. On this basis, we find that Western’s reciprocity tariff remains valid without the provisions related to the Fast Track Process and 10 kW Inverter Process, and therefore accept this variation from the *pro forma* SGIP and SGIA. As a result, we need not address Western’s arguments concerning formal agreements or NEPA.

### C. Filing Fee

22. Western petitions for an exemption from the filing fee based on its non-jurisdictional status. 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.”<sup>14</sup> Because Western is an agency of the United States Department of Energy engaged in the official business of the Federal government, we will grant Western’s request for waiver of the filing fee.

#### The Commission orders:

(A) Western’s petition for declaratory order is hereby conditionally granted, and its revised reciprocity tariff is deemed to represent an acceptable reciprocity tariff, on

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<sup>13</sup> Western states that such requirements applicable to the interconnection of generators to its system include those codified under the Anti-Assignment Act, the Anti-Deficiency Act, the ADR Act, the Contributed Funds Act, NEPA and the Tort Claims Act, among others. Western Transmittal Letter at 14.

<sup>14</sup> Order No. 888-A, FERC Stats. & Regs. at 30,288-89 (citing *South Carolina Public Service Authority*, 75 FERC ¶ 61,209, at 61,694-95 (1996) (citation omitted)).

the condition that it change its reciprocity tariff, consistent with the discussion in the body of this order.<sup>15</sup>

(B) Western's request for exemption from the filing fee is hereby granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>15</sup> We note that if a non-public utility that already has a safe harbor OATT (e.g., Western) wishes to continue to qualify for safe harbor treatment after the effective date of Order No. 890, it must amend its OATT by July 13, 2007 so that its provisions substantially conform or are superior to the reformed *pro forma* OATT adopted in Order No. 890. The specific requirements of Order No. 890, and the mechanisms for compliance, are set forth therein.