126 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 37

(Docket Nos. RM05-17-004 and RM05-25-004; Order No. 890-C)

Preventing Undue Discrimination and Preference in Transmission Service

(March 19, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission affirms its basic determinations in Order Nos. 890, 890-A and 890-B, granting rehearing and clarification regarding certain revisions to its regulations and the pro forma open-access transmission tariff, or OATT, adopted in Order Nos. 888 and 889 to ensure that transmission services are provided on a basis that is just, reasonable, and not unduly discriminatory. The Commission grants clarification of the degree of consistency required in the calculation of available transfer capability by transmission providers and denies rehearing regarding the requirement to undesignate network resources used to serve off-system sales

EFFECTIVE DATE: This rule will become effective [insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Acting Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Preventing Undue Discrimination and Preference in Transmission Service	RM05-17-004 RM05-25-004

ORDER NO. 890-C

ORDER ON REHEARING AND CLARIFICATION

(Issued March 19, 2009)

1. On February 16, 2007, the Commission issued Order No. 890,[1] addressing and remedying opportunities for undue discrimination under the pro forma Open Access Transmission Tariff (OATT) adopted in Order No. 888.[2] The pro forma OATT was intended to foster greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service. In the ten years since Order No. 888,

[1] Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, order on reh'g, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), order on reh'g, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

[2] 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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), 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) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

however, flaws in the pro forma OATT undermined its ability to realize the core objective of remedying undue discrimination. The Commission acted in Order No. 890 to correct these flaws by reforming the terms and conditions of the pro forma OATT in several critical areas, including the calculation of available transfer capability (ATC), the planning of transmission facilities, and the conditions of services offered by each transmission provider.

2. In Order Nos. 890-A and 890-B, the Commission largely affirmed the reforms adopted in Order No. 890. The Commission concluded that, taken together, these reforms will better enable the pro forma OATT to achieve the core objective of remedying undue discrimination in the provision of transmission service. The Commission did, however, grant rehearing and clarification regarding certain revisions to its regulations and the pro forma OATT. NorthWestern Corporation (NorthWestern) and South Carolina Electric and Gas Co. (SCE&G) have requested further rehearing and clarification of Order No. 890-B on certain discrete issues, which we address below.

I. Reforms of the OATT

A. Consistency and Transparency of ATC Calculations

3. In Order No. 890-B, the Commission among other things affirmed a clarification provided in Order No. 890-A that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent available transfer capability (ATC) values on either side of a single interface.[3] The Commission stated that it disagreed with

[3] Order No. 890-B at P 15.

petitioners arguing that consistent ATC values should not be interpreted to mean identical ATC values, but acknowledged that factors such as timing of reservation requests, acceptances, and confirmations, and multiple interfaces between and among transmission providers, can make it difficult to achieve coincidental, identical postings of ATC values on both sides of an interface. The Commission reiterated that, if all of the ATC components and certain data inputs and assumptions are consistent, the ATC calculation methodologies being finalized by the North American Electric Reliability Corporation (NERC) through the reliability standards development process should produce predictable and sufficiently accurate, consistent, equivalent, and replicable results.

Requests for Clarification and Rehearing

4. NorthWestern contends that, while requiring two adjacent transmission providers to post identical ATC at a single interface appears on its face to be reasonable, that requirement can have unintended and negative consequences. NorthWestern states the requirement may allow transmission customers to be able to block other market participants from requesting ATC without placing a transmission service request or following OATT requirements. NorthWestern offers an example of two transmission providers with a single interface and a customer that requests service on that interface from only one of the transmission providers. NorthWestern contends that the requirement to make ATC postings on either side of an interface identical would force the second transmission provider to reduce ATC on its side of the interface if the first transmission provider grants service to the customer, even though no request for service

was submitted on the second transmission system, circumventing the first-come, first-served nature of transmission service under the pro forma OATT.

5. NorthWestern contends that how transmission providers account for capacity benefit margin (CBM) and transmission reliability margin (TRM) on either side of an interface can have the same impact as a transmission service request. If one transmission provider sets aside capacity for CBM or TRM, NorthWestern contends that those set asides will force the transmission provider to decrement ATC on the other side of the interface. While NorthWestern understands the Commission's desire to remove the potential for undue discrimination by requiring ATC calculations to be consistent and transparent, it contends that directing transmission providers to have identical ATC postings on either side of an interface will allow transmission providers and customers to block access to transmission service, either intentionally or not.

6. NorthWestern therefore asks the Commission to grant rehearing to require that ATC on either side of an interface be consistent, rather than identical. NorthWestern suggests that a consistency requirement could be structured such that the transmission providers posting ATC for a single interface be able to transparently provide all necessary information that allows interested parties to determine why differences in ATC exist.

Commission Determination

7. The Commission clarifies that it did not intend in Order No. 890-B to require transmission providers to post identical ATC values on either side of an interface in every instance and at all times. While ATC values on either side of an interface may be

identical in some instances, in others they may not. To the extent necessary, the Commission grants rehearing of Order No. 890-B to eliminate reference to the posting of identical ATC values on either side of an interface.

8. In Order No. 890-A, the Commission clarified that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface.[4] The Commission explained that this requirement is applicable to any neighboring transmission providers no matter whether they use the same or different ATC methodologies. Several petitioners requested rehearing and clarification of this requirement, generally raising two arguments. First, they suggested that it would be more appropriate to require consistency of total transfer capability (TTC) on either side of an interface instead of consistency of ATC values.[5] Second, they argued that any requirement to achieve consistent ATC values on either side of an interface should not be interpreted to mean identical ATC values.[6] In response, the Commission stated that it disagreed with petitioners arguing that consistent ATC values should not be interpreted as identical, but went on to acknowledge that various factors (such as timing of reservation requests, acceptances and confirmation, or multiple interfaces between transmission providers) could make it difficult for transmission providers to achieve

[4] Order No. 890-A at P 52. The Commission noted that the anticipated consistency is for available capability in the same direction across an interface.

[5] See Order No. 890-B at P 9.

[6] See id. P 9-10.

coincidental, identical postings of ATC values on either side of an interface.[7] The Commission therefore reiterated that the ATC calculation methodologies being finalized by NERC "should produce predictable and sufficiently accurate, consistent, equivalent, and replicable results."[8]

9. The requirement, then, is not to achieve identical postings of ATC values on either side of an interface, as NorthWestern contends. The requirement is, instead, to achieve consistency in such values through the development of ATC calculation methodologies that produce sufficiently accurate, consistent, equivalent, and replicable results. In some instances, it may be possible for transmission providers under these methodologies to achieve identical ATC values on either side of an interface. In others, such as when there are differences in reservation status or when there are multiple interfaces between the transmission providers, it may not be possible or even practical to achieve identical values.

10. Since the issuance of Order No. 890-B, NERC has submitted to the Commission six proposed Reliability Standards governing the calculation of ATC. In a companion order issued today, the Commission proposes to approve these Reliability Standards as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[9]

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[7] Id. P 15.

[8] Id.

[9] Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability

(continued)

The Commission will address in that proceeding whether the proposed Reliability Standards satisfy the requirements of Order No. 890, as clarified above.

B. Designation of Network Resources

11. In Order No. 890-B, the Commission among other things clarified that the requirement for a network customer and the transmission provider's merchant function to undesignate each portion of each resource used to support a sale of system power does not apply in the event the buyer and seller are located on the same transmission system and the buyer designates the system power as a network resource. The Commission explained that, when a seller's network resources are used to support an on-system sale, the buyer meets the informational requirements of section 29.2(v) of the pro forma OATT simply by identifying the seller's system as the resource. In comparison, when a buyer does not designate a system purchase as a network resource, the point-to-point transmission reservation for taking delivery of the purchase and the corresponding resource-specific undesignation by the seller provide the transmission provider with the information it needs to accurately model the effect of the transaction on its transmission system and set aside ATC accordingly.

Requests for Clarification and Rehearing

12. SCE&G argues on rehearing that the Commission has unreasonably restricted the types of system sales that can be made from network resources without undesignation.

Standards for the Bulk-Power System, Notice of Proposed Rulemaking, Docket No. RM08-19-000, *et al.* (March 19, 2009). 126 FERC ¶ 61,249 (2009).

SCE&G argues that, for purposes of performing transmission modeling and ATC calculations in conjunction with a given third-party sale, the transmission provider has all of the information that it needs regardless of whether the buyer is located on-system or off-system. According to SCE&G, transmission modeling relating to off-system sales is a routine matter in the industry and the practice of supporting such sales via slice-of-system undesignations has presented no obstacles to the execution of such modeling or any associated calculations. SCE&G contends that, when modeling transmission flows associated with an off-system sale, the neighboring systems (of the buyer and the seller) are evaluated on a system-wide basis and calculations reflecting the amount of the sale are properly performed in modeling the flow from the system of the seller to that of the buyer.

13. SCE&G contends that modeling for slice-of-system sales, whether on-system or off-system, is designed to ensure not only accuracy, but also economic efficiency. SCE&G states that the modeling for such sales takes into account load forecasts for the relevant time period and, on the basis of such data, includes projections of which specific plants are likely to be involved in generating the incremental power that supports the sale, which in turn is reflected in the relevant economic dispatch plan. Because load forecasts invariably differ to at least some degree from the actual load that ultimately materializes, SCE&G contends that the modeling of any system sale includes appropriate alternate dispatch scenarios, to ensure that unit dispatch is performed in the correct economic order no matter what the actual load may eventually prove to be. For off-system sales, SCE&G

states, the transmission provider takes the additional steps of recalculating ATC for the relevant interface and ensuring proper adjustment to posted ATC values.

14. If sellers are denied the ability to use a slice-of-system undesignation to support an off-system sale, SCE&G states that their only alternative is to make unit-by-unit undesignations, which SCE&G contends is unworkable and inaccurate and could result in units having to be dispatched out of economic order. SCE&G states that purchasers often use such off-system firm transactions as a tool for ensuring their compliance with NERC and regional reliability council reserve requirements and related reliability requirements and that these transactions garner greater reliability benefits by virtue of being based on a share of an entire portfolio of generating units, rather than a single unit. SCE&G therefore asks the Commission to revisit its determination in Order No. 890-B and safeguard the ability to access and rely on off-system system sales.

15. SCE&G argues that it is particularly ironic that the Commission's initial clarification regarding the use of network resources to supply system sales is the outgrowth of a clarification sought by SCE&G in comments on the NOPR in this proceeding. In those comments, SCE&G requested that the Commission clarify "exactly how to undesignate and redesignate [network resources] when the Transmission Provider/Network Customer is selling a block of firm power out of the system."[10] SCE&G argues that, in responding to the request in Order No. 890, the Commission

[10] Reply Comments of South Carolina Electric & Gas Co. at 15, Docket No. RM05-25-000, et al. (Sep. 20, 2006) (emphasis added).

expressly acknowledged the off-system nature of the sales at issue and, therefore, its statement that "firm third-party sales may be made from an undesignated portion of [network resources]" appeared to apply to off-system sales.[11] SCE&G contends that the Commission's determination in Order No. 890-B therefore cannot be squared with either the history of the Commission's express treatment of the issue or standard industry practice.

16. Should the Commission decline to grant rehearing as requested, SCE&G argues that the Commission at a minimum should grandfather long-term, still-continuing off-system sales sourced from designated network resources that were entered into prior to Order No. 890-B in reliance of the Commission's prior policy.

Commission Determination

17. The Commission affirms the requirement that network resources used to supply sales of system power to off-system buyers must first be undesignated.[12] As we explained in Order No. 890, transactions in which a buyer and seller are both network customers located on the same transmission system are distinct from transactions involving sales of energy from a network customer to an off-system buyer. In the latter circumstance, the off-system buyer will not be using network service to take delivery from the host transmission provider and, instead, must identify the points of receipt and delivery for the transaction on the host transmission provider's system, i.e., the points

[11] Citing Order No. 890 at PP 1567 and 1582.

[12] See Order No. 890-B at P 206.

where capacity and energy will be received from the seller and delivered to the buyer. The point-to-point transmission reservation and the corresponding resource-specific undesignation provide the transmission provider with the information it needs regarding the location of particular resources being used by the seller to source the transaction in order to model the effect of the transaction on its transmission system and set aside ATC accordingly.

18. SCE&G contends that a resource-specific undesignation of resources is unnecessary for a transmission provider to model an economic dispatch of resources to determine which specific plants are likely to be involved in generating the incremental power to support an off-system sale. Even if that is true in some circumstances, whether or not the transmission provider is able to analytically determine the likely units used to support a power sale does not affect the need of the buyer to identify the points of receipt and delivery on the host transmission system where capacity and energy will be received from the seller and delivered to the buyer. Because the buyer is not a network customer of the host transmission provider, it cannot use network service to take delivery. In order for the buyer to schedule point-to-point service to take delivery, the transmission customer must identify the point of receipt and delivery for the transaction. Even if the transmission provider has accurately modeled the seller's optimal use of resources to supply the transaction, it is unclear how the buyer and seller would reflect that dispatch in the point-to-point reservation used to deliver the energy other than by identifying the particular point(s) of receipt for the transaction, which is tantamount to a resource-specific undesignation of associated network resources.

19. Transactions in which the buyer of system energy is a network customer located on-system are clearly distinguishable from those in which the buyer and seller are located on different systems. In the former circumstance, the host transmission provider knows the normal operating levels and variable energy costs for both network customers' resources, the load forecasts for both network customers' network loads, and any transmission constraints requiring redispatch. Section 29.2(v) of the pro forma OATT requires such information to be submitted for each of the two designations (the original designation of the capacity by the seller, and the subsequent designation of the capacity by the buyer) such that the local transmission provider is able to use such information to simultaneously determine the expected dispatches for each network customer. From these predictions, reasonable operating and contingency scenarios can be modeled in order to accurately determine what transmission capacity should be reasonably set aside to accommodate both network customers. That is not the case when one party to the transaction is located in another transmission system.

20. As noted above, NERC recently submitted for Commission review proposed Reliability Standards to govern the calculation of ATC. One of the issues the Commission directed transmission providers to address in those Reliability Standards is the effect on ATC of designating and undesignating network resources.[13] Although the Commission proposes in Docket Nos. RM08-19-000, *et al.*, to approve the proposed

[13] See Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1041, order on reh'g, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

Reliability Standards, the Commission notes that NERC failed to address the modeling of network resources and its impact on ATC calculations. The Commission proposes to direct NERC to develop a modification to the Reliability Standards to address this requirement. We encourage SCE&G and any other interested party to provide comments in that proceeding regarding the interaction of network resource designations and the calculation of ATC. Upon review of those comments and final action in that proceeding, the Commission may revisit its network resource policies as necessary to reflect the Reliability Standards implemented by NERC.

21. In the meantime, we disagree with SCE&G that the Commission's network resource policies unreasonably impair the ability of network customers to meet reserve requirements or related reliability requirements. In Order Nos. 890-A and 890-B, the Commission made clear that network customers could use designated resources to fulfill obligations under a reserve sharing program.[14] In other proceedings, the Commission has permitted transmission providers to amend their OATTs to allow network customers to use designated resources to supply power to other control areas during system emergencies.[15] Moreover, the Commission has stated repeatedly that transmission providers are free to propose additional variations to the pro forma OATT to

[14] See Order No. 890-A at P 948; Order No. 890-B at P 215.

[15] See Arizona Public Service Co., 121 FERC ¶ 61,246 at P 42 (2007).

accommodate more flexible network resource policies if the particular ATC methodology used by a transmission provider allows for such flexibility.[16]

22. We also disagree with SCE&G that it would be appropriate to grandfather all long-term, still-continuing off-system sales sourced from designated network resources that were entered into prior to Order No. 890-B. In response to SCE&G's NOPR comments, the Commission clearly stated that firm third-party sales may be made only from an undesignated portion of network resources and that a network customer must submit undesignations for each portion of each resource supporting the third-party sale.[17] A number of petitioners sought rehearing and clarification of that statement, which led the Commission to conclude in Order No. 890-A that system sales could be supplied by network resources without undesignation if the system sale is itself designated as a network resource by the buyer.[18] The Commission, however, did not specifically state that the buyer had to be a network customer on the same transmission system as the seller in order to qualify for this exception from the undesignation requirement. As a result, confusion arose regarding Order No. 890-A that was resolved in Order No. 890-B.[19]

23. It would therefore only be appropriate to allow an exception to the undesignation requirement for off-system system sales that occurred after the issuance of Order

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[16] See Order No. 890-A at P 951; Order No. 890-B at P 210.

[17] See Order No. 890 at P 1582.

[18] See Order No. 890-A at P 947.

[19] See Order No. 890-B at P 205.

No. 890-A, but before the clarification in Order No. 890-B. During that six-month period, it may have been reasonable for a network customer to interpret the Commission's statement in Order No. 890-A as allowing for off-system sales from network resource capacity undesignated on a general (as opposed to resource-specific) basis if the buyer designated the purchase as an external network resource with its own transmission provider. Prior to issuance of Order No. 890-A, however, there was no indication that such sales would be permitted without undesignation on a resource-specific basis.

24. As such, we agree that a power sale initiated on or after the issuance date of Order No. 890-A, but before the effective date of Order No. 890-B, may be accommodated with capacity undesignated on a general basis, as described in paragraph 947 of Order No. 890-A. Any network customer making such power sales, and which submitted a general undesignation for such power sales between those dates, is not considered to be in violation of section 30.4 as a result of operation of such resources. Network customers may rely on such undesignation(s) until the redesignation date (for resources temporarily terminated) or the expiration of the current term of the power sales contract (for resources indefinitely terminated).

II. Information Collection Statement

25. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[20] The

[20] 5 CFR 1320 (2007).

revisions to the information collection requirements for transmission providers adopted in Order No. 890 were approved under OMB Control Nos. 1902-0233. This order does not substantively alter those requirements. OMB approval of this order is therefore unnecessary. However, the Commission will send a copy of this order to OMB for informational purposes only.

III. Document Availability

26. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

27. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

IV. Effective Date and Congressional Notification

29. This order does not substantively alter the requirements of Order Nos. 890, 890-A or 890-B and, therefore, will become effective as of the date of publication in the Federal Register.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.