

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Transmission Cooperative, Inc.

Docket No. EL04-77-000

ORDER CLARIFYING STATUS OF SAFE HARBOR TARIFF

(Issued May 10, 2004)

1. In this order, the Commission clarifies that the “safe harbor” Open Access Transmission Tariff (OATT) of Southwest Transmission Cooperative, Inc. (SWTransco) has not been deemed to include the pro forma Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIA) adopted by the Commission in Order 2003 and Order 2003-A.<sup>1</sup> This order benefits customers by further clarifying the status of “safe harbor” tariffs under Order Nos. 2003 and 2003-A.

**Background**

2. In Order No. 888, the Commission required non-public utilities that own, operate or control transmission facilities, as a condition of receiving open access transmission service from a public utility under its OATT, to provide reciprocal transmission service

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<sup>1</sup> Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), order on reh’g, Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 5, 2004), FERC Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), reh’g pending.

on comparable terms.<sup>2</sup> As one method of satisfying this reciprocity requirement, the Commission allowed non-public utilities to file an OATT with the Commission under the voluntary “safe harbor” provision.<sup>3</sup> Under this provision, the Commission issues a declaratory order finding the OATT appropriate for “safe harbor” status if its provisions “substantially conform or are superior to” the pro forma OATT.<sup>4</sup>

3. More recently, in Order No. 2003 the Commission required public utilities that own, control or operate transmission facilities to include in their OATT a pro forma LGIA and LGIP. In that order, the Commission also stated 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 . . . LGIP and LGIA if it wishes to continue to qualify for safe harbor treatment.”<sup>5</sup> In its Notice Clarifying Compliance Procedures,<sup>6</sup> the Commission stated that the OATTs of all “non-independent Transmission Providers”<sup>7</sup> were “deemed to be revised to include” the LGIP and LGIA as of January 20, 2004.

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<sup>2</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, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,760-61 (Order No. 888), order on reh’g, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), 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 (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).

<sup>3</sup> Order No. 888 at 31,761; Order No. 2003 at P 841.

<sup>4</sup> Id.

<sup>5</sup> Order No. 2003 at P 842; Order No. 2003-A at P 773.

<sup>6</sup> 106 FERC ¶ 61,009 (2004) (January 8 Notice).

<sup>7</sup> Non-independent Transmission Providers are defined as “utilities that (a) are not RTOs or ISOs or (b) are members of RTOs or ISOs but maintain ownership and operational control over certain of their Commission-jurisdictional facilities.” January 8 Notice at P 2, note 2.

4. Further, in Order No. 2003-A, the Commission reiterated that:

Order No. 2003 does not require that a non-public utility also provide transmission credits for Network Upgrade costs to satisfy the Commission's reciprocity condition. With respect to a Tariff filed under the “safe harbor” provision, the Commission's reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself.<sup>8</sup>

5. The Commission also clarified that a non-public utility must apply interconnection cost recovery and other terms and conditions of Interconnection Service to third parties in a manner comparable to the process it applies to itself in order to satisfy the reciprocity condition.<sup>9</sup> Thus, the non-public utility must treat network upgrade payments in a manner comparable to how it treats its own network upgrade costs and will be required to refund transmission upgrade costs only if it affords itself comparable treatment. Otherwise, the non-public utility would not be required to refund transmission upgrade costs.<sup>10</sup>

6. SWTransco is a Rural Utilities Service (RUS)-financed, nonprofit rural electric transmission cooperative that operates largely in Arizona.<sup>11</sup> It is not a public utility under the Federal Power Act. SWTransco adopted an Order No. 888 OATT and an Order No. 889<sup>12</sup> OASIS, for which SWTransco obtained “safe harbor” status.<sup>13</sup>

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<sup>8</sup> Order No. 2003-A at P 762.

<sup>9</sup> Order No. 2003-A at P 777.

<sup>10</sup> Order No. 2003-A at P 780.

<sup>11</sup> See Dairyland Power Cooperative 37 F.P.C. 12, 15 (1967).

<sup>12</sup> Open Access Same-Time Information System and Standards of Conduct (OASIS), Order No. 889, 61 Fed. Reg. 21,737 (1996), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,035 (1996), order on reh'g, Order No. 889-A, 62 Fed. Reg. 12,484 (1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,049 (1997), order on reh'g, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

<sup>13</sup> SWTransco's “safe harbor” tariff has been approved. Sierra Southwest Cooperative Services, Inc., 95 FERC ¶ 61,310 (2001); revisions accepted by Letter Order dated December 23, 2002, in Docket No. NJ02-5-000.

7. On January 20, 2004, SWTransco submitted a letter to the Commission in response to the January 8 Notice. SWTransco believes that the January 8 Notice refers only to jurisdictional public utilities and that the Commission simply wanted to hear from non-jurisdictional utilities with “safe harbor” OATTs that perceive issues or difficulties in adopting the pro forma LGIP and LGIA. SWTransco explains that it would have substantial difficulties complying with those provisions of the LGIP and LGIA that might be interpreted to preclude “participant funding” (i.e., provisions that could require it to provide transmission credits associated with transmission network upgrades that result from the interconnection of generators). SWTransco is concerned that if it is unable to use participant funding, it will be forced to “cross-subsidize transmission and power sales to non-members without receiving any benefits or value in return.”<sup>14</sup>

8. SWTransco requests that its filing not be construed as a request for waiver of Order No. 2003 to permit it to implement participant funding while preserving its “safe harbor” status (although SWTransco states that it would accept grant of such a waiver at the present time). Instead, SWTransco states that its filing is in response to the Commission’s January 8 Notice and requests guidance from the Commission if the prohibition on participant funding is intended to apply to SWTransco’s particular situation.

9. Notice of SWTransco’s filing was published in the Federal Register, 69 Fed. Reg. 6,966 (2004), with comments, protests, or interventions due on or before February 13, 2004. None was filed.

### **Discussion**

10. In response to SWTransco’s request, the Commission clarifies that, in the January 8 Notice, only the OATTs of non-independent Transmission Providers were deemed to include the pro forma LGIP and LGIA. “Transmission Provider,” as defined in the pro forma LGIP and LGIA, means only a public utility.<sup>15</sup> Therefore, the Commission did not deem the LGIP and LGIA to be included in “safe harbor” Tariffs, and because SWTransco is not a public utility, its OATT has not been “deemed” to include the pro forma LGIP and LGIA.

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<sup>14</sup> SWTransco filing at 4.

<sup>15</sup> See Order No. 2003, pro forma LGIP (Appendix C) at section 1, and pro forma LGIA (Appendix 6 to LGIP) at section 1 (defining “Transmission Provider” to mean only a public utility (or its designated agent)).

11. As we stated in Order No. 2003, a non-public utility may seek to add interconnection procedures and an interconnection agreement to its “safe harbor” OATT that substantially conform with or are superior to the pro forma LGIP and LGIA if the utility wishes to continue to qualify for “safe harbor” treatment. If SWTransco decides to make such a filing, it should explain how its proposal meets the “substantially conform or are superior to” standard under which we review “safe harbor” tariffs. It must demonstrate that its use of participant funding is not unduly discriminatory and that it treats itself and its affiliates comparably to how it treats non-affiliated generators in order to satisfy the reciprocity requirement of Order No. 888. The Commission will consider such language at that time.

The Commission orders:

The Commission hereby clarifies the status of SWTransco’s “safe harbor” OATT, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.