

ORDER NO. 890-A
**PREVENTING UNDUE DISCRIMINATION AND
PREFERENCE IN TRANSMISSION SERVICE**
MORE OF THE SAME

The Fourteenth Annual FERC Briefing
EXNET/Bruder, Gentile & Marcoux, L.L.P.
Utility Infrastructure and Regulation
Current Trends – Future Mandates
March 18, 2008

Peter K. Matt, Esquire
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20006-5807
202-296-1500 (tel) pkmatt@brudergentile.com 202-296-0627 (fax)

Order No. 890-A

- Order No. 890 was evolutionary not revolutionary.
- Order No. 890-A mostly affirms Order 890.
- No major policy reversals.
- Order 890-A does provide clarification of many of the issues addressed in Order 890.



Applicability

- A transmission owning customer that is a member of or takes service from an RTO/ISO is only required to provide comparable service to other transmission-owning members of the RTO/ISO.



Available Transfer Capability - ATC

- Transmission owners must obtain consistent ATC values on either side of an interface, regardless of whether they use the same ATC methodology.



Data Posting

- A transmission provider must post underlying assumptions used to develop load forecasts on a daily basis, including economic and weather-related assumptions.



Planning

- Planning requirements apply to RTOs and ISOs but do not apply to RTO/ISO members who do not have an OATT.
- Transmission providers not required to construct all facilities identified in the planning process. However, transmission provider still has obligation to construct facilities in response to transmission service requests.

Planning Coordination

- Affirmed that Load Serving Entities do not have an equal voice in the planning process, but they must have the opportunity for timely and meaningful input.
- Transmission providers still have obligation to plan for network customers beyond the planning process.

Information Exchange

- Customers must provide cost information for generation and transmission facilities needed by a transmission provider to perform customer-requested economic planning studies.



Comparability

- Non-public utilities will not be considered to be providing reciprocal service if they fail to adopt an Order 890-compliant planning process.



Dispute Resolution

- Includes both substantive and procedural issues.
- Cannot impose obligation on transmission provider to construct new facilities.



Economic Planning Studies

- Studies can include integration of new loads and resources as well as congestion issues.



Open Season Requirement

- Commission refused to mandate open season for joint ownership of transmission projects.



Generator Imbalance

- Transmission Provider is obligated to provide generator imbalance service to the extent it can do so without compromising reliability.
- Transmission Provider must attempt to obtain generator imbalance service from third parties if it cannot provide it. If transmission provider cannot provide generator imbalance service, it must accept a customer's use of dynamic scheduling arrangements with a neighboring control area.

Network Customer Credits

- Customer gets credit for integrated facilities. Facilities are presumed integrated if similar facilities owned by transmission provider would be included in transmission provider's annual revenue transmission revenue requirements specified in Attachment H of the OATT.
- Customer's facilities are presumed to qualify for integration if Customer shows facilities are similar in design and purpose of facilities of transmission owner included in rates. Transmission Provider then has burden to show Customer facilities are not similar.

Capacity Reassignment

- Order 890-A reaffirms lifting of price caps for reassignment of transmission capacity but only for limited period of time, until October 1, 2010. Price cap then will be reinstated subject to a FERC Staff study of the impact of lifting the cap on the secondary market.

Unreserved Use Penalty

- Transmission Provider must make a Section 205 filing to include unreserved use penalty in its tariff. It must also make a one-time Section 206 filing proposing the methodology for distributing late study penalties and unreserved use penalties prior to the first distribution of the penalties.
- Penalties apply to RTOs/ISOs. However, Commission will take into consideration the ability of non-profit transmission providers to pay penalties in review of Section 205 filings.

Planning Redispatch

- RTOs/ISOs are not required to change existing planning redispatch provisions to comply with Order 890.
- Planning Redispatch and Conditional Firm service are available only to customers requesting long-term point-to-point service.

Implementation of Planning Redispatch and Conditional Firm

- In refusing to allow transmission providers to reassess the conditions applicable to redispatch and conditional firm for bridge service (service to a customer pending construction of required transmission facilities), the Commission acknowledged that transmission provider may incorporate a greater “risk” factor into determining the conditions for bridge customer service.
- Redispatch and conditional firm customers must pay the cost of the biennial reassessment studies.

Implementation of Planning Redispatch and Conditional Firm (cont'd)

- Biennial studies can consider new factors not considered in initial studies.
- Conditional Firm service has the same curtailment priority as secondary network service during conditional period.
- Conditional Firm service can be used for off-system designated network resources.

Rollover Rights

- Rollover rights apply even if points of receipt and delivery are changed, provided that there is no substantial change in the location or direction of power flows on the transmission system.
- An existing customer that is displaced due to a competing long-term request loses only that portion of its service needed to fulfill the request.

Rollover Rights (cont'd)

- New five-year contract commitment to retain rollover rights does not apply until first rollover date after the current contract expiration and effective date of the revised OATT.
- Customers with existing contracts with less than five years remaining at the effective date of the new rollover policy retain 60-day notice rights for first rollover after the effective date. Customers with existing contracts longer than 5 years remaining must provide one year's notice.

Undesignation of Network Resources

- A seller may undesignate (*i.e.*, terminate designation as a network resource) a slice of its system if it makes a firm slice-of-system sale of power to a purchaser that designates the sale as a network resource.
- A seller must undesignate a portion of each unit involved in the sale if the purchaser does not designate the purchase as a network resource.

Enforcement



- Affirms the adoption of a rebuttable presumption that a transmission provider's affiliate should lose its market-based rate in each market in which the affiliated transmission provider loses its market-based rate authority.
- Commission bears ultimate burden of proof to show that the affiliate of a transmission provider that loses market-based rate authority should also lose its market-based rate authority.