

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 35 and 37

(Docket Nos. RM05-17-002 and RM05-25-002)

Preventing Undue Discrimination and Preference in Transmission Service

(Issued June 26, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Establishing Technical Conference and Providing Guidance

SUMMARY: In this order, the Federal Energy Regulatory Commission (Commission) grants requests to establish a technical conference to address certain issues related to the designation and undesignation of network resources, the rules for which were modified in Order No. 890. The Commission also provides guidance regarding the minimum lead time necessary to undesignate a network resource.

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SUPPLEMENTARY INFORMATION:

2. As discussed in more detail below, the Commission establishes a staff technical conference to consider certain issues raised by the Commission's rulings in Order No. 890 regarding the designation and undesignation of network resources. The Commission also provides guidance to transmission providers in advance of the upcoming July 13, 2007 compliance deadline on the minimum lead-time necessary to undesignate a network resource. The Commission defers action on all remaining matters pending a further order on rehearing and clarification.

II. Background

3. In Order No. 890, the Commission clarified certain of its existing policies, and established several new policies, regarding the designation and undesignation of network resources. Among other things, the Commission affirmed its existing policy of requiring network customers and the transmission provider's merchant function to undesignate network resources or portions thereof in order to make certain firm, third-party sales from those resources.² The Commission established a minimum lead-time for undesignating network resources, requiring that network customers undesignate a resource "before the firm scheduling deadline (10 a.m. the day before service commences)" in order to make a firm sale out of the resource.³ The Commission explained that this reform was necessary to ensure that the appropriate set of network resources can be included in the calculation of available transfer capability (ATC).

² Id. at P 1539.

³ Id. at P 1557.

4. With regard to the procedures for undesignating network resources, the Commission determined that all undesignations must be submitted on OASIS and directed transmission providers to work with the North American Energy Standards Board (NAESB) to develop OASIS functionality necessary for such submissions.⁴ Prior to implementation of the new OASIS functionality and related NAESB standards, the Commission stated that requests for undesignation could be submitted by telefax or by telephone over the transmission provider's recorded telephone line.⁵

5. In order to initially designate a resource as a network resource, the Commission required both the transmission provider's merchant function and network customers to include a statement with each application for network service or to designate a new network resource that attests, for each network resource identified, that (1) the transmission customer owns or has committed to purchase the designated network resource and (2) the designated network resource comports with the requirements in the OATT for designated network resources.⁶ The Commission explained that the network customer should include this attestation in the customer's comment section of the request when it confirms the request on OASIS. The Commission also clarified that a customer may not designate as a network resource a seller's choice power purchase agreement which is sourced by generating units internal to the transmission provider's control area,

⁴ Id. at P 1541.

⁵ Id. at P 1543.

⁶ Id. at P 1521.

since evaluating the effect on ATC would be problematic.⁷ In order for a network customer to have a choice of resources that are internal to the particular transmission provider's control area from which to dispatch power, the Commission explained that the customer must designate each of the resources as network resources.

6. A number of commenters filed for rehearing and/or clarification of these rulings.⁸ In addition, certain parties have requested that the Commission convene a technical conference to address certain issues. In its request for rehearing, E.ON U.S. LLC (E.ON) asks that the Commission convene a technical conference to address the issue of the 10:00 a.m. minimum lead-time for designating network resources, arguing that the deadline will harm liquidity and efficiency of power markets and ultimately consumers. On April 27, 2007, WSPP Inc. ("WSPP") submitted a supplemental filing which also requested that the Commission hold a technical conference to consider alternatives to the minimum lead-time for undesignating resources required in Order No. 890. WSPP expressed concern that enforcement of a 10:00 a.m. day-ahead deadline will adversely impact regional reliability by restricting the availability of firm power in real-time. WSPP offers several proposals for consideration, including flexibility for undesignations as necessary to address emergencies and reliability requirements, in the event hourly firm

⁷ Id. at P 1483.

⁸ See, e.g., Bonneville Power Administration (Bonneville), Duke Energy Corporation, Edison Electric Institute (EEI), National Rural Electric Cooperative Association (NRECA), Public Service Company of New Mexico, Southern Company Services, Inc., Washington Investor-Owned Utilities, Wisconsin Electric Power Company (Wisconsin Electric), and WSPP. Though we provide guidance on our reforms in this order, we will address the merits of the rehearing requests in a subsequent order on rehearing.

transmission is offered, or if otherwise justified by the transmission provider. Answers in support of WSPP's request for technical conference were filed by Basin Electric Power Cooperative ("Basin") and Barclays Bank, PLC, J. Aron & Company, Morgan Stanley Capital Group Inc., and Bear Energy LP ("Financial Service Joint Filers"). Financial Service Joint Filers request that the scope of the technical conference also include consideration of issues relating to the availability of ancillary services such as generator imbalance service and operating reserves.

7. On June 14, 2007, EEI filed, in answer to the WSPP request, a supplemental request for clarification, technical conference and other relief. EEI argues that a requirement to undesignate network resources by 10:00 a.m. of the day prior to the transaction raises complex issues that could disrupt real-time bilateral markets in both the Western and Eastern interconnections. EEI asks the Commission to clarify whether network customers are in fact required to undesignated resources by 10:00 a.m. the day prior to the transaction under Order No. 890. EEI requests a technical conference to discuss this and other issues related to the designation and undesignation of network resources, including the mechanism for undesignating network resources in the absence of OASIS functionality and whether transmission providers should have the right to evaluate the firmness of power purchase agreements and their resulting eligibility to be designated as network resources or the obligation to verify the firmness of a customer's

off-system transmission service if they cannot do so through OASIS.⁹ EEI requests further clarification regarding whether the Commission will allow flexibility regarding the designation of network resources in emergency situations and what information must be provided when designating a slice-of-system network resource. EEI asks that the Commission issue a statement of policy that makes clear that it will not impose penalties for non-compliance with the designation and undesignation requirements of Order No. 890 and the revised pro forma OATT until issues raised in requests for rehearing and clarification and at the technical conference are resolved.

III. Discussion

8. The Commission grants the requests to establish a staff technical conference to consider the impact of its decision to impose a minimum lead-time for the undesignation of network resources. In addition, we find good cause exists to include in the technical conference the issue of eligibility of on-system seller's choice contracts and system sales. The Commission directs its staff to convene this technical conference within 60 days of the date of this order. In the interim, the Commission provides guidance regarding the issues raised in the requests for a technical conference. This guidance should address some of the concerns underlying those requests and otherwise address the concerns of commenters that Order No. 890 mandates certain changes to regional practices.

⁹ EEI suggests that the Commission identify issues to be discussed in the technical conference by soliciting input from the interested parties to develop a list of 15 to 20 issues (including actual language from a variety of contracts) that would be published in advance of the technical conference. EEI argues that the technical conference should be limited to matters involving only the designation and undesignation requirements of Order No. 890.

9. The principal issue raised involves the minimum lead-time for undesignating a network resource. Prior to Order No. 890, the pro forma OATT did not include a specific lead-time for the undesignation of network resources. In Order No. 890, the Commission amended section 30.3 of the pro forma OATT to require that a network resource be undesignated “not later than the firm scheduling deadline for the period of termination.” This change appears to be causing great concern for the industry and, more generally, confusion between the interplay between section 30.3 and section 13.8 of the pro forma OATT.

10. Section 30.3 requires notification of an undesignation no later than the “firm scheduling deadline for the period of termination.” Section 13.8 requires, in turn, that firm point-to-point transmission service must be scheduled “no later than 10:00 a.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service.” The firm scheduling deadline addressed in section 30.3 therefore incorporates by reference the flexibility set forth in section 13.8, thereby providing the regional flexibility sought by commenters, provided the transmission provider requests to modify its OATT in that regard pursuant to section 205 of the Federal Power Act. Order No. 890 did not change this flexibility. Rather, it simply required that the same scheduling deadline be used for submitting firm schedules and undesignations so that the appropriate set of network resources can be included in ATC calculations.

11. The short-hand reference to these related tariff provisions in paragraph 1557 of Order No. 890 seems to have created confusion. In stating that notices of undesignation

were required “before the firm scheduling deadline (10 a.m. the day before service commences),” the Commission was simply referring to the standard pro forma 10:00 a.m. deadline in section 13.8. To the extent a transmission provider has adopted a different firm scheduling deadline, and obtained Commission approval for that OATT variation, the pro forma 10:00 a.m. timeframe will have been superseded by that approved deviation. For example, although the Commission did not require hourly firm service to be offered under the pro forma OATT, some transmission providers have already implemented that service and may have adjusted their firm scheduling deadlines in section 13.8 accordingly. Order No. 890 simply requires that notices of undesignation be submitted by the firm scheduling deadline otherwise applicable under section 13.8.

12. We understand that some 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.¹⁰ This does not, however, change the deadline for 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

¹⁰ Order No. 890 required all rules, standards and practices that significantly affect transmission service to be incorporate into the transmission provider’s OATT. Rules, standards, and practices that merely relate to transmission service may be posted on the transmission provider’s public website.

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.¹¹

13. With regard to the remaining issues raised by EEI and the Financial Service Joint Filers, we do not believe there is a need at this time to include in the technical conference matters other than those identified above. The issue of broadest concern for the commenters involves the 10:00 a.m. deadline for undesignating network resources and, thus, the Commission will convene a staff technical conference on that issue. In addition, we believe that the Commission will benefit from additional discussion of the concerns raised in various parties' requests for rehearing and clarification with regard to whether on-system seller's choice contracts or system sales should be eligible for designation as network resources.¹² We find that good cause has not been established for holding a technical conference on the other matters regarding the designation and undesignation of network resources, and those remaining issues will be resolved in a later order on rehearing and clarification of Order No. 890.

14. Finally, we deny EEI's request to effectively extend, through the issuance of a policy statement, the compliance deadline for the designation and undesignation requirements of Order No. 890 until the Commission acts on rehearing. With the guidance provided above, we believe the requirements of Order No. 890 are sufficiently

¹¹ Transmission providers of course retain all rights under FPA section 205 to propose an alternate scheduling and undesignation structure that is consistent with or superior to the terms and conditions of the pro forma OATT.

¹² See, e.g., Bonneville, NRECA, and Wisconsin Electric.

clear and that further delay of those reforms is not necessary.¹³ Any compliance issues can be resolved on a case-by-case basis during the compliance process.

The Commission orders:

(A) The Commission directs its staff to convene a technical conference within 60 days of the date of this order to consider the issues regarding the 10:00 a.m. deadline for undesignating network resources and the eligibility of on-system seller's choice and system sales to be designated as network resources.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ In response to motions from EEI and others, the Commission previously granted a request for extension of the compliance deadlines of Order No. 890. See Preventing Undue Discrimination and Preference in Transmission Service, 119 FERC ¶ 61,037 (2007).