

123 FERC ¶ 61,079  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 25, 2008

In Reply Refer To:  
Southwestern Power Administration  
Docket No. NJ07-9-000

Southwestern Power Administration  
Attn: Laurence J. Yadon, II, Esq.,  
General Counsel  
One West Third Street, Suite 1668  
Tulsa, OK 74103

Dear Mr. Yadon:

1. On September 27, 2007, Southwestern Power Administration (Southwestern), a Federal power marketing administration, submitted revisions to its open access transmission tariff (OATT or tariff). The purpose of the filing is to comply with Order Nos. 2003,<sup>1</sup> 2006,<sup>2</sup> and 661<sup>3</sup> and to incorporate Large Generator Interconnection Procedures (LGIP), a *pro forma* Large Generator Interconnection Agreement (LGIA), Small Generator Interconnection Procedures (SGIP), and a *pro forma* Small Generator Interconnection Agreement (SGIA) into its OATT. In addition, pursuant to Order No. 676,<sup>4</sup> Southwestern proposes to incorporate, by reference, certain business practices

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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).

<sup>2</sup> *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005).

<sup>3</sup> *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g*, Order No. 661-A, FERC Stats. & Regs. ¶ 31,198 (2005).

<sup>4</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216 (2006), *order on reh'g*, Order No. 676-A, 116 FERC ¶ 61,255 (2006), *order on reh'g*, Order No. 676-B, 119 FERC ¶ 61,049 (2007).

of the North American Energy Standards Board (NAESB) into Southwestern's OATT. Southwestern requests that the Commission issue a declaratory order determining that this filing satisfies the comparability standards of sections 35.28 (e) and (f) of the Commission's regulations (18 C.F.R. § 35.28 (e), (f) (2007)).

2. Southwestern is not a public utility within the Commission's jurisdiction under sections 201, 205, and 206 of the Federal Power Act.<sup>5</sup> Order No. 888, however, provides a "safe harbor" provision, whereby non-public utilities can file reciprocity transmission tariffs.<sup>6</sup> 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.<sup>7</sup>

3. On March 31, 2005, Southwestern and Southwest Power Pool (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 (OASIS) administration, and reliability coordination. Southwestern is a transmission-owning member of SPP. On March 21, 2006, the Commission accepted changes to Southwestern's OATT to conform the OATT to the terms and conditions of the SPP/Southwestern Agreement.<sup>8</sup> However, the Commission also found that Southwestern did not have a valid "safe harbor" reciprocity tariff until it achieved formal compliance with Order Nos. 2003 and 2006.

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<sup>5</sup> 16 U.S.C. §§ 824, 824d, 824e (2000 & Supp. V 2005).

<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).

<sup>7</sup> *U.S. Department of Energy – Southwestern Power Administration*, Docket No. NJ98-2-000 (May 13, 1998) (unpublished letter order).

<sup>8</sup> *Southwestern Power Administration*, 114 FERC ¶ 61,292, at P 13 (2006).

4. In the instant filing, Southwestern proposes modifications to its OATT intended to comply with Order Nos. 2003, 2006, and 661, while recognizing Southwestern's non-jurisdictional status and its obligations and limitations as a Federal power marketing administration as well as the arrangements between Southwestern and SPP. For example, certain proposed modifications relate to Southwestern's status as a Federal power marketing administration, such as the removal of any dispute resolution procedures that call for binding arbitration; citing the Administrative Procedures Resolution Act,<sup>9</sup> Southwestern points out that it is unable to participate in binding arbitration. Additionally, Southwestern states that, before constructing interconnection facilities, it must also follow certain procedures of the National Environmental Policy Act.<sup>10</sup> Southwestern also states that the LGIP, LGIA, SGIP, and SGIA apply only to interconnection facilities up to the proposed point of interconnection; SPP's procedures would cover studies and cost allocation for any network upgrades required for the generator interconnection.

5. Southwestern proposes other modifications to its OATT that, among other things, recognize Southwestern's limited ability to provide control area services. In addition, Southwestern states that it cannot agree to indemnify the interconnection customer and has included language to this effect. Southwestern has also removed language in various sections referring to network upgrades as the process for studying and constructing such upgrades will be handled by SPP.

6. Southwestern states that it coordinated its proposed language with SPP to ensure regional consistency and to facilitate SPP's administration of Southwestern's OATT, as provided in the SPP/Southwestern Agreement.

7. Finally, consistent with Order No. 676, Southwestern proposes revisions to Attachment N to incorporate various NAESB business practices—including standards related to the OASIS, area control error, and inadvertent interchange payback—into the tariff.

8. Southwestern adds that it is undertaking a dialogue with its customers regarding implementation of Order No. 890.<sup>11</sup> Southwestern states that it will make a future filing to incorporate the Order No. 890 provisions.

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<sup>9</sup> 5 U.S.C. §§ 571-84 (2000).

<sup>10</sup> 42 U.S.C. § 4321 *et seq.* (2000).

<sup>11</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007).

9. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 57,316 (2007), with interventions and protests due on or before October 29, 2007. None was filed.

10. We find Southwestern's proposed changes to be in compliance with Order Nos. 2003, 2006, 661, and 676. We note, however, that this filing does not purport to be a filing in compliance with Order No. 890. Southwestern must amend its tariff in response to Order No. 890 if it wishes to continue to qualify for safe harbor treatment. Until Southwestern has amended its tariff in such a manner, it does not qualify for safe harbor treatment.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.