138 FERC ¶ 61,188
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Powerex Corp. Docket No. EL12-21-000

v.

United States Department of Energy, Western Area
Power Administration – Sierra Nevada Region

ORDER DENYING COMPLAINT

(Issued March 15, 2012)

1. On December 30, 2011, pursuant to sections 206, 211A, 306, 307, and 309 of the Federal Power Act (FPA),[1] and Rule 206 of the Commission's Rules of Practice and Procedure,[2] Powerex Corp. (Powerex) filed a petition against the United States Department of Energy, Western Area Power Administration (Western) – Sierra Nevada Region (WASN).[3] Powerex alleges that WASN unlawfully and preferentially awarded long-term firm point-to-point transmission service on the California-Oregon Transmission Project (COTP), a 500 kV transmission line, to Morgan Stanley Capital Group Inc. (Morgan Stanley). Powerex asks the Commission to order WASN to vacate and set aside its award of capacity, remove Morgan Stanley's request from WASN's queue, and take other actions to ensure that awards of long-term firm point-to-point

[1] 16 U.S.C. §§ 824e, 824j-1, 825e, 825f, and 825h (2006).

[2] 18 C.F.R. § 385.206 (2011).

[3] WASN is a balancing authority for the region and operates approximately 1,200 miles of high-voltage transmission line under Western's OATT. Western website, http://www.wapa.gov/sn/ops; *see also* Powerex December 30, 2011 Complaint at 8 (Powerex Complaint).

transmission service by WASN on the COTP are the product of a transparent process and comply with the Commission's open access principles.

2. As discussed below, we find Powerex's complaint to be without merit and will, therefore, deny it.

I. Background

A. Western and WASN

3. Western is a federal power marketing administration that markets federal power and operates transmission facilities in 15 western and central states. Western is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the FPA.[4] Western is a transmitting utility subject to sections 210 through 213 of the FPA.[5] In addition, pursuant to the safe harbor provisions for the filing of reciprocity transmission tariffs in Order No. 888,[6] Western filed an open access transmission tariff (OATT) that was determined by the Commission to be an acceptable reciprocity tariff under Order No. 888.[7] In response to Order No. 890,[8] Western modified its OATT and the Commission found it continued to qualify as an acceptable reciprocity tariff.[9]

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[4] 16 U.S.C. §§ 824d, 824e (2006).

[5] 16 U.S.C. §§ 824j, 824k, 824l (2006).

[6] *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 31,696 (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) (Order No. 888).

[7] *Western Area Power Admin.*, 119 FERC ¶ 61,329 (2007).

[8] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009) (Order No. 890).

[9] *Western Area Power Admin.*, 133 FERC ¶ 61,193 (2010).

4. Under Western's reciprocity tariff, WASN is obligated to provide transmission service that is non-discriminatory and not unduly preferential, pursuant to the Commission's open access standards. WASN is also required to adhere to open access same-time information system (OASIS) requirements that ensure transparency in the transmission capacity allocation process.[10]

B. Powerex Complaint

5. Powerex alleges that, on December 22, 2011, WASN unlawfully and preferentially awarded 50 MW of long-term firm capacity on the COTP to Morgan Stanley in contravention of the Commission's OASIS requirements, provisions of Western's OATT and standards of conduct, and certain provisions of WASN's business practices governing its operations on OASIS. Powerex alleges that WASN's actions have resulted in non-comparable treatment of similarly-situated transmission customers and undue discrimination, in violation of the FPA.

6. Powerex states that between 2004 and 2007 it submitted several requests to WASN for long-term firm point-to-point transmission service on the COTP. Powerex asserts that WASN rejected all of Powerex's requests and declined to study them. Subsequent to WASN's rejection of the 2007 request, Powerex contends that WASN appears to have disabled the OASIS function for requesting long-term firm point-to-point transmission service. Powerex states that it was under the impression, prior to learning of WASN's award of long-term firm transmission service to Morgan Stanley on December 22, 2011, that WASN had not formally restored this functionality or otherwise indicated that long-term firm point-to-point capacity was available and able to be requested on OASIS. Powerex asserts that, because this function was disabled, market participants could not submit requests for long-term firm point-to-point transmission service on WASN's system, and Powerex's 2007 service request could not be maintained in WASN's long-term firm transmission queue.[11]

7. Powerex reports that, on December 22, 2011, it discovered that WASN had granted a request by Morgan Stanley for 50 MW of long-term firm point-to-point transmission service on the COTP for a five-year term commencing on January 1, 2012.

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[10] *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, at 31,594 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, at 30,552-54 (1997) (non-public utilities that undertake to provide reciprocal open access transmission service must comply with the Commission's OASIS requirements in Part 37 of its regulations). *See* 18 C.F.R. § 37.6(e) (2011).

[11] Powerex Complaint at 12-14.

Powerex asserts that the Morgan Stanley request was confirmed by WASN less than half an hour after the request was queued on OASIS. After learning of WASN's grant of service to Morgan Stanley, Powerex contends that it discovered an adjustment to WASN's OASIS configuration, just hours before Morgan Stanley's request, that "apparently re-enabled" WASN's long-term firm point-to-point transmission service queue. Powerex asserts that, prior to Morgan Stanley request, WASN posted no notice on its OASIS, nor did it otherwise advise customers of their renewed ability to request long-term firm point-to-point transmission service on the COTP path.[12] Powerex contends that it discovered the configuration change only after it observed that Western granted Morgan Stanley's December 22 service request.

8. Powerex states that, after seeing confirmation of the Morgan Stanley request, it submitted its own request, on that same date, for 50 MW of long-term firm point-to-point transmission service on the same line, for the same time period. Powerex states that, less than half an hour later, WASN rejected its request and refused to put the request into study mode. Powerex states that it attempted to obtain additional information and sent a series of follow-up questions to WASN on December 24, 2011. Powerex asserts that it was notified by WASN that responses would not be available until the week of January 2, 2011, after service to Morgan Stanley had already begun.[13]

9. Powerex argues that, due to numerous deficiencies and irregularities regarding WASN's award of capacity to Morgan Stanley, the Commission must vacate and set aside the award. Powerex alleges a number of violations related to WASN's requirement to post information on its OASIS or provide other public notice regarding its policies and procedures regarding requests for long-term firm transmission service. Specifically, Powerex claims that WASN failed to post on its OASIS or provide other public notice that it was changing its historic policy and business practice of reserving all long-term firm point-to-point capacity on the COTP for WASN's statutory obligations. Powerex also asserts that there was no apparent posting by WASN on OASIS that it would be formally re-enabling the OASIS function that allows market participants to request long-term firm point-to-point transmission service on the COTP, or an amendment to the business practices that allows for long-term firm service requests.[14]

10. In addition, Powerex claims that WASN failed to post positive available transmission capacity on WASN's share of the COTP to satisfy the grant of capacity to Morgan Stanley, despite a business practice requirement to post any available transfer

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[12] *Id.* at 14-15.

[13] *Id.* at 15-17.

[14] *Id.* at 17-19.

capacity on OASIS. Moreover, Powerex states that it is not aware of any publicly-available studies of the available transmission capacity on the COTP that indicate an availability of capacity to accommodate third party requests for long-term firm service on the COTP for the time period requested by Morgan Stanley.[15]

11. Powerex asserts that, when it contacted WASN regarding the grant of capacity to Morgan Stanley, it was directed to an informal, off-OASIS service queue that showed a single anonymous request for service on the COTP, but for a different quantity and different time period than the December 22, 2011 Morgan Stanley request. Based on the queue referenced by WASN, Powerex alleges that WASN and Morgan Stanley may have come to an agreement through private, off-OASIS discussions and/or negotiations, in violation of: (1) the Commission's OASIS posting requirements; (2) the requirements for non-discrimination, transparency, and impartial enforcement of OATT provisions found in Western's standards of conduct; and (3) WASN's business practice requirement that all requests for long-term firm transmission service must be made through the OASIS.[16]

12. Powerex also takes issue with the apparent timing of WASN's award to Morgan Stanley. Powerex complains that Morgan Stanley's request was submitted only nine days prior to the commencement of service, which did not meet even the timelines specified for other types of transmission service requests.[17] Powerex also argues that WASN did not put Morgan Stanley's request in study mode, as required by the operations business practice, but rather confirmed it immediately.[18]

13. Regarding Powerex's own requests for long-term firm point-to-point transmission service on the COTP, Powerex argues that its 2007 request should have priority in WASN's long-term transmission queue over the Morgan Stanley request as first in time. Powerex contends that WASN did not study or grant its 2007 request. Powerex states that it has not received an offer to study or a counteroffer from WASN despite the fact that: (1) its 2007 request is first in time to Morgan Stanley's request; (2) its 2007 request overlapped with the first year of the service granted to Morgan Stanley; and (3) Western's business practices require WASN to place requests in study mode and make a counteroffer for partial service if it cannot accommodate a customer's request in

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[15] *Id.* at 17-18.

[16] *Id.* at 19.

[17] For example, pursuant to WASN's business procedures (BP-009 at p. 14), requests for monthly (short-term) firm point-to-point service must be made no later than fourteen days in advance of the service.

[18] *Id.* at 19-20.

its entirety. Powerex also alleges that WASN peremptorily rejected its December 22, 2011 service request for the same capacity, path, and duration as the Morgan Stanley request, without placing Powerex's request in study mode, in contravention of operations business practice requirements.[19]

14. With regard to economic harm, Powerex provides that it is a direct competitor of Morgan Stanley for transmission access to California and within the California market itself. Powerex asserts that long-term firm transmission service that enables energy deliveries from the Pacific Northwest to California is considered valuable and, therefore, offerings on such paths are usually fully subscribed. Thus, Powerex argues that, if 50 MW of this capacity is preferentially granted to one market participant, such a grant places the other market participants at a substantial competitive disadvantage.[20]

15. Powerex contends that the Commission has direct authority over WASN's transmission service offerings pursuant to section 211A of the FPA, which requires WASN to provide non-discriminatory transmission service, and also pursuant to section 206 of the FPA, as a result of Western's reciprocity tariff, to ensure that WASN adheres to the Commission's open access standards. In order to remedy the competitive harm Powerex will face as a result of WASN's grant of capacity to Morgan Stanley, Powerex requests that the Commission investigate whether improper, off-OASIS communications took place between WASN and Morgan Stanley related to the 50 MW award of transmission capacity, and to take the following actions: (1) reinstate Powerex's 2007 request on the basis that it was a valid request that was first in time and submitted under an open and transparent process, and award partial service to Powerex; (2) direct WASN to rescind the award of capacity to Morgan Stanley and void any agreement between WASN and Morgan Stanley due to violations of WASN's posted business practices and standards of conduct, and the Commission's OASIS requirements; and (3) direct WASN to remove Morgan Stanley's December 22, 2011 request from WASN's OASIS queue on the basis that Morgan Stanley had preferential knowledge that the queue had been re-enabled.[21]

16. In the alternative, Powerex requests that the Commission direct WASN to remove all requests for long-term firm point-to-point transmission service that were submitted on or after December 21, 2011 and direct WASN to create a fresh queue to ensure that all market participants have an equal, non-discriminatory opportunity to compete for such service. Further, Powerex requests that the Commission direct WASN to undertake

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[19] *Id.* at 20.

[20] *Id.* at 21-22.

[21] *Id.* at 23-26.

various actions to remedy transparency issues, including the performance of a transmission study to determine available capacity on COTP, revision of business practices, and re-enablement of OASIS functions that will permit interested third parties to request long-term firm service on the COTP through a non-discriminatory and non-preferential process.[22]

II. Notice of Filing and Responsive Pleadings

17. Notice of Powerex's complaint was published in the *Federal Register*, 77 Fed. Reg. 1482 (2012), with interventions due on or before January 11, 2012. On January 11, 2012, Western filed its answer. Timely motions to intervene were filed by Pacific Gas and Electric Company; Xcel Energy Services Inc.; Cargill Power Markets, Inc.; Modesto Irrigation District; and the California Department of Water Resources State Water Project. Morgan Stanley filed a timely motion to intervene and protest. On January 19, 2012, Powerex filed an answer to Western's answer and Morgan Stanley's protest. On February 2, 2012, Western filed an answer to the Powerex answer.

A. Western Answer[23]

18. As a threshold matter, Western denies that the Commission has jurisdiction under the FPA in this matter. Western notes that it is not a public utility under sections 205 or 206 of the FPA and argues that section 211A of the FPA is not applicable to Powerex's complaint. Western contends that FPA section 211A applies only in situations where a non-jurisdictional transmitting utility is alleged to have provided services to a third party in a manner that is not comparable to the manner in which it provides those services to *itself*, which is not the case here. However, Western states that it understands the importance of reciprocity and wishes to voluntarily participate in this proceeding to assist the Commission in fully examining Powerex's allegations.[24]

19. Western disputes Powerex's version of the facts that led up to the award of transmission capacity to Morgan Stanley. Western asserts that, on January 3, 2011, Morgan Stanley was the first entity to request long-term firm point-to-point transmission service on the COTP under Western's Order No. 890 reciprocity OATT. Thus, Western refutes Powerex's assertion that Morgan Stanley submitted its request only nine days

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[22] *Id.* at 27-28.

[23] In its answer, Western does not distinguish between Western and WASN and refers collectively to both entities as Western, despite the fact that Powerex refers specifically to alleged violations by WASN.

[24] Western January 11, 2012 Answer at 6-7 (Western Answer).

before the requested commencement of service. Western explains that Morgan Stanley made this request pursuant to section 17.1 of Western's OATT, which permits the submission of transmission service requests by fax. Western contends that both it and Morgan Stanley followed all of the provisions in Western's OATT and business practices for obtaining conditional firm transmission service, including the submission of a completed application for long-term firm service and required deposits, a rejection of the long-term firm request and counteroffer to conduct a study for conditional firm services, performance of the required system impact studies, and execution of the service agreement for conditional firm service on the COTP. Western states that it placed Morgan Stanley into its transmission scheduling system on OASIS on December 22, 2011, after execution of the service agreement, almost a full year after Morgan Stanley submitted its application.[25]

20. Western acknowledges that from 2004 through 2007 it rejected Powerex's requests for long-term firm service on the COTP. Western asserts that, when Powerex made these requests, it had no long-term firm capacity available on the COTP due to existing contracts and statutory obligations. Western provides that it did not undertake a system impact study for Powerex's prior requests because Western cannot unilaterally modify or expand the COTP to accommodate requests for additional capacity.[26]

21. Western explains that the Commission, in Order No. 890, required public utilities to offer conditional firm transmission service, a modified version of long-term firm service with varying curtailment priorities, that can be offered when a request for long-term firm cannot be accommodated. Western states that, although it is not a public utility under Part II of the FPA, it maintains a reciprocity OATT with the Commission and, therefore, modified its OATT to adopt conditional firm service in conformity with Order No. 890. In doing so, Western asserts that it conducted a comprehensive public process that addressed the topic of conditional firm transmission service. Further, Western asserts that, on November 30, 2009, it provided notice on both its OASIS and website that it was implementing its Order No. 890 reciprocity OATT. Western also states that, on December 1, 2009, it issued its conditional firm business practice, which largely mirrors those of the other transmission providers within its regional footprint.[27]

22. Western avers that it complied with its OATT requirements, business practices, and standards of conduct in making a non-discriminatory award of capacity on the COTP to Morgan Stanley. Western contends that Powerex's failure to make the request when

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[25] *Id.* at 11-12.

[26] *Id.* at 8-9.

[27] *Id.* at 9-10.

conditional firm service first became available is a circumstance beyond Western's control. Western points out that, when Powerex made its 2004-2007 requests, Western's rejection was consistent with its OATT, business practices, and standards of conduct in effect at the time. Western maintains that there was no long-term firm capacity available on the COTP, and prior to December 1, 2009 Western did not have conditional firm transmission service to offer as an alternative to long-term firm service.[28]

23. Western also contends that Powerex's December 22, 2011 request was properly rejected because Powerex failed to follow the procedures required by Western's OATT. Western explains that Powerex did not complete the required application or remit the processing fee or service deposit with those requests, as required in Western's OATT. Western states that it informed Powerex that it must follow the OATT procedures. Western states that it is currently evaluating the valid application submitted by Powerex on December 23, 2011.[29]

24. Western also argues that Powerex appears to misunderstand the difference between its OASIS transmission scheduling system and the long-term firm transmission service request process. Western asserts that Powerex's invalid December 22, 2011 request was entered in the transmission scheduling system. Western clarifies that transmission service requests are placed in the long-term firm queue after the completed application is received, but are placed in the OASIS scheduling system only after going through the application process and executing a service agreement. Western emphasizes that the transmission scheduling system is not a mechanism for requesting long-term firm point-to-point transmission service. Western explains that its OATT and OASIS provide the directions for obtaining long-term firm service; the application form for submitting the request is available on its OASIS.[30] Further, Western asserts that the long-term transmission queue is currently available on its OASIS and the process for maintaining and getting on the long-term transmission queue has never changed.[31]

25. Western states that, while not clear, it suspects that the December 21, 2011 configuration change referred to by Powerex was related to the implementation of changes necessary to accommodate conditional firm transmission schedules in its

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[28] *Id.* at 16-17.

[29] *Id.* at 17-18, 27-29.

[30] Ex. WPA-1 at 10.

[31] Western Answer at 18-21.

transmission scheduling system. However, Western explains that this change did not affect the long-term transmission queue that Western maintains separately.[32]

26. Western asserts that its business practices are consistent with its OATT, despite the fact that Western has not amended its OASIS business practice to allow for long-term firm service requests through OASIS. Western points out that its OATT provides for conditional service, and that section 15.4 of its OATT specifies that, if Western cannot accommodate a request for long-term firm service, it will offer conditional firm service to the requesting customer. Moreover, Western notes that section 1.3 of its OATT specifically states that, if any business procedure conflicts with the OATT, the OATT shall apply. Finally, Western asserts that it has implemented a conditional firm service business practice, which is posted on its OASIS, under which, in order to request a conditional firm service study, a customer must first submit a request for firm point-to-point service for a period of at least a year and fulfill all other OATT requirements. If there is not sufficient capacity available to accommodate the request for long-term firm service, Western will offer to perform a system impact study for conditional firm service.[33]

27. Western emphasizes that there is no long-term firm capacity available on the COTP. However, Western asserts that, when it performed a study of Morgan Stanley's request, pursuant to section 19 of Western's OATT, the study indicated that conditional firm transmission service was available. Western states that, after completing the application procedure in compliance with Western's OATT, Morgan Stanley entered the long-term transmission queue on May 6, 2011. However, counter to Powerex's assertion that the anonymous May 6, 2011 queue entry indicates that the genesis of the award to Morgan Stanley was non-transparent, preferential negotiations, Western explains that all requests enter the queue anonymously until a service agreement is executed, at which time the request enters the transmission scheduling system, which is a separate system.[34]

28. Western argues that this case raises the important underlying policy issue of whether a transmission service application that is properly rejected because a particular service does not exist should be retained in the queue and given priority in the event that the service becomes available sometime in the future. Western contends that a properly rejected application should carry no future rights and that, if a new service is added in the future, potential customers should compete on equal footing for that service. Western asserts that any other approach would create an unmanageable process that would result

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[32] *Id.* at 21, n.78.

[33] Ex. WPA-3 at § 3.1.

[34] Western Answer at 21-25.

in constant litigation over whether a future service was included in a prior, rejected request.[35]

B. Morgan Stanley Protest

29. Morgan Stanley also rejects Powerex's allegations regarding WASN's award of capacity on the COTP. Morgan Stanley explains the facts related to this complaint consistent with those provided by Western, averring that it secured the conditional firm transmission service following the procedures set forth the Western's OATT and without preferential access to information or any other inappropriate communication. Specifically, Morgan Stanley provides that, in the course of its previous procurements of short-term firm service from WASN, Morgan Stanley became familiar with section 15.4 of the Western OATT, which requires Western to offer conditional firm service if it cannot accommodate a request for the long-term firm service, and the corresponding business practices.[36] In addition, Morgan Stanley asserts that it was aware, due to its previous transmission service requests, that WASN's OASIS did not contain the functionality for long-term firm service requests; all such requests would automatically be denied. Thus, Morgan Stanley explains that, in accordance with section 17.1 of Western's OATT, it utilized the fax option for submitting its request. Morgan Stanley contends that this OATT provision was transparent to the market, and these same procedures were thus available to Powerex since 2009.[37]

30. Morgan Stanley refutes Powerex's claim to priority based on its 2007 request, arguing that a request rejected five years ago does not give Powerex a right in perpetuity to priority in the queue. Morgan Stanley observes that Western modified its product offering in 2009 in conformance with Order No. 890, pursuant to a public process regarding those revisions. Thus, Morgan Stanley contends that Powerex's prior requests took place under a different regime and do not establish any right to the conditional firm service implemented in 2009.[38]

31. Morgan Stanley asserts that the communications between it and WASN were appropriate during the entire process and were conducted pursuant to the protocols in Western's OATT and conditional firm transmission service business practice. Morgan Stanley argues that, based on the record presented, there is not material dispute of fact

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[35] *Id.* at 31-32.

[36] Morgan Stanley January 11, 2012 Protest at 8-9 (Morgan Stanley Protest).

[37] *Id.* at 6-10.

[38] *Id.* at 10.

that Morgan Stanley properly secured conditional firm service from WASN using procedures that were equally available to Powerex and that Powerex therefore has no right to be given priority. Morgan Stanley contends that taking away its properly secured transmission service because Powerex failed to use the available tools would be inconsistent with Western's OATT and contrary to law.[39]

III. Discussion

A. Procedural Issues

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the January 19, 2012 Powerex answer or the February 2, 2012 Western answer and will, therefore, reject them.

B. Commission Determination

34. We will deny Powerex's complaint. We find no evidence in the record of preferential treatment or undue discrimination by Western.[40] Further, we find that Morgan Stanley and WASN followed the procedures in Western's Commission-accepted reciprocity OATT and corresponding conditional firm transmission service business practice. First, we find that the process by which Morgan Stanley submitted its January 3, 2011 request complies with section 17 of Western's OATT, which sets forth the procedures for arranging firm transmission service. Pursuant to section 17.1 of Western's OATT, all customers requesting firm transmission service for periods of one year or longer must submit a written application that includes the specified information. Further, section 17.1 of Western's OATT provides that, "[p]rior to implementation of the [t]ransmission [p]rovider's OASIS," the applicant may provide the "required information to the [t]ransmission [p]rovider by telefax."[41] As Powerex correctly observes, this provision has been part of the Order No. 888 *pro forma* OATT since its inception and

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[39] *Id.* at 10-11.

[40] Because we find no evidence of preferential treatment or undue discrimination, and are denying the complaint, we will not address the applicability of FPA section 211A.

[41] Western, OATT, § 17.1 (0.0.0).

remains part of Western's OATT.[42] Moreover, WASN makes the application and OATT procedures for obtaining transmission service transparently available on its OASIS.[43] Therefore, we find that Morgan Stanley's January 3, 2011 submission of an application for long-term firm service via fax was a valid submission under Western's currently-effective OATT.

35. Next, we find that the procedure followed by WASN complies with section 15.4(c) of Western's OATT, which requires the transmission provider to make a counteroffer of conditional firm service if it cannot accommodate a customer's request for firm transmission service, and section 19 of Western's OATT, which establishes the requirements and procedures for performing system impact studies in relation to requests for firm point-to-point transmission service. As documented by Western and Morgan Stanley in the record of this proceeding, and as described above, WASN made the required counteroffer and performed the required studies.[44]

36. In addition, we find that WASN and Morgan Stanley complied with the requirements of Western's conditional firm transmission service business practice. Section 3.1 of Western's conditional firm transmission service business practice states that, in order to request a study for conditional firm service, customer must first submit a request for firm point-to-point service for a period of at least a year. If the transmission provider does not have sufficient capacity to provide long-term firm service, then the customer will be offered a system impact study, the scope of which will be determined by the customer and transmission provider.[45] As discussed above, Morgan Stanley submitted a valid request for long-term firm transmission service. WASN notified Morgan Stanley by letter dated January 26, 2011 that it had no long-term firm service available on the COTP, and offered to perform a system impact study to determine if conditional firm service was available as an alternative.[46] WASN and Morgan Stanley executed a system impact study agreement, and WASN subsequently performed the study, thereby satisfying the business practice requirements.[47]

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[42] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,943.

[43] *See* Western Answer at 11.

[44] Ex. WPA-6 through WPA-8, WPA-10; Morgan Stanley Ex. C through F.

[45] Western Answer at 11; Ex. WPA-3 at § 3.1.

[46] Ex. WPA-6; Morgan Stanley Ex. C.

[47] Ex. WPA-7, WPA-8, WPA-10; Morgan Stanley Ex. D through F.

37. We find no evidence of off-the-record negotiations or other inappropriate communication between WASN and Morgan Stanley throughout the process. Rather, we find that Powerex appears to have misunderstood Western's post-Order No. 890 procedures for obtaining conditional firm service. Because there is no long-term firm transmission service available to third parties on the COTP, Western does not offer this service as an active product that can be requested through the WASN OASIS. The fact that Western did not reinstate long-term firm service as an active product after implementing its Order No. 890 reciprocity OATT did not necessarily imply, as Powerex appears to believe, that Western would summarily reject all requests for long-term firm service, including those submitted via fax. To the contrary, since implementation of its Order No. 890 reciprocity OATT and corresponding conditional firm transmission service business practices, Western has been obligated, pursuant to section 15.4 of its OATT, to respond to a request for long-term firm service with a counteroffer to study the availability of conditional firm service. Moreover, we find that, if Powerex had questions about the implementation of conditional firm service and the associated procedures, it had the opportunity to clarify the requirements and procedures as part of the public process conducted by Western regarding its Order No. 890 revisions. More importantly, we find that Powerex had the same opportunity as Morgan Stanley to avail itself of the procedures for obtaining conditional firm service, including the fax submission option.

38. We are also not persuaded by Powerex's arguments regarding the priority of its 2007 service request. We find that WASN properly rejected the 2007 request for long-term service under the provisions of its then-effective OATT. There was no long-term firm capacity available on the COTP, and conditional firm service was not available as an alternative to long-term firm at that time.

39. Subsequently, Western revised its OATT and implemented a new type of service. We agree with Western that a transmission provider should not be required to retain in its queue requests that were properly rejected because the service did not exist, and then give priority to that request in the event that someday the service, or a different service, becomes available. Such an approach could lead to an unmanageable process involving litigation over whether a future service was somehow incorporated into a past request that was properly rejected. It is undisputed that Morgan Stanley was the first entity to submit a request to WASN for service on the COTP after conditional firm service became available. Accordingly, we find that Morgan Stanley's January 3, 2011 request, the first request for long-term firm service under the post-Order No. 890 OATT, was properly given priority over Powerex's 2007 request.

40. We also find that Powerex's December 22, 2011 request was properly rejected. Western's OATT and business practices are clear; applicants must provide the information listed in section 17.2 of Western's OATT, and must submit the deposit and processing fee required by section 17.3. Powerex did not follow this procedure. We note that, when Powerex provided the completed application, service deposit, and processing

fee on December 23, 2011, as required by Western's OATT, its application was accepted by WASN and is currently being evaluated. Thus, we find no OATT violations or undue discrimination in WASN's rejection of the December 22, 2011 request.

41. In conclusion, we find no justification for granting the relief requested by Powerex because Western complied with its reciprocity OATT and did not engage in any preferential or unduly discriminatory behavior in its award of capacity to Morgan Stanley. Moreover, as discussed above, Powerex had numerous opportunities to seek clarification of the process for obtaining conditional firm service after the Commission's acceptance of Western's Order No. 890 reciprocity OATT and Western's implementation of its conditional firm transmission service business practices. Further, even if WASN had posted Morgan Stanley's request on its OASIS immediately upon receipt, on January 3, 2011, thereby providing notice to Powerex that it could submit its own request, the Morgan Stanley request would still take priority as first in time because Powerex's 2007 request was properly rejected. Therefore, we find that discontinuation of service to Morgan Stanley and removal of Morgan Stanley's request from the queue is not warranted.

The Commission orders:

Powerex's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.