

134 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Duke Energy Carolinas, LLC

Docket No. ER11-2641-000

ORDER DENYING REQUEST FOR WAIVER

(Issued March 31, 2011)

1. On December 21, 2010, as amended on February 10, 2011, Duke Energy Carolinas, LLC (Duke) submitted a petition for waiver of the requirement that utilities post Total Transfer Capability (TTC) on their Open Access Same-Time Information System (OASIS), set forth in section 37.6 of the Commission's regulations and Order No. 890 (Waiver Request).¹ We deny the Waiver Request, as discussed below.

I. Background

2. As required in Order No. 676-E,² Duke filed, and the Commission accepted, effective April 1, 2011, proposed revisions to Attachment C of Duke's Open Access Transmission Tariff (OATT) to implement Duke's use of a flowgate methodology to assess Available Transfer Capability (ATC).³ Therein Duke indicated its intention to submit the instant request for waiver. In a subsequent proceeding, Duke proposed

¹ 18 C.F.R. § 37.6 (2010); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *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), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009), *order on reh'g*, 130 FERC ¶ 61,116 (2010).

³ *Duke Energy Carolinas, LLC*, Docket No. ER11-2426-000, at 1 (Feb. 17, 2011) (delegated letter order).

revisions to section 4 of its OATT to comply with Order No. 676-E by incorporating certain business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board. The Commission also accepted these revisions for filing, effective April 1, 2011.⁴

II. Waiver Request

3. In light of its change from an area interchange methodology to a flowgate methodology for assessing ATC, Duke requests waiver of the requirement that it post TTC values on its OASIS. Duke advances four arguments in support of its request for waiver.

4. First, Duke argues that the Commission should grant waiver because the North American Reliability Corporation's (NERC) Modeling, Data, and Analysis (MOD) Reliability Standard, MOD-030-02, which provides the requirements relating to the flowgate methodology, does not require transmission providers utilizing the flowgate methodology to calculate TTC values.⁵

5. Second, Duke points out that Reliability Standard MOD-001-1a, which sets forth the requirements for calculating Available Transmission System Capability, refers to both the calculation of TTC and Total Flowgate Capability (TFC) values.⁶ Duke interprets NERC Reliability Standard MOD-001-1a to imply that only utilities choosing to employ the area interchange methodology are required to calculate TTC.⁷ Duke concludes that entities utilizing the flowgate methodology, in contrast, are only required to calculate TFC values.⁸

6. Third, Duke asserts that TTC values are not utilized in or produced by the process of calculating Available Flowgate Capability (AFC) values. Rather, TTC values must be reverse calculated and are produced for the sole purpose of complying with the

⁴ *Duke Energy Carolinas, LLC*, Docket No. ER11-2586-000 (Feb. 15, 2011) (delegated letter order).

⁵ Waiver Request at 3 (citing Reliability Standard MOD-030-02 (Flowgate Methodology)).

⁶ *See* Reliability Standard MOD-001-01a (Available Transmission System Capability), at Requirement R6.

⁷ Waiver Request at 3.

⁸ *Id.* (citing NERC Reliability Standard MOD-001-01a (Available Transmission System Capability)).

Commission's posting requirements. Thus, according to Duke, the TTC values do not provide meaningful data to customers, but require significant resources to produce.⁹

7. Finally, Duke argues that its request for waiver is consistent with two previous cases in which the Commission has granted waivers of the requirement to post TTC values on OASIS.¹⁰ Moreover, Duke states that its request for waiver is narrower than waivers previously granted by the Commission because Duke does not request waiver of the requirement to convert AFC to ATC values or waiver of the posting requirements applicable to ATC, Capacity Benefit Margin, and Transfer Reserve Margin.

8. In an amendment to its filing, Duke requests an effective date of April 1, 2011, for the waiver.

III. Notice of Filing

9. Notice of the Waiver Request was published in the *Federal Register*, 76 Fed. Reg. 2897 (2011), with interventions and protests due on or before January 14, 2011. Notice of the amendment was published in the *Federal Register*, 76 Fed. Reg. 10,352 (2011), with interventions and protests due on or before February 23, 2011. No interventions or protests were received in either comment period.

IV. Discussion

10. The Commission's regulations state: "The available transfer capability on the Transmission Provider's system . . . and the total transfer capability . . . on that system shall be calculated and posted for each Posted Path as set out in this section."¹¹ In Order No. 890, the Commission addressed the potential for undue discrimination by requiring industry-wide consistency and transparency of all components of ATC calculation methodology and certain definitions, data and modeling assumptions.¹² The Commission noted its concern that the lack of consistent, industry-wide ATC calculation standards

⁹ *Id.* at 4.

¹⁰ *Id.* at 4-5 (citing *Midwest Independent Transmission System Operator, Inc.*, 126 FERC ¶ 61,107 (2009) (*Midwest ISO*); *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,207 (2009) (*Southwest Power Pool*)).

¹¹ 18 C.F.R. § 37.6(b).

¹² Firm and non-firm ATC values are determined by deducting from TTC certain components, including Capacity Benefit Margin, Transmission Reliability Margin, and Existing Transmission Commitments, and adding Postbacks and counterflows for a specified period for an ATC Path.

poses a threat to the reliable operation of the bulk-power System, particularly because a transmission provider may not know of its neighbors' system conditions affecting its own ATC values.¹³ Among other things, the Commission required transmission providers to post the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, when applicable) on their respective OASIS websites, with the link noted in the transmission provider's Attachment C.¹⁴

11. We find Duke's arguments regarding its interpretation of the Reliability Standards to be unpersuasive. In Order No. 890, the Commission directed public utilities working through NERC to develop Reliability Standard MOD-001-1,¹⁵ a rule to convert AFC values into ATC values.¹⁶ The standard was intended to be used by transmission providers that currently use the flowgate methodology to facilitate consistent posting of the ATC, TTC, Capacity Benefit Margin, and Transfer Reserve Margin values on OASIS.¹⁷ Notably in this case, Order No. 890 affirmed the requirement for all transmission providers using the flowgate methodology to convert AFC values into ATC values before posting.¹⁸ The Commission stated: "However, we remind transmission providers that our regulations require the posting of ATC values associated with a particular path, not AFC values associated with a flowgate. Transmission providers using an AFC methodology must therefore convert flowgate (AFC) values into path (ATC) values for OASIS posting."¹⁹ Thus, the Commission did not intend for the Reliability Standards to either supersede or to provide exemption from the posting requirements set

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 195.

¹⁴ *Id.* P 325, 328.

¹⁵ On September 16, 2010, the Commission issued an order accepting an interpretation of Reliability Standard MOD-001-1. *North American Electric Reliability Corporation*, 132 FERC ¶ 61,239 (2010) (September 16, 2010 Order). To reflect this interpretation, which is now appended to the standard, the Reliability Standard is now MOD-001-1a.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 211. Reliability Standard MOD-030-02, Flowgate Methodology, articulates the specific algorithm for converting AFC to ATC.

¹⁷ *See id.*; Reliability Standard MOD-001-1a (Available Transmission System Capability).

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 211.

¹⁹ *Id.*

forth in the regulations.²⁰ Duke's proposed reading of the Reliability Standards, therefore, does not justify a waiver of the OASIS posting requirements.

12. Contrary to Duke's assertions, its request for waiver reaches beyond the confines of Commission precedent.²¹ On rehearing of Order No. 890, E.ON U.S., LLC (E.ON) requested clarification of the requirement that AFC calculations be converted into ATC for the purposes of posting the results on the company's OASIS.²² E.ON asked the Commission to clarify that if Regional Transmission Organizations (RTO) and their member utilities are granted waivers of the requirement to calculate and post ATC, in favor of AFC, all transmission-owning utilities in the region should be able to request a waiver on the same basis.²³ In Order No. 890-A, the Commission responded that "transmission-owning utilities in an RTO region can request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver."²⁴ Thus, the Commission did not extend eligibility for a waiver of the posting requirements to transmission providers outside of an RTO region and Duke has not justified doing so in this case.

13. Moreover, the precedent Duke cites in support of its position illustrates the breadth of its request, and undercuts its assertion that it seeks a narrower waiver than the Commission has previously granted. In *Southwest Power Pool*, as relevant here, the applicant requested a temporary waiver of the requirements to post ATC, TTC, Capacity Benefit Margin and Transfer Reserve Margin values on the company's OASIS.²⁵ Southwest Power Pool explained that after June 30, 2009, it planned to transition to a new OASIS site that would automatically convert AFC to ATC, at which time it would resume posting the required values. The Commission granted the waiver and directed Southwest

²⁰ Section 39.6 of the Commission's regulations, 18 C.F.R. § 39.6 (2010), provides the process for resolving any conflict between a Reliability Standard and a Commission "function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission." Duke has not argued any such conflict exists in this case. Nor had Duke initiated the procedures set forth in the regulations.

²¹ Waiver Request at 4-5 (citing *Midwest ISO*, 126 FERC ¶ 61,107; *Southwest Power Pool*, 127 FERC ¶ 61,207).

²² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 45.

²³ *Id.*

²⁴ *Id.* P 51.

²⁵ *Southwest Power Pool*, 127 FERC ¶ 61,207 at P 1.

Power Pool to fully comply with the OASIS posting requirements after the waiver's expiration, which was about one month after the waiver was granted.²⁶ The Commission's decision in *Southwest Power Pool* thus offers little support for Duke's request for a permanent waiver.

14. Duke's request for waiver similarly reaches beyond the precedent established in *Midwest ISO*, where the Commission considered a request for permanent waiver of the requirement to convert AFC values into ATC values and to post the ATC components on its OASIS.²⁷ The Commission granted the request for waiver "for paths internal to Midwest ISO's energy market footprint."²⁸ Notably, the Commission observed that the number of internal service requests requiring ATC values was minimal and that Midwest ISO's Scenario Analyzer²⁹ provided customers seeking new transmission capacity "adequate information" regarding the availability of service.³⁰ However, the Commission observed there was no evidence that requests for Drive-In, Drive-Out or Drive-Through service were limited in quantity.³¹ As a result, the Commission denied Midwest ISO's request for waiver as it pertained to paths used for those services.³² In this case, however, such a distinction would be inappropriate because, unlike the Midwest ISO, Duke's control area does not constitute a market in and of itself. Rather, Duke engages in transactions solely with interconnected customers that require TTC. Thus Duke's posting of TTC is necessary to ensure industry-wide consistency and transparency of all ATC components, thereby reducing the potential for undue discrimination.

15. Duke has also failed to explain how being denied such a waiver would subject it to an undue burden. For example, whereas the applicants in *Midwest ISO* and *Southwest Power Pool* explained that denial of their respective waivers would require that they

²⁶ *Id.* P 14.

²⁷ *Midwest ISO*, 126 FERC ¶ 61,107 at P 1.

²⁸ *Id.* P 21.

²⁹ A Scenario Analyzer is a query tool that can be used to determine the ATC on a specific path for a time span covering multiple time points, based on constraint AFC values. *Id.* P 8.

³⁰ *Id.* P 21.

³¹ *Id.* P 22. Further, the Commission found that Midwest ISO's Scenario Analyzer was incapable of computing the Transfer Reserve Margin or Capacity Benefit Margin components of ATC. *Id.*

³² *Id.*

compute more than 1 million values every hour,³³ Duke merely states denial of the waiver would force it to “expend significant resources,” with no further elaboration.³⁴

16. We conclude that Duke is ineligible for the waiver of the OASIS posting requirements established in Order No. 890-A and the Commission’s regulations. The Waiver Request does not persuade us to expand upon the precedent establishing requirements for granting such a waiver. Consequently, Duke’s request for waiver is denied.

The Commission orders:

Duke’s request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³³ *Midwest ISO*, 126 FERC ¶ 61,107 at P 7; *Southwest Power Pool*, 127 FERC ¶ 61,207 at P 8.

³⁴ Waiver Request at 4.