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# TROUTMAN SANDERS LLP

A T T O R N E Y S   A T   L A W  
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000  
WASHINGTON, D.C. 20004-2134  
TELEPHONE: 202-274-2950

## ***REGULATORY ALERT BULLETIN***

**January 2, 2008**

### **ORDER NO. 890-A<sup>1</sup>**

For additional information, please contact:

David Rubin – 202.274.2964  
david.rubin@troutmansanders.com

Amie Colby – 202.274.2922  
amie.colby@troutmansanders.com

Jeffrey Jakubiak – 202.274.2892  
jeffrey.jakubiak@troutmansanders.com

### **INTRODUCTION**

On December 28, 2007, the Federal Energy Regulatory Commission (“Commission”) issued Order No. 890-A, the Order on Rehearing and Clarification of its Final Rule, issued February 16, 2007, amending the open access regulations and Open Access Transmission Tariff (“OATT”).<sup>2</sup> This Regulatory Alert Bulletin identifies the extent to which the Commission granted rehearing or clarification of the Final Rule. For the most part, Order No. 890-A largely affirms Order No. 890.

Order No. 890-A will become effective 60 days after its publication in the Federal Register.

#### **I. SCOPE, APPLICABILITY, AND COMPLIANCE**

- Transmission providers that have not been approved as independent system operators (“ISO”) or regional transmission organizations (“RTO”) and whose facilities are not in the footprint of an RTO or ISO, must submit a Federal Power Act (“FPA”) section 206 filing that contains the revised non-rate terms and conditions of the *pro forma* OATT stated in Appendix C of Order No. 890-A within 60 days of publication of the order

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<sup>1</sup> **DISCLAIMER** – The information provided in this Regulatory Alert Bulletin does not constitute, nor should it be construed as, legal advice. Receipt of this Regulatory Alert Bulletin and/or its contents does not establish an attorney-client or other relationship between Troutman Sanders LLP (including its attorneys) and the recipient.

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (“Order No. 890”).

within the Federal Register (hereinafter “60 Day Compliance Filing”). RTO and ISO transmission providers are similarly directed to submit a section 206 filing. Order No. 890-A at P 38.

- The Commission did not intend in Order No. 890 to extend reciprocity obligations beyond transmission owning members of ISOs or RTOs. Accordingly, the Commission revises section 6 of the OATT to require a Transmission Customer that is a member of or that takes service from an RTO or ISO to provide comparable service only to the transmission-owning members of the RTO or ISO. Order No. 890-A at PP 32, 37.

## II. REHEARING AND CLARIFICATION ASPECTS OF ORDER NO. 890-A

### A. ATC Calculations: Consistency and Transparency

#### 1. Consistency

##### (a) Necessary Degree of Consistency

- Transmission-owning utilities in an RTO region can request waiver of the requirement to convert Available Flowgate Capacity (“AFC”) calculations into available transfer capability (“ATC”) for posting purposes in the event the RTO has been granted such waiver. Order No. 890-A at P 51.
- Adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface. Order No. 890-A at P 52.
- Transmission reserve margin (“TRM”) may be used to accommodate the procurement of ancillary services used to provide service under the *pro forma* OATT. Order No. 890-A at P 53.

##### (b) ATC Components

- Existing Transmission Commitments (“ETC”): The reference to “committed requests” in Order No. 890 refers to confirmed transmission requests. Order No. 890-A at P 66. Order No. 890’s reference to releasing unused (non-scheduled) transfer capability as non-firm ATC applies to unscheduled firm transmission capability because “all unused non-firm capacity is deemed available to any entity meeting the scheduling requirements.” Order No. 890-A at P 67.
- Capacity Benefit Margin (“CBM”): Utilities need not make CBM available to load serving entities (“LSEs”) on their system if the utilities do not reserve for themselves CBM or its equivalent. Order No. 890-A at P 82.
- TRM: The North American Electric Reliability Corporation (“NERC”) was not directed to identify a particular methodology or actual number to include in TRM standards, but rather to include consistent guidelines and criteria in the calculation and uses of TRM by transmission providers. Order No. 890-A at P 94.

**(d) Modeling, Assumptions, and Input Data**

- Models utilized by the transmission provider in calculating ATC, and not actual ATC values, are required to be benchmarked in order to ensure the models are sufficiently accurate. Order No. 890-A at P 99.
- Assumptions regarding loop flows in calculating ATC must be consistent with those used for planning purposes within the respective timeframes. Further, loop flow impact in ATC calculation should not be restricted to the transmission provider's control area, and loop flows occurring in the power system must be included in the load flow models that simulate power system conditions. Order No. 890-A at P 100.
- Transmission providers must include an LSE's native load service obligations as well as the transmission provider's own load in data and modeling assumptions used in ATC calculation. Order No. 890-A at P 100.

**(e) ATC Calculation Frequency**

- Transmission providers are not required to update ATC on a more frequent basis than the minimum frequency that the NERC/NAESB standards require. Order No. 890-A at P 105.

**2. Transparency/OASIS**

**(a) ATC/TTC Posting/Narrative Explanation Requirements**

- Data used for ATC/TTC calculation for constrained paths, as well as any system planning studies or specific network impact studies performed for customers, should be made available upon request, regardless of whether the customer is affiliated or non-affiliated with the transmission provider. Order No. 890-A at P 115.
- As stated in Order No. 890, transmission providers must post a brief, but specific, narrative explanation of the reason for a change in monthly or yearly ATC values on a constrained path as a result of a change in TTC of 10 percent or more. When changes in TTC occur, the transmission provider is only required to list the primary events, rather than each every occurrence, that impact such values. Further, transmission providers are directed to work with NAESB to develop the OASIS functionality necessary to post narrative explanations regarding the reason for change in such TTC values. Order No. 890-A at P 125.
- Transmission providers that employ the AFC calculation methodology must submit in the 60 Day Compliance Filing a statement describing how the narrative explanation is derived for ATC/TTC postings or, if such information was provided in a prior compliance filing, to reference such filing. Order No. 890-A at P 127.

**(b) Additional Data Posting**

- Order No. 890 required transmission providers to post on OASIS metrics regarding transmission service requests. In Order No. 890-A, the Commission indicates that

transmission providers should include in such metrics any type of request for service, including transmission service requests by affiliated merchant or trading entities as well as requests by the transmission providers' merchant function to designate or undesignate network resources or to procure secondary network service to serve native load. Order No. 890-A at P 141.

- RTOs and ISOs must also post metrics related to the provision of transmission service. Posting of non-affiliate transmission service request metrics will improve the transparency of transmission service request processing. Order No. 890-A at P 142.
- Underlying load forecast assumptions should include economic and weather-related assumptions, and both actual daily peak load and load forecast data is required to be posted. Order No. 890-A at P 143.

### (c) Additional Transparency

- The step-by-step modeling study methodology and criteria for adding or eliminating flowgates is considered part of the ATC methodology and should be included in each transmission provider's Attachment C. Any transmission provider that has not included such information must do so in the 60 Day Compliance Filing. Order No. 890-A at P 149.

## B. Transmission Planning

### 1. Need for Reform

- All transmission providers, including RTOs and ISOs must comply with the planning-related reforms adopted in Order No. 890. Order No. 890-A at P 175. The filing and posting requirements do not apply to transmission-owning RTO/ISO members without an OATT. While certain responsibilities may be delegated to transmission-owning members of an RTO/ISO, the RTO/ISO has the responsibility to demonstrate compliance with the Commission's nine planning principles. Order No. 890-A at P 175.
- Each transmission provider, including each RTO and ISO, is required to submit a compliance filing stating its transmission planning process in an attachment to its OATT. Order No. 890-A at P 177.
- The Commission declines to expand the *pro forma* OATT to place additional obligations on the transmission provider to construct facilities that may be identified in its transmission plan. Order No. 890-A at P 178.

### 2. Planning Principles

#### (a) Coordination

- Transmission providers must provide stakeholders with an opportunity to participate fully in the planning process, and such participation opportunities must be available at the early stages of the development of the transmission plan. This does not mean, however,

that customers may have co-equal control over the planning process. Order No. 890-A at P 188.

**(b) Openness**

- If there are circumstances under which participating in planning is limited, then those circumstances should be clearly described in each transmission provider's Attachment K. Order No. 890-A at P 194.

**(c) Transparency**

- Order No. 890 required transmission providers to disclose to all customers and stakeholders the basic criteria, data, and assumptions that underlie transmission system plans. In Order No. 890-A, the Commission clarifies, that to the extent necessary, transmission base case and change case data used by the transmission provider may be included in the information to be disclosed as such assumptions are necessary to adequately understand the results reached in a transmission plan. Order No. 890-A at P 200.

**(d) Information Exchange**

- Within the transmission planning context, customers should only be required to provide cost information for transmission and generation facilities as necessary for the transmission provider to perform economic planning studies requested by the customer. Order No. 890-A at P 206.
- Good faith projections of anticipated point-to-point uses of the transmission system are intended only to give the transmission provider additional data to consider in its planning activities. Order No. 890-A at P 207.

**(e) Comparability**

- The Commission will consider on a case-by-base basis how a transmission provider should treat a non-public utility transmission provider that does not implement a planning process in accordance with Order No. 890. Order No. 890-A at P 214.

**(f) Dispute Resolution**

- The scope of the dispute resolution mechanism is not limited to procedural issues. All disputes related to the planning process, both procedural and substantive, may be addressed in the dispute resolution process. Order No. 890-A at P 221.

**(g) Regional Participation**

- Participation in a regional coordination process, while directed to transmission providers, is not limited to transmission providers. Order No. 890-A at P 226.

- Concerns regarding the inability of interested parties to participate in the regional development process can be raised during Commission review of the Attachment K compliance filings. Order No. 890-A at P 227.

#### **(h) Economic Planning Studies**

- The transmission provider's Attachment K must clearly describe the process by which economic planning studies can be requested and how they will be prioritized. Stakeholders have the right to request the defined number of high priority studies to be paid for by the transmission provider. However, stakeholders requesting additional studies would be responsible for paying for the cost of such studies. Order No. 890-A at P 236.
- It is the transmission provider's obligation to perform economic planning studies. To the extent an RTO or ISO delegates any of its responsibilities, it will be the obligation of the RTO or ISO to ensure ultimate compliance with the requirements of Order No. 890. Order No. 890-A at P 238.

#### **(i) Cost Allocation for New Projects**

- Order No. 890 required transmission providers to address in their Attachment K planning processes the allocation of costs of new facilities which do not fit under existing rate structures. Order No. 890-A states that the details of a proposed cost allocation methodology must be clearly defined in Attachment K. The Commission states further, "[I]dentification of an upgrade (reliability or economic) in the transmission plan does not trigger an obligation to build under the Attachment K planning process." Order No. 890-A at P 251.
- The Commission will allow regional flexibility regarding cost allocation and will consider each proposal on a case-by-case basis, including cross-border allocation or potential cost-shifting to border utilities. Order No. 890-A at P 253.

### **C. Transmission Pricing**

#### **1. Energy and Generator Imbalances**

##### **(a) Tiered Approach to Imbalance Penalties in the OATT**

- End-use customers providing ancillary service through demand response should generally not be subject to penalties for imbalances created as a result of providing the ancillary service. Order No. 890-A at P 272.
- The Commission revises Schedules 4 and 9 to clarify that a transmission provider may charge a transmission customer a penalty for either hourly generator imbalances under Schedule 9 or hourly energy imbalances under Schedule 4 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other. Order No. 890-A at P 273.

**(b) Generator Imbalance Penalties**

- The Commission revises section 3 of the *pro forma* OATT to reflect that generator imbalance service must be offered for any transmission service used to deliver energy from a generator located within the transmission provider's control area, as required by Schedule 9. Order No. 890-A at P 287.
- The Commission revises Schedule 9 to require the transmission provider to offer generator imbalance service to any generator in its control area. However, the transmission provider only has to provide generator imbalance service from its own resources to the extent that it is physically feasible to do so. Order No. 890-A at PP 288-90.
- If a generator has executed a service agreement for generator imbalance service, any transmission customer scheduling from the generator will be deemed to have satisfied its obligation to purchase generator imbalance service under section 3 and Schedule 9. Order No. 890-A at P 288.
- The definition of intermittent resources in the context of Schedule 9 does not include: (1) hydroelectric units that store water used to generate electricity; or (2) newly completed generating units producing test energy. Thus, these resources are appropriately subject to the generator imbalance provisions. Order No. 890-A at P 292.
- The Commission revises Schedule 9 to reflect an exemption from generation imbalance penalties for: (1) generators responding to correct frequency decay; (2) generators deviating from their schedules due to directives from balancing authorities, transmission operators and reliability coordinators; and (3) generators responding to a reserve sharing event, with properly structured arrangements with transmission providers. Order No. 890-A at P 293.

**(c) Definition of Incremental Cost**

- The Commission modifies the definition of incremental cost for purposes of assessing imbalance charges to require transmission providers to use the cost of the last 10 MWs dispatched for any purpose. Each transmission provider must propose new OATT language that clearly specifies the method by which it will calculate incremental costs, as well as the method it will use to obtain each component of the calculation. Order No. 890-A at PP 309-10.
- Transmission providers can include in the calculation of incremental cost those start-up costs that are incurred in an hour different from the hour of excess imbalance, provided that the costs are in fact associated with providing the imbalance service. Order No. 890-A at P 312.
- Transmission providers may propose to assess regulation charges to generators selling in the control area, as well as generators selling outside the control area, and the Commission will consider such proposals on a case-by-case basis. Order No. 890-A at P 313.

**(d) Netting of Energy and Generator Imbalances**

- Netting should be done on a megawatt-hour basis, rolling over the month. Imbalances remaining at the end of the month should be settled at the load weighted average of the hourly incremental costs during that month. Transmission providers may propose a more granular approach to netting within the first tier, subject to a showing that it is necessary under the circumstances. Order No. 890-A at P 325.

**(e) Distribution of Penalty Revenues above Incremental Cost**

- Regarding the time frame during which there is to be a matching of penalty revenue and credits to non-offending customers, the transmission provider should distribute the penalty revenue received in a given hour to those non-offending customers in that hour, including customers that were out of balance but within the first tier. The transmission provider may, as part of its distribution methodology, address how distributions may be affected by the transmission provider's inability to recover the costs incurred to provide imbalance service. Order No. 890-A at P 333.

**2. Credits for Network Customers**

**(a) The New Test to Determine Eligibility for Credits**

- Presumptions of integration are rebuttable both as applied to the transmission provider and the network customer. Order No. 890-A at P 351.
- Denial of credits for a network customer no longer triggers a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard because credits for network customer facilities can now be denied only after an affirmative showing by the transmission provider that its facilities are not similar under the integration test to those of the network customer, *i.e.*, by overcoming the presumption of integration. Order No. 890-A at P 352.
- A network customer may justify application of the presumption that a network customer's facilities are integrated by reference to the existing facilities in the transmission provider's rates, *i.e.*, by showing that its new facilities are similar in design and purpose to facilities owned by the transmission provider that are included in rates. Order No. 890-A at P 353.

**3. Capacity Reassignment**

**(a) Removal of the Price Cap**

- The Commission amends section 23.1 of the *pro forma* OATT to lift the price cap on reassignments of capacity until October 1, 2010. Before that date, Commission Staff will be closely monitoring the quarterly reassignment-related data submitted by transmission providers to identify any problems in the development of the secondary market and to prepare a report for the Commission by May 1, 2010. Upon review of that report and any

industry feedback, the Commission will determine whether it is appropriate to continue to allow reassignments of capacity above the price cap beyond October 1, 2010. Order No. 890-A at P 390.

**(b) Contracting and Posting Issues**

- Similar to primary capacity contracting obligations, all reassignments can be accomplished by the assignee executing a service agreement governing its reassignments of capacity generally (threshold requirement) and completing a particular assignment through the OASIS. The transmission provider and assignee may rely on OASIS to provide information regarding the reseller, quantity, and price associated with a particular reassignment of service (or multiple reassignments of service), which would then become part of the binding agreement between the two parties. Order No. 890-A at PP 422-23.
- The Commission revises Schedules 7 and 8 to reflect that neither the discount rule nor the price ceilings otherwise discussed in the OATT apply to reassignments of capacity. Order No. 890-A at P 426.
- To the extent necessary, the costs incurred by the transmission provider to account and bill for reassignments of transmission capacity should be included in the transmission provider's cost of service, just like accounting and billing costs for any other service under the transmission provider's OATT. Order No. 890-A at P 427.

**(c) Market-Based Rate Tariffs**

- Reassignments of capacity are governed by the terms and conditions of the transmission provider's OATT. The reseller's market-based rate tariff, including its price cap or reporting obligations provisions, is not relevant or controlling with regard to reassignments. Order No. 890-A at PP 431-33.

**4. "Operational" Penalties**

**(a) Unreserved Use Penalties**

- Order No. 890 was not intended to grant transmission providers greater flexibility than other network customers when using undesignated network resources or undesignated portions of designated network resources to serve bundled retail load. Transmission providers serving native load must designate network resources, and to the extent a transmission provider takes power from a non-designated network resource to serve bundled retail load, such power must be on a non-firm basis comparable to secondary network service. Order No. 890-A at P 453.
- The discussion of secondary network service in Order No. 890 was intended to address only what a network customer (or the transmission provider) can and cannot do with respect to the host transmission provider's system. The host transmission provider cannot impose a penalty for scheduling delivery of designated or undesignated portions of a customer's remote resources when such delivery does not utilize the host transmission provider's transmission system. Order No. 890-A at P 454.

- With regard to the OATT requirement that a customer using unreserved service shall be deemed to have executed a service agreement with the host transmission provider to govern that service, all unreserved uses of the host transmission provider's system are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service. Order No. 890-A at P 454.
- All charges for ancillary service costs associated with unreserved uses must be based on the actual costs of the ancillary service attributable to the unreserved use, *i.e.*, not subject to the 200 percent penalty rate. Order No. 890-A at P 463.

**(b) Distribution of Operational Penalties**

- If a transmission provider elects to impose unreserved use penalties, it must: (1) submit to the Commission a tariff filing under FPA section 205 stating the applicable unreserved use penalty rate; (2) at any time prior to the first distribution, submit a one-time compliance filing under FPA section 206 proposing the transmission provider's methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties; and (3) report on its penalty assessments and distributions in an annual compliance report filed in the same docket as the section 206 compliance filing, on or before the deadline for submitting FERC Form-1. Order No. 890-A at P 472.
- The Commission will review each distribution proposal on a case-by-case basis, but the Commission clarifies that identification of "non-offending" transmission customers for purposes of making unreserved use penalty distributions should not be based on the entire calendar year. Order No. 890-A at P 473.
- Transmission providers have flexibility in developing their distribution methodologies to minimize administrative burdens by establishing reasonable minimum thresholds to trigger a distribution, provided they do not unduly restrict the distribution of penalty amounts. Order No. 890-A at P 475.

**(c) Applicability of Operational Penalties Proposal to RTOs and Other Independent or Non-Profit Entities**

- The Commission will take into consideration the relative ability of non-profit transmission providers to pay late study penalties on review of such providers' relevant notification filings. Order No. 890-A at PP 484-85.

**5. "Higher of" Pricing Policy**

- The capital costs of upgrades, as estimated in a facilities study and eventually specified in a service agreement through an incremental rate, are not subject to change once the customer has executed the service agreement. Order No. 890-A at P 491.

## 6. Other Ancillary Services

- The technical criteria that a transmission provider may use to evaluate whether it may reliably allow the sale of ancillary services by a load resource must be developed and imposed on a non-discriminatory basis, and transmission providers should give comparable, not preferential, consideration of load resources in selecting the mix of resources to supply ancillary services. Order No. 890-A at P 499.

### D. Non-Rate Terms and Conditions

#### 1. Modifications to Long-Term Firm Point-to-Point Service

##### (a) Requirement to Offer Planning Redispatch and Conditional Firm

###### (1) Planning Redispatch

- Transmission providers need not provide planning redispatch from resources that are expected to provide reliability redispatch in response to constraints. If resources with restricted run times are required to meet the reliable service needs of native load, including reliability redispatch needs, these resources need not be offered for planning redispatch service. Order No. 890-A at PP 532, 539.
- The Commission will not require publication of the metrics underlying these reliability grounds or identification of reserves set aside for customers. Order No. 890-A at P 532.
- Transmission providers without the ability to dispatch generation cannot reliably provide planning redispatch service and have no obligation to procure generation to provide the service. Order No. 890-A at P 536.
- The Commission revises section 32.3 of the *pro forma* OATT so that it will correspond to the amendments to 19.3 of the *pro forma* OATT, which will make clear that the information required in a system impact study is nearly identical for network and point-to-point customers. Order No. 890-A at P 542.
- The Commission agrees with EEI's request to amend section 15.4(b) of the *pro forma* OATT so that its language is consistent with statements in Order No. 890 that a transmission provider is obligated to provide planning redispatch service to customers requesting long-term firm point-to-point service, but not to customers requesting short-term firm service. Order No. 890-A at P 544.

###### (2) Conditional Firm

- A transmission provider that provided short-term conditional firm service prior to the issuance of Order No. 890 need not revise the existing tariff provisions relating to short-term firm service. A transmission provider proposing to add short-term conditional firm service to its OATT must seek approval under FPA section 205. Order No. 890-A at P 557.

- The Commission revises section 32.3 of the *pro forma* OATT to require the study of automatic devices when requested by a network customer in a system impact study. Order No. 890-A at P 559.
- The Commission agrees with EEI's request to amend section 15.4(c) of the *pro forma* OATT so that its language is consistent with statements in Order No. 890 that a transmission provider is obligated to provide conditional firm options only to customers requesting long-term firm point-to-point service. The Commission also revises sections 19.1 and 19.3 of the *pro forma* OATT to make clear that the conditional firm option is available to eligible customers, not just existing transmission customers. Order No. 890-A at P 544.

## **(b) Implementation of Planning Redispatch and Conditional Firm**

### **(1) Characteristics of Service**

- Customers paying for upgrades have priority access to the capability created by those upgrades, up to the point of the amount of transmission service requested. Any capacity created in excess of the service request should be allocated to those planning redispatch and conditional firm customers earlier in the queue, based on their order in the queue. Order No. 890-A at P 584.
- A transmission provider's waiver of a reassessment for conditional firm or planning redispatch service does not constitute a waiver of all reassessments for the duration of the service, unless explicitly agreed to by the transmission provider. Order No. 890-A at P 585.
- When a transmission provider is evaluating its continued ability to provide conditional firm service during a biennial reassessment, it is not limited to the specific conditions previously agreed to by the transmission customer in the initial service agreement or a prior reassessment. Thus, the Commission does not impose upon the transmission provider the obligation to plan its system to keep firm the part of the conditional firm service that is firm when service was initiated. Order No. 890-A at P 590.
- Transmission providers shall, in coordination with NERC and NAESB, develop within 180 days of publication of this order in the Federal Register a consistent set of tracking capabilities and business practices for tagging for implementation of conditional firm service. In the interim, the existing business practices of each transmission provider for tracking and tagging conditional firm service shall remain in effect. Order No. 890-A at P 592.

### **(2) Pricing of Planning Redispatch**

- In months in which generation-related payments are collected for planning redispatch, these payments should be treated as a revenue credit to off-set native load customers' fuel adjustment clause. In months in which the embedded cost rate of transmission is collected for planning redispatch, these revenues should be included in the numerator of the rate calculation as a revenue credit. For most planning redispatch service, the Commission believes that there will likely be at least one month a year when the actual

incremental cost of redispach is higher than the embedded cost rate. For this reason the Commission believes it is appropriate for transmission providers to treat transmission revenues from planning redispach service consistent with the rate treatment for revenues from short-term transmission reservations. Order No. 890-A at P 606.

**(c) Proposals for Transparent Redispach**

- Transmission providers that do not calculate and charge separate reliability dispatch charges to their network customers have no obligation to report monthly redispach costs for those services. If redispach costs are calculated and charged on a system-wide basis rather than for each constraint on the system, the transmission provider has no obligation to perform new calculations to estimate the redispach costs for each constraint on its system. In the described situation, only the average costs for the system for the month, including the highest and lowest system average redispach costs in an hour for the month, need be posted. Order No. 890-A at P 627.

**2. Rollover Rights**

**(a) Five-Year Minimum Contract Term**

- The Commission did not intend in Order No. 890 to restrict the rollover right to exactly the same points of receipt and delivery as the terminating service. 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. Transmission providers must permit rollover of a network resource by another user if it would accord itself rollover of the resource if it served the transmission provider's load. Order No. 890-A at P 647.
- Both network customers and point-to-point customers may roll over a portion of their service, provided that they will only obtain a subsequent rollover right if they agree to another five-year term, or match any longer term competing request, for that portion of capacity. Order No. 890-A at P 651.

**(c) Matching Competing Requests**

- A network customer seeking rollover of its network service for a designated resource should be able to match a competing point-to-point request by extending its network service agreement rather than the power contract supporting the network resource designation. A customer exercising a rollover right is only required to match a *bona fide* competing commitment to take service, evidenced for example by a pre-confirmed transmission request or the execution of a contingent service contract. Order No. 890-A at P 666.
- In cases where a rollover customer loses service to a longer-duration competing request for a lesser quantity, the rollover of the original request should only be displaced by the quantity needed to fulfill the longer-term request for a lesser quantity. In such instances,

the transmission provider should grant service to the competing customer and reduce the amount of capacity available for roll over by the original customer accordingly. Order No. 890-A at P 669.

**(e) Effectiveness Upon Acceptance of Coordinated and Regional Planning Process**

- The Commission revises section 2.2 of the *pro forma* OATT to make clear that it is only after a transmission provider's Attachment K planning process is accepted by the Commission that the transmission provider should file the rollover reform language of section 2.2, and the effective date of that language should be commensurate with the date of that filing. Order No. 890-A at P 684.

**(f) Transition Issues**

- The Commission revises section 2.2 of the *pro forma* OATT to provide that the current one-year contract commitment requirement will continue to apply to all transmission service requests that were in a transmission provider's transmission queue as of the effective date of the reforms adopted in Order No. 890 (*i.e.*, July 13, 2007). For such transmission requests, the five-year contract commitment requirement will not apply until the first rollover date after both the execution of the transmission service contract and effectiveness of the revised section 2.2 for the particular transmission provider. Order No. 890-A at P 691.
- An existing transmission customer must comply with the new rollover reforms at the time of the first rollover of its contract occurring after the effectiveness of the rollover reforms for its transmission provider, as provided in the revisions to section 2.2 of the *pro forma* OATT. Order No. 890-A at P 693.
- A transmission customer with an existing contract that seeks to exercise its rollover after the effectiveness of rollover reform may exercise this rollover based on the existing 60-day notice rule, in recognition of the fact that during this transition period certain customers may not have a year or more left on their existing contracts. Order No. 890-A at P 693.
- The current 60-day notice rule will continue to apply only to those existing contracts that have less than five years left in their terms at the time of effectiveness of rollover reform for its transmission provider. Any customer with an existing contract with five or more years left in its term at the time of effectiveness of rollover reform for its transmission provider will be required to give one-year notice of whether it intends to exercise its rollover right. Regardless of whether an existing transmission customer is required to give 60-days or one-year notice when exercising its rollover right under its existing contract, the customer must enter into a minimum of five years of service and meet any of the other requirements of the reformed rollover right in order to retain a rollover right going forward. Order No. 890-A at P 695.

### **3. Modification of Receipt or Delivery Points**

- Transfer capability is not freed up for earlier queued service requests until a redirect has been granted. A redirect request must be evaluated in accordance with section 17 of the *pro forma* OATT using the same system assumptions and analysis applicable to any other new request for service, including whether sufficient ATC exists to accommodate the request. If there is insufficient ATC to offer service to customers in the queue, and an existing customer requests redirected service, any increase in ATC along the original path is contingent upon the acceptance and confirmation of the redirect. It cannot be assumed at the time of a redirect request that the transmission provider will grant the request. Order No. 890-A at P 708.

### **4. Acquisition of Transmission Service**

#### **(a) Processing of Service Requests**

##### **(1) Posting Performance Metrics**

- The Commission grants rehearing to make several typographical revisions to the regulations implementing posting requirements. The Commission clarifies that the posting requirements apply to all requests for service, including requests for point-to-point service and requests to designate new network resources or loads. Order No. 890-A at P 722.

##### **(2) Operational Penalties for Late Studies**

- Delegating to a third party the responsibility for conducting transmission studies does not relieve the transmission provider of its obligation to ensure compliance with sections 19 and 32 of the *pro forma* OATT. Order No. 890-A at P 745.
- Payment of a late study penalty by the transmission provider falls outside the scope of the indemnification provided by transmission customers under section 10.2 of the *pro forma* OATT. Assessment of a late study penalty would not preclude other claims for damages to the extent the transmission provider is liable under relevant legal principles. Order No. 890-A at P 748.

##### **(3) Recovery Through Rates**

- If an RTO or ISO is unable to identify any appropriate funds from which to pay a late study penalty, the Commission will consider case-specific cost-recover proposals under FPA section 205. Such proposals should not include mechanisms to automatically pass through to customers any penalties approved to the RTO or ISO. Order No. 890-A at P 757.

#### **(4) Clustering Transmission Service Request Studies**

- To the extent a transmission provider wishes to adopt additional procedures governing the clustering of requested studies, it may propose such procedures in a filing under section 205 of the FPA, demonstrating that clustering will be implemented in a timely and non-discriminatory basis. Order No. 890-A at P 760.

#### **(6) Additional Processing Proposals**

- The Commission revises section 17.7 of the *pro forma* OATT in order to define more equitably the rights and obligations of customers failing to make timely payment of deposits in order to extend the commencement of service. The Commission believes that it is more equitable to require those transmission customers who seek an extension of service, but fail to pay the required deposit in a timely fashion, to lose only their option to extend their transmission service start date and not the underlying transmission service agreement. Order No. 890-A at P 773. If a transmission customer fails to make the appropriate payment to extend service, that customer will remain obligated to take service under the original terms and conditions of the underlying transmission service agreement. Order No. 890-A at P 774.
- The Commission revises section 17.7 of the *pro forma* OATT to make clear that extensions of service are subject to availability. For contracts of five years or longer, the Commission expects that identification of any restrictions on rollover rights in the initial service agreement will continue to serve as corresponding restrictions on the ability of the customer to extend the commencement of service. Order No. 890-A at P 775.
- Sections 17.1 and 17.5 of the *pro forma* OATT do not require transmission providers to undertake system impact studies for all requests for short-term transmission service. System impact studies are only required if it is necessary to evaluate the impact of the request prior to granting service. Order No. 890-A at P 777.

#### **(b) Reservation Priority**

##### **(1) Priority for Pre-Confirmed Requests**

- In the event an offer for service on a pre-confirmed request can only be accommodated by additions to the transmission provider's transmission system, the transmission customer may: (1) take a shorter term of service, if available; (2) agree to undertake any upgrades that may be necessary to accommodate the transmission requests; or (3) decline service. Order No. 890-A at P 787.
- Regarding the application of the right of first refusal for eligible customers with requests for service over multiple days, a competing request must exceed the total term of service in order to trigger the right of first refusal. Order No. 890-A at P 789.
- The language adopted in Order No. 890 did not fully capture the Commission's intent of allowing all eligible customers the opportunity to pre-confirm short-term firm and non-firm reservations. The Commission thus revises sections 1.39, 17.2, and 18.2 of the *pro*

*forma* OATT to more accurately reflect its intent that pre-confirmation service should be available to all eligible customers seeking short-term firm and non-firm transmission services. Order No. 890-A at P 790.

## (2) Price as a Tie Breaker

- Use of price as a tie-breaker does not mean that a customer is offering to be charged a market-based rate by the transmission provider. Under section 13.2 of the *pro forma* OATT, price serves as a tie-breaker among competing service requests of equal duration only when the transmission provider has offered a discount or a “below ceiling rate” on transmission service. Transmission providers may not charge rates above those stated in their OATT for primary transmission capacity. Order No. 890-A at P 793.

## (3) Five-Minute Window for Requests

- Each transmission provider has discretion to determine how its submittal window will be implemented, including the point at which the window goes into effect. Order No. 890-A at P 804.

## (4) Right of First Refusal and Preemption

- A “competing request” under sections 13.2 and 14.2 of the *pro forma* OATT may include a transmission service request that overlaps with only part of another existing transmission service reservation since both requests cannot be granted simultaneously. Accordingly, a “competing request” for purposes of sections 13.2 and 14.2 may also include a transmission service request for which transmission capacity cannot be accommodated without preempting one or more existing transmission reservations of parts thereof. Order No. 890-A at P 817.
- Sections 13.2 and 14.2 allow an eligible customer to retain its original reservation by matching the competing service request’s cost or duration terms exactly or by exceeding one or more of the terms of a competing transmission service request. Order No. 890-A at P 818.
- With regard to reassignments of capacity in the secondary market, the associated right of first refusal under sections 13.2 and 14.2 to match a competing transmission service request applies to the primary transmission service, not the reassignment of scheduling rights. Order No. 890-A at P 819.

# 5. Designation of Network Resources

## (a) Qualification as a Network Resource

### (1) Liquidated Damage Contracts

- In Order No. 890, the Commission concluded that power purchase agreements with a firm liquidated damage (“LD”) provision may be eligible for designation as a network

resource only if the contract contained a “make whole” LD provision. The Commission stated that the “make whole” LD provisions of the EEI firm LD product and the WSPP Schedule C agreement satisfy these requirements. On rehearing, the Commission clarifies that it is not concerned with the specific form used to contract for resources, so long as the designated power purchase agreement meets the relevant requirements. Order No. 890-A at P 837.

## (2) Off-System Resources

- The term “delivery point” in section 29.2(v) of the *pro forma* OATT contemplates an interface between the local transmission provider’s transmission system and the neighboring system from which power is being received. The use in section 29.2(v) of the plural “control area(s)” as adopted in Order No. 890 was inadvertent and is amended to indicate “control area” in the singular. Order No. 890-A at P 866.

## (3) On-System Resources

- Order No. 890 was not intended to change the requirements for designating on-system sales as network resources. The changes made in Order No. 890 to section 29.2(v) of the OATT did not change the substantive requirements for designating network resources as they apply to on-system and off-system resources; rather, the tariff language more clearly specifies the information (*i.e.*, source of supply, control area location, transmission arrangements, and delivery point(s) to the system) that applies only to off-system resources. Order No. 890-A at PP 886-889.
- An on-system seller’s choice contract may not provide sufficient information to be designated as a network resource, but may become eligible for designation as the information becomes available (*i.e.*, if the source generation is identified in a timely manner, and if the seller is bound to the identified generation for a specific period). Order No. 890-A at P 891.

## (4) Resource Information

- Section 29.2(v) of the OATT need not be provided for off-system sales. The operating restrictions applicable to off-system sales designated as network resources are the restrictions set forth in the contracts, not the underlying units supplying the contracts. The approximate generating cost for redispatch purposes for a system sale is the variable energy cost specified in the contract. Order No. 890-A at P 897.

### (b) Documentation for Network Resources

- The language used in Paragraph 1512 of Order No. 890 describing the attestation requirement for designated network resources is merely a paraphrase of the language included in the OATT. A network customer designating a network resource should submit an attestation using the language set forth in sections 29.2(viii) and 30.2 of the *pro forma* OATT. If the OASIS customer comment section does not allow enough space for a network customer to provide its attestation, then the transmission provider should

modify its OASIS functionality in order to accommodate full attestation. In the meantime, the transmission provider should identify an alternate means for the customer to provide the attestation. Order No. 890-A at P 919.

- Transmission providers must be allowed access to each others' OASIS, in order to permit confirmation of the firmness of transmission underlying the designation of a network resource. Order No. 890-A at P 923.

### (c) Undesignation of Network Resources

- Portions of a seller's individual network resources supporting a sale of system power need not be undesignated as long as the system sale itself is designated as a network resource by the buyer. Rather, the seller should undesignate a portion of its system equal to the amount of the system sale, but which is not attributed to any specific generators. However, if the system sale is not designated as a network resource by the buyer, then the seller must submit undesignations for each portion of each resource supporting the third-party sale. Order No. 890-A at P 947.
- Pending the implementation of a new OASIS functionality for designation and undesignation of resources, submission of requests to designate and undesignate network resources may be provided by any appropriate electronic procedures established by the transmission provider, or by telephone or telefax as established in Order No. 890. Order No. 890-A at P 949.
- A transmission provider may not deny undesignation. Any reliability issues related to undesignation should be dealt with through other means, such as negotiation of must-run service agreements. Order No. 890-A at P 950.

## 6. Clarifications Related to Network Service - Secondary Network Service

- The Commission's reference, in Paragraph 1606 of Order No. 890, to "lower-priority" secondary network service was intended to distinguish secondary network service from firm transmission service, not from non-firm service. Section 28.4 of the *pro forma* OATT provides that secondary service has a higher curtailment priority than any non-firm point-to-point service; however secondary service does not have a higher scheduling priority compared to all other non-firm service. Secondary service is only on an "as available" basis, and cannot be locked-in in advance of other non-firm uses of available transmission. Order No. 890-A at P 963.

## 7. Standardization of Rules and Practices/Business Practices

- A transmission provider may post its rules, standards, and practices relating to transmission on its OASIS, public website, or other electronic platform as long as the transmission provider provides, both on OASIS and on its website, an electronic link to the information. Section 4 of the *pro forma* OATT has been revised accordingly. Order No. 890-A at P 991.

- Credit guides and manuals containing more detailed information than required in Attachment L to the OATT are rules, standards and practices that relate to transmission service, and need not be included in the transmission provider's OATT. However, the transmission provider must electronically post such credit guides and manuals, and provide a link to such posting on its public website and OASIS. Order No. 890-A at P 992.

## **8. OATT Definitions**

- The Commission amends the *pro forma* OATT such that every use of the term "Affiliate" is capitalized. The Commission also clarifies that the term "Affiliate" applies to the transmission function and generation function of a single corporation. Order No. 890-A at P 1003.
- Under normal circumstances, a unit contingent agreement would not fall within the definition of "Non-Firm Sale," because delivery can usually only be interrupted for the specific reasons identified in the underlying agreement. Additionally, a system sale that permits curtailment without penalty to serve the seller's native load would fall within the definition of a Non-Firm Sale, because the seller has the right to rely on that capacity in the event it is needed to serve native load. Order No. 890-A at P 1016.

## **E. Enforcement**

- In Order No. 890, the Commission established a presumption that if a transmission provider should lose its market-based rate authority in a market in which it possesses transmission market power, the Commission will also revoke the market-based rate authority in that market of all affiliates of the transmission provider. Affiliates may present evidence rebutting this presumption, and the determination whether an affiliate has overcome the rebuttable presumption depends on an analysis of specific facts, including whether the transmission provider and the affiliate were under the same control. In Order No. 890-A, the Commission clarifies that the reference to "whether the transmission provider and the affiliate were under the same control" means that the Commission will consider whether the affiliation between the transmission provider and the affiliate is sufficient to give either entity or a common parent control over both entities. Order No. 890-A at P 1043.