

Response to Public Comments Regarding
Western Area Power Administration's Draft Order No. 890 Filing

Western Area Power Administration (Western) received comments from five parties during the public comment period on its draft Order No. 890 reciprocity Open Access Transmission Tariff (Tariff). No party tendered comments outside of the submission window. The parties' comments, and Western's responses, are discussed below.

I. Tariff

A. Section 1.29

A commenter suggests that Western add the phrase "or ancillary services" after "transmission service" in the definition of the term "New Rate" in section 1.29 of Western's reciprocity Tariff.

Western agrees with the commenter's suggestion. The term "New Rate" was incorporated into Western's Tariff through a previous revision process. This was done to accommodate new language added concurrently in section 1.0 of Attachment J to Western's Tariff (Attachment J) regarding change of rates. However, Western's review indicates that the phrase "ancillary services" was inadvertently omitted from the term's definition. [See Western's August 3, 2005 and June 20, 2007 filings in Docket Nos. NJ05-1-001 and -002, respectively, and FERC's order and delegated letter order in those same dockets.](#)¹ Consequently, Western will revise section 1.29 of its revised Tariff so that the term "New Rate" is now defined as "the modification of a Rate for transmission or ancillary services provided by the Transmission Provider, ~~that~~ which has been promulgated pursuant to the rate development process outlined in Power And Transmission Rates, 10 C.F.R. Part 903 (2006)."

Western's review also indicates the presence of a ministerial error in section 1.43 of its revised Tariff. For that reason, Western will revise this provision so that the term "Rate Adjustment" is now defined, in pertinent part, as "a change in an existing rate or rates, or the establishment ~~of~~ of a rate or rates for a new service."

The above being said, Western notes that the change of rates provision in section 1.0 of Attachment J only applies in cases where Western proposes a new or revised formula rate for transmission or ancillary services, and does not apply when Western merely updates the charge for those services based on an existing formula rate. Furthermore, a transmission customer's termination rights pursuant to section 1.0 of Attachment J would only apply if an adjustment to

¹ Blue text indicates a hyperlink to the relevant document(s) on either FERC's or Western's Internet site. Click anywhere on a hyperlink to activate it.

a new formula or new rate results in an increase in costs to the transmission customer taking the applicable service. [See Western’s August 3, 2005 filing in Docket No. NJ05-1-001](#) at p. 2-3; and [Western Area Power Administration, 119 FERC ¶ 61,175 \(2007\)](#) at P 17-18.

B. Section 3

A commenter asks whether Western will develop Western-wide principles, and seek customer involvement, to include non-generating assets in its ancillary service rates described in section 3 of Western’s revised Tariff.

Western clarifies that if and when it determines a potential need to include non-generating (e.g., demand response) resources in its Federal project ancillary service rates, Western will comply with all statutes and regulations relevant to developing such rates and will seek customer involvement during the process.

C. Section 15.4

A commenter suggests a modification to the new language in revised section 15.4(a) of Western’s Tariff regarding contingency of appropriations.

Western notes that a requirement of the Federal Anti-Deficiency Act restricts Western from obligating funds that have not yet been congressionally appropriated or authorized for expenditure, and, thus, Western’s obligation under the Tariff to expand or modify transmission facilities must be limited accordingly. [31 U.S.C. § 1341\(a\)\(1\)](#). Section 28.2 of Western’s Tariff has always contained Commission-approved non-pro forma language that notes such a limitation for network service requests; however, Western’s prior Tariff filings inadvertently omitted this language from the equivalent provision in section 15.4 for firm point-to-point transmission service requests. [See, e.g., Western’s December 31, 1997 filing in Docket No. NJ98-1-000](#). Here, Western revised section 15.4 of its Tariff to incorporate the requisite language, and since that language is identical to the longstanding “contingent upon appropriations” proviso in section 28.2, Western will retain it without modification.

A commenter observes that section 15.4(b) of Western’s Tariff contains the term “due diligence,” and asks whether that term should be replaced with “Reasonable Efforts.”

Western clarifies that it intentionally replaced the term “due diligence” with “Reasonable Efforts” only in sections of its Tariff related to the transmission study timeline and metric provisions, which is not the case with section 15.4(b) of the Tariff. [See Western’s June 2, 2009 Order 890 public meeting presentation](#) at slide no. 5, and [Western’s Brief Outline of Proposed Revisions](#) at section I.B. The purpose of this modification is discussed hereafter under section 19.10 of Western’s Tariff.

D. Section 15.4, et al.

A commenter asserts that Western should not offer planning redispatch under section 15.4, et al. of the Tariff. In support of its assertion, the commenter observes that Order No. 890 allowed for pre-existing Federal obligations to qualify as the type of firm commitments to others that would excuse transmission providers from the planning redispatch obligation, and the commenter also provides examples of certain Federal hydroelectric plants that it believes are not capable of providing the service.

Western agrees that Order No. 890 stated an allowance for pre-existing Federal obligations in the context of offering planning redispatch service under the Tariff. Nonetheless, Order No. 890-A explicitly found that hydroelectric-based systems are not generically exempt from the provision of planning redispatch service, and that while there is potential for disputes regarding the availability of a hydroelectric unit, such disputes are not unusual for other types of units that are equally subject to the planning redispatch requirements. See [Order No. 890](#) at P 948-949, and [Order No. 890-A](#) at P 537. Due to this finding, and inasmuch as the commenter did not provide a definitive technical or contractual argument that all Federal hydroelectric units Western operates are incapable of providing planning redispatch service, Western will retain the provisions in its Tariff related to that service and will study requests for it on a case-by-case basis as established in Order No. 890. This will allow Western to comply with the Commission's directives in Order No. 890 while retaining the ability to review specific requests for planning redispatch and determine whether or not the specific unit is capable of providing such service.

E. Section 19.2

A commenter suggests that Western add language to section 19.2 of its Tariff requiring forfeiture of deposit for a customer who opts out of a cluster study.

Western notes that section 17.3 of its Tariff requires Western to return a deposit with no interest if a transmission service request is withdrawn, which would include withdrawal due to a customer opting out of an established cluster study under section 19.2. For that reason, Western will not adopt the commenter's suggestion since it would result in Western providing disparate treatment to its transmission customers (i.e., between those who would seek to participate in a cluster study and those who would not), and may also discourage valid proposals to establish a cluster.

That being said, section 19.2 of Western's Tariff provides that a cluster study may be established only with the concurrence of all customers proposed to be included in that cluster. Therefore, if such a customer believes a transmission service request may have a high probability of being withdrawn before cluster study completion, then that customer may

refrain from providing its concurrence with the proposed cluster, and may also propose its own cluster as an alternative.

F. Section 19.10

A commenter argues that the term “due diligence” should be reinserted in section 19.10 of Western’s revised Tariff, rather than “Reasonable Efforts.”

As Western explained in previous filings with the Federal Energy Regulatory Commission (FERC), as a Federal power marketing administration (PMA), Western is a non-profit entity that implements strict cost controls on all aspects of its business, including establishing cost-effective staffing levels to fulfill Western’s role as a transmission owner and provider throughout multiple states. In addition, as a Federal entity, Western is subject to executive and congressional oversight regarding staffing, funding, and authorization limits. Funding levels for these items may be established that limit Western’s ability to meet various transmission and interconnection study deadlines. [See Western’s January 25, 2005 filing in Docket No. NJ05-1-000](#) and [March 1, 2007 filing in Docket No. NJ07-2-000](#), and [FERC’s respective orders in those dockets](#).

Consequently, Western proposed in its aforementioned filings—and FERC approved in its subsequent orders—global modifications to Western’s Large and Small Generator Interconnection Procedures and Agreements (LGIP, LGIA, SGIP, and SGIA, respectively). These modifications were intended to allow Western to meet its interconnection study and other deadlines using “Reasonable Efforts.” Similarly, to alleviate the conflict between Western’s statutory staffing and funding limitations and FERC’s goal of strict adherence by jurisdictional transmission providers to the pro forma Tariff’s 60-day transmission study timelines, Western will retain in its Tariff’s transmission study timeline and metric provisions substitution of the term “Reasonable Efforts” in place of “due diligence.”

Two commenters contend that Western appears to have removed the transmission study performance metrics reporting requirements from sections 19.10(i) and (ii) of its Tariff. Each commenter disagrees with such a revision, and one asks for clarification of Western’s intent in this respect.

Western clarifies that it omitted from sections 19.10(i) and (ii) of its Tariff only the requirement to submit to FERC notices and explanatory filings regarding late studies. As a Federal PMA, Western does not make such filings with FERC, and Western notes that FERC has approved the same omission in a reciprocity Tariff filed by another nonjurisdictional entity. [See East Kentucky Power Coop, Inc., 121 FERC ¶ 61,012 \(2007\)](#) at P 7 and 11-12. Western also clarifies that—for purposes of transparency—its Regional transmission providers will track and post on

their OASIS sites the transmission study performance metrics that were established in Order No. 890, but are not explicitly stated in the pro forma Tariff. [See Order No. 890](#) at P 1310.

G. Section 23.1

Two commenters express support for Western’s retaining the language in section 23.1 of the Tariff regarding pricing for transmission capacity reassignments.

Western appreciates the commenters’ expressions of support.

H. Section 29.2(v), et al.

A commenter asserts that in its revised Tariff, Western has adopted a non-pro forma clause that would require an off-system resource to have a firm transmission path to Western’s system so that it may be designated as a network resource.

Western agrees that its Tariff, as revised, requires an off-system resource to have a firm transmission path to Western’s system in order for it to be designated as a network resource; however, this requirement is the result of language incorporated into the pro forma Tariff by the FERC in its Order No. 890. Specifically, Western has adopted the new pro forma language in revised Tariff sections 29.2(v), 29.2(viii), 30.2, and 30.3(iv) requiring that network customers must, among several other things, (1) identify for off-system network resources the transmission arrangements on external system(s), and (2) provide a signed statement attesting that the designated network resources do not include any resources, or any portion thereof, that cannot be called upon to meet the network customer's network load on a non-interruptible basis. A network customer designating network resources must submit its attestation using the language set forth in sections 29.2(viii) and 30.2 of the Tariff, and is not permitted to merely reference the applicable section of the Tariff when completing the attestation requirement. If a network customer does not meet all of the designation requirements when it confirms its request, the transmission provider must notify that customer within 15 days of confirmation that its request is deficient, according to the procedures in section 29.2 of the Tariff. [See Order No. 890](#) at P 1476 and 1521-1522, and [Order No. 890-A](#) at P 919.

On a related matter, Western cautions that although Order No. 890 required that transmission providers be responsible for verifying the firmness of third-party transmission arrangements to deliver a designated network resource to the transmission provider's system, Order No. 890 nonetheless made it clear that it is the network customer’s responsibility to assure the pro forma Tariff requirements are satisfied before requesting designation of a network resource. Moreover, Order No. 890 indicated that the network customer must take appropriate steps to ensure that the resource has not been committed for sale to non-designated third party load or

is otherwise unable to be called upon to meet the network customer's network load on a non-interruptible basis, with compliance by jurisdictional and nonjurisdictional transmission customers subject to audit by FERC's Office of Enforcement, and with the potential for assessment of civil penalties in instances of noncompliance. [See Order No. 890](#) at P 1523-1526, and [Order No. 890-A](#) at P 921.

A commenter questions whether a network customer would be required to show the transmission path on the external system when designating the resource.

Western confirms that the Tariff's transmission arrangement identification and attestation requirements for off-system designated network resources must be satisfied at the time a new resource is designated either in an application for network service or under an existing network service agreement, or upon submitting a request to temporarily terminate (i.e., concurrently undesignate and redesignate) an existing designated network resource. [See Order No. 890](#) at P 1521, and section 30.3(iv) of the Tariff.

A commenter asks whether a network customer would be required to bring the off-system resource in under secondary network transmission if the transmission path on the external system is not firm.

Western confirms that resources (both on- and off-system) which do not meet all of the network resource designation requirements may be delivered on Western's system using secondary network service in accordance with section 28.4 of the Tariff.

As a point of clarification, Western notes that, in addition to the standard firm point-to-point transmission service product offered under the Tariff, conditional firm point-to-point transmission service may be used to import an off-system designated network resource into Western's system. [See Order No. 890](#) at P 1503.

A commenter asserts that by definition, since customers are buying "firm" power under several Edison Electric Institute (EEI) or Western Systems Power Pool (WSPP) contracts, customers do not need to identify the particular off-system resources for designation as network resources. According to the commenter, it is up to the supplier to ensure that the power is made available to the specified delivery point—not the customers—and in the event the supplier cannot deliver, it must pay liquidated damages.

Western agrees insofar as Order No. 890-A clarified that if an off-system power purchase is sufficiently firm to satisfy the designation requirements, then the transmission provider need not be concerned with the upstream transmission leg(s) from the generator(s) to the point where the buyer takes title of the firm power. Thus, if a power purchase agreement (PPA) is the resource being designated, and if that agreement is sufficiently firm in nature, it is not

necessary for the customer to demonstrate the firmness of the upstream transmission in order to designate the contract as a network resource. [See Order No. 890-A](#) at P 867.

Regarding the general issue of whether a PPA containing liquidated damages (LD) provisions is sufficiently firm to satisfy the Tariff's off-system network resource designation requirements, Order No. 890 stated that as of its effective date, PPAs designated as network resources may only contain LD provisions of the "make whole" type. Conversely, PPAs containing LD provisions that provide penalties of a fixed amount, are capped at a fixed amount, or otherwise do not require the seller to pay an aggrieved buyer the full cost of replacing interrupted power, are not acceptable to be designated as network resources. Further, any PPA which contains an unacceptable LD provision, but otherwise qualifies for designation as a network resource and has been properly designated as a network resource before the effective date of Order No. 890, may be grandfathered only until the earlier of (1) the expiration of the PPA's current term or (2) an indefinite termination of the PPA as a designated network resource pursuant to revised section 30.3 of the pro forma Tariff. That is, a firm LD contract that does not have a "make whole" LD provision and which is grandfathered according to Order No. 890 may continue to be temporarily terminated in order to make third-party sales without jeopardizing its eligibility to be redesignated after a third-party sale. However, once a network resource is indefinitely terminated, it must comport with the requirements for LD provisions, and all other requirements for designation of network resources, before it can be redesignated. [See Order No. 890](#) at P 1452-1455 and n. 868.

With respect to the EEI Master Power Purchase and Sale Agreement's Firm LD product (EEI Product), Order No. 890 found that it was acceptable for designation as a network resource. [See Order No. 890](#) at P 1455. Therefore, Western will permit the EEI Product to be designated as a network resource, provided the agreement is in the form accepted by FERC and has not been altered to allow interruptions of service for reasons other than reliability, as discussed immediately below.

With respect to the WSPP Schedule C agreement (WSPP Agreement), FERC initially concluded in Order No. 890 that the WSPP Agreement would not be eligible for designation as a network resource since the then-current version allowed interruptions for reasons other than reliability. [See Order No. 890](#) at P 1460. Subsequently, WSPP submitted to FERC—and FERC accepted—a modified form of the WSPP Agreement with a revised section C-3.8(c) of Service Schedule C prohibiting such interruptions. However, FERC granted its acceptance on the condition that other forms of WSPP Agreement allowing such interruptions will not be eligible for designation as a network resource. [See WSPP's March 9, 2007 filing in Docket No. ER07-624-000; and FERC's May 7, 2007 delegated letter order and May 8, 2007 Errata Notice in that same docket.](#) Accordingly, Western will permit the modified WSPP Agreement accepted by FERC to be

designated as a network resource, but not the prior or any altered form containing language allowing interruptions of service for reasons other than reliability.

With respect to other types of PPAs containing LD provisions, Western will consider requests to designate such agreements as network resources on a case-by-case basis according to the applicable requirements set forth in Order No. 890.

I. Schedules 4 and 9

A commenter asserts that it was not appropriate for Western to omit the pro forma tiered imbalance penalty bandwidths from Schedules 4 and 9 of Western’s Tariff.

Western did not adopt the specific pro forma rates language, including the tiered imbalance penalty bandwidths, in Schedule 4 and new Schedule 9 of its Tariff because Western may only determine its Federal project-specific transmission and ancillary service rate methodologies under public rate processes as required by statute and regulation. Therefore, adopting the pro forma bandwidths would have improperly predetermined the outcome of those requisite processes.

J. Schedule 10

A commenter observes that it has entered into agreements with Western’s Sierra Nevada Region (SNR) for reliability coordination, including reserve sharing. The commenter suggests that Western add language to new Schedule 10 of its Tariff stating that Unreserved Use penalties do not apply to a transmission customer’s use of transmission during emergencies or for the purposes of implementing reserve sharing arrangements.

Similar to the preceding issue, the commenter’s suggested language would improperly predetermine the outcome of any future project-specific Unreserved Use rate public processes that may be conducted by Western’s Regional transmission providers, including SNR. Thus, Western declines to adopt that language. Western encourages the commenter to address its concerns directly with SNR and during the corresponding rate public process, so that they may be given due consideration and addressed in a manner best suited to the specific circumstances of that Region.

K. Attachment C

A commenter contends the term “Miscellaneous Impact” on page 96 of Attachment C to Western’s revised Tariff should be defined more clearly.

Upon further review, Western has determined that the referenced term is unnecessary. Therefore, Western will remove the term from its Tariff to eliminate the ambiguity. In addition,

Western has made minor editorial changes, including capitalizing the term “transmission provider” in many instances, and has added clarifying references to the relationship between Western’s UGPR and the Midwest ISO under the Interconnected Operations and Congestion Management Service Agreement under the Midwest ISO tariff.

L. Attachment P

A commenter suggests that Western’s Upper Great Plains Region (UGPR) form e-mail “exploders” to notify stakeholders of planned study efforts, and that Western revise section 13.4(b) of Part I of Tariff Attachment P (Part I) so that the threshold number of stakeholders expressing need prior to UGPR holding a planning meeting is lowered from ten to two.

Western declines to adopt either of the commenter’s suggestions at this time. With respect to the first, section 13.3.1 of Part I already requires UGPR to post on its OASIS advance notice to all stakeholders of local planning process meetings. Western believes posting the information will provide all interested parties with equal access to information in the same time frame without adding an additional administrative burden related to maintenance of email “exploders”. With respect to the second, the threshold number of ten stakeholders established in section 13.4(b) is the same that approved by FERC in the tariff of another, jurisdictional transmission provider situated in the Mid-Continent Area Power Pool (MAPP). [See MidAmerican Energy Company’s \(MidAmerican\) December 7, 2007 filing in Docket No. OA08-41-000](#) at Original Sheet No. 615; and [MidAmerican Energy Co., 123 FERC ¶ 61,160 \(2008\)](#) at P 10. Nonetheless, Western’s UGPR will consider implementing the commenter’s suggestions at a later point, after it gains experience administering the planning process.

A commenter asserts that Part I sets a maximum of two planning meetings annually, and suggests that such a limitation would be too restrictive.

Western clarifies that section 6.7 of Part I provides for planning meetings to be held “at least twice annually,” and does not set a relevant limit.

In addition to the specific public comments addressed above, Western made certain changes to its revised Tariff Attachment P that were discussed at the June 2, 2009 public meeting. Those revisions are described below and in a [comparison](#) of the June 2, 2009 version of Attachment P to the version in Western’s post-public comment Tariff file posted on Western’s web page.

First, Western revised certain provisions in Part I to conform to changes made by MAPP to its regional planning process. Those changes were approved by the MAPP Transmission Planning Subcommittee on July 10, 2009 and were drafted in response to a FERC compliance directive

regarding MidAmerican's proposed planning process. See [MidAmerican](#) at P 13; and MAPP's document posted on its [web site](#).

Second, upon review of the verbal comments offered during the public meeting, Western determined that the provision in section 1.1.7 of Part II of Tariff Attachment P (Part II) was extraneous insofar as it is not present in the planning processes of any other WestConnect transmission provider. Consequently, Western deleted that provision.

Third, Western has added a new section 1.1.9 to Part II in response to a FERC compliance directive regarding the WestConnect transmission provider planning processes. See [El Paso Electric Co., et al.](#), 128 FERC ¶ 61,063 (2009) at P 15 and n. 25.

Finally, should further guidance occur through FERC filings or orders issued by FERC regarding the templates Western's Attachment P is based upon, Western will review and incorporate that guidance as appropriate, prior to filing its revised Tariff with FERC.

M. Attachment Q

A commenter asks if the credit limit provision in section 3.3 of Attachment Q to Western's Tariff is intended to be a requirement to advance fund five months of service if the transmission customer is not creditworthy.

Western confirms that the credit limit provision in section 3.3 of Attachment Q to Western's Tariff requires a transmission customer to advance fund five months of total estimated service charges as collateral if that transmission customer is determined by Western to be non-creditworthy. Furthermore, section 3.4.3 of Attachment Q provides that acceptable forms of collateral totaling five months of estimated service charges are: prepayment for service; an unconditional and irrevocable letter of credit as security to meet the Transmission Customer's responsibilities and obligations; a cash deposit; or an irrevocable and unconditional corporate guaranty from an entity that satisfies the creditworthiness requirements.

II. LGIP – General

A commenter encourages Western to review the changes that have been proposed to the pro forma LGIP by Regional Transmission Organizations, and suggests that Western actively engage with the WestConnect LGIP workgroup.

Western notes that it is actively monitoring all of the ongoing regional and subregional LGIP revision efforts, including those applicable to Western's facilities situated in MAPP. Further, Western has a representative on the WestConnect LGIP workgroup.

III. LGIA Article 19.1, and SGIA Article 7.1

A commenter asserts that Western has changed the assignment provisions in Article 19.1 of its LGIA and Article 7.1 of its SGIA so that Western has the opportunity to assign its rights and obligations under either agreement.

Western clarifies that it has always had the right to assign its LGIA and SGIA to another party, as Article 19.1 of Western's LGIA explicitly provided before its revision that "[t]his LGIA may be assigned by either Party," and Article 7.1 of Western's SGIA contains similar language, which has not been modified. Western also clarifies that it has only revised the assignment provisions of its LGIA and SGIA to eliminate confusion for Western's interconnection customers regarding their ability to assign the agreements to third parties for security purposes—e.g., in several instances, large generator interconnection customers have been concerned that it was only permissible to assign the LGIA to one of their affiliates for security purposes. This was not Western's intent in its prior Tariff revisions. [See Western's January 25, 2005 filing in Docket No. NJ05-1-000](#) and [March 1, 2007 filing in Docket No. NJ07-2-000](#). With Western's revisions here, assignment of the LGIA or SGIA may occur to any party provided a potential assignee meets the relevant assignment requirements in the agreements. Further, the ability to assign the LGIA or SGIA for security purposes may occur to any third party, not just affiliates of the interconnection customer.