

126 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MATL LLP

Docket Nos. ER07-1174-003
OA07-74-003

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued March 3, 2009)

1. On July 3, 2008, pursuant to section 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, as discussed below, subject to further compliance filings.

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. § 824e (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

3. MATL is a merchant transmission provider that is developing a new 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.³

4. In compliance with Order No. 890, MATL states that it is submitting revised tariff sheets for its open access transmission tariff,⁴ including: 1) Attachment C- addressing MATL's methodology for calculating available transfer capability; and 2) Attachment K- describing a coordinated and regional planning process.

II. Notice of Filing and Responsive Pleadings

5. Notice of MATL's filing was published in the *Federal Register*, 73 Fed. Reg. 41,059 (2008), with interventions and protests due on or before July 24, 2008. NaturEner USA, LLC (NaturEner USA) filed a motion to intervene. No protests or adverse comments were received.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene of NaturEner USA serves to make it a party to this proceeding.

B. Methodology for Calculating Available Transfer Capability

7. In Order No. 890, as clarified by Order No. 890-A, the Commission required transmission providers to amend their OATTs to include an Attachment C to set forth the methodology that would be used to calculate ATC. We accept MATL's revised Attachment C, as modified below, to be effective December 7, 2007. We also direct

³ *Order Authorizing Sale Of Transmission Rights Subject To Conditions, Granting and Denying Waivers, and Conditionally Accepting and Suspending Tariff Sheets*, 116 FERC ¶ 61,071 (2006). In such proceedings, MATL stated that the project is a single transmission line and all of its interconnecting customers will be wind generators. MATL also indicated that it has no franchised service territory and it does not own any generation.

⁴ *MATL LLP, Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. I.*

MATL to file, within 30 days of the date of this order, a further compliance filing, as discussed below.

1. MATL's Attachment C Filing

8. MATL states that it has modeled its proposed Attachment C on methodologies used by other regional utilities, including NorthWestern Corporation. MATL explains that its calculation for ATC is based upon the Western Electricity Coordinating Council (WECC)-approved methodology detailed in the "Determination of Available Transfer Capability within the Western Interconnect [sic]."⁵ MATL further states that its Attachment C mirrors its OATT with respect to the method for offering unused capacity back into the market.

2. Commission Determination

9. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling, operating, and planning horizons.⁶ Further, the actual mathematical algorithms must be posted on the transmission provider's website, with the link noted in the transmission provider's Attachment C.⁷

10. We have reviewed MATL's filing and find that MATL's revised Attachment C does not provide the link to MATL's website with the actual mathematical algorithms. Therefore, MATL's filing fails to comply with Order No. 890. We direct MATL to file, within 30 days of the date of this order, a further compliance filing that revises its Attachment C to provide the link to MATL's website with the actual mathematical algorithms, as required in Order No. 890.

C. Compliance with Order No. 890's Planning Principles

11. One of the Commission's primary reforms under Order No. 890 was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers

⁵ MATL July 3, 2008 Filing at 3.

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C and P 323.

⁷ *Id.* P 325, 328.

to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment (Attachment K) to their OATTs.

12. In Order No. 890, the Commission required that each transmission provider's transmission planning process satisfy the following nine principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation and to build on transmission planning efforts and processes already underway in many regions of the country. However, as Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁸

13. Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.⁹

14. MATL states that its Attachment K may differ from the planning processes filed by other public utilities because MATL is not like most other public utilities. MATL notes that, unlike other public utilities with native load, generation assets, and transmission networks, MATL is a sole-purpose merchant transmission developer. MATL states it does not, and will not, own any generation and does not serve any wholesale or retail load, nor does it have any affiliates engaged in those activities. MATL asserts that no load will be served off of the line, therefore, the line will be

⁸ As the Commission explained in Order No. 890, not all rules and practices related to transmission service, or planning activities in particular, need to be codified in the transmission provider's OATT. Rules, standards and practices that relate to, but do not significantly affect, transmission service may be placed on the transmission providers' websites, provided there is a link to those business practices on the transmission provider's Open Access Same-Time Information System (OASIS). *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-1655. Transmission providers could therefore use a combination of tariff language in their Attachment K, and a reference to planning manuals on their websites, to satisfy their planning obligations under Order No. 890.

⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

capable of providing only point-to-point transmission service. In addition, MATL states that as a merchant developer, it will bear the risk of developing and expanding the line as required under Commission precedent, and it has no captive ratepayers from whom it can recover the costs of planning and expansion.

15. We find that MATL's proposed Attachment K planning process, with certain modifications required below, complies with the nine planning principles and other planning requirements adopted in Order No. 890. Accordingly, we accept MATL's Attachment K, subject to a further compliance filing as discussed below. MATL is directed to file its compliance filing within 90 days of the date of this order.

16. While we accept MATL's transmission planning process in Attachment K, we nonetheless encourage further refinements and improvements to MATL's planning process as MATL and its customers and other stakeholders gain more experience through actual implementation of this process. Commission staff will also periodically monitor the implementation of the planning process to determine if adjustments are necessary and will inform the transmission provider and the Commission of any such recommendations. Later in the year, the Commission will convene regional technical conferences similar to the conferences held in 2007 leading up to the filing of the Attachment K compliance filings. The focus of the 2009 regional technical conferences will be to determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement.

1. Coordination

17. In order to satisfy the coordination principle, transmission providers must provide customers and other stakeholders the opportunity to participate fully in the planning process. The purpose of the coordination requirement, as stated in Order No. 890, is to eliminate the potential for undue discrimination in planning by opening appropriate lines of communication between transmission providers, their transmission-providing neighbors, affected state authorities, customers, and other stakeholders. The planning process must provide for the timely and meaningful input and participation of customers and other stakeholders regarding the development of transmission plans, allowing customers and other stakeholders to participate in the early stages of development. In its Attachment K planning process, each transmission provider must clearly identify the details of how its planning process will be coordinated with interested parties.¹⁰

¹⁰ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 451-454.

a. MATL's Filing

18. MATL's proposed Attachment K provides for the development of a transmission plan (the Plan) every five years.¹¹ A Planning Advisory Group (Planning Group) shall be established to provide input and feedback to MATL during the development of the Plan. MATL states that the Planning Group will meet biennially and that meetings will be held (1) as specified by the Plan; (2) when MATL deems necessary, either upon its own or another entity's request; or (3) at the request of a majority of the Planning Group. MATL states that notice of Planning Group meetings will be provided by electronic mail to members of the Planning Group and will be posted on MATL's OASIS and website at least one week before the meeting.

19. MATL states that the Plan will use a five-year planning horizon, reflecting at least five-year capacity and load forecasts (if applicable), and will identify, based on the results of planning studies, a list of proposed transmission enhancements and expansions for at least the ensuing five years that MATL has determined are appropriate at the time the Plan is issued. MATL states that, if requested by a member of the Planning Group, the Planning Group will meet to receive comments on the draft Plan. Interested parties may submit comments on planning studies and the draft Plan to MATL and members of the Planning Group will have the opportunity to offer alternative solutions to identified needs. At the request of a majority of the Planning Group, MATL will circulate one additional draft of the Plan and a briefing paper to the Planning Group for review and comment.

b. Commission Determination

20. We find that MATL's proposed Attachment K partially complies with the coordination principle stated in Order No. 890.¹² MATL will coordinate the development of studies and Plans with the Planning Group, which will have the opportunity to comment on drafts and proposed solutions to identified needs. However, MATL's proposal to post notice of its meetings on its OASIS and website as late as one week before the scheduled date of a meeting provides minimal notice for interested parties to make arrangements for attendance. While Order No. 890 did not specify how much advance notice for planning meetings is appropriate, allowing as little as seven

¹¹ MATL states that its five year planning window reflects the fact that its transmission line is a point-to-point merchant transmission facility and that MATL is only obligated to expand its system in response to customer requests if the expansion is economically feasible. *See Montana Alberta Tie, Ltd.*, 119 FERC ¶ 61,216 at P 6 (2007).

¹² We address our finding that section 2.1 of its Attachment K appears to limit the types of entities that may participate fully in the planning process in our discussion of MATL's compliance with the openness requirements of Order No. 890.

days to review materials and prepare for meetings could present an unnecessary burden on stakeholders and thus inhibit meaningful participation in planning activities. MATL has not supported why such short notice of scheduled meeting may be necessary or appropriate. Therefore, we will require MATL to revise its Attachment K to provide a minimum notice period that ensures interested stakeholders are given adequate advance notice of scheduled planning meetings.

2. Openness

21. The openness principle requires that transmission planning meetings be open to all affected parties, including but not limited to all transmission and interconnection customers, state authorities, and other stakeholders. Although the Commission recognized in Order No. 890 that it may be appropriate in certain circumstances to limit participation in a meeting to a subset of parties, such as a particular meeting of a subregional group, the Commission emphasized that the overall development of the transmission plan and the planning process must remain open.¹³ Transmission providers, in consultation with affected parties, must also develop mechanisms to manage confidentiality and Critical Energy Infrastructure Information concerns, such as confidentiality agreements and password protected access to information.¹⁴

a. MATL's Filing

22. MATL's proposed Attachment K provides that the Planning Group will be open to participation by all transmission owners in WECC, MATL's customers, generators interconnected to MATL's transmission line, other suppliers, neighboring transmission providers and balancing authorities, and state utility regulatory agencies and offices of public advocates in the State of Montana.¹⁵ MATL states that each entity that participates in the Planning Group will have one member of the group and MATL will act as the facilitator. The Planning Group's stated role is to provide input and feedback to MATL during the development of the Plan, and MATL pledges to document and track all input and respond to all suggestions, queries or comments by circulating consolidated responses to the members of the Planning Group.

¹³ The Commission made clear in Order No. 890-A that any circumstances under which participation in a planning meeting is limited should be clearly described in the transmission provider's Attachment K planning process, as all affected parties must be able to understand how, and when, they are able to participate in planning activities. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 194.

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

¹⁵ MATL Attachment K, section 2.1.

23. MATL states that it has an obligation to protect confidential information and proprietary information and that access to confidential information may be requested in writing by entities that both demonstrate a right or need to access the information and execute a non-disclosure agreement. MATL states that it will post forms of non-disclosure agreement on its website and that it will seek agreement from entities that provided the confidential information before releasing such information.

b. Commission Determination

24. We find that MATL partially complies with the openness principle stated in Order No. 890. In the transmittal letter for its proposed Attachment K, MATL states that the Planning Group “is open to all parties interested in the planning process and provides an opportunity for reviewing planning-related data and analysis.”¹⁶ Section 2.1 of the proposed tariff language, on the other hand, lists particular classes of entities that can participate in the Planning Group. We will remind MATL that its list of participants should not be interpreted as exclusive. Therefore, we will require MATL to commit in its tariff, as stated in its transmittal letter, to making participation in its planning process open to all interested stakeholders.

25. In addition, we note that while MATL addresses the treatment of confidential information in its transmission planning process, it does not address the treatment of Critical Energy Infrastructure Information (CEII). In Order No. 890, the Commission directed transmission providers to develop mechanisms to address both confidentiality and CEII concerns.¹⁷ Therefore, we also will require MATL to revise its Attachment K to address the treatment of CEII in its transmission planning process.

3. Transparency

26. The transparency principle requires transmission providers to reduce to writing and make available the basic methodology, criteria, and processes used to develop transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. To that end, each transmission provider must describe in Attachment K the method(s) it will use to disclose the criteria, assumptions, and data that underlie its transmission system plans.¹⁸ The Commission specifically found that

¹⁶ MATL July 3, 2008 Filing at 5.

¹⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460.

¹⁸ In Order No. 890-A, the Commission made clear that this includes disclosure of transmission base case and change case data used by the transmission provider, as these are basic assumptions necessary to adequately understand the results reached in a transmission plan. *See* Order No. 890-A, 121 FERC Stats. & Regs. ¶ 31,261 at P 199.

simple reliance on Form Nos. 714 and 715 failed to provide sufficient information to provide transparency in planning because those forms were designed for different purposes. Transmission providers were also directed to provide information regarding the status of upgrades identified in the transmission plan.

27. The Commission explained that sufficient information should be made available to enable customers, other stakeholders, and independent third parties to replicate the results of planning studies and thereby reduce the incidence of after-the-fact disputes regarding whether planning has been conducted in an unduly discriminatory fashion. The Commission explained in Order No. 890 that simultaneous disclosure of transmission planning information should alleviate standards of conduct concerns regarding disclosure of information. The Commission also specifically addressed consideration of demand response resources in transmission planning. Where demand resources are capable of providing the functions assessed in a transmission planning process, and can be relied upon on a long-term basis, they should be permitted to participate in that process on a comparable basis.¹⁹

a. MATL's Filing

28. Section 4 of MATL's proposed Attachment K describes the methodology, criteria, and process for the developing the Plan. MATL states that, as necessary, it will conduct studies for the development of the Plan. Proposed section 4.4 provides that MATL will apply industry standard methodologies, criteria and processes for the development of transmission plans, including the WECC regional planning process and path rating process for expansions and upgrades to the transmission line. MATL also states that all planning processes and data will be made available on its OASIS for one year.

29. MATL states that information about how assumptions regarding transmission, generation, and demand resources are developed will be available to customers and other stakeholders at all stages of the planning process. Furthermore, MATL proposes to provide access to underlying data and assumptions, such as power flow base cases and associated files needed for transmission planning, upon a written request by the interested party. Section 5.3 of MATL's proposed Attachment K states that members will have the opportunity to question and discuss principal assumptions of the Plan through meetings of the Planning Group and that MATL will run one additional calculation upon request by a majority of the Planning Group.

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471-479.

b. Commission Determination

30. We find that MATL's Attachment K complies with the transparency requirements of Order No. 890. MATL provides interested parties the option to request the necessary methodology, criteria, and data to replicate the studies used to develop MATL's transmission plans. Stakeholders are also given the opportunity to question and evaluate the underlying assumptions used in its transmission plans through participation in the Planning Group.

4. Information Exchange

31. The information exchange principle requires network customers to submit information on their projected loads and resources on a comparable basis (e.g., planning horizon and format) as used by transmission providers in planning for their native load. Point-to-point customers are required to submit any projections they have of a need for service over the planning horizon and at what receipt and delivery points. As the Commission made clear in Order No. 890-A, these projections are intended only to give the transmission provider additional data to consider in its planning activities, and should not be treated as a proxy for actual reservations.²⁰ Transmission providers, in consultation with their customers and other stakeholders, are to develop guidelines and a schedule for the submittal of such customer information.

32. The Commission also provided that, to the extent applicable, transmission customers should provide information on existing and planned demand resources and their impacts on demand and peak demand. Stakeholders, in turn, should provide proposed demand response resources if they wish to have them considered in the development of the transmission plan. The Commission stressed that information collected by transmission providers to provide transmission service to their native load customers must be transparent, and equivalent information must be provided by transmission customers to ensure effective planning and comparability. In Order No. 890-A, the Commission made clear that 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, and that the transmission provider must maintain the confidentiality of this information. To this end, transmission providers must clearly define in their Attachment K the information sharing obligations placed on customers in the context of economic planning.²¹

²⁰ Order No. 890-A, FERC Stats. & Regs ¶ 31,261 at P 207.

²¹ *Id.* P 206.

33. The Commission emphasized that transmission planning is not intended to be limited to the mere exchange of information and after-the-fact review of transmission provider plans. The planning process is instead intended to provide a meaningful opportunity for customers and stakeholders to engage in planning along with their transmission providers. To that end, the Commission clarified that information exchange relates to planning, not other studies performed in response to interconnection or transmission service requests.²²

a. MATL's Filing

34. Section 6 of MATL's proposed Attachment K explains the data that will be exchanged in MATL's planning process. MATL states that, at the minimum, it will follow the Commission-approved modeling, data, and analysis reliability standards²³ specific data requirements for transmission owners and generation owners to provide data to planning authorities, resource planners, and regional reliability organizations. MATL proposes to require that transmission customers submit, at least once a year by January 31st for the immediately preceding calendar year, projections of need for service over the planning horizon, including transmission capacity, duration, and receipt and delivery points. MATL states that it may request additional information during the planning process, and that customers may provide any additional data they believe would be helpful to MATL in development of its Plan.

b. Commission Determination

35. We find that MATL's proposed Attachment K complies with the information exchange requirements of Order No. 890. MATL has provided transmission customers the process by which information for developing the Plan will be requested and provided. MATL has further committed to, at a minimum, follow the Commission-approved modeling, data, and analysis reliability standards specific data requirements for its transmission customers and to provide current and projected transmission needs to the interconnected balancing authorities to integrate the transmission line into their respective plans.

5. Comparability

36. The comparability principle requires transmission providers, after considering the data and comments supplied by customers and other stakeholders, to develop a

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 486-88.

²³ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

transmission system plan that meets the specific service requests of their transmission customers and otherwise treats similarly-situated customers (e.g., network and retail native load) comparably in transmission system planning. In Order No. 890, the Commission expressed concern that transmission providers historically have planned their transmission systems to address their own interests without regard to, or ahead of, the interests of their customers. Through the comparability principle, the Commission required that the interests of transmission providers and their similarly-situated customers be treated on a comparable basis during the planning process. The Commission also explained that demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate. Lastly, in Order No. 890-A, the Commission clarified that, as part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning.²⁴

a. MATL's Filing

37. Section 3.2 of MATL's Attachment K states that the Plan "will be developed to meet the specific service requests of Transmission Customers and otherwise treat similarly-situated customers comparably in transmission system planning." Section 1.2 further explains that the goal of MATL's transmission planning process is to develop a plan "to ensure that the Transmission System can meet the needs of both the Transmission Provider and its Transmission Customers on a comparable and nondiscriminatory basis."

b. Commission Determination

38. We find that MATL has partially complied with the comparability requirements of Order No. 890. MATL states that the purpose of its planning process is to ensure that its transmission system can meet both its needs and those of its transmission customers on a comparable and nondiscriminatory basis. However, we note in that in Order No. 890-A, the Commission provided additional guidance, among other things, about how the transmission provider can achieve compliance with the comparability principle. Specifically, the Commission stated that the transmission provider needed to identify as part of its Attachment K planning process "how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."²⁵ MATL has not demonstrated that it complies with this

²⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494-95.

²⁵ Order No. 890, FERC Stats. & Regs. ¶ 61,261 at P 216; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, 487, 494, and 549.

requirement of Order No. 890-A. Therefore, we direct MATL to revise its Attachment K to provide the necessary demonstration required by Order No. 890-A.²⁶

6. Dispute Resolution

39. The dispute resolution principle requires transmission providers to identify a process to manage disputes that arise from the planning process. The Commission explained that an existing dispute resolution process may be used, but that transmission providers seeking to rely on an existing dispute resolution process must specifically address how its procedures will address matters related to transmission planning. The Commission encouraged transmission providers, customers, and other stakeholders to use the Commission's dispute resolution services to help develop a three-step dispute resolution process, consisting of negotiation, mediation, and arbitration. In order to facilitate resolution of all disputes related to planning activities, a transmission provider's dispute resolution process must be available to address both procedural and substantive planning issues. The Commission made clear, however, that all affected parties retain any rights they may have under the FPA section 206 to file complaints with the Commission.²⁷

a. MATL's Filing

40. MATL addresses the dispute resolution principle in section 7 of Attachment K, wherein MATL refers to the dispute resolution procedures in its OATT to address procedural and substantive planning disputes. MATL will provide non-confidential dispute results to any stakeholder upon request, and clarifies that all affected parties retain their rights under the FPA section 206 to file complaints with the Commission.

b. Commission Determination

41. We find that MATL's proposed Attachment K partially complies with the dispute resolution principle stated in Order No. 890. MATL relies on the existing dispute resolution provisions of its OATT to manage both procedural and substantive disputes that arise from the planning process. However, those provisions apply only to disputes between MATL and its transmission customers. MATL therefore has not identified a process for resolving disputes that may arise with stakeholders with which MATL

²⁶ For example, tariff language should provide for participation throughout the transmission planning process by sponsors of transmission solutions, generation solutions, and solutions utilizing demand resources.

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 501-503.

interacts in the transmission planning process. We direct MATL to revise its Attachment K to satisfy the dispute resolution requirements of Order No. 890.²⁸

7. Regional Participation

42. The regional participation principle provides that, in addition to preparing a system plan for its own control area on an open and nondiscriminatory basis, each transmission provider is required to coordinate with interconnected systems to: share system plans to ensure that they are simultaneously feasible and otherwise use consistent assumptions and data and identify system enhancements that could relieve congestion or integrate new resources. In Order No. 890, the Commission stated that the specific features of the regional planning effort should take account of and accommodate, where appropriate, existing institutions, as well as physical characteristics of the region and historical practices. The Commission declined to mandate the geographic scope of particular planning regions, instead stating that the geographic scope of a planning process should be governed by the integrated nature of the regional power grid and the particular reliability and resource issues affecting individual regions and subregions. The Commission also made clear that reliance on existing North American Electric Reliability Corporation (NERC) planning processes may not be sufficient to meet the requirements of Order No. 890 unless they are open and inclusive and address both reliability and economic considerations. To the extent a transmission provider's implementation of the NERC processes are not appropriate for such economic issues, individual regions, or subregions must develop alternative processes.²⁹

43. In Order No. 890-A, the Commission clarified that while the obligation to engage in regional coordination is directed to transmission providers, participation in such processes is not limited to transmission providers and should be open to all interested customers and stakeholders.³⁰ The Commission also emphasized that effective regional planning should include coordination among regions and subregions as necessary, in

²⁸ We note that MATL's dispute resolution provisions omit the second step, mediation, of a three-step dispute resolution process consisting of negotiation, mediation and arbitration. While we are not requiring MATL to include mediation, we strongly encourage it to consider including a mediation step in its dispute resolution process. We have found that a high percentage of disputes sent to the Commission's dispute resolution services or another mediator or an administrative law judge serving as a settlement judge settle without adjudication. If MATL desires to include the mediation step, it should do so in the filing required in this order.

²⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523-28.

³⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 226.

order to share data, information, and assumptions to maintain reliability and allow customers to consider resource options that span the regions.³¹

a. MATL's Filing

44. MATL states that it will participate in regional and subregional planning activities as a member of WECC and commits itself to timely support and input into WECC's annual progress report. In addition, section 12 provides that MATL will, upon request, provide system data and planning activity information to subregional planning groups such as ColumbiaGrid, Northwest Power Pool and the Northern Tier Transmission Group. Moreover, MATL will continue to participate in stakeholder activities with its interconnected balancing authorities, NorthWestern Energy and the Alberta Electric System Operator.

b. Commission Determination

45. We find that MATL complies with the regional participation principle stated in Order No. 890. MATL is a merchant transmission provider that merely interconnects two markets and has no obligation to expand its system in response to customer requests that are not economically feasible.³² Within this particular context, we find that MATL's commitment to participate in regional and subregional planning activities through its membership in WECC sufficient to satisfy the regional participation requirements of Order No. 890. However, as the intertie between the Alberta Electric System Operator and NorthWestern Energy systems, we expect that MATL would fulfill this commitment by coordinating any future expansions of its system with interconnected systems.

8. Economic Planning Studies

46. The economic planning studies principle requires transmission providers to account for economic and reliability considerations in the transmission planning process. The Commission explained in Order No. 890 that good utility practice requires vertically integrated transmission providers to plan not only to maintain reliability, but also to consider whether transmission upgrades can reduce the overall cost of serving native load. The economic planning principle is designed to ensure that economic considerations are adequately addressed when planning for OATT customers as well. The Commission emphasized that the scope of economic studies should not be limited just to individual requests for transmission service. Customers must be given the opportunity to obtain studies that evaluate potential upgrades or other investments that

³¹ *Id.*

³² *Montana Alberta Tie, Ltd.*, 119 FERC ¶ 61,216 , at P 7.

could reduce congestion or integrate new resources and loads on an aggregated or regional basis.

47. The Commission also stressed that existing regional processes conducted by RTOs and ISOs are not exempt from economic planning study requirements. All transmission providers, including RTOs and ISOs, were directed to develop procedures to allow stakeholders to identify a certain number of high priority studies annually and a means to cluster or batch requests to streamline processing. The Commission determined that the cost of the high priority studies would be recovered as part of the transmission provider's overall OATT cost of service, while the cost of additional studies would be borne by the stakeholder(s) requesting the study.³³

48. In Order No. 890-A, the Commission made clear that 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.³⁴ In Order No. 890-A, the Commission also made clear that a transmission provider's affiliates should be treated like any other stakeholder and, therefore, their requests for studies should be considered comparably, pursuant to the process outlined in the transmission provider's Attachment K. Additionally, in Order No. 890-A, the Commission clarified that to the extent an RTO or ISO delegates any of its responsibilities in the context of economic planning, it will be the obligation of the RTO or ISO, as the transmission provider, to ensure ultimate compliance with the requirements of Order No. 890.³⁵

a. MATL's Filing

49. In section 9 of Attachment K, MATL states it will perform economic planning studies on behalf of transmission customers, when requested, and that the studies will generally be conducted in connection with other planning studies. In addition, the section provides that economic planning studies will be performed to evaluate potential upgrades or other investments that could reduce congestion or interconnect new resources, and allows studies to be batched or clustered, or incorporated with other economic planning studies at MATL's discretion. Section 9.3 obligates requesting parties with unique economic planning studies to provide data as required by MATL. Further, section 9.4 states that transmission customers requesting economic planning studies will be responsible for their costs and required to provide a \$25,000 deposit prior to initiation of a study.

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 542-551.

³⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 236.

³⁵ *Id.* P 237.

b. Commission Determination

50. We find that MATL's proposal to undertake economic planning studies as requested by transmission customers in addition to its regular five-year review of its transmission line satisfies the economic planning requirements of Order No. 890.³⁶ As noted above, MATL has an obligation to expand its system in response to customer requests only if the expansion is economically feasible. Within this particular context, we believe that MATL's economic planning process adequately addresses the requirements of Order No. 890.

9. Cost Allocation

51. The cost allocation principle requires that transmission providers address in their Attachment K the allocation of costs of new facilities that do not fit under existing rate structures. In Order No. 890, the Commission suggested that such new facilities might include regional projects involving several transmission owners or economic projects that are identified through the study process, rather than individual requests for service. Transmission providers therefore were directed to identify the types of new projects that are not covered under existing cost allocation rules and, as a result, would be affected by the cost allocation proposal.

52. The Commission did not impose a particular allocation method for such projects and, instead, permitted transmission providers and stakeholders to determine the criteria that best fits their own experience and regional needs. The Commission suggested that several factors be weighed in determining whether a cost allocation methodology is appropriate. First, a cost allocation proposal should fairly assign costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, the cost allocation proposal should provide adequate incentives to construct new transmission. Third, the cost allocation proposal should be generally supported by state authorities and participants across the region. The Commission stressed that each region should address cost allocation issues up front, at least in principle, rather than have them relitigated each time a project is proposed.³⁷ In Order No. 890-A, the Commission also made clear that the details of proposed cost allocation methodologies must be clearly defined, as participants seeking to support new

³⁶ We note that MATL's clustering process description is limited within its Attachment K. The Commission accepted similar clustering provisions in *Ohio Valley Electric Corp.* Seeing that MATL is similarly situated to that filing, we find MATL's proposed clustering provisions acceptable. *Ohio Valley Electric Corp.*, 126 FERC ¶ 61,106 (2009).

³⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 557-561.

transmission investment need some degree of certainty regarding cost allocation to pursue that investment.³⁸

a. MATL's Filing

53. MATL proposes that the costs of reliability and economic projects that are identified in the planning studies, and the costs of new facilities required due to individual requests for service, will be allocated to transmission customers pursuant to Schedule 7 of MATL's OATT.

b. Commission Determination

54. We find that MATL's proposed Attachment K satisfies the cost allocation principle. The costs of reliability and economic projects and required new facilities will be allocated to the transmission customer in accordance with existing mechanisms. We find this cost allocation methodology appropriate for MATL because, under Schedule 7 of MATL's OATT, MATL will not sell any expansion capacity without first obtaining approval for such sales from the Commission.

10. Recovery of Planning Costs

55. In Order No. 890, the Commission recognized the importance of cost recovery for planning activities, specifically addressing that issue after discussing the nine principles that govern the planning process. The Commission directed transmission providers to work with other participants in the planning process to develop cost recovery proposals in order to determine whether all relevant parties, including state agencies, have the ability to recover the costs of participating in the planning process. The Commission also suggested that transmission providers consider whether mechanisms for regional cost recovery may be appropriate, such as through agreements (formal or informal) to incur and allocate costs jointly.³⁹

a. MATL's Filing

56. MATL states that, to the extent not specifically recovered pursuant to other provisions in its Attachment K, planning costs will not be recovered from transmission customers.

³⁸ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 251.

³⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 586.

b. Commission Determination

57. MATL proposes to bear the planning costs associated with its own transmission planning process. We find this appropriate in MATL's case because as a merchant developer, MATL will bear the risk of developing and expanding its transmission line, and in addition, MATL has no captive ratepayers from whom it can recover the costs of planning and expansion. Thus, we find acceptable MATL's proposal not to recover planning costs from transmission customers unless specifically provided for in its Attachment K, such as in the case of economic planning studies.

The Commission orders:

(A) MATL's compliance filing is hereby accepted, as modified in accordance with Ordering Paragraph (B), effective December 7, 2007, as discussed in the body of this order.

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

(C) MATL is hereby directed to submit a compliance filing, within 90 days of the date of issuance of this order, to revise Attachment K to its OATT as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.