

171 FERC ¶ 61,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Western Area Power Administration

Docket No. NJ20-6-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 5, 2020)

1. On December 13, 2019, Western Area Power Administration (Western) submitted a petition for declaratory order from the Commission finding that proposed revisions to Western's Open Access Transmission Tariff (tariff) substantially conform or are superior to the Commission's *pro forma* Open Access Transmission Tariff (OATT), and qualify Western's tariff as an acceptable reciprocity tariff. Western also requests that the Commission grant it waiver of the declaratory order filing fee. Western, however, explains that it has deferred making tariff revisions implementing the mandates of certain Commission orders until a later date. Accordingly, in this order, we grant Western's petition in part, but we also find that Western's tariff, as revised, is not yet an acceptable reciprocity tariff, as discussed below.

**I. Background**

2. Western is a federal power marketing administration that markets federal power and owns and operates transmission facilities in 15 western and central states. Western operates such facilities in the Desert Southwest Region (DSW), Rocky Mountain Region (RMR), Sierra Nevada Region (SNR), and Upper Great Plains Region (UGPR). Western is not a public utility within the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).<sup>1</sup> Western is, however, a transmitting utility subject to sections 210 through 213 of the FPA.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. §§ 824, 824d, 824e (2018).

<sup>2</sup> 16 U.S.C. §§ 824i-824l (2018).

3. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity transmission tariffs by non-public utilities.<sup>3</sup> Under this procedure, non-public utilities, such as Western, may voluntarily submit to the Commission an open access transmission tariff and request for declaratory order finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the tariff contains terms and conditions that substantially conform or are superior to those in the Commission's *pro forma* OATT, 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>4</sup> Western's tariff was previously determined to be an acceptable reciprocity tariff under Order No. 888.<sup>5</sup>

4. Subsequently, in Order No. 890,<sup>6</sup> the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis, and required any non-public utility with a safe harbor tariff to amend its tariff so that its provisions substantially conform or are superior to the revised *pro forma* OATT, if it wishes to continue to qualify for safe

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<sup>3</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) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,221), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248, *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>4</sup> In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) and standards of conduct requirements, or obtain waiver of them. *See* Order No. 888-A, 78 FERC ¶ 61,221 at 30,286.

<sup>5</sup> *Western Area Power Admin.*, 119 FERC ¶ 61,329 (2007).

<sup>6</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

harbor treatment.<sup>7</sup> In 2010, Western submitted tariff revisions to comply with Order No. 890 and the Commission found that Western had an acceptable reciprocity tariff.<sup>8</sup>

5. In 2019, Western submitted a petition for declaratory order for a Commission finding that its tariff revisions made to comply with the Commission's mandates in Order Nos. 676-H,<sup>9</sup> 764,<sup>10</sup> 784,<sup>11</sup> 792,<sup>12</sup> and 828<sup>13</sup> substantially conform or are superior to the *pro forma* OATT, and qualify Western's tariff as an acceptable reciprocity tariff. The Commission granted Western's petition in part, but found that Western's tariff, as revised, was not then an acceptable reciprocity tariff. The Commission stated that "to find that Western has an acceptable reciprocity tariff, Western must submit revisions to its tariff to also incorporate changes associated with Order Nos. 827, 842, 845, and 1000."<sup>14</sup>

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<sup>7</sup> Order No. 890, 118 FERC ¶ 61,119 at P 191.

<sup>8</sup> See *Western Area Power Admin.*, 133 FERC ¶ 61,193 (2010); *Western Area Power Admin.*, Docket Nos. EF11-4-000 and EF11-4-001 (Apr. 25, 2011) (delegated letter order).

<sup>9</sup> *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-H, 148 FERC ¶ 61,205, *as modified, errata notice*, 149 FERC ¶ 61,014 (2014), *order on reh'g*, 151 FERC ¶ 61,046 (2015).

<sup>10</sup> *Integration of Variable Energy Resources*, Order No. 764, 139 FERC ¶ 61,246, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

<sup>11</sup> *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 144 FERC ¶ 61,056 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

<sup>12</sup> *Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159 (2013), *as modified, errata notice*, 146 FERC ¶ 61,019 (2014), *as modified, errata notice*, 148 FERC ¶ 61,215 (2014), *clarifying*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

<sup>13</sup> *Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities*, Order No. 828, 156 FERC ¶ 61,062 (2016).

<sup>14</sup> See *Western Area Power Admin.*, 168 FERC ¶ 61,022, at P 27 (2019).

## II. Western's Filing

6. In its filing, as discussed below, Western proposes to modify Large Generator Interconnection Procedures and Large Generator Interconnection Agreement (LGIP and LGIA, respectively), and Small Generator Interconnection Procedures and Small Generator Interconnection Agreement (SGIP and SGIA, respectively) in order to comply with the Commission's mandates in Order Nos. 827<sup>15</sup> and 842.<sup>16</sup> In addition, Western proposes to revise its tariff to address other issues, such as defining terms, updating language, and adding ministerial changes in order to improve clarity and consistency. However, Western defers addressing the revisions promulgated in Order Nos. 845<sup>17</sup> and 1000<sup>18</sup> until a later date. Western petitions the Commission for a declaratory order finding that these modifications to its tariff substantially conform or are superior to the Commission's *pro forma* OATT, and that these modifications satisfy the requirements for reciprocity status. Finally, Western seeks an exemption from the filing fee applicable to declaratory orders based on its non-jurisdictional status.

### A. Order No. 827

7. In Order No. 827, the Commission revised Appendix G to the *pro forma* LGIA, and the *pro forma* SGIA to eliminate the exemptions for wind generators from the requirement to provide reactive power, and require newly interconnecting non-synchronous generating facilities to provide reactive power.

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<sup>15</sup> *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277, *order on clarification and reh'g*, 157 FERC ¶ 61,003 (2016).

<sup>16</sup> *Essential Reliability Services and the Evolving Bulk-Power System – Primary Frequency Response*, Order No. 842, 162 FERC ¶ 61,128, *order on clarification and reh'g*, 164 FERC ¶ 61,135 (2018).

<sup>17</sup> *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g*, Order No. 845-A 166 FERC ¶ 61,137 (2019).

<sup>18</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

8. In this filing, Western proposes to add *pro forma* language established in Order No. 827 to LGIA Article 9.6.1 and SGIA Article 1.8.1 to require all newly interconnecting non-synchronous generators that have not executed a facilities study agreement as of a given deadline to maintain a composite power delivery at continuous rated power output at the high-side of the generating facility substation at a power factor within the range of 0.95 leading to 0.95 lagging, unless the transmission provider has established a different power factor range that applies to all similarly situated non-synchronous generating facilities in the control area on a comparable basis. Western, however, proposes to modify the *pro forma* language so that the facilities study agreement execution deadline is established as the initial effective date, rather than the effective date of Order No. 827, in the interest of its existing interconnection customers.<sup>19</sup>

9. In addition, Western proposes to append non-*pro forma* language to the end of new *pro forma* LGIA Article 9.6.1.2 and new *pro forma* SGIA Article 1.8.1.2 to state that: “This requirement shall also apply to existing non-synchronous generators making upgrades that require a new [LGIA/SGIA] only where the Transmission Provider’s Interconnection System Impact Study shows the need for reactive power as a result of an upgrade. If applicable, this requirement will be memorialized in [Appendix C/Attachment 5] of this [LGIA/SGIA].” Western states that this non-*pro forma* language is largely similar to the language the Commission accepted for Florida Power & Light Company and Sky River LLC.<sup>20</sup>

10. Western proposes to modify its LGIA Appendix G to adopt the *pro forma* language that provides that the reactive power requirements specified therein apply only to newly interconnecting wind generating plant that has executed an interconnection facilities study agreement as of the initial effective date of Western’s filing of these proposed revisions. Western also proposes to correct the modified Appendix G’s reference to “section 9.6.1 of this LGIA” to “Article 9.6.1 of this LGIA.”<sup>21</sup>

11. Finally, Western proposes to replace the power factor specification in tariff Section 8.0 of Attachments A and B and tariff Section 7.0 of Attachment F with the phrase “[t]o be filled in if applicable in accordance with Section 24.3 of the Tariff” in order to avoid potential conflict with Order No. 827’s specified power factor range and point of measurement for certain generating facilities.

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<sup>19</sup> Western Transmittal at 3.

<sup>20</sup> *Id.* at 3-4.

<sup>21</sup> *Id.* at 4.

**B. Order No. 842**

12. In Order No. 842, the Commission amended the *pro forma* LGIA and the *pro forma* SGIA to require newly interconnecting large and small generating facilities, both synchronous and non-synchronous, to install, maintain, and operate equipment capable of providing primary frequency response as a condition of interconnection. Order No. 842 also modified the *pro forma* LGIP, LGIA, SGIP, and SGIA to require newly interconnecting large and small electric storage resources to meet certain related requirements.

13. In this filing, Western proposes to revise LGIA Article 9.6.2.1 to conform to the *pro forma* language, and to adopt Order No. 842's *pro forma* language in LGIA Articles 9.6.4, 9.6.4.1, and 9.6.4.2 and SGIA Articles 1.8.4, 1.8.4.1, and 1.8.4.2. Consistent with Order No. 842, Western's proposed revisions require the interconnection customer to install, maintain, and operate a functioning governor or equivalent controls with the capability of operating with a maximum five percent droop and  $\pm 0.036$  Hz deadband, or in accordance with the NERC Reliability Standard providing for equivalent or more stringent parameters. Western's proposed revisions also require that the droop characteristic be based on the generating facility's nameplate capacity, and that the generating facility's real power response to sustained frequency deviations outside of the deadband setting is automatically provided and shall begin immediately after frequency deviates outside of the deadband, at least until system frequency returns to a value within the deadband setting of the governor or equivalent controls. Western's proposed revisions also prohibit the interconnection customer from blocking or otherwise inhibiting the ability of the governor or equivalent controls to respond, but ensure that the response is not inhibited, except under certain operational constraints.<sup>22</sup>

14. Western proposes to adopt the *pro forma* language in LGIA Article 9.6.4.3 and SGIA Article 1.8.4.3 to: exempt generating facilities regulated by the United States Nuclear Regulatory Commission from the primary frequency response requirements; and require generating facilities that are behind the meter generation that is sized-to-load (i.e., the thermal load and the generation are near-balanced in real-time operation and the generation is primarily controlled to maintain the unique thermal, chemical, or mechanical output necessary for the operating requirements of its host facility) to install primary frequency response capability in accordance with the aforementioned droop and deadband capability requirements. The proposed language, however, exempts those generating facilities from the other operating requirements of LGIA Articles 9.6.4, 9.6.4.1, 9.6.4.2, and 9.6.4.4 and SGIA Articles 1.8.4, 1.8.4.1, 1.8.4.2, and 1.8.4.4.

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<sup>22</sup> *Id.* at 5.

15. Western also proposes to adopt the *pro forma* language in LGIP Appendix, LGIA Article 9.6.4.4, and SGIA Article 1.8.4.4; and revise SGIP Attachment 2 to: require an interconnection customer interconnecting an electric storage resource to establish an operating range that specifies a minimum state of charge and a maximum state of charge between which the electric storage resource will be required to provide primary frequency response, and to specify whether the operating range is static or dynamic and consider relevant factors; and require an electric storage resource to provide timely and sustained primary frequency response within certain conditions when it is online and dispatched to inject electricity to the transmission system and/or receive electricity from the transmission system.

**C. Deferral of Tariff Revisions for Order Nos. 845 and 1000**

16. Western states that it is not, at this time, revising its tariff to incorporate changes resulting from Order Nos. 845 and 1000. Western states that it is currently reviewing Order No. 845's requirements and options for compliance, and developing the proposed tariff revisions to address Order No. 845. Western commits to submit a subsequent filing to the Commission addressing Order No. 845 as soon as practicable after the Commission approves tariff language proposed by other transmission providers in their compliance filings addressing certain Order No. 845 requirements, and after Western completes its analysis and confirms that the final requirements will not conflict with Western's statutory requirements, proposes tariff revisions, and obtains input from stakeholders.<sup>23</sup>

17. Western states that its DSW, RMR, and SNR regions are currently participating in the WestConnect transmission planning region. Western states that it was prepared to incorporate revisions to Part II of Attachment P to its tariff to reflect the participation of those regions and to address Order No. 1000's requirements in its previous April 1, 2019 tariff revision filing in Docket No. NJ19-10-000; however, Western continues, the public utility transmission providers in the WestConnect transmission planning region have suggested to Western they may terminate their filed tariff planning attachments and refile to remove the Commission-approved coordinating transmission owner provisions. Western states that currently, the jurisdictional entities have appealed the Commission's latest order involving the WestConnect planning region and that appeal is continuing to be held in abeyance pending ongoing discussions between the jurisdictional and non-jurisdictional parties.<sup>24</sup> Western also states that the parties recently reached an agreement in principle that they believe will result in just and reasonable rates within the WestConnect region indicating the parties intend to file a settlement agreement for the Commission's approval. Western asserts that it therefore decided to continue to defer incorporating

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<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 6-7.

Order No. 1000-related revisions to Part II of Attachment P to its tariff until such time as Western can ensure the final modifications to the WestConnect planning region documents will not conflict with Western's statutory requirements and Western determines whether DSW, RMR, and SNR can continue to participate.

#### **D. Other Revisions**

18. Western proposes to define the term "Tariff" and the acronym "OATT." Western also proposes to remove or update incorrect or unnecessary languages in various sections of Attachment C, Attachment J, and Attachment G, including: updating the language describing the process for the release of non-firm transmission capacity; updating language that more generally reflects the transmission reliability margin calculation requirements of the western-region reserve sharing groups in which Western's affected transmission providers currently participate; modifying language to properly indicate that Western's decisions related to National Environmental Policy Act on whether to execute an agreement applies to all agreements under the tariff and not solely to an LGIA as currently stated; and revising language to indicate the full names of interconnection facilities study agreement and interconnection system impact study agreement.<sup>25</sup> In addition, Western proposes to make various ministerial changes revisions and corrections to its tariff, LGIP, LGIA, SGIP, and SGIA.<sup>26</sup>

### **III. Notice of Filing and Responsive Pleadings**

19. Notice of Western's filing was published in the *Federal Register*, 84 Fed. Reg. 71,406 (Dec. 27, 2019), with motions to intervene and protests due on or before January 3, 2020. Modesto Irrigation District and Southwest Transmission Dependent Utility Group<sup>27</sup> filed timely motions to intervene.

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<sup>25</sup> *Id.* at 7-8.

<sup>26</sup> *Id.* at 8-9.

<sup>27</sup> Southwest Transmission Dependent Utility Group includes: Aguila Irrigation District, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 6, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Hohokam Irrigation and Drainage District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, City of Needles, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, and Wellton-Mohawk Irrigation and Drainage District.



#### IV. Commission Determination

##### A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the intervenors' timely, unopposed motions to intervene serve to make them parties to this proceeding.

21. Because Western is an agency of the United States Department of Energy engaged in the official business of the Federal government, we grant Western's request for waiver of the filing fee.<sup>28</sup>

##### B. Discussion

22. We grant in part and deny in part Western's petition for declaratory order. We have compared the non-rate terms and conditions of Western's revised tariff to those in the Commission's *pro forma* OATT. We find that the revised terms and conditions of Western's tariff that incorporate changes resulting from Order Nos. 827 and 842 substantially conform or are superior to those in the Commission's *pro forma* OATT. We also find that Western's other proposed tariff changes provide clarity to Western's customers. Accordingly, we grant Western's request that the Commission declare that Western's tariff revisions substantially conform or are superior to the Commission's *pro forma* OATT.

23. However, for the Commission to find that Western has an acceptable reciprocity tariff, Western must submit revisions to its tariff to also incorporate changes associated with Order Nos. 845 and 1000. Because Western is currently analyzing the impact of adopting the tariff language implemented by these Commission orders and has determined to defer implementation to a later date, we cannot find that Western's tariff, as revised here, is an acceptable reciprocity tariff.<sup>29</sup> We encourage Western to file a further updated tariff once it completes its stakeholder process and review.

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<sup>28</sup> 18 C.F.R. §§ 381.102(a), 381.108(a), 381.302(c) (2019).

<sup>29</sup> The Commission has found that non-jurisdictional entities' tariffs were not acceptable reciprocity tariffs because they did not implement changes to the *pro forma* OATT. See, e.g., *U.S. Dept. of Energy – Bonneville Power Admin.*, 128 FERC ¶ 61,057, at PP 32, 45 (2009), *order denying reh'g*, 135 FERC ¶ 61,023 (2011) (finding that Bonneville Power Administration's tariff did not meet the safe harbor reciprocity requirements because the tariff was incomplete and did not incorporate certain Order No. 890-related provisions); see also *Western Area Power Admin.*, 168 FERC ¶ 61,022 (finding that Western's tariff did not meet the requirements to be an acceptable

The Commission orders:

(A) Western's petition for declaratory order is hereby granted in part, effective February 11, 2020, and denied in part, as discussed in the body of this order.

(B) Western's request for exemption from the filing fee is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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reciprocity tariff because Western did not incorporate changes associated with Order Nos. 827, 842, 845, and 1000).