

124 FERC ¶ 61,240
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.

WestConnect

Docket No. EL08-68-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued September 18, 2008)

1. In this order, the Commission grants, with clarification, a Petition for Declaratory Order Relating to WestConnect's Proposed Two-Year Experimental Regional Transmission Pricing Initiative (Petition) filed by a group of jurisdictional and non-jurisdictional transmission providers in the Western Interconnection (the Participants).¹ Our guidance in this order on the Petition will promote access to coordinated transmission service from multiple transmission providers at a single rate, encouraging greater, more efficient use of the transmission grid, and has the potential to reduce costs to customers.

Background

2. Participants state that they have formed WestConnect, an unincorporated association, to offer transmission customers the option of purchasing hourly non-firm point-to-point transmission service across their transmission systems at a single rate (the Proposal), as an alternative to purchasing pancaked point-to-point transmission service

¹ At this time, the Participants subject to the Commission's public utility jurisdiction are Arizona Public Service Company, El Paso Electric Company, Nevada Power Company/Sierra Pacific Power Company, Public Service Company of Colorado, Public Service Company of New Mexico, and Tucson Electric Power Company. The non-jurisdictional Participants are Tri-State Generation and Transmission Association, Inc. and the Western Area Power Administration, a federal power marketing administration. Although Sierra Pacific Power Company, Imperial irrigation district, Sacramento Municipal Utility District, Salt River Project Agricultural Improvement and Power District, and Southwest Transmission Cooperative, Inc. are also members of WestConnect, they have chosen not to participate in the proposal that is the subject of the Petition.

currently offered under the petitioners' individual Open Access Transmission Tariffs (OATTs).² The Proposal would establish a two-year experimental pricing initiative offering transmission customers the option to reserve, schedule, and pay for hourly non-firm point-to-point transmission service across multiple participating transmission systems at a single rate. Participants would offer coordinated transmission service on a nondiscriminatory basis to all eligible transmission customers and would include service over jurisdictional and non-jurisdictional transmission facilities. Taking coordinated service from a transmission provider under the Proposal would be an alternative to, and not an exclusive replacement for, point-to-point transmission service offered under the Participants' OATTs at pancaked rates.³

3. Under the Proposal's pricing initiative, transmission customers would pay for service at the highest ceiling rate for hourly non-firm transmission service posted on the Open Access Same-Time Information System (OASIS) of the participating transmission providers involved in a WestConnect transaction. Transmission customers would also be charged for transmission losses, scheduling, system control and dispatch charges of each of the participating transmission providers in the transaction, reactive supply charges for the participating transmission provider on the last segment of the transaction, and an administrative charge payable to a centralized coordinator of the regional transmission service.⁴ Service under the Proposal would be offered to all eligible customers and, therefore, the Participants propose that the discounting provisions under their individual OATTs would not apply. The Participants contend that the Proposal is structured such that the rates of non-jurisdictional Participants should not fall within the jurisdictional review requirements of the Commission.

4. In compensation for services they provide under the Proposal, Participants providing service would be allocated a *pro rata* share of revenues based on the ratio of the posted OASIS ceiling rate of each transmission provider involved to the sum of those ceiling rates; provided that, none of the Transmission Providers will collect more than their OASIS posted ceiling rate.⁵

² Petition at 4.

³ Pancaked rates occur when a transmission customer must pay separate rates for a transaction that crosses multiple transmission systems.

⁴ The Petition states that the centralized coordinator, or billing agent, will be the OASIS manager and will collect an administrative charge. Petition at 15.

⁵ Petition, Attachment 3 at 3.

5. Petitioners propose to implement service under the Proposal through an agreement among all the Participants (Participation Agreement) and a separate transmission tariff (Regional Tariff) for each WestConnect Participant.⁶ They state that the Proposal does not contemplate the creation of a regional transmission organization or independent system operator. They state that the primary purpose of the Proposal is to learn how the offer of an alternative to pancaked rate service for transmission might affect (1) use of available transfer capability on the participating transmission owners systems, and (2) transmission revenues of the participating transmission owners. Finally, the Participants state that they will use the wesTTrans common OASIS for the Proposal and that all requests and reservations for service under the Proposal will take place only on the wesTTrans OASIS.⁷

6. The Participation Agreement allows a Participant to withdraw from the Proposal: at any time before the Proposal begins; at any time as a result of adverse regulatory actions; or, after the first annual anniversary date, for any reason with ninety days' prior notice. The Participants seek Commission confirmation that any withdrawal by a jurisdictional Participant would be allowed without Commission approval of the withdrawal, subject only to a timely informational filing by the withdrawing Participant and notice posted on the wesTTrans OASIS.

7. Petitioners request the Commission's declaratory order on the following questions:

- A. Whether the Commission agrees that the filing approach of WestConnect suggested by the Participants is consistent with the requirements of the Federal Power Act (FPA) and the Commission's regulations thereunder;
- B. Whether the Commission agrees that the Proposal is structured in such a way that Commission review of the transmission rates, revenue requirements or costs of non-jurisdictional Participants under FPA sections 205 and 206 in connection with the Proposal is neither required nor appropriate;
- C. Whether the Commission agrees that the discount rule (at schedule 8 of the pro forma OATT) does not apply to the Proposal;

⁶ A form of the Participation Agreement and of the Regional Tariff are attached to the Petition.

⁷ wesTTrans.net "is an enhanced OASIS site serving a significant portion of the Western Interconnection." See <http://www.westtrans.net>.

- D. Whether the Commission agrees that a jurisdictional Participant may withdraw from the Proposal in accordance with the terms of the Participation Agreement and a notice filing for informational purposes not requiring further approval or acceptance by the Commission; and
- E. Whether there are any aspects of the proposed rate structure that, in the Commission's view, raise issues that should be (but have not been) addressed by the Participants.

8. Petitioners request that the Commission respond to the Petition no later than September 15, 2008, in order that, upon a favorable decision, preparatory and start-up activities will allow the Proposal to begin February 1, 2009.

Notice of Filing and Responsive Pleadings

9. Notice of the Petition was published in the *Federal Register*, 73 Fed. Reg. 36,314 (2008), with interventions and protests due on or before July 10, 2008. Timely motions to intervene were filed by Arizona Public Service Company, Southwest Transmission Dependent Utility Group, Metropolitan Water District of Southern California, and Xcel Energy. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Discussion

10. The Commission addresses below each of the questions posed in the Petition. At the outset, however, we commend the Participants for their efforts to develop a proposal to coordinate the provision of transmission service on a regional basis in the Western Interconnection. If implemented, the Proposal will allow customers to access service provided by multiple transmission providers at a single rate, encouraging greater, more efficient use of the transmission grid, and has the potential to reduce costs to customers. The Commission encourages the Participants and other transmission providers in non-organized markets to continue their efforts to identify ways in which they can enhance the services they provide. We look forward to further development of the Proposal and, to that end, provide the requested guidance below.

A. Structure of the Proposal

11. Petitioners seek the Commission's declaration that the filing approach of WestConnect suggested by the Participants is consistent with the requirements of the FPA and the Commission's regulations thereunder. Petitioners propose to file the Participation Agreement as a rate schedule of WestConnect. Each jurisdictional Participant would file an identical Regional Tariff with the Commission that details the rates, terms and conditions for transmission service under the Proposal.

Commission Determination

12. We will grant the petitioners' request on the structure of the proposal. The Participants state that WestConnect is an unincorporated, voluntary membership association governed by a memorandum of understanding among its members.⁸ As such, the Commission recognizes that WestConnect is not a public utility and will not be the transmission service provider. The transmission service described in the Petition will be provided through the Participants' OASIS pursuant to their Regional Tariffs.⁹ Therefore, it is reasonable for the Participants in the Proposal to submit the Participation Agreement as a rate schedule of WestConnect on behalf of its public utility Participants, with each public utility Participant filing its Regional Tariff individually for Commission review and approval.

B. Participation of Non-Jurisdictional Entities

13. Petitioners seek a determination that the Proposal is structured in such a way that Commission review of the transmission rates, revenue requirements, or costs of non-jurisdictional Participants under FPA sections 205 and 206 is neither required nor appropriate. Petitioners explain that the non-jurisdictional members are concerned that the Commission may subject them to the rate filing and rate review requirements in light of the decisions in *Pacific Gas and Electric Co.* and *Basin Electric Power Cooperative*.¹⁰ Petitioners explain that, based on these cases, it appears that when the transmission revenue requirement of a non-jurisdictional participant is used as part of a jurisdictional utility's rate, the Commission may review the justness and reasonableness of the non-jurisdictional participant's revenue requirement.

14. Petitioners, however, assert that several facets of the Proposal's design distinguish it from *Vernon* and *Basin*. First, they contend that contrary to *Vernon* and *Basin*, the Proposal does not provide for the collection of the revenue requirement of any non-jurisdictional Participant by a jurisdictional Participant. When service is provided over transmission paths owned in part by non-jurisdictional Participants, the rate charged for transmission service may be that of the non-jurisdictional Participant if it is the most expensive of all transmission providers on the requested path. However, the transmission

⁸ See Petition at 3.

⁹ All Participants in WestConnect use the wesTTrans OASIS. See note 7.

¹⁰ *Pacific Gas & Electric Co. v. FERC*, 306 F.3d 1112, (D.C. Cir. 2002), on remand, *City of Vernon, California*, 111 FERC ¶ 61,092 (2005), *reh'g granted in part and denied in part*, 112 FERC ¶ 61,207 (2005), *reh'g denied*, 115 FERC ¶ 61,297 (2006) (*Vernon*); *Basin Electric Power Cooperative*, 113 FERC ¶ 61,079 (2005) (*Basin*).

customer always has the option to take service under the Participants' individual OATTs and pay pancaked rates instead of the rate charged under the Proposal. In the petitioners' view, the ability of the eligible transmission customers to verify the transmission charges from the OASIS of each transmission provider will ensure that the transmission customer can make an appropriate decision regarding the type of service it desires.

15. Petitioners also argue that, unlike the blended transmission rates in *Vernon* and *Basin*, the rate for service provided under the Proposal is not designed to recover the revenue requirements of all the Participants. The only effect of a non-jurisdictional Participant's rate on jurisdictional service is to contribute to how much less than its posted rate the jurisdictional Participant will receive, given that each participant in the Proposal that provides transmission service will receive a *pro rata* share of the rate charged under the Proposal. The rate a jurisdictional transmission provider will effectively receive, by virtue of the *pro rata* revenue distribution, will always be less than the "applicable just and reasonable rate for a jurisdictional transaction."¹¹

16. Petitioners state that the administrative charge, ancillary services, and losses will not affect the revenue requirements or rates of the non-jurisdictional transmission providers. The administrative charge will always be collected and retained by the billing agent as compensation for its services. Further, ancillary service costs and losses will be priced at the rate of the transmission owner that provides the ancillary service or losses (the last segment owner of any transmission path) and the billing agent will distribute the collected sums for such service directly to such transmission owner.

17. Petitioners also state that the non-jurisdictional transmission providers will not submit their costs, revenue requirements, and rates to the Commission for review under section 205. Petitioners therefore request that the Commission declare that the Proposal, as structured, does not require review under FPA sections 205 or 206 of non-jurisdictional Participants' transmission rates or revenue requirements.

Commission Determination

18. The Commission finds that participation by the non-jurisdictional Participants in the Proposal, as described in the Petition, does not by itself make their rates, revenue requirements, or costs subject to review under FPA section 205 or 206. Under *Vernon* and *Basin*, the Commission's duty is to ensure that the rates charged by a jurisdictional public utility are just and reasonable.¹² The Commission must therefore review the rates, revenue requirements, and costs of the non-jurisdictional Participants only if they affect

¹¹ Petition at 31.

¹² See *Vernon*, 306 F.3d at 1118-19; *Basin*, 113 FERC ¶ 61,079 at P 15.

the rates charged by jurisdictional Participants for jurisdictional service they provide. As described in the Petition, however, the Proposal contains certain protections for transmission customers that ensure that the rates charged by jurisdictional Participants for service they provide do not exceed just and reasonable amounts.

19. Revenues for each jurisdictional Participant for service they provide are capped at the OASIS posted ceiling rate.¹³ Therefore, participation of a non-jurisdictional Participant in the provision of coordinated service will never cause the rate charged by the jurisdictional Participants, in the form of allocated revenues, to be higher than their OATT rates, already found by the Commission to be just and reasonable. Even if a non-jurisdictional Participant were to increase its rate in an effort to increase its allocated share of revenues for coordinated service under the Proposal, capping allocated revenues to each jurisdictional Participant at its OATT rate provides adequate protections for that transmission provider's customers.

20. We therefore agree that participation by the non-jurisdictional participants in the Proposal, as described in the Petition, would not by itself subject their rates, revenue requirements, or costs to review under FPA section 205 or 206.

C. The Discount Rule under Open Access Transmission

21. Petitioners state that both the jurisdictional and non-jurisdictional Participants have two concerns regarding the Commission policies regarding the offering of discounted transmission service. Specifically, they note that the "discount rule" included in Schedule 8 of the *pro forma* OATT states, in short, that any discount agreed upon for service on a transmission path from points of receipt to points of delivery must be offered to all eligible transmission customers for the same time period to the same point of delivery.

22. First, petitioners ask that the Commission not interpret the discount rule to require that the rate charged under the Proposal on all available paths to the same point of delivery be the lowest rate for any of those paths. Petitioners contend that it would be inconsistent with the filed rate under the Proposal if the Commission were to require the lowest of the path rates be applied to all paths terminating at the same point of delivery. Because available transmission capacity between the point of receipt and point of delivery may be available on paths owned by different Participants with different rates, the rate under the Proposal will be determined separately, based upon the highest rates of the transmission owner on that path. Accordingly, petitioners argue that applying the lowest rate to all paths would be inconsistent with the Proposal's rate design.

¹³ Petition Attachment 3 at 3-4.

23. Second, petitioners contend that the discount rule should not be interpreted to require the Participants to offer discounted transmission service on all transmission paths terminating at the same point of delivery under their individual OATTs whenever they receive less than their posted rate when providing regional transmission service under the Proposal. Petitioners argue that the rate under the Regional Tariff will not be discounted even when it is lower than the sum of the rates of the Participants' OATT rates and produces transmission revenues that are lower than what the Participants would have collected under such OATT rates. They contend that the Regional Tariff rates are instead formula tariff rates resulting from the provision of service under the Proposal pursuant to the Participation Agreement. Rates for service under the Proposal will not be subject to negotiation and, therefore, not subject to discounting.

Commission Determination

24. The Commission agrees with the petitioners that the discount rule stated in section 8 of the *pro forma* OATT would not apply to rates charged for service by each transmission provider under its Regional Tariff. That service, as set forth in the Petition, would be offered on a nondiscriminatory basis and thus all eligible customers would have access to the rates available under Regional Tariff.

D. Withdrawal Provision

25. Petitioners state that the Participation Agreement will permit a participant to withdraw from the Proposal in the following circumstances: for any reason, and at the sole discretion of the Participant, before the Proposal begins; at any time, after the Proposal begins, as a result of adverse regulatory action;¹⁴ and, for any reason, with ninety days' prior written notice, after the Proposal begins.

26. Petitioners propose that any jurisdictional Participant's withdrawal from the Proposal be subject only to the filing of an informational notice with the Commission. They request that the Commission deem that such notice satisfies the requirements of the Commission's regulations requiring the filings of notices of withdrawal. Petitioners state that notices of withdrawal would be posted promptly on the westTrans OASIS so all interested stakeholders will have notice of the withdrawal, including the proposed effective date of the withdrawal.

¹⁴ Petitioners state that such instances include conditions imposed by the Commission or any other governmental agency, including the subjecting of rates, transmission revenue requirements or costs of a non-jurisdictional participant to review under the FPA. Petition at 16.

27. Petitioners claim that good cause exists to deem notices of filing satisfy the Commission's regulations because no customer will be adversely affected as a result of the early withdrawal. They explain that the Proposal contemplates only hourly non-firm service and that any withdrawing Participant will remain responsible for completion of pre-existing transactions under the Proposal. Hourly, non-firm transmission service under a Participant's OATT will furthermore continue to be available over the system of any withdrawing participant.

Commission Determination

28. The Commission grants waiver of the Commission's regulations regarding notice of rate changes. The waiver is granted because the Proposal is a voluntary program, concerns hourly non-firm point-to-point service only, and because customers are always protected because the rates of jurisdictional entities are capped at their OATT rates. Customers can, moreover, elect the existing pancaked rate structure over the Proposal. In the section 205 filings proposing tariff sheets to effectuate the Proposal, jurisdictional Participants should clearly indicate that any notice of withdrawal made with the Commission will be filed for informational purposes only, that is, not subject to notice and comment. Such notice of withdrawal should be accompanied by a form of notice, to be published in the *Federal Register*, to inform the public that the relevant tariff sheets have been terminated and cancelling the relevant tariff sheets associated with the jurisdictional Participant's participation in the Proposal.

The Commission orders:

The Commission grants, with clarification, the Petition, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.