

126 FERC ¶ 61, 226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Duke Energy Carolinas, LLC
Duke Energy Carolinas, LLC

Docket No. ER09-562-000
Docket No. OA08-50-002

ORDER ACCEPTING PROPOSED TARIFF AMENDMENTS
AND DEFERRING WAIVER REQUEST

(Issued March 17, 2009)

1. On January 16, 2009, pursuant to section 206 of the Federal Power Act (FPA),¹ Duke Energy Carolinas, LLC (Duke Energy) submitted a compliance filing in Docket No. OA08-50-002 as required by Order Nos. 890² and 676-C.³ Duke Energy filed a request for a waiver from certain business practice standards adopted by the Commission in Order No. 676-C. Additionally, in Docket No. ER09-562-000, pursuant to section 205 of the FPA,⁴ Duke Energy submitted a revised version of Attachment C (Methodology to

¹ 16 U.S.C. § 824e (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 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), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

³ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs., ¶ 31,216, *order on reh'g*, Order No. 676-A, 116 FERC ¶ 61,255 (2006), Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007), Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008), *order on reh'g*, Order No. 676-D, 124 FERC ¶ 61,317 (2008).

⁴ 16 U.S.C. § 824d (2006).

Assess Available Transfer Capability) and Attachment K⁵ (Independent Entity) to its Open Access Transmission Tariff (OATT).⁶ In this order, the Commission accepts Duke Energy's proposed tariff revisions and grants in part and defers action on the requested Order No. 676-C waivers, subject to the outcome of further proceedings, as described below.

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 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 revisions in Order No. 890-A address, among other things: how transmission providers process service requests; under what circumstances long-term customers may renew (i.e., rollover) their transmission service; the ability of network customers to designate certain resources; and how point-to-point customers may reassign transmission capacity. The Commission also directed transmission providers to address certain issues related to the calculation of available transfer capability and the calculation of incremental costs for purposes of imbalance charges.

4. In 2006, the Commission issued Order No. 676, thereby incorporating by reference in its regulations certain standards promulgated by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). In addition, the Commission directed public utilities to comply with these standards and revise their OATT to include these standards. The standards established a set of business practice standards and communications protocols (Standards WEQ-001, -002, and -003) for the

⁵ As the Commission explained in Order No. 890, some transmission providers may already have attachments to their Open Access Transmission Tariff (OATTs) labeled with the letter "K," in which case transmission providers are free to label their planning process OATT attachment with the next available letter. Duke Energy filed its coordinated and regional transmission planning process as Attachment N. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at n.246 and *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 (2008).

⁶ Duke Energy Carolina's FERC Electric Tariff, Sixth Revised Volume No. 4.

electric industry that replace the Commission's existing Open Access Same-Time Information Systems (OASIS) standards, and also include business practices to complement reliability standards of the North American Electric Reliability Council (NERC) (Standards WEQ-004, -005, -006 and -007).

5. As an alternative to complying with these standards, Order No. 676 gave public utilities the option of applying for a waiver, in whole or in part, of the standards by filing a request explaining the reasons why the waiver should be granted. Further, Order No. 676 stated that utilities, including independent system operators (ISOs) and regional transmission organizations (RTOs) that have existing waivers of certain OASIS standards may reapply for such waivers using simplified procedures. These procedures require an applicant to identify the specific standard(s) from which it is seeking waiver and provide the caption, date, and docket number of the proceeding in which it received its waiver. In addition, an applicant must certify that the circumstances warranting its waiver(s) have not changed.⁷

6. On July 21, 2008, the Commission amended its regulations to incorporate the NAESB WEQ Version 001 standards in Order No. 676-C. As with Order No. 676, Order No. 676-C provides that "each public utility that wants a waiver of any standard we are incorporating by reference in this Final Rule may file a request for a waiver, supported by the reasons it believes a waiver is warranted."⁸ In addition, the Commission stated that if a "public utility requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a public utility has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver."⁹

7. In Order No. 676-C, the Commission incorporated by reference the latest version (Version 001) of certain standards adopted by NAESB's WEQ. In addition, the Commission directed public utilities to comply with the revised standards and revise their OATT to include the revised standards. The NAESB WEQ standards: (1) revise the OASIS business practice standards and communications protocols (Standards WEQ-001, 002, and 003); (2) revise four business practice standards relating to interchange matters (Standards WEQ-004, 005, 006, 007); (3) add new standards on transmission loading relief for the Eastern Interconnection (WEQ-008); (4) add new standards regarding

⁷ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 79.

⁸ *Id.* P 19.

⁹ *Id.* P 84.

Gas/Electric Coordination (WEQ-011); (5) add new standards for key public infrastructure (WEQ-012); and (6) add a new OASIS implementation guide (WEQ-013).

8. On January 6, 2009 in Docket No. RM05-5-000, Edison Electric Institute (EEI) requested a blanket waiver of the WEQ standards¹⁰ adopted in Order No. 676-C “that impose posting requirements on Transmission Providers that conflict with, or have been rendered unnecessary by, the new posting requirements imposed by the Commission’s Order No. 717.”¹¹ EEI’s request for a blanket waiver is currently pending before the Commission.

II. Docket No. OA08-50-002

9. In this filing, Duke Energy has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of April 1, 2009. The revised section 2.2 requires a five-year minimum contract term for a customer to be eligible for a rollover right and a one-year notice period for exercising such a right. Duke Energy explains that some network customers have signed network service agreements with term provisions that, while evergreen, meaning the contract is automatically renewed, are not five years or longer in duration in that the customer can, but is not obligated to, take service for a term of five years or more. In addition, Duke Energy states that it assumes all such customers desire to retain rollover rights and thus will want their network service agreements amended before such network service agreements’ current term expires.¹² Therefore, Duke Energy explains that it plans, in the near future, to file amendments to the term provisions of network service agreements that are less than five years to ensure that they continue to be eligible for rollover rights.

10. Duke Energy proposes to incorporate the latest version of business practice standards implemented by the WEQ of the NAESB to comply with Order No. 676-C. Duke Energy explains that it supports and renews the EEI Request for Waiver for

¹⁰ WEQ Standards: WEQ-001-1.6(g)(4), 002-4.5.2, and 002-4.3.10.5.

¹¹ EEI’s Request for Waiver (EEI Request for Waiver) at 1-2, citing *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008).

¹² Duke Energy Transmittal Letter at 2.

NAESB Standards 001-1.6(g)(4), 002-4.5.2 and 002-4.3.10.5 that “are in conflict with or are inconsistent with Order No. 717.”¹³ Duke Energy requests an effective date of October 1, 2008 for these proposed tariff sheets.

III. Docket No. ER09-562-000

11. Duke Energy states that, in addition to making modifications in compliance with Order No. 890-A, it is submitting changes to its Attachment C to correct inconsistencies with its OATT and to correct various typographical errors. Specifically, Duke Energy proposes to delete text that implies that Capacity Benefit Margin (CBM) is available on the Duke Energy system. Duke Energy also proposes to add language clarifying that utilities do not need to make CBM available on their system if the utilities do not reserve CBM or its equivalent for themselves.

12. Duke Energy explains that since the filing of Attachment K, as a result of both Order No. 890 and the North Carolina Transmission Planning Collaborative, which has its own independent entity, Duke Energy has revised its entire transmission planning process. As a result, there is no longer a need for the Independent Entity to play a role in transmission planning. Thus, to effectuate this change, Duke Energy proposes to amend its Attachment K to delete various definitions (or portions of definitions) that will no longer be applicable. In addition, Duke Energy proposes to remove inapplicable references that provided the Independent Entity a role in transmission planning and include a reference to Order No. 890. Lastly, Duke Energy explains that because it has already held the two-year anniversary stakeholder conference relating to the Independent Entity, it proposes to modify Attachment K to indicate that a five-year anniversary conference is planned.¹⁴

13. Further, Duke Energy seeks to remove rate schedules from its OATT and to reflect the rates for service over distribution-level facilities in network service agreements. Duke Energy explains that distribution rates are now routinely set forth only in individual service agreements and are not typically included in the OATT itself.

14. Lastly, Duke Energy seeks an effective date of March 17, 2009 for the items in Docket No. ER09-562-000.¹⁵

¹³ *Id.* at 3.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 7.

IV. Notice of Filing

15. Notice of Duke Energy's filings was published in the *Federal Register*, 74 Fed. Reg. 6,151-52 (2009), with comments, interventions and protests due on or before February 6, 2009. None were filed.

V. Discussion

16. In this order, the Commission accepts Duke Energy's proposed tariff revisions and grants in part and defers action on the requested Order No. 676-C waivers, subject to the outcome of further proceedings, as described below.

A. Rollover Rights

17. In Order No. 890, the Commission adopted a five-year minimum contract term for a customer to be eligible for a rollover right and a one-year notice period for exercising such a right. The Commission determined that the rollover reforms adopted in Order No. 890 would become effective after the transmission provider's transmission planning process is accepted by the Commission. Duke Energy's Attachment N transmission planning process was accepted on September 18, 2008.¹⁶ The Commission, therefore, accepts Duke Energy's revised section 2.2, to be effective on April 1, 2009, as requested.

B. NAESB Revisions

18. Duke Energy incorporates by reference in its OATT the latest version of business standards implemented by the WEQ of the NAESB to comply with Order No. 676-C. Duke Energy requests an effective date of October 1, 2008 for these proposed NAESB revisions.

19. The Commission finds that the revisions incorporated by reference satisfactorily comply with the directives of Order No. 676-C. The Commission, therefore, accepts Duke Energy's proposed NAESB revisions, to be effective on October 1, 2008, as requested.

C. Waiver of NAESB Standards Requested

20. Duke Energy requests approval of its proposed waiver to Standards WEQ-001-1.6(g)(4), 002-4.5.2, and 002-4.3.10.5, because the posting requirements conflict with or are inconsistent with Order No. 717 as set forth in the EEI Waiver Request. Duke Energy states that it understands that a waiver request relieves it of its obligations to abide by the

¹⁶ *Duke Energy Carolinas, LLC*, 124 FERC ¶ 61,267 (2008).

identified NAESB Standards until or unless the Commission denies such waiver. The Commission defers action on Duke Energy's request for waiver of Standards WEQ-001-1.6(g)(4), 002-4.5.2, and 002-4.3.10.5 and will act on Duke Energy's and EEI's request for waiver simultaneously in Docket No. RM05-5-000.

D. Capacity Benefit Margin

21. Duke Energy states that its Attachment C filing includes clarifying language and corrections of various typographical errors relating to CBM. First, Duke Energy proposes to delete from section IV.D.2b text that implies that CBM is available on the Duke Energy system. Second, Duke Energy explains that section IV.E stated that Duke Energy would provide CBM upon the request of a network customer. Duke Energy proposes to replace this text with a statement reflecting Order No. 890-A's holding regarding the obligation to make CBM available.¹⁷ Specifically, Duke Energy proposes to add additional language to section IV.E, Transmission Margins, clarifying that utilities do not need to make CBM available on their system if the utilities do not reserve CBM or its equivalent for themselves.

22. The Commission finds that Duke Energy's proposed revisions to Attachment C are consistent with or superior to the revised *pro forma* OATT. We accept Duke Energy's proposed changes as described herein.

E. The Independent Entity

23. In its section 205 filing, Duke Energy states that Attachment K addresses the role and obligations of the Independent Entity. Under its proposal, Duke Energy will retain responsibility for a number of core transmission functions, but will no longer play a role in the transmission planning process. Duke Energy explains that as a result of both Order No. 890 and the North Carolina Transmission Planning Collaborative's use of its own independent entity, Duke Energy has revised its entire transmission planning process.¹⁸

24. We agree with Duke Energy's proposal to eliminate various provisions relating to its Independent Entity structure that are no longer applicable. As Duke Energy explains,

¹⁷ Duke Energy Transmittal Letter at 5.

¹⁸ Section 2.4.4 (Independent Third Party) of Duke Energy Carolinas, LLC's Attachment N describes the roles and responsibilities of the Independent Third Party in the North Carolina Transmission Planning Collaborative Process. *See Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.*, 124 FERC ¶ 61,267 (2008).

there is no longer a need for its Independent Entity to play a role in transmission planning. Indeed, in Order No. 890, Duke Energy stated that it has an Attachment K that covers the Independent Entity that will oversee the provision of transmission service by Duke Energy.¹⁹ In response, the Commission stated that after the submission of FPA section 206 compliance filings, transmission providers may submit FPA section 205 filings proposing 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.²⁰ We find Duke Energy’s proposed revisions to be “consistent with or superior to” the *pro forma* OATT. Thus, we accept the proposed modifications and clarifications with respect to the Independent Entity structure that Duke Energy has agreed to make and that are identified herein.

F. Distribution Rates

25. Duke Energy explains that it has executed network service agreements that reflect wholesale distribution rates under its OATT. It notes that the nature of network service agreements has changed and distribution rates are now filed and reviewed on a case-by-case basis. Therefore, Duke Energy proposes to remove three rate schedules²¹ from its OATT. Duke Energy explains that it is more appropriate to reflect the rates for service over distribution-level facilities in network service agreements. We agree with Duke Energy’s proposal to remove the specified rate schedules from its OATT. Indeed, the Order No. 890 *pro forma* OATT does not contain schedules for distribution rates and this proposed modification would make Duke Energy’s OATT more consistent with the *pro forma* OATT. Thus, we accept the proposed modifications identified herein.

G. Effective Date

26. Duke Energy requested an effective date of March 17, 2009 for the following tariff amendments: correcting typographical errors regarding CBM; removing Independent

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 129.

²⁰ *Id.* P 137.

²¹ Duke Energy Carolinas, LLC, FERC Electric Tariff Sixth Revised Volume No. 4, Schedule 10 – Distribution Rates for the Carolina Municipals, Schedule 11 – Distribution Rate for the Town of Highlands, North Carolina and Schedule 12 – Distribution Rate for Haywood Electric Membership Corporation.

Entity provisions that are no longer applicable; and removing specified rate schedules from its OATT.²² We accept Duke Energy's proposed revisions to be effective on March 17, 2009, as requested.

The Commission orders:

(A) Duke Energy's proposed tariff amendments are hereby accepted, to be effective October 1, 2008 and March 17, 2009, as requested.

(B) Duke Energy's request for limited waivers will be addressed simultaneously with EEI's Waiver Request in Docket No. RM05-5-000, as discussed in the body of this order.

(C) Duke Energy's proposed revisions to section 2.2 are hereby accepted, to be effective April 1, 2009.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²² Duke Energy Transmittal Letter at 7.