

120 FERC ¶ 61,041
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.

Mid-Continent Area Power Pool

Docket No. OA07-8-000

ORDER ON PROPOSED VARIATIONS
FROM THE PRO FORMA OPEN ACCESS TRANSMISSION TARIFF

(Issued July 13, 2007)

1. On April 19, 2007 Mid-Continent Area Power Pool (MAPP) filed a request on behalf of its Regional Transmission Committee (RTC) Members to retain certain provisions of its Open Access Transmission Tariff (OATT) that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890.¹ As discussed below, the Commission accepts in part and rejects in part MAPP's proposed variations from the *pro forma* OATT to become effective July 13, 2007.

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.² 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 *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). MAPP states that its filing is made on behalf of each of the individual public utility Members of the MAPP RTC, as well as on behalf of the non-public utility Members of the MAPP RTC to the extent they are required to comply with Order No. 890 consistent with their reciprocity obligations. *See* Order No. 890 at P 190-92.

² *See id.* at P 26-61.

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 an independent system operator (ISO) or regional transmission organization (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit Federal Power Act (FPA) section 206 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, within 120 days from publication of Order No. 890 in the Federal Register, *i.e.*, July 13, 2007.³

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888⁴ *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking a determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the Federal Register, *i.e.*, April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

³ 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).

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 (1997), 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).

II. MAPP's Filing

5. MAPP's Schedule F was approved by the Commission as consistent with or superior to the Order No. 888 *pro forma* OATT in 1999.⁵ In this filing, MAPP requests waiver from the requirements of Order No. 890 in five general areas: (1) Network Service; (2) Long-Term Firm Service and Rollover Rights; (3) Ancillary Services; (4) Charges for Unreserved Use; and (5) Posting of Control Area to Control Area ATC/TTC Information.

6. MAPP states that Schedule F does not offer network service and the Commission has previously approved elimination of Part III based on the limited services offered under Schedule F. Accordingly, MAPP requests waiver of all requirements related to network resources to include the following recent Order No. 890 reforms: sections 29 and 30, which are requirements for designating off-system resources and terminating, operating and scheduling network resources; section 29, requiring that network customers submit attestations that the resources they seek to designate meet the Commission's requirements; section 30.9 for revised language regarding credits for integrated transmission facilities; section 32.5 for penalties for failure to meet study deadlines; and section 28.6 for charges and penalties for misuse of network or secondary service.

7. MAPP Schedule F is a regional limited-services tariff wherein customers can reserve firm transmission service for periods of one month, up to 12 consecutive months,⁶ without any obligation to build to accommodate requests for service. Thus, MAPP requests waiver of the following reforms as they apply to long-term transmission service: section 15.4 requiring transmission providers to study planning re-dispatch and conditional firm options when a request for long-term firm transmission service cannot be satisfied and upgrades cannot be completed prior to the expiration of the requested service term; section 13.4 requiring certain actions in connection with planning re-dispatch and conditional firm service; section 19.1 providing Eligible Customers with an election regarding the study of planning re-dispatch or conditional firm options; section 19.3, system impact study procedures that apply to planning re-dispatch and conditional firm service, Attachment A-1; section 2.2, rollover provision which now

⁵ See *Mid-Continent Area Power Pool*, 87 FERC ¶ 61,075 (1999) (*MAPP*), *order on compliance*, 88 FERC ¶ 61,157 (1999), *order on compliance*, Docket No. OA97-163-006, *et al.* (Oct. 13, 1999) (unpublished letter order).

⁶ MAPP initially provided transmission service with a term of up to 2 years. See *MAPP*, 87 FERC at 61,310. But MAPP's offering of point-to-point (PTP) service has since changed such that customers may reserve firm transmission service up to 12 consecutive months. See *Mid-Continent Area Power Pool*, Docket No. ER04-960-004 (May 16, 2005) (unpublished letter order).

requires 5-year contract terms for rollover eligibility and 1-year notice for intent to exercise;⁷ and section 17.7, extensions for commencement of service provision.

8. MAPP states that Ancillary Services are provided under the individual RTC Members' OATTs or other agreements and not by MAPP (with the exception of Scheduling and Tariff Administration Service). Consistent with the Commission's previous determination,⁸ MAPP seeks waiver of the following: Schedule 9, Generator Imbalance Service; Schedule 4, new banded pricing mechanisms for Energy Imbalance Service; some related crediting mechanisms for imbalance penalty revenues; and Section 2 of the OATT, which consists of charges for customers that exceed reserved capacity or use service that has not been reserved.

9. MAPP's current tariff language assesses charges for unauthorized use of service at two (2) times the normal rate and provides that excess revenues from penalty charges are used to reduce the RTC's administrative costs.⁹ MAPP seeks to retain its current variation in whole. MAPP states that its unreserved use penalty is presumptively reasonable because it is set at twice the normal rate, and it requests to continue to apply these revenues to RTC administration costs rather than remitting to non-offending customers, as provided in Order No. 890.

10. Finally, MAPP notes that in Order No. 889-A, the Commission granted MAPP a limited waiver posting requirements for intra-MAPP interfaces.¹⁰ MAPP notes that the nature of its territory has not changed since it was granted waiver of the ATC/TTC posting requirements (*i.e.*, MAPP's control areas do not correspond to the service territories of the MAPP Members). While some MAPP members have placed their systems under the Midwest ISO's tariff or have entered into coordination agreements with the Midwest ISO, there remain 11 utilities but only 7 control areas. MAPP also notes that it determines transmission availability based on the source/point of receipt and

⁷ See *MAPP*, 87 FERC at 61,312. This variation was later reaffirmed. Mid-Continent Power Pool, Docket Nos. ER01-104-000 and ER01-105-000. (Nov. 20, 2001) (unpublished letter order) (modifying Schedule F to permit customers the option of requesting long-term PTP service under a member's OATT).

⁸ See *MAPP*, 87 FERC at 61,315.

⁹ *Mid-Continent Area Power Pool*, Docket No. ER99-2391-000 (May 7, 1999) (unpublished letter order).

¹⁰ See *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889-A, FERC Stats. & Regs., Regs. Preambles July 1996 – December 2000 ¶ 31,049 at 30,563-64 (1997), 62 Fed. Reg. 12,484 (Mar. 14, 1997).

sink/point of delivery for each transaction to recognize that constraints are not necessarily reflected by control area boundaries. Therefore, MAPP seeks continued waiver of the requirement to post control area to control area ATC/TTC. MAPP further states that if the Commission denies this request, MAPP's current waiver must continue until NERC develops a rule to convert AFC into ATC values, consistent with Order No. 890.¹¹

III. Notice And Responsive Pleadings

11. Notice of MAPP's filing was published in the Federal Register,¹² with comments, protests, and interventions due on or before May 7, 2007. Dairyland Power Cooperative (Dairyland), Lincoln Electric System (Lincoln), and Nebraska Public Power District (NPPD) filed motions to intervene and comments in support of the filing. Missouri River Energy Services, Powerex Corp., and MidAmerican Energy Company filed motions to intervene raising no substantive issues. On May 17, 2007, Western Area Power Administration (WAPA) filed a motion to intervene out-of-time and comments in support of the filing. On May 29, 2007, Xcel Energy Services, Inc. (Xcel), filed a motion to intervene out-of-time and protest. MAPP filed an answer in response to Xcel's protest.

IV. Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant WAPA's and Xcel's motions to intervene out-of-time given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MAPP's answer because it has provided information that assisted us in our decision-making process.

¹¹ MAPP transmittal letter at 8, *citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 211.

¹² 72 Fed. Reg. 20,524-25 (2007).

Variations from the Pro Forma OATT

14. The five previously-approved variations that MAPP seeks to have continued are approved. We find that these variations continue to be consistent with or superior to the revised *pro forma* OATT, as discussed below.¹³

Variations due to Elimination of Part III

15. As MAPP Schedule F does not offer network service, MAPP appropriately seeks to retain its elimination of Part III of the *pro forma* OATT. Accordingly, we accept the proposed variations from the revised *pro forma* OATT with respect to sections 29, 30, 32.5, and 28.6.

Variations due to Elimination of Long-Term Firm Service and Rollover Rights

16. Xcel protests one aspect of this waiver. Xcel states that it neither opposes nor supports MAPP's request for a waiver of the provisions related to long-term firm service, but it argues that the Commission should reject the request for a waiver of the redispatch planning provisions of the *pro forma* OATT. Xcel asserts that at one time MAPP had planned to create a regional transmission group and to develop a coordinated transmission plan on a regional basis.¹⁴ Xcel is concerned that approving this waiver would:

... undermine the Commission's objectives in incorporating redispatch planning into the *pro forma* OATT by precluding evaluation of redispatch alternatives on a coordinated, footprint-wide basis both for the monthly service provided by MAPP and longer-term service provided under the OATTs of the individual MAPP members.^[15]

¹³ The Commission has considered only those previously-approved variations from the *pro forma* OATT that MAPP contends in its transmittal letter are consistent with or superior to the reforms adopted in Order No. 890. Acceptance of these proposed variations to the *pro forma* OATT tariff sheets does not relieve MAPP of the obligation to make a section 206 compliance filing for requirements of Order No. 890 not addressed in the instant filing as required by Order No. 890 on or before July 13, 2007.

¹⁴ Xcel at 7-9.

¹⁵ *Id.* at 9.

In the alternative, MAPP suggests that the Commission defer acting on this request until it has an opportunity to evaluate the revised *pro forma* OATTs filed by individual MAPP members.

17. In its answer, MAPP notes that Order No. 890 only requires planning redispatch in connection with long-term firm service. MAPP concludes that the planning redispatch obligations do not apply, and asserts that Xcel's suggestion that MAPP should have to facilitate the study of redispatch for monthly service under Schedule F constitutes an impermissible collateral attack on Order No. 890.

18. Because MAPP Schedule F is a limited-services tariff with no long-term firm product, granting the requested waiver is consistent with the revised *pro forma* OATT. Regarding Xcel's protest, MAPP is correct that, under Order No. 890, planning redispatch options need only be made available to customers that request firm point-to-point service of more than a year in duration.¹⁶ Since MAPP does not offer long-term firm service, customers may not request firm point-to-point service of longer than a year, and hence MAPP need not offer planning redispatch. Nevertheless, the absence of redispatch provisions in MAPP's OATT for short-term point-to-point service should not dissuade MAPP participants from consideration of all long-term planning options, including redispatch, in their coordinated regional planning efforts.

Variations due to Elimination of Ancillary Services

19. Given that ancillary services are provided under individual RTC members' OATTs or other transmission agreements, MAPP reasonably seeks to continue not to offer ancillary services other than Scheduling and Tariff Administration Services. Therefore, we accept MAPP's proposed waiver of Schedule 9 Generator Imbalance Service, Schedule 4 provisions related to Energy Imbalance Service, related crediting mechanisms, and section 3 of the OATT with respect to charges for exceeding reserved capacity.

Variations Related to Charges for Unreserved Use

20. The Commission determined in Order No. 890 that transmission providers must make an annual informational filing proposing a method to identify non-offending transmission customers and to distribute operational penalties to non-offending transmission customers. The Commission explained that this would accomplish the Commission's goals of detecting inappropriate penalties and detecting any failure to penalize the transmission provider's affiliates.¹⁷ The Commission also articulated the

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 978.

¹⁷ *Id.* at P 861.

goal of preventing the transmission provider from retaining revenues above those it should be allowed to earn.¹⁸ Finally, in response to a suggestion that the amount of any such operational penalties be credited against the transmission provider's transmission revenue requirement, we noted that the transmission provider is free to propose this mechanism, with assurances that offending customers will not benefit, and that we would decide the appropriateness of the proposal on a case-by-case basis.¹⁹

21. MAPP proposes to continue its current practice of using any excess revenue from penalty charges to reduce the RTC's administration costs. It explains that, because MAPPCOR is the tariff administrator for all MAPP members, applying the revenues to RTC administration costs benefits all transmission customers. MAPP's current practice was accepted by an unpublished letter order on May 7, 1999 in Docket No. ER99-2391-000.

22. We will require that MAPP comply with Order No. 890 by submitting an annual filing and a mechanism through which the transmission provider will identify non-offending transmission customers and the method by which it will distribute unreserved use penalty revenues to those customers. MAPP currently recovers its administrative costs through a stated rate of \$0.10 per MWH in Schedule 1 of its tariff.²⁰ However, there does not appear to be any provision in the tariff to reduce the stated rate for non-offending customers. Thus, it appears that offending customers benefit in so far as they are treated similarly to non-offending customers. Moreover, MAPP's existing practice would not further the Commission's goal of detecting inappropriate penalties.

Variations for Waiver of Control Area to Control Area ATC/TTC Posting Requirement

23. The Commission concluded in Order No. 889-A that it was appropriate to grant MAPP a limited waiver of the control area to control area ATC/TTC posting requirement based on the particular circumstances within MAPP's system. These particular considerations included: (1) MAPP's control areas did not correspond to the service territories of its members; (2) MAPP determined transmission availability and assessed the impact on its member systems of each transaction based on the point of delivery and point of receipt for each transaction; and (3) MAPP provided pool-wide transmission

¹⁸ *Id.* at P 861-62.

¹⁹ *Id.* at P 862.

²⁰ *See* Mid-Continent Area Power Pool, FERC Electric Tariff, 1st Revised Volume No. 1, Original Sheet No. 94.

service using a flow-based (MW-mile) pricing methodology and planned to determine transmission availability for all known constrained interfaces or paths. The Commission made clear that the waiver only applied to postings for intra-MAPP interfaces and that MAPP would still be required to post ATC and TTC for control area to control area paths connecting its member systems with neighboring transmission systems.

24. Several intervenors comment in support of continuing this variation from the *pro forma* OATT. Dairyland, Lincoln, NPPD, and Xcel state that, because of MAPP's unique structure wherein control areas do not always correspond to members' service territories, it is more accurate to determine transmission availability for known constrained interfaces and assess each transaction's impact on member systems based on the point of receipt and point of delivery. They assert that a contract-path methodology would not recognize that constraints within MAPP's region are not necessarily reflected by control area boundaries.

25. We conclude that it is reasonable to allow MAPP to retain a waiver of the control area to control area ATC/TTC posting requirement for intra-MAPP interfaces. The reforms adopted in Order No. 890 were not intended to disturb any existing waivers, revocation of which will be considered on a case-by-case basis in response to concerns raised by interested parties. We emphasize, however, that this applies only to the existing waiver enjoyed by MAPP. To the extent that MAPP contemplates an additional waiver of control area to control area ATC/TTC posting requirement for paths connecting MAPP members with neighboring transmission systems, the requirements of Order No. 890 apply.²¹

The Commission orders:

(A) MAPP's filing is hereby accepted in part and rejected in part, effective July 13, 2007, as discussed in the body of this order.

(B) MAPP is hereby directed to submit an annual filing and a mechanism through which the transmission provider will identify non-offending transmission

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 211 (directing public utilities, working through NERC, to develop an AFC definition and a rule to convert AFC into ATC values to be used by transmission providers that currently use the flowgate methodology).

customers and the method by which it will distribute unreserved use penalty revenues to those customers in compliance with Order No. 890, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.