

153 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Public Service Company of Colorado	Docket Nos. ER13-75-009
Tucson Electric Power Company	ER13-77-007
UNS Electric, Inc.	ER13-78-007
Public Service Company of New Mexico	ER13-79-007
Arizona Public Service Company	ER13-82-007
El Paso Electric Company	ER13-91-006
Black Hills Power, Inc.	ER13-96-006
Black Hills Colorado Electric Utility Company, LP	ER13-97-006
Cheyenne Light, Fuel, and Power Company	ER13-120-006
Arizona Public Service Company	ER15-411-001
NV Energy, Inc.	ER15-428-002

ORDER ON COMPLIANCE FILINGS

(Issued October 20, 2015)

1. On May 14, 2015, the Commission issued an order accepting, subject to modifications,¹ the third compliance filings that Arizona Public Service Company (Arizona Public Service); Black Hills Power, Inc. (Black Hills Power);² Black Hills

¹ *Public Serv. Co. of Colo.*, 151 FERC ¶ 61,128 (2015) (Third Compliance Order). See also, *Public Serv. Co. of Colo.*, 142 FERC ¶ 61,206 (2013) (First Compliance Order), and *Public Serv. Co. of Colo.*, 148 FERC ¶ 61,213 (2014) (Second Compliance Order).

² Black Hills Power, Basin Electric Power Cooperative (Basin Electric), and Powder River Electric Cooperative (Powder River) jointly own a transmission system in South Dakota, Wyoming, and Nebraska. Black Hills Power, Basin Electric, and Powder River provide point-to-point and network integration transmission service under their Joint Open Access Transmission Tariff, for which Black Hills Power is the administrator.

Colorado Electric Utility Company, LP (Black Hills Colorado); Cheyenne Light, Fuel, and Power Company (Cheyenne LF&P); El Paso Electric Company (El Paso Electric); NV Energy, Inc. (NV Energy);³ Xcel Energy Services, Inc. (Xcel) on behalf of Public Service Company of Colorado; Public Service Company of New Mexico; Tucson Electric Power Company (Tucson Electric); and UNS Electric, Inc. (UNS Electric) (collectively, Filing Parties) made to comply with the regional transmission planning and cost allocation requirements, and local planning requirements, of Order No. 1000.⁴

2. On June 15, 2015, Filing Parties submitted proposed revisions to their respective Open Access Transmission Tariffs (OATT) to comply with the Third Compliance Order.⁵

³ NV Energy is the public utility holding company owning Nevada Power Company and Sierra Pacific Power Company.

⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (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).

⁵ Arizona Public Service Co., FERC Electric Tariff, Volume No. 2, Attachment E (2.0.0) (Arizona Public Service OATT, Attachment E); Public Service Company of Colorado, Transmission Tariffs, R-PSCo (PSCo Transmission Planning Process) (0.3.2) (Public Service Company of Colorado OATT, Attachment R-PSCo); Tucson Electric, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.0.0) (Tucson Electric OATT, Attachment K); Public Service Company of New Mexico, PNM Open Access Transmission Tariff, Elec Tariff Vol No. 6, Open Access Transmission Tariff (S-57), (Attachment K) (1.0.1) (Public Service Company of New Mexico OATT, Attachment K); El Paso Electric Co., Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.2.0) (El Paso Electric Co. OATT, Attachment K); Black Hills Power, Joint Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (2.1.0) (Black Hills Power Joint OATT, Attachment K); Black Hills Colorado Electric Utility Company, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (4.1.0) (Black Hills Colorado OATT, Attachment K); Nevada Power Co., Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (0.2.0) (Nevada Power Co. OATT, Attachment K); Cheyenne LF&P, Open Access Transmission Tariff, Attachment K (Transmission Planning Process) (2.1.0) (Cheyenne LF&P OATT, Attachment K). Filing Parties' individual filings contain uniform transmittal letters and proposed OATT revisions; therefore, the Commission will cite to the transmittal letter and OATT of a single Filing Party, Arizona Public Service, when referencing Filing Parties' proposal. However, where differences between or

(continued ...)

Concurrently, Arizona Public Service submitted revisions to the WestConnect Planning Participation Agreement (Planning Participation Agreement).⁶ In this order, we accept Filing Parties' proposed OATT revisions and conditionally accept Filing Parties' proposed revisions to the Planning Participation Agreement, subject to a further compliance filing, as discussed below.

I. Notice of Filings and Responsive Pleadings

3. Notice of Filing Parties' compliance filings was published in the *Federal Register*, 80 Fed. Reg. 35,644 (2015), with interventions and protests due on or before July 6, 2015.
4. On July 6, 2015, Basin Electric Power Cooperative, Colorado Springs Utilities, Platte River Power Authority, Sacramento Municipal Utility District, Transmission Agency of Northern California, and Tri-State Generation and Transmission Association, Inc. jointly submitted comments supporting Filing Parties' proposed compliance filings.

II. Discussion

A. Regional Transmission Planning Process and Cost Allocation

1. Third Compliance Order and Fourth Compliance Filings

5. In the Third Compliance Order, the Commission declined to adopt Filing Parties' proposed tariff provisions which required an 80 percent vote of identified beneficiaries to determine whether a regional transmission project is eligible for binding cost allocation, and thus directed Filing Parties to revise their respective OATTs accordingly.⁷ On

among the filings are addressed, the Commission will cite to the respective Filing Party's filings, as appropriate.

⁶ Arizona Public Service submitted revisions to the Planning Participation Agreement in Docket No. ER15-411-002, and is designated as the lead filer. All other Filing Parties have Certificates of Concurrence to the Planning Participation Agreement on file. *See* Third Compliance Order, 151 FERC ¶ 61,128 at n.8.

⁷ *Id.* P 56.

compliance, Filing Parties state that they have removed the previously proposed language related to such voting.⁸

6. In the Third Compliance Order, the Commission rejected Filing Parties' proposal to make a transmission project ineligible to be selected in the regional transmission plan for purposes of cost allocation if, in the event that a coordinating transmission owner declines the cost allocation for a transmission project, the cost shift to remaining beneficiaries would exceed 10 percent of their prior cost allocation.⁹ Thus, the Commission directed Filing Parties to revise their respective OATTs accordingly. On compliance, Filing Parties state that they have removed the previously proposed tariff provisions and have deleted the corresponding provisions in the Planning Participation Agreement.¹⁰

7. In the Third Compliance Order, the Commission directed Filing Parties to remove the two proposed statements from their OATTs: (1) "consideration should be given to the free rider issue as appropriate..." and (2) "[e]xisting OATT customers shall not be made to unduly subsidize the cost of benefits" to coordinating transmission owners and, therefore, the Planning Management Committee "may select...a regional transmission project where beneficiary elections...do not result in significant costs shifts onto existing OATT customers of Public Utility beneficiaries."¹¹ Filing Parties state that they have removed these statements from their respective OATTs.¹²

8. In the Third Compliance Order, the Commission directed Filing Parties to clarify the language in their OATTs describing how the Planning Management Committee will approve the regional transmission plan and noted that the language reflected in the

⁸ E.g., Arizona Public Service OATT, Attachment E, § III.E.6. To make the Planning Participation Agreement consistent with the OATT, Filing Parties have also removed language from the Planning Participation Agreement related to voting by beneficiaries on cost allocation. Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement §§ 7.6.1 and 7.6.2.

⁹ Third Compliance Order, 151 FERC ¶ 61,128 at PP 57-58.

¹⁰ E.g., Arizona Public Service, Docket No. ER13-82-007 Transmittal Letter at 3 (Arizona Public Service Transmittal Letter).

¹¹ Third Compliance Order, 151 FERC ¶ 61,128 at P 59.

¹² E.g., Arizona Public Service, Transmittal Letter at 3-4.

Planning Participation Agreement is more accurate.¹³ On compliance, Filing Parties state that they have revised their respective OATTs to adopt the approval language in the Planning Participation Agreement.¹⁴

9. In the Third Compliance Order, the Commission rejected Filing Parties' proposal to allow an enrolled non-public utility transmission provider to unenroll after the regional transmission plan is approved and, therefore, directed Filing Parties to remove the proposed sections allowing such unenrollment and the proposed associated provisions that would remove a transmission project's eligibility for regional cost allocation due to such unenrollment.¹⁵ On compliance, Filing Parties state that they have removed the provisions providing for such unenrollment.¹⁶

10. In the Third Compliance Order, the Commission directed Filing Parties to revise their process for selecting transmission developers for transmission projects because their proposed process failed to require the Planning Management Committee to explain why a particular transmission developer was selected, or why the transmission project failed to secure a developer for a specific transmission project. The Commission directed Filing Parties to revise their OATTs to include an additional step in the process to explain the Planning Management Committee's determinations. The Commission further indicated that the information provided must be sufficiently detailed for the transmission developers and stakeholders to understand: (1) the reasons why a particular transmission developer was selected or not selected as eligible to use the regional cost allocation method for a transmission facility selected in the regional transmission plan for purposes of cost allocation and, if applicable; (2) the reasons why a transmission project failed to secure a transmission developer through the selection of a transmission developer for transmission projects process. The Commission also required that such information be

¹³ Third Compliance Order, 151 FERC ¶ 61,128 at P 60.

¹⁴ *E.g.*, Arizona Public Service OATT, Attachment E, § III.E.6.f.

¹⁵ Third Compliance Order, 151 FERC ¶ 61,128 at P 73.

¹⁶ *E.g.*, Arizona Public Service OATT, Attachment E, §§ III.E.7 and VII.B.11.a-c. Filing Parties have also made corresponding revisions in the Planning Participation Agreement to: (1) remove language allowing for unenrollment by an enrolled non-public utility transmission provider; and (2) add language clarifying that enrolled non-public utility transmission providers seeking to unenroll from the region must do so under section 5.6 of the Planning Participation Agreement, governing the withdrawal of members. Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.4.

provided to stakeholders within a reasonable timeframe.¹⁷ On compliance, Filing Parties propose the following language in their respective OATTs:

After the [Planning Management Committee] makes a determination, it will post a document on the WestConnect website within 60 days explaining the [Planning Management Committee's] determination in selecting a particular transmission developer for a specific transmission project. The information will explain (1) the reasons why a particular transmission developer was selected or not selected, and, if applicable, (2) the reasons why a transmission project failed to secure a transmission developer.¹⁸

11. In the Third Compliance Order, the Commission found that some of Filing Parties' proposed revisions inadvertently restricted the transmission projects that are eligible for selection in the regional transmission plan for purposes of cost allocation to those with a benefit-to-cost ratio of 1.25 exactly, rather than 1.25 or more. Accordingly, the Commission directed Filing Parties to clarify in their OATTs that the quantified benefits to each beneficiary of a regional transmission project driven by reliability needs or public policy requirements must be greater, by a margin of 1.25 to 1 *or more*, than the project's costs.¹⁹ In response, Filing Parties state that they propose adjustments in several locations to uniformly provide for a benefit-to-cost ratio of 1.25 "or more."²⁰

2. Commission Determination

12. We find that Filing Parties' proposed revisions to their respective OATTs, described above, comply with the directives of the Third Compliance Order. Therefore, we accept these tariff revisions for filing, effective January 1, 2015.

¹⁷ Third Compliance Order, 151 FERC ¶ 61,128 at P 136.

¹⁸ *E.g.*, Arizona Public Service OATT, Attachment E, § VII.B.9.

¹⁹ Third Compliance Order, 151 FERC ¶ 61,128 at P 139.

²⁰ *E.g.*, Arizona Public Service Transmittal Letter at 4; *See also, e.g.*, Arizona Public Service OATT, Attachment E, § VII.B.4.

B. Planning Participation Agreement

13. The Planning Participation Agreement sets forth the rights and obligations of WestConnect members to carry out the WestConnect regional transmission planning process. For example, the Planning Participation Agreement contains the terms and conditions for becoming a member of the Planning Management Committee,²¹ including the qualifications for membership in each membership sector and the rules for maintaining active membership status in the Planning Management Committee.²² The Planning Participation Agreement also contains dispute resolution rules used to address disputes within the scope of the Planning Participation Agreement.²³ Additionally, the Planning Participation Agreement explains how costs incurred by the Planning Management Committee, such as the costs incurred in defending it or any of its members, will be allocated to the respective membership sectors.²⁴ In the Second Compliance Order, the Commission directed Filing Parties to file the Planning Participation Agreement with the Commission given the significance of the agreement's provisions to the WestConnect regional transmission planning process.²⁵

1. Termination Provision of Planning Participation Agreement**a. Third Compliance Order**

14. With respect to the termination provision of the Planning Participation Agreement, the Commission rejected Filing Parties' proposal in section 5.7 (Termination of Agreements by Transmission Owners with Load Serving Obligations) of the Planning Participation Agreement providing that the members of the Transmission Owners with Load Serving Obligations sector may, by majority vote, terminate the Planning Participation Agreement if the Commission makes significant modifications to the requirements of Order No. 1000 or if a court vacates, reverses, or remands any significant part of the Commission's orders on WestConnect Order No. 1000 regional transmission

²¹ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.

²² *Id.* § 6.

²³ *Id.* § 10.

²⁴ *Id.* § 10.2.2.

²⁵ Second Compliance Order, 148 FERC ¶ 61,213 at P 158.

planning.²⁶ The Commission explained that certain elements of the Planning Participation Agreement are necessary to uphold the WestConnect transmission planning process' compliance with Order No. 1000, and stated that this is why the Commission directed Filing Parties to file it in the first place.²⁷ Specifically, the Commission noted that Filing Parties' OATTs provide that entities seeking to: (1) propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; or (2) be a transmission developer eligible to use the regional cost allocation method, must sign the Planning Participation Agreement and be active members of the Planning Management Committee. Therefore, the Commission stated, if the Transmission Owners with Load Serving Obligations sector votes to terminate the Planning Participation Agreement, it would eliminate substantive elements of the regional transmission planning process. Accordingly, the Commission directed Filing Parties to remove this proposal from the Planning Participation Agreement.²⁸

b. Fourth Compliance Filings

15. Filing Parties propose to delete the provision in section 5.7 (Termination of Agreements by Transmission Owners with Load Serving Obligations) of the Planning Participation Agreement allowing the members of the Transmission Owners with Load Serving Obligations sector to terminate, by majority vote, the Planning Participation Agreement if the Commission makes significant modifications to the requirements of Order No. 1000 or if a court vacates, reverses, or remands any significant part of the Commission's orders on WestConnect Order No. 1000 regional transmission planning.²⁹ Filing Parties propose to maintain in section 5.7.1 of the Planning Participation Agreement the provision stating that “[enrolled transmission owners] have sole discretion to terminate this [Planning Participation] Agreement, upon a unanimous vote of [enrolled transmission owners] provided that certain sections of this Agreement are expressly identified to survive termination.”³⁰ Filing Parties also propose to maintain section 5.7.2,

²⁶ Third Compliance Order, 151 FERC ¶ 61,128 at P 108.

²⁷ *Id.* (citing Second Compliance Order, 148 FERC ¶ 61,123 at PP 158-159).

²⁸ *Id.*

²⁹ See Arizona Public Service Docket No. ER15-411-001 Transmittal Letter at 3.

³⁰ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.7.1. Pursuant to WestConnect Planning Participation Agreement §§ 10.2.4, 10.3.3, and A4.3.8, certain provisions have been identified to survive termination, such as, § 10.2, Disputes Between a Member(s) and the Planning Management Committee, §10.3, Disputes Between the Planning Management Committee

which states that the Planning Participation Agreement will terminate “on the date specified by the [enrolled transmission owners] who vote to terminate it pursuant to section 5.7.1 above, which will be no later than 90 days after the vote to terminate.”³¹

c. Commission Determination

16. We find that Filing Parties have complied with the Commission’s directive to remove the provisions in the Planning Participation Agreement that would allow Filing Parties and other Transmission Owners with Load Serving Obligations sector members to vote to terminate, by majority vote, the Planning Participation Agreement if the Commission makes significant modifications to the requirements of Order No. 1000 or if a court vacates, reverses, or remands any significant part of the Commission’s orders on WestConnect Order No. 1000 regional transmission planning. However, Filing Parties propose to retain the provision in the Planning Participation Agreement that states that the Planning Participation Agreement will terminate on the date specified by unanimous vote of the enrolled transmission owners. The WestConnect regional transmission planning process outlined in the OATTs significantly relies on the execution of, and certain provisions in, the Planning Participation Agreement. It is unclear how the WestConnect regional transmission planning process will be preserved intact in the event that the Planning Participation Agreement is terminated. Thus, additional OATT revisions are necessary to allow for the termination of the Planning Participation Agreement.

17. In particular, the OATT states that a transmission owner or other stakeholder must be a signatory to the Planning Participation Agreement in order to enroll in the WestConnect transmission planning region and to become members able to fully participate in the regional transmission planning process by, for example, being eligible to propose a transmission project for potential selection in the regional transmission plan,³² being eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation,³³ and receiving

and Third Parties (Non-Members), and §A4.3.8 pertaining to the administrative fees and other fees and expenses of the arbitration, respectively.

³¹ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.7.2.

³² *E.g.*, Arizona Public Service OATT, Attachment E, § III.C.5.

³³ *E.g.*, Arizona Public Service OATT, Attachment E, §§ III.D.2.m, III.D.3.c.

voting rights for transmission planning decisions.³⁴ Thus, if the Planning Participation Agreement were terminated, it would no longer be clear how, for example, a transmission developer could become eligible to propose a transmission project for potential selection and be eligible to use the regional cost allocation method. Additionally, if the Planning Participation Agreement were terminated, it is unclear how entities could enroll in the WestConnect transmission planning region or be eligible to become WestConnect members. Accordingly, we direct Filing Parties to submit further compliance filings, within 30 days of the date of issuance of this order, to revise their respective OATTs to provide that, to the extent the Planning Participation Agreement is terminated, it will no longer be necessary for an entity to execute the Planning Participation Agreement before: (1) proposing a transmission project for selection in the regional transmission plan; or (2) being eligible to use the regional cost allocation method for a transmission project selected in the regional transmission plan for purposes of cost allocation. We also direct Filing Parties to revise their respective OATTs to state how stakeholders may become a WestConnect member with voting rights in decisions made by the Planning Management Committee if the Planning Participation Agreement is terminated. We also note that Filing Parties must submit a notice of cancellation filing with the Commission if the Planning Participation Agreement is terminated and, at that time, Filing Parties must also propose any revisions to their OATTs that are necessary to recognize the termination of the Planning Participation Agreement and must demonstrate that they continue to comply with Order No. 1000 notwithstanding the termination.

2. Dispute Resolution

a. Third Compliance Order

18. In addition, the Commission directed Filing Parties to clarify that to the extent a provision in the Planning Participation Agreement is under the Commission's jurisdiction, that provision must be exclusively governed and interpreted in accordance with the Commission's orders, and that all other provisions that are outside of the Commission's jurisdiction may be governed and interpreted in accordance with a state's laws, and designating the laws of a specific state, such as the State of Arizona, is appropriate.³⁵

³⁴ *E.g.*, Arizona Public Service OATT, Attachment E, §§ III.A, III.A.2.a, and III.B.2.

³⁵ Third Compliance Order, 151 FERC ¶ 61,128 at P 106.

b. Fourth Compliance Filings

19. On compliance, Filing Parties propose a new section titled “FERC Role in Dispute Resolution,” which they state is modeled on provisions the Commission has previously approved.³⁶ New section 12.14.1 in the Planning Participation Agreement states:

Disputes directly relating to the Members’ compliance with their OATTs that are not resolved in the Arizona state appellate process and all disputes relating to matters that fall within the exclusive jurisdiction of FERC shall be reviewed at FERC pursuant to the Federal Power Act if such review is sought by a Member. Any party to a dispute regarding matters over which both the State of Arizona and FERC have jurisdiction and responsibility for action may submit a request to FERC for a joint or concurrent hearing to resolve the dispute.³⁷

c. Commission Determination

20. We find that proposed section 12.14.1 partially complies with the Commission’s directive in the Third Compliance Order. Specifically, we reject the language in the proposed provision that states, “Any party to a dispute regarding matters over which both the State of Arizona and FERC have jurisdiction and responsibility for action may submit a request to FERC for a joint or concurrent hearing to resolve the dispute.” First, Filing Parties’ proposal to add language addressing disputes regarding matters over which *both* the State of Arizona *and* the Commission have jurisdiction goes beyond the requirements of the Third Compliance Order because the Commission did not direct Filing Parties to include this change.³⁸ Moreover, although Filing Parties argue that the proposed language is based on the tariff language the Commission previously approved for

³⁶ E.g., Arizona Public Service Docket No. ER15-411-001 Transmittal Letter at 3 (citing *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 at P 51 & n.95 (2013)).

³⁷ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 12.14.1.

³⁸ The Commission directed Filing Parties to make revisions to reflect the Commission’s clarification about disputes concerning provisions that are either: (1) under the Commission’s jurisdiction; and (2) outside the Commission’s jurisdiction. Third Compliance Order, 151 FERC ¶ 61,128 at P 106.

New York Independent System Operator, Inc. (NYISO),³⁹ it has one significant difference. The language Filing Parties cite in NYISO's tariff states that any party to a dispute regarding matters over which both the *New York Public Service Commission* and the Commission have jurisdiction and responsibility for action may submit a request to the Commission for a joint or concurrent hearing to resolve the dispute.⁴⁰ In contrast, Filing Parties proposed language states that any party to a dispute regarding matters over which both *the State of Arizona* and the Commission have jurisdiction and responsibility for action may submit a request to the Commission for a joint or concurrent hearing to resolve the dispute. This difference (New York Public Service Commission as opposed to the State of Arizona) is significant because the Commission accepted the NYISO language allowing parties to request a joint or concurrent hearing with the New York Public Service Commission based on Rule 1305 of the Commission's Rules of Practice and Procedure, which outlines the process for joint and concurrent hearings before the Commission and a state commission.⁴¹ However, there is not a similar provision in the Commission's regulations that outlines the process for a joint or concurrent hearing with a *state* and the Commission, and Filing Parties do not explain the process that would govern such hearing. Therefore, we direct Filing Parties to submit, within 30 days of the date of issuance of this order, further compliance filings to remove the language in section 12.14.1 that states, "Any party to a dispute regarding matters over which both the State of Arizona and FERC have jurisdiction and responsibility for action may submit a request to FERC for a joint or concurrent hearing to resolve the dispute."

3. Other Planning Participation Agreement Compliance Directives

a. Third Compliance Order and Fourth Compliance Filings

21. In the Third Compliance Order, the Commission directed Filing Parties to revise the Planning Participation Agreement to state that the WestConnect regional transmission planning process is conducted pursuant to a biennial planning cycle, which is more fully described in Filing Parties' respective OATTs, as supplemented by the business practice manual.⁴² On compliance, Filing Parties propose to add the following language to the

³⁹ E.g., Arizona Public Service Docket No. ER15-411-001 Transmittal Letter at 3 (citing *N.Y. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,059 at P 51 & n.95 (2013)).

⁴⁰ See NYISO OATT, Attachment Y, § 31.6.1 (*emphasis added*).

⁴¹ *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372, at P 19 (2004) (citing 18 C.F.R. §385.1305).

⁴² Third Compliance Order, 151 FERC ¶ 61,128 at P 102.

Planning Participation Agreement: “The WestConnect Regional Planning Process is conducted pursuant to a biennial planning cycle which is more fully described in the respective Member’s OATTs on file with the Commission, as supplemented by the BPM.”⁴³

22. Next, in the Third Compliance Order, the Commission directed Filing Parties to add language to the Planning Participation Agreement to include a timeframe for the Planning Management Committee to make a decision on membership approvals.⁴⁴ On compliance, Filing Parties propose language providing that, except as special circumstances warrant otherwise and as determined by the affirmative vote of the Planning Management Committee, the Planning Management Committee will make a decision on membership approvals no later than the second in-person Planning Management Committee meeting after receipt of an entities’ member sector notification form.⁴⁵

23. With respect to dispute resolution in the Planning Participation Agreement, the Commission directed Filing Parties to: (1) remove the proposal that would require WestConnect members to waive their right to pursue a dispute in a trial by jury if that dispute arises out of, under, or in connection with a Planning Management Commission decision or the scope of the Planning Participation Agreement; or, alternatively (2) revise the provision to apply only when both parties mutually agree to the waiver.⁴⁶ On compliance, Filing Parties propose to remove the requirement for jury trial waivers and allow them only in situations where it is mutually agreed upon by the member(s).⁴⁷

⁴³ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 7.

⁴⁴ Third Compliance Order, 151 FERC ¶ 61,128 at P 109.

⁴⁵ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 5.2.

⁴⁶ Third Compliance Order, 151 FERC ¶ 61,128 at P 122.

⁴⁷ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement § 10.2.1.

24. Finally, the Commission directed Filing Parties to clarify in the Planning Participation Agreement that the expenses incurred to resolve disputes will be shared *pro rata* based on the number of members within the sector.⁴⁸ On compliance, Filing Parties propose revisions to make this clarification.⁴⁹

b. Commission Determination

25. We find that Filing Parties proposed changes to the Planning Participation Agreement, described above, comply with directives in the Third Compliance Order. Therefore, we accept these proposed tariff revisions for filing, effective January 1, 2015.

The Commission orders:

- (A) Filing Parties' respective compliance filings revising their regional transmission planning processes are hereby accepted for filing, effective January 1, 2015.
- (B) Filing Parties' respective compliance filings revising the Planning Participation Agreement are hereby conditionally accepted for filing, effective January 1, 2015, subject to further compliance filings, as discussed in the body of this order.
- (C) Filing Parties are hereby directed to submit, within 30 days of the date of issuance of this order, further compliance filings to revise the termination provision and the dispute resolution provision in the Planning Participation Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁸ Third Compliance Order, 151 FERC ¶ 61,128 at P 123.

⁴⁹ Arizona Public Service, Rate Schedule No. 274, WestConnect Planning Participation Agreement §§ 10.2.2, 10.2.3, and 10.3.2.