

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.

Southwest Transmission Cooperative, Inc.

Docket No. NJ06-5-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued February 16, 2007)

1. On August 30, 2006, Southwest Transmission Cooperative, Inc. (Southwest) filed a petition for declaratory order requesting a finding that its updated “safe harbor” open access transmission tariff (OATT) constitutes an acceptable reciprocity tariff pursuant to the provisions of Order No. 888.¹ Southwest also requests waiver of the filing fee.
2. In this order, we will grant Southwest’s petition for a declaratory order and grant Southwest's request for waiver of the filing fee.

Background

3. Southwest states that it is a transmission only, non-profit rural electric cooperative that serves six, member rural electric distribution cooperatives. Southwest is subject to the jurisdiction of the Arizona Corporation Commission (Arizona Commission) with

¹ *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 No. 888), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997) (Order No. 888-A), *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).

respect to the rates Southwest charges member distribution cooperatives.² Southwest has a mortgage with the Rural Utilities Service of the Department of Agriculture and is thus not a public utility under the Federal Power Act.³

4. Previously, on April 11, 2001, as amended on April 13, 2001, in Docket No. NJ01-3-000, Southwest tendered for filing with the Commission a petition for a declaratory order. On May 30, 2001, the Commission granted Southwest's petition, finding that its proposed reciprocity tariff was acceptable. In addition, the Commission granted waiver of the filing fee.⁴

5. Subsequently, on July 1, 2002, in Docket No. NJ02-5-000, Southwest filed revisions to its reciprocity tariff to update its rates to reflect changes in transmission costs and volumes. On December 23, 2002, the filing was accepted in an unpublished letter order.

6. On September 1, 2005 in Docket No. NJ05-6-000, Southwest filed further revisions to its reciprocity tariff to incorporate the proposed Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP) and to update its rates. On February 9, 2006, the Commission granted Southwest's petition, subject to modifications.⁵

7. Finally, on December 22, 2005, in Docket No. NJ06-1-000, Southwest filed a revision to its reciprocity tariff to update its rates in accordance with a rate schedule that Southwest stated was approved and directed by the Arizona Commission. The December 22, 2005 filing was accepted in a letter order dated March 13, 2006.⁶

² Southwest states that it has been contesting the Arizona Commission's assertion of such jurisdiction in litigation that was initiated before the Arizona Commission and remains pending on appeal in Arizona state court.

³ 16 U.S.C. § 824 (2000).

⁴ See *Sierra Southwest Cooperative Services, Inc. and Southwest Transmission Cooperative, Inc.*, 95 FERC ¶ 61,310 (2001).

⁵ See *Southwest Transmission Cooperative, Inc.*, 114 FERC ¶ 61,125 (2006) (*Southwest*).

⁶ See *Southwest Transmission Cooperative, Inc.*, 114 FERC ¶ 61,258 (2006).

Southwest's Reciprocity Tariff

8. Southwest submits a petition for declaratory order requesting a finding that its updated safe harbor OATT constitutes an acceptable reciprocity tariff and also requests waiver of the Commission's filing fee based on its non-jurisdictional status. In particular, Southwest explains that it has updated its safe harbor OATT in four respects: (1) revised transmission rates that reflect phased rate increases approved and directed by the Arizona Commission; (2) removal of language in article 11.4.1 of the LGIA that Southwest had previously added, but the Commission had found was unnecessary (*citing Southwest*, 114 FERC ¶ 61,125 at P 27); (3) adoption of the small generator and wind interconnection rules in Order No. 661 and Order No. 2006, respectively;⁷ and (4) modification of the Small Generator Interconnection Agreement (SGIA) to reflect changes in the large generator interconnection rules that Southwest previously made, and the Commission accepted, in light of Southwest's status as a non-jurisdictional, tax-exempt Arizona Commission-regulated, consumer-owned cooperative subject to regulation by the Rural Utilities Service.

9. With respect to its revised transmission rates, Southwest explains that the rate increases flow through to member and nonmember network and point-to-point transmission service customers. Accordingly, it asserts, comparability in Southwest's transmission rates has been preserved.

Notice of Filing and Responsive Pleadings

10. Notice of Southwest's August 30, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 54,045 (2006), with interventions and protests due on or before September 27, 2006. None was filed.

Discussion**Reciprocity Tariff**

11. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁸ Under this procedure, non-public utilities may voluntarily submit to the Commission a transmission tariff and a petition for

⁷ In *Southwest*, the Commission had found that Southwest's reciprocity tariff would not be valid until Southwest complied with Order Nos. 661 and 2006. *Southwest*, 114 FERC ¶ 61,125 at P 34.

⁸ Order 888 at 31,760, Order 888-A at 30,281-87.

declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that such a tariff contains terms and conditions that substantially conform or are superior to those in the *pro forma* tariff contained in Order No. 888, 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.⁹

12. We have compared the non-rate terms and conditions of Southwest's updated safe harbor OATT to those in the Commission's *pro forma* tariff. We find that the proposed non-rate terms and conditions of Southwest's safe harbor OATT substantially conform or are superior to the *pro forma* tariff. Therefore, we find that Southwest's updated safe harbor OATT is an acceptable reciprocity tariff.¹⁰

13. With respect to article 1.10 of the SGIA, which states that Southwest is not required to provide or offer any service that it determines, in its sole discretion, it is incapable of providing on its transmission system, we will accept Southwest's modification. However, if the Commission receives complaints alleging that Southwest is abusing its "sole discretion," we will reevaluate whether Southwest's safe harbor OATT is an acceptable reciprocity tariff.

14. We have previously explained that the review standard for reciprocity tariff rates is that the non-public utility must provide sufficient information for us to conclude that its rates are comparable to the rates that it charges itself.¹¹ Southwest's proposed rates would be applicable to all of its customers, including its six member cooperatives.

⁹ 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.

¹⁰ We note that the Commission is issuing, concurrently with this order, a Final Rule in Docket Nos. RM05-17-000 and RM05-25-000 (Order No. 890) that addresses and remedies opportunities for undue discrimination under the *pro forma* OATT adopted by Order No. 888. As the Commission explains in Order No. 890, a non-public utility that already has a safe harbor OATT (e.g., Southwest) must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.

¹¹ *See, e.g., Long Island Power Authority*, 84 FERC ¶ 61,280, at 62,333 (1998); *Salt River Project Agricultural Improvement and Power District*, 83 FERC ¶ 61,280, at 62,162 (1998).

15. We find that Southwest has provided sufficient information for us to conclude that Southwest's revised rates are comparable to the rates it charges itself. Accordingly, we find that the proposed rates meet the standard for a reciprocity tariff.

Filing Fee

16. We will grant Southwest's request for waiver of the filing fee. 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. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in those circumstances."¹²

The Commission orders:

(A) Southwest's petition for declaratory order is hereby granted, and its tariff is hereby deemed to represent an acceptable reciprocity tariff, as discussed in the body of this order.

(B) Southwest's request for waiver of the filing fee is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² Order No. 888-A at 30,288-89.