

120 FERC ¶ 61,218  
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.

Duke Energy Carolinas, LLC

Docket No. ER07-1146-000

ORDER ACCEPTING IN PART AND DISMISSING IN PART PROPOSED  
VARIATIONS FROM THE PRO FORMA OPEN ACCESS TRANSMISSION TARIFF

(September 7, 2007)

1. On July 11, 2007, Duke Energy Carolinas, LLC (Duke Energy Carolinas) submitted for filing pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> proposed variations to its open access transmission tariff (OATT),<sup>2</sup> in accordance with Order No. 890.<sup>3</sup> As discussed below, we will accept the proposed variations to OATT sections 29.2 and 30.3 to permit the designation and undesignation of network resources via electronic mail (email), to become effective July 11, 2007, as requested. However, we will dismiss the proposed modification to the deadline for undesignating network resources as moot, in accordance with the Commission's concurrently issued Notice Granting Extension of Effective Date.<sup>4</sup>

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* 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

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> FERC Electric Tariff, Fifth Revised Volume No. 4.

<sup>3</sup> *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).

<sup>4</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Docket Nos. RM05-17-000, RM05-17-002, RM05-25-000 and RM05-25-002, 120 FERC ¶ 61,222 (2007).

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.

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.<sup>5</sup>

4. 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.<sup>6</sup>

## II. Duke Energy Carolinas’ Filing

5. Duke Energy Carolinas states that its filing is made in response to the deadline for undesignating network resources as clarified by the Commission in its June 26, 2007 order.<sup>7</sup> That order states:

[S]ome transmission providers, while retaining the *pro forma* 10:00 a.m. scheduling deadline, have adopted business practices that allow for consideration of firm schedule requests submitted after the deadline stated in their tariff. Section 13.8 of the *pro forma* OATT specifically provides that “[s]chedules submitted after 10:00 a.m. will be accommodated, if practicable,” and thus these business practices would be consistent with the *pro forma* OATT. This does not, however, change the deadline for

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<sup>5</sup> 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).

<sup>6</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 135.

<sup>7</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,322 (2007) (June 26 Order).

undesignation of a network resource, which is linked to the firm scheduling deadline provided in section 13.8. The fact that a transmission provider may consider later requests on a case-by-case basis does not alter the generally-applicable deadline stated in section 13.8 of the transmission provider's OATT.<sup>8</sup>

6. Duke Energy Carolinas states that it permitted firm schedules after the 10 a.m. deadline where practicable, although it did not change the 10 a.m. deadline. Duke Energy Carolinas states that it is concerned that, if it were to adopt a hard 10 a.m. deadline, as suggested by the June 26 Order, that would undermine the viability of the energy market by not allowing the flexibility needed in today's marketplace. It argues that providing network customers with flexibility in making undesignations closer to real time is superior to the *pro forma* OATT from the perspective of both buyers and sellers of energy. Therefore, Duke Energy Carolinas proposes variations to its OATT that would permit requests to undesignate network resources submitted after 10 a.m. of the day prior to the commencement of the termination to be accommodated, if practicable. Duke Energy Carolinas claims that its proposed deadline is identical to the deadline for scheduling Firm Point-to-Point Transmission Service contained in OATT section 13.8 (i.e., a flexible deadline).<sup>9</sup> Further, Duke Energy Carolinas states that the proposed modification works seamlessly with its current practice, now reflected in OATT section 30.2, of allowing network resources to be designated on an hourly basis, as described in Duke Energy Carolinas' Order No. 890 compliance filing.

7. A second proposed variation involves the methods for submitting undesignated network resources. Order No. 890 allows the undesignation of network resources to be submitted to the transmission provider by telefax or recorded telephone.<sup>10</sup> Duke Energy Carolinas proposes additional variations to its OATT to permit designating and undesignating network resources via email. It states that its current OATT provides two methodologies, aside from OASIS, for submitting designations of network resources under section 29.2 -- telefax and recorded telephone. Duke Energy Carolinas argues that email is convenient for customers and that email includes a "time of receipt" record feature. In cases of delay from the time of transmission to the time of receipt, features such as receipt notification would allow a customer to verify that an email transmission was received by Duke Energy Carolinas. Duke Energy Carolinas proposes variations to

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<sup>8</sup> *Id.* P 12.

<sup>9</sup> *Pro forma* OATT section 13.8 provides that the scheduling of Firm Point-To-Point Transmission Service be submitted to the transmission provider no later than 10 a.m., but permits requests submitted after 10 a.m. to be accommodated, if practicable.

<sup>10</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1543.

OATT sections 29.2 and 30.3 to permit email as a methodology for such communications in addition to telefax and recorded telephone.

8. Duke Energy Carolinas requests an effective date of July 11, 2007, for these tariff modifications, and thus, seeks waiver of the 60-day notice period. It states that this effective date would allow the proposed variation to the Commission's undesignation deadline policy to go into effect on the same date as the reforms adopted in Order No. 890 and would also minimize potential disruption to power markets. Duke Energy Carolinas adds that the proposed variation permitting the designation and undesignation of network resources via email will be beneficial to customers and should not be delayed.

### **III. Notice of Filing and Responsive Pleadings**

9. Notice of Duke Energy Carolinas' filing was published in the *Federal Register*, 72 Fed. Reg. 41,725 (2007), with comments, protests or interventions due on or before August 1, 2007. None was filed.

### **IV. Discussion**

10. We will dismiss as moot Duke Energy Carolinas' proposed variation concerning the deadline for undesignating network resources, without prejudice to resubmission after the Commission addresses the minimum lead time for undesignating network resources in Docket No. RM05-17-000, *et al.* In a notice issued concurrently with this order, the Commission grants an extension of the effective date of the minimum lead time for undesignating network resources adopted in Order No. 890 and, thus, defers the effectiveness of that requirement. As the Commission explains in the notice, we will revisit the issue of the minimum lead time for undesignating network resources in an order to be issued in the rulemaking proceeding.

11. We agree that email is a convenient way to designate and undesignate network resources for customers. We find that the proposed variations to sections 29.2 and 30.3 of Duke Energy Carolinas' OATT are consistent with or superior to the Commission's *pro forma* OATT. Accordingly, we will accept for filing Duke Energy Carolinas' proposed variations, to become effective July 11, 2007, as requested.

#### **The Commission orders:**

(A) Duke Energy Carolinas' proposed variation to the deadline for requests to undesignate network resources is hereby dismissed as moot, as discussed in the body of this order.

(B) Duke Energy Carolinas' proposed variations to OATT sections 29.2 and 30.3 to permit email as a methodology for designating and undesignating network resources are hereby accepted for filing, to become effective July 11, 2007, as requested, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.