

122 FERC ¶ 61,077
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.

Duke Energy Carolinas, LLC

Docket Nos. OA07-25-000
OA07-25-001

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued January 31, 2008)

1. On July 11, 2007, as amended on July 31, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Duke Energy Carolinas, LLC (Duke) submitted its compliance filing as required by Order No. 890 (Filing).² The Filing also provides a report of various implementation matters regarding Order No. 890 that do not require actual revisions to Duke's Open Access Transmission Tariff (OATT). In this order, we will accept Duke's Filing, as modified, as in compliance with Order No. 890, as discussed 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

¹16 U.S.C. § 824e (2000 & Supp. V 2005).

²*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, 121 FERC ¶ 61,297 (2007). In addition to the Filing in this proceeding, Duke has made a separate filing under section 206 in Docket No. OA07-82-000 to implement a methodology to assess available transfer capability. That filing will be addressed in a future order.

Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

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 independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

II. Compliance Filing

4. In its Filing, Duke provides revised tariff sheets implementing the modifications required by Order No. 890. The Filing also explains Duke's proposed approach to the *pro forma* OATT provisions that provide the Transmission Provider discretion as to whether to include a provision or as to how to implement Order No. 890. The Filing discusses Duke's proposed approach to, among others things: time windows for firm transmission service requests; the Capacity Benefit Margin (CBM) set-aside; time periods for Network Resource designations; requests that studies be clustered; computing and allocating energy and generation imbalance penalties; and creditworthiness procedures. Duke also proposes various nomenclature changes to the *pro forma* Schedules and Attachments to reflect particularities of Duke's OATT. Duke requests an effective date of July 11, 2007, with the exception of the certain imbalance provisions of Schedule 4 (Energy Imbalance Service) and Schedule 13 (Generator Imbalance Service) for which it seeks effective dates of August 1, 2007 and September 1, 2007.

III. Notice of Filing and Responsive Pleadings

5. Notice of Duke's July 11, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 1, 2007. North Carolina Electric Membership Corporation filed a timely motion to intervene.

6. Notice of Duke's July 31, 2007 amendment was published in the *Federal Register*, 72 Fed. Reg. 45,033 (2007), with interventions and protests due on or before August 21, 2007. None was filed.

³The 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).

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214 (2007), North Carolina Electric Membership Corporation's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Duke's Filing

8. As discussed below, we will accept Duke's compliance filing, as modified, to be effective July 11, 2007, August 1, 2007 and September 1, 2007, as requested. We also direct Duke to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Capacity Benefit Margin

9. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the CBM⁴ set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁵

10. Duke states that it does not currently set aside CBM for its own native load. Duke further states that none of its network customers currently set aside for its own native load. Therefore, Duke seeks a waiver of the requirement to make a FPA section 205 filing as described in Order No. 890. Duke states that if it or any of its network customers request a CBM set-aside, Duke will make such a filing with the Commission.

11. Because Duke indicates it does not reserve CBM for native load or any other customer, we will grant it waiver of this requirement.⁶

⁴CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁵Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

⁶We note that to the extent Duke uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890. *See id.*

2. Continuation of Hourly Network Service Designations

12. In Order No. 890, the Commission found that the minimum term that a transmission provider must honor for Network Resource designations should be the same as the minimum time period used for reserving firm point-to-point service, “unless otherwise demonstrated by the transmission provider and approved by the Commission.”⁷

13. Duke’s minimum term for reserving firm point-to-point transmission service is one day. However, under its current OATT, Duke permits Network Resource designations as short as one hour. Duke notes that “because Order No. 888 did not set a minimum time period [for Network Resource designations], each Transmission Provider was expected to choose a minimum time period and apply it non-discriminatorily.”⁸ Duke proposes to maintain its Order No. 888 practice in its OATT of a one-hour minimum period in section 30.2 of its OATT for Network Resources. Duke states that “[c]hanging this existing practice would be highly disruptive to [Duke’s] Network Customers. . . . Also, given that [Duke] has permitted hourly Network Resource designations for years without complaint from point-to-point customers, there is no basis for a finding that this existing practice is unreasonable on a going forward basis.”⁹

14. We understand that Duke’s existing practice provides a minimum time period for reservations for point-to-point customers that differs from the minimum time period for designations of Network Resources. However, in Order No. 890, the Commission found that the minimum time period for Network Resource designations should be the same as the minimum time period used for point-to-point service. Duke simply states that changing its existing practice would be disruptive to network customers and that it has not received any complaints from point-to-point customers. Duke does not explain why the minimum time periods are not the same or if they cannot be the same. Duke’s existing practice is a variation to Order No. 890 and Duke did not make the required showing that its existing practice is consistent with or superior to the provision required by Order No. 890. Accordingly, we direct Duke to file, in a compliance filing to be filed within 30 days of the date of this order, revised tariff sheets providing that the minimum time period for Network Resource designations is the same as the minimum time period used for firm point-to-point service.

⁷*Id.* P 1505.

⁸Filing at 4.

⁹*Id.* at 4-5.

3. Imbalance Penalty Distribution

15. 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.¹⁰

16. Duke proposes a methodology for computing both energy and generation imbalance penalties on an hourly basis. However, under Duke's proposal, these penalties will be distributed on a monthly basis only to the customers that have not experienced *any* energy or generation imbalances outside the deviation band during the month. Duke proposes to disburse accumulated imbalance penalty revenues in the form of credits on a monthly basis to only those customers that have not experienced such imbalances, based on those customers' share of the schedules.

17. We reject Duke's proposal to distribute energy and generation imbalance penalty revenues. As we explained in *PacifiCorp*,¹¹ we find that Duke's proposal is unduly restrictive. Under Duke's proposal, a transmission customer who experiences an imbalance in excess of the deviation band during one hour in the monthly period would be excluded from the pool of non-offending imbalance customers eligible to receive penalty revenues. We find that incurring an imbalance penalty charge for a single hour in the monthly period should not make a customer ineligible for a share of penalty revenues for the month. Accordingly, we direct Duke to file, within 30 days of the date of issuance of this order, a further compliance filing with a revised mechanism for the distribution of penalty revenues that defines non-offending customers on an hourly basis and only excludes customers from receiving penalty revenues for the offending hour.

4. Procedures for Addressing Parallel Flows

18. 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

¹⁰Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

¹¹*PacifiCorp*, 121 FERC ¶ 61,223, at P 44-45 (2007) (accepting in part and rejecting in part PacifiCorp's Order No. 890 compliance filings).

Transmission Provider.” The Commission in the NERC Transmission Loading Relief Order¹² 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.¹³ As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

19. Duke has not filed any procedures in Attachment J. Duke is directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as shown below:

The North American Electric Reliability Corporation’s (“NERC”) TLR Procedures originally filed March 18, 1998, which are now the mandatory Reliability Standards that address TLR, and any amendments thereto, on file and accepted by the Commission, are hereby incorporated and made part of this tariff. See www.nerc.com for the current version of the NERC’s TLR Procedures.

5. Effective Date

20. In its July 11, 2007 filing, Duke seeks a July 11, 2007 effective date for most of its revised tariff sheets. However, Duke proposes that certain changes to its OATT take effect on August 1, 2007. These include changes to Schedule 4 (Energy Imbalance Service), new Schedule 13 (Generator Imbalance Service), and the methodology for calculating unreserved use charges. Duke states that it requests the August 1, 2007 effective date due to concerns over making changes in the middle of a billing cycle.

¹²*North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

¹³*See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at 31,561-62, *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

21. In its July 31, 2007 filing, Duke requests an effective date of September 1, 2007 for its imbalance provisions. Duke states that it is working on extensive software and system changes that will be necessary to implement these tariff sheets, but that it requires additional time to complete the imbalance software project. Accordingly, Duke requests withdrawal of several sheets that were proposed in the July 11, 2007 filing¹⁴ and filed new revised tariff sheets to reflect the implementation of software and system changes.¹⁵

22. We accept Duke's July 11, 2007 compliance filing, as modified, effective July 11, 2007 with the exception of the tariff sheets listed in note 14. We grant Duke's request to withdraw the tariff sheets listed in note 14 and those sheets are rendered moot. We accept the tariff sheets listed in note 15, effective September 1, 2007 and July 11, 2007, respectively. We find Duke's proposed effective date to be reasonable in light of the complexity of the required changes in software and billing procedures.

The Commission orders:

(A) Duke's compliance filing is hereby accepted, as modified, effective July 11, 2007 and September 1, 2007, as discussed in the body of this order.

(B) Duke 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.

¹⁴These sheets include: Original Sheet Nos. 4A, 26A, 29A, 29B, 155A and 155B; and First Revised Sheet Nos. 4, 10, 28, 29, 138, 138A, 138B and 138C; and First Replacement Sheet No. 26. Each of these has a proposed effective date of August 1, 2007.

¹⁵In the July 31, 2007 filing, Duke submits the following proposed tariff sheets: new Original Sheet Nos. 4A, 26A, 29A, 29B, 155A and 155B; and First Revised Sheet Nos. 4, 10, 28, 29, 138, 138A, 138B and 138C. Each of these has a proposed effective date of September 1, 2007. Duke also submits proposed First Revised Sheet No. 26, effective July 11, 2007.