

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Capacity Reservation Open Access  
Transmission Tariffs

Docket No. RM96-11-000

ORDER TERMINATING PROCEEDING

(Issued July 30, 2004)

1. In 1996, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.<sup>1</sup> For the reasons given below, we are exercising our discretion to terminate this proceeding.

**Background**

2. On April 24, 1996, concurrent with the issuance of Order No. 888, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing a capacity reservation tariff (CRT) that would replace the open access transmission tariff (OATT) required by the Commission in Order No. 888.<sup>2</sup>

3. Under the OATT, service is provided on both a network basis (load-based service) and a point-to-point basis (based on transmission capacity reservations). In the NOPR, the Commission requested comment on whether there are certain disadvantages inherent

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<sup>1</sup> Capacity Reservation Open Access Transmission Tariffs, Notice of Proposed Rulemaking, 61 Fed. Reg. 21,847 (May 10, 1996), FERC Stats. & Regs. ¶ 32,519 (1996).

<sup>2</sup> See 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).

in offering transmission on both a network and a point-to-point basis. If so, the Commission requested comment on whether comparability of transmission service can be better accomplished by requiring that transmission service be rendered using a single methodology, in particular, the proposed CRT approach

4. The Commission explained that the proposed CRT approach would be based on the point-to-point service in Order No. 888 and would allow all transmission customers to have the same degree of flexibility in reserving and using transmission service. The Commission further explained that a single service open access tariff might better accommodate competitive changes occurring in the industry while ensuring that all interstate transmission service subject to the Commission's jurisdiction is provided in a fair and non-discriminatory manner.

5. The Commission noted that in the Order No. 888 proceeding many commenters requested the Commission to adopt more flexible or more innovative tariffs and that it was proposing in the NOPR an alternative that may better suit the needs of the changing electric power industry. The Commission recognized that offering two types of service in the OATT may have disadvantages, but also recognized that the CRT could have disadvantages, *e.g.*, it could lead to an understatement of ATC. The Commission also noted that the industry was in a period of rapid change and many ideas were being considered for regional organizations and others, and that most of the proposed changes being considered assumed that all jurisdictional users of the transmission system would be treated alike. The Commission requested comment on whether there were other transmission capacity allocation methodologies that, when compared to the two-service approach in Order No. 888, were more compatible with proposed and contemplated marketplace innovations.

6. A technical conference was held on September 20, 1996 and comments were filed on October 21, 1996. The NOPR received a mixed response. A number of commenters expressed concern that the Commission was moving too fast and others were concerned that the NOPR lacked specificity. Still other commenters asserted that the CRT lacked flexibility and may not be technically feasible. Another commenter asserted that the establishment of ISOs would cause many of the problems that the CRT was designed to resolve to disappear. A further concern was that the CRT proposal may create a uniform structure that may impede the development of alternative and possibly superior approaches. Those commenters suggested that the Commission may instead want to support regional restructuring and pricing proposals. On the other hand, other commenters thought that the CRT proposal was essential to open access transmission because of the difficulties in calculating ATC, and proposed detailed CRT proposals.

## Discussion

7. More than eight years have passed since the NOPR was issued. During those years, conditions have changed and events have occurred that have indirectly or directly affected the NOPR. Significantly, we have seen the development of ISOs and RTOs. As we recognized in the RTO NOPR, “[g]iven the interconnectedness of the grid, it is necessary to introduce regional pricing innovations through some kind of regional organization. This cannot be done by individual transmission providers acting alone. We anticipated that regional organizations would be the likely innovators in our Transmission Pricing Policy Statement.”<sup>3</sup>

8. The Commission further noted that a number of innovations had been proposed since the issuance of Order No. 888, including locational pricing, non-physical transmission rights and transmission congestion contracts, and explicit market-based pricing of congestion and ancillary services. The Commission has also noted that, in almost every instance, it has “approved these proposals because they offer the promise of promoting overall operating efficiency and encouraging fair, open and competitive energy markets.”<sup>4</sup>

9. Given these developments and the continuing development of voluntary RTOs and ISOs and their related pricing and other innovations, we have concluded that the alternative tariff proposed over eight years ago has been overtaken by events. Accordingly, we will exercise our discretion to terminate this proceeding.

### The Commission orders:

Docket No. RM96-11-000 is hereby terminated.

By the Commission. Commissioner Kelliher concurring with a separate statement attached.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>3</sup> Regional Transmission Organizations, Notice of Proposed Rulemaking, 64 Fed. Reg. 31,389 (June 10, 1999), FERC Stats. & Regs. ¶ 32,541 at 33,739 (1999), Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000).

<sup>4</sup> *Id.* FERC Stats. & Regs. ¶ 32,541 at 33,740.

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Joseph T. KELLIHER, Commissioner *concurring*:

There are laws in many states against the abuse of corpses. In a regulatory context, the Notice of Proposed Rulemaking concerning Capacity Reservation Tariffs is a corpse. It met with an unpleasant reception when it was unveiled eight years ago, and was quickly and quietly shelved. Over the years, the decomposition process has slowly reduced the proposed rule to a desiccated husk. It is altogether fitting and proper that we give this corpse a decent burial. It is for that reason I support terminating the proceeding.

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Joseph T. Kelliher