

123 FERC ¶ 61,120
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.

NewCorp Resources Electric Cooperative, Inc.

Docket No. OA08-49-000

ORDER GRANTING REQUEST FOR WAIVER OF ORDER NO. 890

(Issued May 5, 2008)

1. On December 7, 2007, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted a request for waiver of the Order No. 890 requirement that it develop and include a transmission planning process as Attachment K to its Open Access Transmission Tariff (OATT).¹ In this order, we accept NewCorp's request for waiver.

I. Background

A. Order No. 890

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 comparable and non-discriminatory basis. Among other things, the Commission in Order No. 890 required that transmission providers establish coordinated, open and transparent planning processes with their Network and Firm Point-to-Point transmission customers and other interested parties, including the coordination of such planning with interconnected systems within their regions. The Commission also required that a transmission provider's planning process be provided as an attachment to the transmission provider's OATT. The transmission provider's planning process must also satisfy nine principles: coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects.²

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 418-602.

3. The Commission also stated that the criteria for waiver of the requirements of Order No. 890³ is unchanged from that used to evaluate requests for waiver under Order Nos. 888⁴ and 889.⁵

B. NewCorp

4. NewCorp states that it is a small transmission-only company organized as an electric cooperative pursuant to the Texas Cooperative Corporation Act. Its owner and only member is Cap Rock Energy Corporation (Cap Rock), which is also its only customer. NewCorp owns and operates a looped transmission system that consists of approximately 305 miles of 138 kV transmission lines and 17 substations. Cap Rock takes network integration transmission service from NewCorp pursuant to a service agreement on file with the Commission.⁶ Cap Rock in turn provides bundled retail service to its retail customers but does not engage in any wholesale power sales or provide any transmission services. NewCorp does not provide point-to-point transmission service or serve any other customers.

5. NewCorp's transmission system is primarily radial in nature and interconnects with the Southwestern Public Service Company (SPS) transmission system and the Cap Rock distribution system. Other than SPS and Cap Rock, the NewCorp transmission system is not interconnected to any other entity. SPS functions as the Balancing Authority for the NewCorp transmission system.

³ *Id.* P 1759.

⁴ *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).

⁵ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁶ *See* NewCorp's December 7, 2007 Filing, at 1 (*citing, NewCorp Res. Elec. Coop., Inc.*, 109 FERC ¶ 61,103, at P 8 (2004)).

II. Compliance Filing

6. NewCorp requests waiver of the requirement in Order No. 890 to develop and include as an Attachment K to its OATT a coordinated, open and transparent transmission planning process. NewCorp argues that given its unique operational circumstances, the requirement to file an Attachment K would be unreasonably burdensome and unnecessary.

7. NewCorp also argues that because it serves only one customer, its affiliate, it has neither the ability nor the incentive to discriminate between customers. Furthermore, NewCorp states that there are no other existing or potential transmission customers that are interconnected to the NewCorp transmission system, and, therefore, there is no need for NewCorp to develop and adopt more detailed planning procedures.

8. NewCorp also argues that the expense and time commitment required to develop the detailed planning procedures is likely to be significant for NewCorp.

9. NewCorp states that because of its small size and limited operations, it has been granted a waiver of the requirement to comply with the Commission's Order No. 889 OASIS requirements,⁷ as well as the Commission's Order No. 2004 Standards of Conduct.⁸

10. NewCorp also states that it understands that SPS, the Balancing Authority for the NewCorp transmission system, is participating in the development of detailed planning procedures intended to comply with Order No. 890. NewCorp states that this

⁷ *Id.* at 2 (citing, Order No. 889, FERC Stats. & Regs. ¶ 31,035).

⁸ *Id.* (citing, *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, 72 Fed. Reg. 2,427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, 72 Fed. Reg. 14235 (Mar. 27, 2007), FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, 72 Fed. Reg. 3,958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007)). *Also citing, Nat'l Fuel Gas Supply Corp.*, 116 FERC ¶ 61,048, at PP 74-77 (2006); *N. States Power Co.*, 76 FERC ¶ 61,250, at 62,297 (1996).

development means that the entity that in effect manages the NewCorp transmission system will be subject to planning procedures that will have been found by the Commission to be just, reasonable and in conformance with Order No. 890.

III. Notice of Filing and Responsive Pleadings

11. Notice of NewCorp's filing was published in the *Federal Register*, 72 Fed. Reg. 73,016 (2007), with interventions and protests due on or before January 7, 2008.⁹ Electric Power Supply Association submitted a timely motion to intervene. No protests were filed.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

13. Consistent with the Commission's previous approval of NewCorp's request for waiver of certain other requirements of Order No. 890,¹⁰ we grant NewCorp's request for waiver of the requirement in Order No. 890 that it develop and include as Attachment K to its OATT provisions for a coordinated, open and transparent transmission planning process.

14. In granting NewCorp's request for waiver, we relied on the statements it made in its filing, including that: (1) NewCorp serves only one customer and that its one customer, Cap Rock, is its affiliate; (2) there are no other existing or potential transmission customers that are directly interconnected with the NewCorp transmission system; (3) the NewCorp transmission system is primarily radial in nature and interconnects only with the SPS transmission system and the Cap Rock distribution system; (4) SPS, the Balancing Authority for the NewCorp transmission system, will comply with the planning requirements in Order No. 890; and (5) the expense and time commitment to develop the detailed planning procedures is likely to be significant for NewCorp. If there is a change to the factual circumstances we relied upon in granting the requested waiver, NewCorp must inform the Commission.

⁹ The original comment deadline was December 28, 2007 and was extended to January 7, 2008 by a December 20, 2007 Notice of Extension of Time.

¹⁰ See *NewCorp Res. Coop., Inc.*, 122 FERC ¶ 61,201 (2007).

The Commission orders:

NewCorp's request for waiver of the requirement to file an Attachment K transmission planning process to its OATT pursuant to Order No. 890 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.