

122 FERC ¶ 61,221
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.

American Electric Power Services Corporation

Docket No. OA08-7-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued March 10, 2008)

1. On October 11, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ American Electric Power Services Corporation (AEP)² submitted its compliance filing as required by Order No. 890³ (Compliance Filing). In this order, we will accept AEP's filing, as modified, as in compliance with Order No. 890, as discussed below.

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 (2000 & Supp. V 2005).

² AEP states that its filing is made on behalf of certain of its operating company affiliates, which AEP lists as Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Texas Central Company and AEP Texas North Company (collectively, AEP Companies).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members and required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).⁴

Compliance Filing

4. AEP states that AEP companies participate as transmission owners in the PJM Interconnection, LLC (PJM) and Southwest Power Pool (SPP) Regional Transmission Organizations (RTOs) and in the Electric Reliability Council of Texas (ERCOT). AEP states that its ERCOT utilities, AEP Texas Central Company and AEP Texas North Company, are subject to Commission jurisdiction under *Central Power & Light*,⁵ but as members of ERCOT are not members of an RTO and, with respect to transmission service provided within ERCOT, are not subject to the requirements of Order No. 890.

5. AEP states that as of October 1, 2004, PJM became the transmission provider for the AEP East Zone operating companies and offers transmission service under its OATT (PJM Tariff), including planning for transmission facilities within the PJM footprint.

6. AEP states that Public Service Company of Oklahoma and Southwestern Electric Power Company (AEP West Zone) are members of SPP, which offers transmission services under its OATT.

7. AEP further states that the AEP OATT remains as a result of the retention of certain grandfathered transmission service agreements which predate AEP's participation in the PJM and SPP RTOs but that no new transmission service has been offered under the AEP OATT since February 1, 2000 for the AEP West Zone and since October 1, 2004 for the AEP East Zone.

8. In its filing, AEP provides revised tariff sheets implementing the modifications required by Order No. 890 with certain limitations. AEP explains that in certain

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157, 161.

⁵ 17 FERC ¶ 61,078 (1981).

instances, it refers to the PJM or SPP OATT for certain attachments because, as a participant in each of those RTOs, AEP is not the provider of such service. The filing explains AEP's adoption of the *pro forma* OATT with regard to, among other things: OATT definitions, roll-over rights, redispatch and conditional firm service, energy and generation imbalances, credits for network customers, capacity reassignment, operational penalties, acquisition of transmission service, designation of network resources, clarifications related to network service, standardization of rules and practices, and transmission planning.

Notice of Filing and Responsive Pleadings

9. Notice of AEP's filing was published in the *Federal Register*, 72 Fed. Reg. 59,282 (2007), with interventions and protests due on or before November 1, 2007. None was filed.

Discussion

10. As discussed below we will accept AEP's compliance filing, as modified, to be effective October 11, 2007, as requested. We also direct AEP to file, within 30 days of the date of this order, a further compliance filing as discussed below.

Imbalance Energy Revenue Distribution

11. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.⁶

12. AEP has not responded to the Commission's directive regarding the distribution of imbalance revenues in Order No. 890.⁷ We direct AEP to file, within 30 days of the date of this order, a further compliance filing that proposes, consistent with Order No. 890, a mechanism to credit revenues above the transmission provider's incremental costs to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

⁷ *Id.* P 727.

Unreserved Use Penalties

13. 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.⁸

14. Although, AEP adopts the *pro forma* language regarding unreserved use penalties, we note that AEP's OATT does not contain an unreserved use penalty rate and, as a result, AEP may not charge transmission customers for unreserved use penalties. However, if AEP plans to charge unreserved use penalties, it must file a penalty rate in a section 205 filing based on the firm point-to-point rate and provide that penalties will be charged based on the specific period of unreserved use.

Rollover Rights Effective Date

15. 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.⁹

16. AEP has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of October 11, 2007. However, AEP's Attachment R, setting forth its transmission planning process, which was filed December 7, 2007, in Docket No. OA08-39-000, has not yet been accepted by the Commission.¹⁰ 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 AEP to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. AEP should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment R, requesting an effective date commensurate with the date of that filing.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

⁹ *Id.* P 1231, 1265.

¹⁰ Attachment K of the *pro forma* OATT is found at Attachment R in AEP's OATT. See Compliance Filing at n 4.

Attachment J - Procedures for Addressing Parallel Flows

17. 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 NERC Transmission Loading Relief Order¹¹ 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 WECC (WSCC Unscheduled Flow Mitigation Plan) and ERCOT (section 7 of the ERCOT Protocols) regions.¹² As a result, all transmission providers must complete Attachment J by incorporating the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol, and they must provide a link to the applicable procedures.

18. AEP requests waiver of the Order No. 890 requirements for Attachment J because of AEP’s participation in PJM, SPP, and ERCOT.¹³ We grant waiver of the Attachment J requirements for PJM and SPP as those requirements will be listed in the respective OATTs. However, we deny the waiver regarding ERCOT consistent with Order No. 693. We find that AEP must file Attachment M to its OATT incorporating the ERCOT protocol, and AEP must provide a link to the applicable procedures. AEP is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment M.

Creditworthiness

19. 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

¹¹ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

¹² *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, at P 961-65 (2007), *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

¹³ Attachment J of the *pro forma* OATT is found at Attachment M in AEP’s OATT. *See* Compliance Filing at n 4.

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.¹⁴

20. In reviewing AEP's filing, we note that section 11 of AEP's OATT¹⁵ contains AEP's Creditworthiness procedures, but AEP proposes to delete these procedures and has instead created Attachment N which directs us to the creditworthiness procedures of the applicable RTO.¹⁶ However, the Commission in a prior order,¹⁷ directed AEP to revise its *pro forma* Agreement to delete the requirement that an AEP customer would be subject to PJM creditworthiness provisions. Therefore, we direct AEP to file within 30 days of the date of this order, a further compliance filing that inserts the section 11 creditworthiness procedures into Attachment N as modified, if needed, to comply with the criteria set forth in Order No. 890 as explained above.

Waivers of Filing Requirements

21. AEP requests waiver of the requirements of Order No. 890 to the extent necessary to adopt proposed changes to the AEP OATT that reflect AEP's participation in PJM, SPP, and ERCOT. AEP requests waiver of Part IV of the AEP OATT, which covers service within ERCOT, which is not subject to the requirements of Order No. 890. For the same reason, AEP requests waiver with respect to the filing of Attachment C, Attachment L, and Attachment J reflecting the requirements of Order 890.

22. Because Part IV of the AEP OATT covers service within ERCOT, which is not subject to the requirements of Order No. 890, we waive the requirement of Order No. 890 with respect to Part IV.

23. We waive the requirements of Order No. 890 with respect to Attachment C because AEP Companies participate as transmission owners in the PJM and SPP RTOs

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

¹⁵ AEP, FERC Electric Tariff, Third Revised Vol. No. 6, Original Sheet No. 40.

¹⁶ Attachment L of the *pro forma* OATT is found at Attachment N in AEP's OATT. See Compliance Filing at n 4.

¹⁷ *American Electric Power Service Corp.*, 116 FERC ¶ 61,179 at P 63 (2006) (finding that since AEP is providing the service under its OATT, AEP's creditworthiness requirements should apply and requiring AEP to revise its *pro forma* agreement to delete the requirement that the customer will be subject to PJM creditworthiness provisions).

and in the ERCOT. We also waive the requirements of Order No. 890 Attachment J with respect to PJM and SPP, as discussed above. Finally, we deny the request for waiver to file *pro forma* Attachment L (AEP Attachment N), as discussed above.

Miscellaneous Issue

24. We note that in section 13.2 of the AEP OATT, the third sentence includes language not required by Order No. 890.¹⁸ Therefore, we direct AEP to remove this language in its compliance filing.

25. Accordingly, we will accept AEP's compliance filing, as modified, to be effective October 11, 2007. We also direct AEP to file, within 30 days of the date of this order, a further compliance filing as required above.

The Commission orders:

(A) AEP's compliance filing is hereby accepted, as modified, effective October 11, 2007, as discussed in the body of this order.

(B) AEP 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.

¹⁸ See Proposed First Revised Sheet No. 49.