

Preventing Undue Discrimination and Preference in Transmission Service

Notice of Proposed Rulemaking (NOPR)

FERC Docket Nos. RM05-25-000 and RM05-17-000

May 18, 2006

The Commission proposes amendments to its regulations and to the pro forma open access transmission tariff (pro forma OATT), adopted in Order Nos. 888 and 889, to address deficiencies in the pro forma OATT that have become apparent since the issuance of Order Nos. 888 and 889.

The Purpose of the Proposed Rule

- o To strengthen the pro forma OATT to ensure that it achieves its original purpose of remedying undue discrimination.
- o To provide greater specificity in the pro forma OATT to reduce opportunities for the exercise of undue discrimination, make undue discrimination easier to detect, and facilitate the Commission's enforcement.
- o To increase transparency in the rules applicable to planning and use of the transmission system.

Brief Overview

- o Major proposed reforms:
 - o Greater consistency and transparency in ATC calculation
 - o Open, coordinated and transparent planning
 - o Reform of energy imbalance penalties
 - o Reform of rollover rights policy
 - o Clarify tariff ambiguities
 - o Increase transparency and customer access to information
- o Core elements of Order No. 888 being retained:
 - o Comparability requirement
 - o Protection of native load
 - o States jurisdiction over bundled retail load
 - o Functional unbundling to address undue discrimination
 - o Reciprocity

The Applicability of the Proposed Rule

- o The proposed rule applies to all public utility transmission providers, including RTOs and ISOs.
- o As with Order No. 888, a public utility may propose terms and conditions of open access service that are consistent with or superior to the pro forma OATT.
- o The purpose of the proposed rule is not to redesign approved, fully-functional RTO or ISO markets. The Commission does not expect that substantial changes to

those markets would be required as a result of this NOPR.

Significant Proposed Reforms

Available Transfer Capability (ATC)

ATC is the transfer capability remaining on a transmission provider's transmission system that is available for further commercial activity over and above already committed uses. Transmission providers currently calculate the ATC for their systems using different assumptions and methodologies. After concluding that the absence of a consistent ATC methodology increases the discretion of transmission providers and the opportunities for undue discrimination in application of the pro forma OATT, the Commission proposes:

- To ensure consistency in the ATC calculation components, data inputs and modeling assumptions as well as consistency in the exchange of data between transmission providers
- To order public utilities, working through the North American Electric Reliability Council (NERC) and the North American Energy Standards Board (NAESB), to develop appropriate standards within 6 months of the final rule
- To increase the transparency of ATC calculations through the inclusion in each transmission provider's OATT of its specific ATC calculation methodology, and through posting of relevant data and models on each transmission provider's open access same-time information system (OASIS)
- To order transmission providers to post on OASIS metrics relating to transmission requests that are approved and rejected

Coordinated, Open and Transparent Transmission Planning

The Nation has experienced a decline in transmission investment relevant to load growth since Order No. 888 was issued, which has increased congestion and reduced access by customers to alternative sources of energy. The Commission concludes that transmission providers have a disincentive to remedy transmission congestion on a nondiscriminatory basis and that the current pro forma OATT does not adequately address these problems. Therefore, the NOPR proposes to require that:

- Transmission providers participate in a coordinated, open and transparent planning process
- Each transmission provider's planning process meet the Commission's eight planning principles, which are set forth in the NOPR and include coordination (regular meetings), openness, transparency, information exchange (including review of draft plans), comparability (plan must meet service requests and treat customers comparably), dispute resolution, regional coordination, and congestion studies (each transmission provider must prepare studies annually)
- Each transmission provider must describe its planning process in its tariff.

- o The Commission will allow regional differences in planning processes

Transmission Pricing

- o **Pricing of Imbalances** – The Commission proposes to reform the pricing of imbalances (i.e., energy and generator imbalances) to ensure that it is related to the cost of correcting the imbalance, to encourage efficient scheduling behavior, and to account for the special circumstances presented by intermittent generators, such as by waiving the higher ends of the imbalance penalties.
- o **Credits for customer-owned transmission facilities** – With respect to credits available to customers that own network transmission facilities that are integrated with the transmission provider's facilities, the NOPR proposes to clarify that the transmission provider, in designing its rates for OATT service, must treat its own facilities on a comparable basis, and proposes to eliminate the requirement that new facilities can receive credits only if they are "jointly planned" because this requirement may provide a disincentive to coordinated planning.
- o **Capacity reassignment** – For capacity reassignments by transmission customers, the NOPR proposes to eliminate the price cap (which currently is the higher of the original rate, the maximum tariff rate or the customer's opportunity cost capped at the cost of expansion) and allow negotiated rates between the customer and its assignee, but not for capacity reassigned by the transmission provider or its affiliates.

Non-Rate Terms and Conditions

- o **Redispatch obligation** – The Commission proposes to clarify that when a transmission provider determines that its system lacks capacity to fulfill a request for point-to-point service, a transmission provider must use all of its available redispatch options to satisfy a request for firm point-to-point service and, at the transmission customer's option, these redispatch options must be studied before the customer is obligated to incur the costs and time delays associated with a study of system-expansion options. The Commission also seeks comment on whether, alternatively, it should modify the nature of point-to-point service to require that transmission providers offer a "conditional firm" service that would be subject to curtailment prior to firm service only a limited number of hours of the year.
- o **Rollover rights (right of first refusal)** – The Commission proposes to revise the rollover provision in the pro forma OATT, which grants an ongoing right to transmission customers to renew or "rollover" their contracts, to apply to contracts that have a minimum term of five years, rather than the current minimum term of one year. The NOPR proposes that a customer must exercise its right of first refusal to renew the contract no less than one year prior to the expiration date of the transmission service agreement, rather than within the current 60-day period.
- o **Hourly firm point-to-point service** – The Commission proposes to require transmission providers to offer hourly firm point-to-point service under the pro forma OATT.

- o **Designated network resources** – The NOPR makes a number of clarifications related to the types of agreements that may be designated as network resources, the process for verifying whether agreements meet the requirements in the pro forma OATT, and the requirement for transmission providers to designate and undesignate network resources on OASIS.
- o **Reservation priority** – The Commission proposes to change the reservation priority rules to give priority to pre-confirmed transmission service requests submitted in the same time period as non-confirmed requests.

Examples of Proposed Increases in Transparency

- o In addition to the increased transparency included in the ATC and planning reforms described above, the Commission proposes to require transmission providers to post on OASIS all business rules, practices and standards that relate to transmission services provided under the pro forma OATT, and to include credit review procedures in their OATTs.
- o The Commission proposes to require transmission providers and their network customers to use the transmission provider's OASIS to request designation of a new network resource and to terminate the designation of an existing network resource.

Proposed Reforms to Facilitate Enforcement of the Pro Forma OATT:

- o The Commission proposes a number of posting and reporting requirements that will provide the Commission and market participants with information about each transmission provider's performance of pro forma OATT obligations. For example, the Commission proposes to require transmission providers to post specific performance metrics related to their completion of studies required to evaluate certain transmission requests under the pro forma OATT.