

121 FERC ¶ 61,094
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MATL LLP

Docket Nos. ER07-1174-000
ER07-1174-001
OA07-74-000
OA07-74-001

ORDER ON COMPLIANCE FILING

(Issued October 26, 2007)

1. On July 13, 2007, as amended on August 28, 2007, pursuant to sections 205 and 206 of the Federal Power Act (FPA),¹ MATL LLP (MATL) submitted its compliance filing as required by Order No. 890.² In this order, we accept MATL's filing in compliance with Order No. 890 and require a further compliance filing, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

¹ 16 U.S.C. §§ 824d, 824e (2000).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (*i.e.*, July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888⁴ *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the *Federal Register*, (*i.e.*, April 16, 2007), and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.⁵

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub. nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 138-139.

5. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are “consistent with or superior to” the *pro forma* OATT.⁶

6. In Order No. 890, the Commission also required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)⁷ set-aside to ensure that customers not benefiting from the CBM set-aside (*i.e.*, point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁸

II. MATL’s Filing

7. MATL is a merchant transmission provider that is developing a new merchant transmission line to connect NorthWestern Corporation’s (NorthWestern) system in Montana with the Alberta Interconnected Electrical System in Alberta, Canada. The Commission previously granted MATL the authority to sell transmission rights at negotiated rates and accepted MATL’s deletion of tariff provisions related to ancillary services and network service, among other things.⁹

8. MATL states that it has revised its OATT to include many of the revisions required by Order No. 890; however, it has excluded from its OATT the revisions adopted in Order No 890 to provisions related to network service, ancillary services and

⁶ *Id.* at P 135.

⁷ CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

⁹ MATL has stated in prior filings that the project is a single transmission line and all of its interconnecting customers will be wind generators. Further, MATL has indicated that it has no franchised service territory and it does not own any generation. *See* filings in Docket No. ER05-764-000, *et al.*

imbalances, among other things. MATL points out that the Commission previously accepted MATL's exclusion of these provisions from its OATT.¹⁰

9. MATL also states that Order No. 890 requires that transmission charges be redesigned to ensure that point-to-point customers do not pay a transmission charge that includes the cost of any CBM set-aside. MATL states that it is not filing to redesign its transmission charges to reflect CBM set-aside because MATL does not use CBM set-aside, and as a result, MATL's customers do not pay for CBM set-aside.

10. In its filing, MATL also indicates that it is revising its OATT to include certain minimum bid provisions that the Commission previously approved, but MATL inadvertently omitted from a previous filing.¹¹ MATL states that including these provisions in the instant filing will correct an administrative oversight that MATL made in its previous compliance filing.

11. Finally, MATL requests waiver of the Order No. 890 requirement that transmission providers submit section 205 filings proposing to retain previously-approved variations from the non-rate terms of the Order No. 890 *pro forma* OATT on or before April 16, 2007. MATL states that as of April 16, 2007, its OATT was pending before the Commission and it did not receive an order accepting its OATT until May 31, 2007.

III. Notice of Filings and Responsive Pleadings

12. Notices of MATL's filings were published in the *Federal Register*, 72 Fed. Reg. 41,725 (2007) and 72 Fed. Reg. 51,630 (2007), with interventions and protests due on or before August 3, 2007 and September 18, 2007, respectively. Powerex Corp. filed a timely motion to intervene and NorthWestern filed a timely motion to intervene and protest. On October 1, 2007, MATL filed an answer to NorthWestern's protest and on October 19, 2007, NorthWestern filed an answer to MATL's answer.

13. According to NorthWestern, the MATL project will be located in NorthWestern's control area, where NorthWestern, as a balancing authority, has the obligation to operate its transmission system in accordance with all reliability criteria. NorthWestern asserts that although it has limited obligations to provide ancillary services to its own customers that are serving load in its control area, it is not required, nor is it willing, to provide

¹⁰ See MATL's July 13, 2007 filing at 2-3 (*citing Montana Alberta Tie, Ltd.*, 116 FERC ¶ 61,071 (2006) (July 2006 Order Authorizing the Sale of Transmission Rights); *Montana Alberta Tie, Ltd.*, 119 FERC ¶ 61,216 (2007) (May 2007 Order Accepting Tariff Sheets)).

¹¹ July 2006 Order Authorizing the Sale of Transmission Rights at P 20 and 53.

ancillary services for MATL's customers. Thus, NorthWestern is concerned that MATL's future interconnection with NorthWestern's transmission system could result in a reliability burden and additional costs to NorthWestern's customers if MATL is not required to provide ancillary services to its own transmission customers.

14. As a result of the foregoing issues, NorthWestern states that it has been negotiating with MATL for months on an interconnection agreement (between NorthWestern and MATL) and on a coordinated operating agreement (among NorthWestern, MATL and the Alberta Electric System Operator), which will be filed with the Commission, to develop a contractual mechanism for controlling certain reliability issues arising from generation and/or load interconnection on the MATL system. However, NorthWestern states that to date it has no assurance that its concerns will be adequately met. Therefore, NorthWestern requests that the Commission defer acting on the ancillary service portion of MATL's filing and establish a technical conference, settlement judge procedures, or some other procedural mechanism to provide stakeholders with an opportunity to resolve certain issues related to the ancillary services MATL may not provide.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or and answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept MATL's and NorthWestern's answers and will, therefore, reject them.

B. Substantive Matters

17. We accept MATL's filing, grant the necessary waiver of the Order No. 890 filing deadline and require MATL to make a further compliance filing, as discussed below.

1. Order No. 890 Deviations

18. We interpret MATL's request for waiver to be a request for waiver of the April 16, 2007 deadline for those previously-approved variations from the Order No. 888 *pro forma* OATT that were substantively affected by the reforms adopted in Order No. 890. Because MATL's OATT was pending before the Commission on the April 16, 2007 deadline, MATL could not anticipate which variations would be approved, and thus,

which of those variations would fall into the previously-approved category. As a result, we find it reasonable to grant waiver of the deadline as requested by MATL.

19. We agree with MATL that it should not be required to revise those OATT provisions that the Commission has previously allowed it to exclude from its OATT (*e.g.*, network service, ancillary services).¹² Accordingly, we grant MATL's request to retain those deviations and find that MATL's OATT remains consistent with the *pro forma* OATT.

20. In addition, we deny NorthWestern's request for the Commission to delay acting on the exclusion of ancillary service provisions from MATL's OATT. NorthWestern has not specified which ancillary service provisions it takes issue with, it has not explained how MATL's interconnection will result in a reliability burden, and it has not provided any evidence supporting its assertion of potential financial harm. Further, NorthWestern's arguments appear to stem from the terms and conditions of the interconnection and operating agreements. Those agreements and the associated discussions are beyond the scope of this proceeding and NorthWestern has provided no evidence that those agreements are linked to this OATT filing. NorthWestern may raise its concerns regarding those agreements when they are filed with the Commission.

2. CBM

21. In its response to the compliance requirement that transmission providers file rates that reflect CBM set-aside to ensure that customers not benefiting from the CBM set-aside (*i.e.*, point-to-point customers) do not pay for CBM, MATL indicates that it does not reserve CBM and, thus, no changes are needed to its rate design. We conclude that MATL's submittal complies with Order No. 890.¹³

3. Previously-Approved Minimum Bid Provisions

22. We find that MATL's reinsertion of the minimum bid provisions in its OATT is reasonable. These provisions were previously accepted by the Commission and were not affected by the Commission's reforms adopted in Order No. 890. Accordingly, we continue to find that MATL's OATT remains consistent with the *pro forma* OATT.

¹² May 2007 Order Accepting Tariff Sheets at P 6.

¹³ We note that to the extent MATL uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

4. Clustering

23. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to study transmission requests in a cluster, and how it will structure transmission customers' obligations when they have joined a cluster.¹⁴

24. MATL has not responded to the Commission's directive regarding clustering.¹⁵ We direct MATL to file, within 30 days of issuance of this order, a further compliance filing that describes how it will process a request to cluster request studies and how it will structure transmission customers' obligations when they have joined a cluster.

5. Attachment J (Procedures for Addressing Parallel Flows)

25. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled "Procedures for Addressing Parallel Flows" that is to be "filed by the Transmission Provider." The Commission in the North American Electric Reliability Corporation (NERC) Transmission Loading Relief Order¹⁶ amended the *pro forma* OATT to incorporate NERC's Transmission Loading Relief (TLR) procedures. The Commission also required that every transmission-operating public utility adopting NERC's TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination—Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent interconnection-wide congestion management methods used in the Western Electricity Coordinating Council (Western Systems Coordinating Council (WSCC) Unscheduled Flow Mitigation Plan) and Electric Reliability Council of Texas (ERCOT) (section 7 of the ERCOT

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

¹⁵ *Id.* at P 1371.

¹⁶ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

Protocols) regions.¹⁷ As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

26. MATL has not filed any procedures in Attachment J. MATL is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

North American Electric Reliability Corporation's (NERC) Qualified Path Unscheduled Flow Relief for the Western Electricity Coordinating Council (WECC), Reliability Standard WECC-IRO-STD-006-0 filed by NERC in Docket No. RR07-11-000 on March 26, 2007, and approved by the Commission on June 8, 2007, and any amendments thereto, are hereby incorporated and made part of this Tariff. See www.nerc.com for the current version of the NERC's Qualified Path Unscheduled Flow Relief Procedures for WECC.

6. Rollover Rights Effective Date

27. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.¹⁸

28. MATL has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, MATL has not yet filed an Attachment K, setting forth its transmission planning process. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct MATL to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. MATL should re-file the rollover reform language established in

¹⁷ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), at 31,561-62, *order on reh'g* Order No. 693-A, 120 FERC ¶ 61,053 (2007).

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date as of the date the Attachment K is accepted.

7. Creditworthiness

29. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.¹⁹

30. We have reviewed MATL's filing and find that MATL has not provided sufficient information with respect to the process for determining the level of credit in its Attachment L. We direct MATL to file, within 30 days of the date of issuance of this order, a further compliance filing that includes more detailed tariff language explaining MATL's process for determining the level of secured and unsecured credit.²⁰

31. Finally, in Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.²¹ We note that MATL's OATT does not contain an unreserved use penalty rate and, as a result, MATL may not charge transmission customers for unreserved use penalties.

The Commission orders:

(A) MATL's compliance filing is hereby accepted, effective July 13, 2007, subject to the conditions discussed in the body of this order and the ordering paragraph below.

¹⁹ *Id.* at P 1656-61.

²⁰ *Id.* at P 1657

²¹ *Id.* at P 834, 848.

(B) MATL is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.