

FERC Issues Final Rule on Open Access Reform

February 23, 2007

On February 15th, the Federal Energy Regulatory Commission (FERC) issued a Final Rule (Order No. 890) amending its open access transmission regulations and *pro forma* Open Access Transmission Tariff (OATT). Order No. 890 represents the FERC's first comprehensive reforms to its open access requirements since those requirements were originally promulgated ten years ago in Order Nos. 888 and 889. Order No. 890, which is over 1200 pages in length, becomes effective 60 days after its publication in the *Federal Register*. The rule imposes a series of compliance requirements on jurisdictional public utilities and others. The deadlines associated with those compliance requirements are summarized below.

Highlighted Reforms

FERC highlighted the following major changes made by Order No. 890:

- **Available Transfer Capability (ATC)** – The rule requires increased transparency and consistency in the inputs to ATC calculations, and orders utilities to work with the North American Electric Reliability Corporation (NERC) and the North American Energy Standards Board (NAESB) to develop standards for ATC calculation.
- **Transmission Planning** – The new rule requires transmission providers to participate in a coordinated, open, and transparent planning process on both a local and regional level. Each transmission provider will be required to include a description of its planning process, addressing nine planning principles identified in Order No. 890, in its OATT.
- **Imbalance Pricing** – Order No. 890 implements a tiered structure for imbalance charges in which such charges escalate with the magnitude of the imbalance and are based on incremental cost. The rule also requires certain adjustments to these imbalance rules to address the concerns of wind and other intermittent generators.
- **Firm Point-to-Point Service Requests** – The rule provides for a “conditional firm” long-term point-to-point transmission service, and it modifies existing requirements relating to redispatch service.
- **Rollover Rights** – Under Order No. 890, rollover rights apply only to contracts of five years or longer, and a customer must provide notice to the transmission provider of the customer's decision to exercise its right of first refusal at least one year prior to the expiration of the applicable agreement.

Other Significant Actions

Order No. 890 makes a number of other significant reforms to open access regulations that have received less attention but, based on our experience, are likely to be important to transmission providers and their customers, including:

- **Secondary Network Service** – FERC declined to adopt a proposal, advanced in the notice of proposed rulemaking, to restrict the use of secondary network service to purchases that will displace a higher-cost unit on the network customer's system. However, FERC clarified that secondary network service must be requested in accordance with the procedures for arranging non-firm point-to-point service.
- **Qualification to Serve as Network Resource** – FERC found that contracts with “make whole” liquidated damages clauses can qualify as designated network resources, while

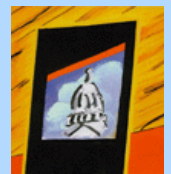
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contracts with capped penalties or fixed dollar damage remedies may not qualify as designated network resources. FERC further found that transmission service provided on a conditional firm basis is sufficiently firm to support a designation of an off-system purchase as a designated network resource. It also found that purchases under Schedule C of the WSPP Agreement are not sufficiently firm to serve as designated network resources.

- ***Designation of Network Resources*** – Both the transmission provider and its network customers are required to designate and undesignate network resources through the transmission provider’s OASIS.
- ***Performance Metrics for Processing Transmission Requests*** – The rule requires a transmission provider to post on its OASIS the processing time for transmission service requests, including the performance of system and facilities studies, and imposes penalties for failure to process requests within specified deadlines.
- ***Transmission Service by Non-Jurisdictional Utilities*** – FERC declined to issue a generic rule implementing Section 211A of the Federal Power Act, which permits FERC to require otherwise non-jurisdictional utilities to provide open access transmission service. The rule retains the current reciprocity approach, under which FERC conditions non-public utilities’ use of public utility open access services on an agreement to offer comparable transmission services in return. The rule also expands the reciprocity obligation to require that non-jurisdictional utilities that are members of, or take transmission from, an RTO or ISO must provide comparable transmission service to any member of that RTO or ISO.

Compliance Schedule

There are a number of compliance deadlines for transmission providers and others set forth in Order No. 890, which are set out below (each measured from the date of publication of Order No. 890 in the *Federal Register*, unless otherwise noted):

- Within 30 days, transmission providers have the option of filing proposed variations from the *pro forma* OATT that were previously approved by FERC and that were affected by the Order No. 890 reforms.
- Within 60 days, non-RTO/ISO transmission providers must submit compliance filings containing the non-rate terms and conditions set forth in Order No. 890.
 - " These filings may include the entire OATT, or simply the changes made by Order No. 890.
 - " These filings cannot include deviations from the Order No. 890 reforms – such deviations must be submitted in subsequent rate filings under section 205 of the FPA.
- Within 75 days, each transmission provider must post on its website or OASIS a “strawman” proposal for compliance with FERC’s nine transmission planning principles.
- Within 90 days, NERC and NAESB must file a status report and work plan for completion of ATC-related business practices and standards.
- Within 90 days, NAESB must file a status report and work plan relating to the development of OASIS functionality and non-ATC uniform business practices.
- Within 120 days, transmission providers must file redesigned transmission charges which ensure that any transmission capacity reserved under a Capacity Benefit Margin (CBM) set-aside is not reflected in FERC-jurisdictional transmission rates.
- Within 180 days, non-RTO/ISO transmission providers must submit Attachment C containing their ATC calculation methodology.

- Within 210 days, RTOs, ISOs, and transmission providers located within an RTO/ISO footprint must submit filings containing the non-rate terms and conditions set forth in Order No. 890, or demonstrations that previously approved variations from *pro forma* OATT provisions continue to be consistent with or superior to the revised *pro forma* OATT.
- Within 210 days, transmission providers must submit Attachment K to their OATTs describing their transmission planning processes. Alternatively, transmission providers can file a demonstration that their current planning processes are consistent with or superior to the Order No. 890 transmission planning principles.
- Within 270 days, NERC and NAESB, working with public utilities, must modify ATC-related reliability standards.
- Within 60 days of NERC and NAESB completing their processes relating to ATC calculations, each transmission provider must file a revised Attachment C to its OATT, containing its ATC calculation methodology.

For Additional Information

This overview only scratches the surface of FERC's Order No. 890 and its effects on transmission providers, transmission customers, and others. Van Ness Feldman has been assisting clients in implementation of, and compliance with, FERC's open access regulations since the advent of those regulations ten years ago. For assistance in evaluating the implications of Order No. 890 or implementing its requirements, please contact Gary Bachman, Doug Smith, Brian Zimmet, or any member of the firm's Electricity practice at (202) 298-1800.

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