Order 890 P 1215

…The Commission also has held that a transmission provider may restrict a right of first refusal based on pre-existing contracts that commence in the future if the transmission provider knows at the time of the execution of the original service agreement that ATC used to serve a customer will be available for only a particular time period, after which time it is already committed to another transmission customer under a previously confirmed transmission request.Once a transmission provider evaluates the impact on its system of serving a long-term firm transmission customer and grants the transmission customer existing capacity, the transmission provider must plan and operate its system with the expectation that it will continue to provide service to the transmission customer should the transmission customer exercise the right of first refusal.

Order 890-A P644

The Commission affirms the decision in Order No. 890 to limit rollover rights to

contracts with a minimum term of five years.

Order 890-A P 645

…A point-to-point customer need not have a five-year power contract in order to secure a five-year transmission service contract. Similarly, it is the length of a network customer’s network service agreement, not the length of the power contract supporting a network resource designation, that determines whether the customer is eligible for rollover. Thus, the availability of five-year power contracts is not determinative of the ability of transmission customers to obtain rollover rights.

Order 890-A P 648

…As the Commission explained in Order Nos. 888 and 888-A, “if the customer chooses a new power supplier and this substantially changes the location or direction of the power flows it imposes on the transmission provider’s system, the customer’s right to continue taking transmission service from its existing transmission provider may be affected by transmission constraints associated with the change.”Thus, a transmission provider must allow a rollover, even where a transmission customer changes power suppliers, so long as there is no substantial change in the location or direction of the power flows imposed on the transmission provider’s system.

Order 890-B P 148

The Commission affirms the determination in Order No. 890-A that the length of a network customer’s network service agreement, not the length of a power contract supporting a network service agreement, determines whether the network customer is eligible for rollover rights.A network customer’s eligibility for rollover rights is distinct from its ability to rollover a particular resource designation. In order for a network customer to qualify for rollover rights, it must have a network service agreement that satisfies the minimum term necessary for rollover rights. The network customer may then continue to designate and undesignate resources pursuant to that service agreement, subject to the availability of adequate transmission capability to accommodate the request.

**123 FERC ¶ 61,299**

**18 CFR Part 37**

**2. Rollover Rights**

141. In Order No. 890-A, the Commission affirmed the decision in Order No. 890 to

limit rollover rights to contracts with a minimum term of five years. The Commission

rejected requests to condition application of the minimum five-year term on a

demonstration that the relevant generation markets support five-year power supply

contracts. The Commission explained that the purpose of its reform of the rollover policy

is to align the rights and obligations of the customer with those of the transmission

provider, not with the availability of supplies within a market or particular commercial

practices in a region. The Commission noted that a point-to-point customer does not

need to have a five-year power contract in order to secure a five-year transmission service

contract and that the length of the network customer’s service agreement, not the length

of the power contract supporting a network resource designation, determines whether a

Customer is eligible for rollover.

**Commission Determination**

148. The Commission affirms the determination in Order No. 890-A that the length of a

network customer’s network service agreement, not the length of a power contract

supporting a network service agreement, determines whether the network customer is

eligible for rollover rights.A network customer’s eligibility for rollover rights is

distinct from its ability to rollover a particular resource designation. In order for a

network customer to qualify for rollover rights, it must have a network service agreement

that satisfies the minimum term necessary for rollover rights. The network customer may

then continue to designate and undesignate resources pursuant to that service agreement,

subject to the availability of adequate transmission capability to accommodate the

Request.

149. In considering that issue, the Commission first addressed whether rollover rights are available to network customers, concluding that all network customers of the transmission system are long-term users of the system and, therefore, meet the minimum term required to qualify for rollover rights.

However, when the Commission extended the minimum contract commitment for rollover rights from one year to five years, it was necessary to state more clearly that a network customer’s threshold eligibility for rollover rights is linked to the term of its network service agreement.

Possible conclusions from above:

* An initial set of rollover rights must be identified and planned for at the time of execution of the network service agreement. Assume this would be based on the initial set of DNRs supplied in the application and assumed to be on-going through the initial term of service unless otherwise known.
* Clearly the NITS Application has a rollover provision that is distinct from any rollover rights for a specific DNR.
* Any rollover rights associated to a DNR must only be loosely tied to that DNR to accommodate the customer changing power suppliers assuming these would be associated with addition of new NITS resources.
* If a DNR has rollover rights, the DNR itself may be for less than five years in duration since the attestation could only cover the term of the power contract and the term of the power contract does not appear to be key determinant of whether the customer has rollover rights or not.