

122 FERC ¶ 61, 078
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.

Progress Energy, Inc.

Docket No. OA07-53-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued January 31, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ Progress Energy, Inc. (Progress Energy), on behalf of its subsidiaries Carolina Power & Light Company, dba Progress Energy Carolinas, Inc. (PEC), and Florida Power Corporation, dba Progress Energy Florida, Inc. (PEF), submitted its compliance filing as required by Order No. 890.² In this order, we will accept Progress Energy'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* Open Access Transmission Tariff (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 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*

¹ 16 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 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007).

(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. Progress Energy filed a joint OATT on behalf of PEF and PEC.⁴ In this filing, Progress Energy states that it is filing revised tariff sheets for the PEF and PEC OATTs, including those provisions required by Order No. 890. Progress Energy explains that, consistent with Order No. 890, it has (1) included a new Attachment L specifying its creditworthiness procedures; (2) developed provisions concerning the methodology for clustering transmission studies, submitted as Attachment T; and (3) specified penalties for unreserved use.

5. Progress Energy requests that the OATTs be made effective on July 13, 2007, with two exceptions. Because reforms for underlying imbalances and unreserved use penalties were scheduled to go into effect on August 1, 2007, Progress Energy requests that the provisions related to underlying imbalances, adopted in Schedules 4 and 9, and the provisions related to unreserved use penalties become effective on the first day of the billing cycle following August 1, 2007.

III. Notice of Filing and Responsive Pleadings

6. Notice of Progress Energy's filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions, protests and comments due on or before August 3, 2007. Motions to intervene were timely filed by North Carolina Electric Membership Corporation (NCEMC), Seminole Electric Cooperative, Inc. (Seminole), Florida Municipal Power Agency (FMPA), and Reedy Creek Improvement District (Reedy Creek). Reedy Creek and Seminole filed comments, and FMPA filed a protest. On August 17, 2007, Progress Energy filed an answer in response to Seminole's comments and FMPA's protest.

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 The PEF tariff is filed as FERC Electric Tariff, Third Revised Volume No. 6. The PEC tariff is filed as FERC Electric Tariff, Fourth Revised Volume No. 3.

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), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Progress Energy's answer because it has provided information that assisted us in our decision-making process.

B. Progress Energy's Compliance Filing

8. As discussed below, we will accept Progress Energy's compliance filing, as modified, to be effective July 13, 2007.⁵ We also direct Progress Energy to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Clustering

a. Progress Energy's Filing

9. Progress Energy submitted a proposal for clustering transmission studies, designated as Attachment T. Progress Energy explains that it may decide, either on its own initiative or in response to a request from an Eligible Customer, to perform a System Impact Study and/or a Facilities Study of multiple requests for transmission service in a single study to determine what Direct Assignment Facilities or Network Upgrades are necessary to provide the requested service. Progress Energy will then notify the Eligible Customers that it will perform a Cluster Study of sequentially-queued requests for transmission service. As part of the proposal, Progress Energy provided that "costs of new facilities that are constructed in response to requests for service that are studied in a Cluster Study shall be allocated to the Transmission Customers pro rata based on the amount of MW of service each Transmission Customer has requested." Transmission Customers would be responsible for paying for transmission service based on the terms

⁵ However, we accept Schedules 4 and 9 and provisions related to penalties to be effective August 1, as requested. The Commission concluded in *Order Granting Extension of Compliance Action Dates* that extending this effective date is reasonable. 119 FERC ¶ 61,037, at P 22 (2007).

of the tariff, and the proposal would not impact the “higher of” pricing policy applicable to service under the tariff.⁶

b. Comments and Protest

10. Both FMPA and Seminole raise issues regarding Progress Energy’s proposal for clustering transmission studies, arguing that several provisions are ambiguous and possibly inconsistent with Commission policy.

11. First, FMPA and Seminole share concerns regarding Progress Energy’s provision that allocates costs of new facilities constructed in response to requests for service that are studied in a Cluster Study on a pro rata basis on the amount of MWs of service requested by each Transmission Customer. FMPA states that the provision appears to require that customers who participate in a Cluster Study must bear all costs of new facilities, whether those facilities are Direct Assignment Facilities or Network Upgrades. In addition, FMPA argues that Progress Energy’s proposal on clustering transmission studies does not clearly state that the Commission’s “higher of” pricing policy applies to service under the tariff. FMPA is also concerned about a cost sharing mechanism for Direct Assignment Facilities, and FMPA argues that customers should first have the option of providing a preferred allocation methodology; if no methodology is preferred, then the customer would use an established methodology set forth in Progress Energy’s tariff. Seminole further argues that the MWs requested by a customer and the allocated cost of new facilities are not necessarily related; other factors, such as location of load/generation, can be more important as a driving factor in dictating new facility requirements. For this reason, Seminole argues that cost allocation should be resolved on a case-by-case basis in accordance with Commission policy, and not established in Progress Energy’s tariff. Additionally, Seminole states that Progress Energy’s tariff does not clearly state whether a customer will be charged based on embedded costs or incremental costs.

12. FMPA and Seminole also disagree with Progress Energy’s requirement that a Cluster Study should omit a customer that has executed a System Impact Study Agreement. Seminole argues that the critical point is not whether the agreement has been executed, but whether the study has in fact begun. In addition, Seminole contends that a transmission service request submitted after a System Impact Study is executed may indicate the need for a Cluster Study; Seminole argues that, if this is the case, and the affected Eligible Customer does not object, the Cluster Study should be conducted. Moreover, FMPA argues that even if the study has begun, it may still make sense to

⁶ “Higher of” pricing refers to the Commission’s policy of requiring transmission customers whose transmission service request requires network upgrades to be constructed to pay the higher of the incremental cost of the upgrade or the average embedded transmission rate for the term of the service.

cluster the ongoing study with additional transmission requests not subject to the study. Therefore, if the provision is not deleted, FMPA recommends amending it so that an eligible customer that has already executed a System Impact Study Agreement may join a Cluster Study, if it compensates the Transmission Provider for all study costs incurred to date, rescinds the agreement for the System Impact Study underway, and replaces it with the Cluster Study agreement.

13. FMPA also requests that Progress Energy provide timely notice when Progress Energy believes it is appropriate to cluster System Impact Studies or Facilities Studies. Additionally, FMPA asserts that Cluster Studies should not be imposed on unwilling Transmission Customers. Further, it argues that the proposal to study “sequentially-queued” requests could lead to absurd results and urges the Commission to strike the phrase. Finally, Seminole requests that Progress Energy notify a customer if and why it decides to reject a customer’s request to perform a Cluster Study, mirroring the existing provision that states that it will notify each affected customer when it decides to perform a Cluster Study and explain its reasoning.

c. Progress Energy’s Answer

14. Progress Energy states that it will adopt certain proposals by FMPA and Seminole.⁷ However, Progress Energy states that it will not adopt FMPA’s proposal to permit customers to opt out of Cluster Studies because it would adversely affect the efficiency and economics applicable to all of the customers in the study in order to obtain benefits that apply only to the withdrawing customer. Further, Progress Energy states that the Commission correctly gave Transmission Providers “discretion to determine whether a transmission customer can opt out of a cluster and request an individual study.”⁸

d. Commission Determination

15. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers

⁷ Progress Energy also states that it plans to file a revised Attachment T in light of issues raised by FMPA and Seminole. Progress Energy did not state the certain proposals it is willing to adopt. In addition, Progress Energy set no deadline for filing the revised attachment and it had not done so by the date of this order.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1371.

to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.⁹

16. While we agree in principle with Progress Energy's proposal to allocate costs of new facilities on a pro rata basis relative to the amount of MW of service each transmission customer has requested, we find that Progress Energy does not clearly explain how it will reasonably differentiate the costs for Direct Assignment Facilities and Network Upgrades among the transmission customers, consistent with Commission policy. Therefore, we direct Progress Energy in its compliance filing to include additional language clarifying references to Direct Assignment Facilities and Network Upgrades in relation to the cost of new facilities that are constructed in response to requests for transmission service that are studied in a cluster. In addition, we will require Progress Energy to clarify that its cost allocation procedures are consistent with the Commission's transmission pricing policies. We find that these clarifications will remove uncertainty for transmission customers and ensure consistency with Commission policy.

17. Further, we disagree with protesters' arguments that Progress Energy's proposal requires a transmission customer to participate in a Cluster Study even if it is not willing to participate in the study. As Progress Energy points out in its answer, any customer can avoid being included in a Cluster Study by refusing to execute a System Impact Study Agreement or a Facilities Study Agreement, which results in its request for service being deemed to have been withdrawn.¹⁰ Further, in Order No. 890, the Commission gave transmission providers "discretion to determine whether a transmission customer can opt out of a cluster and request an individual study," because the transmission provider is in the best position to develop clustering procedures that prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.¹¹

18. However, we require Progress Energy to remove its proposed language, which states, "for purposes of Sections 19.9 and 32.5 of the Tariff, the Transmission Provider may demonstrate that the performance of a Cluster Study is an extenuating circumstance that excuses the Transmission Provider's failure to complete the study within 60 days."¹² The proposed language allows Progress Energy the discretion to determine when a necessary study period will be deemed "an extenuating circumstance" to avoid following

⁹ *Id.* P 1370-71.

¹⁰ Progress Energy Answer at 4.

¹¹ Order No 890, FERC Stats. & Regs. ¶ 31,241 at P 1371.

¹² Progress Energy Filing at Attachment T.

the 60-day study period requirement and subsequent late penalties. If Progress Energy believes that a Cluster Study prevented it from meeting its OATT requirements to process transmission studies in a timely matter, Progress Energy may raise that issue in a notification filing with the Commission, which will be reviewed on a case-by-case basis.¹³ Therefore, we direct Progress Energy to remove this language in its compliance filing.

19. We note the protesters have raised a number of concerns with respect to the proposed clustering provisions and that Progress Energy has committed to “revise Attachment T to address some of Seminole’s and FMPA’s concerns.”¹⁴ Accordingly, we direct Progress Energy to file, within 30 days of the date of this order, a further compliance filing making the modifications required above and abiding by its commitment to revise Attachment T.

2. Unreserved Use Penalty

a. Progress Energy’s Filing

20. In Schedule 7 of its OATT, Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service, Progress Energy sets forth the charge that a customer will pay if it exceeds its firm reserved capacity. Specifically, Schedule 7 states that:¹⁵

In the event that the Transmission Customer’s use of the Transmission System during any hour of that day exceeds the amount of the Transmission Customer’s Reserved Capacity, the Transmission Customer shall pay the Transmission Provider a penalty charge based on a rate equal to 200% of the applicable rate for Firm Point-to-Point Transmission Service for unreserved use within a single day, the penalty charge shall be based on the daily rate. For unreserved use in two or more days within a calendar week, the penalty charge shall be based on the weekly rate. For multiple instances of unreserved use in more than one calendar week in a calendar month, the penalty charge shall be based on the monthly rate.

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1343.

¹⁴ Progress Energy Answer at 2.

¹⁵ Schedule 8 applies to non-firm transmission service, and it contains similar language. Specifically, Schedule 8 provides that the Transmission Customer shall pay the Transmission Provider a penalty charge based on a rate equal to 200 percent of the applicable rate for Non-Firm Point-to-Point Transmission Service for unreserved use.

21. In addition, Progress Energy changed Schedule 10 and Attachment H to impose penalties for violating the terms of network integration transmission service.¹⁶

b. Comments and Protest

22. FMPA contends that Order No. 890 did not modify Schedules 7 and 8 and Progress Energy's proposed change to increase the penalty for unauthorized use from 150 percent to 200 percent is "inappropriate and beyond the scope of this compliance filing."¹⁷ FMPA states that this proposal constitutes a rate increase, requiring a section 205 filing. FMPA further argues that the proposed changes to Schedule 10 and Attachment H, which impose penalties for violating the service provisions of sections 28.6 and 30.4, are impermissible as well. FMPA states that the Commission must require Progress Energy to make a section 205 filing to establish the penalty rates for violations of sections 28.6 and 30.4.

c. Progress Energy's Answer

23. Progress Energy responds that it does not need to make an additional showing to include in its compliance filing a 200 percent standard penalty for unreserved use. Progress Energy argues that it would only need to make a section 205 filing if it proposed unreserved use penalties greater than 200 percent of the relevant rate.

d. Commission Determination

24. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁸ The Commission also stated that penalties up to twice the relevant firm point-to-point rate are just and reasonable.¹⁹ The Commission explained that it would allow transmission providers proposing to charge unreserved use penalties *in excess* of twice the standard rate to make a filing under section 205 of the FPA.²⁰ Therefore, we accept Progress Energy's 200 percent unreserved use penalty charge without a separate section 205 filing.

¹⁶ The terms of network integration transmission service are specifically found in Restrictions on the Use of Service, section 28.6, and Operation of Network Resources, section 30.4.

¹⁷ FMPA protest at 8.

¹⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 838.

¹⁹ *Id.* P 848.

²⁰ *Id.* P 849.

25. However, we find Progress Energy's proposal to charge a non-firm point-to-point customer for unreserved use of transmission service at an unreserved use penalty based upon the non-firm point-to-point rate to be inconsistent with Order No. 890. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.²¹ In addition, the Commission stated that the transmission customer must face a penalty in excess of the firm point-to-point transmission service charge it avoids through unreserved use of transmission service or the transmission customer will have no incentive to reserve the appropriate amount of service.²²

26. Here, Progress Energy's proposal to base the unreserved use penalty for certain instances of unreserved use on the non-firm point-to-point rate is inconsistent with our finding that the transmission customer will have no incentive to reserve the appropriate amount of service if the unreserved use penalty is not in excess of the firm point-to-point transmission service charge.²³ Accordingly, we reject, without prejudice to refile, Progress Energy's proposed unreserved use penalty provision in Schedule 8 as inconsistent with Order No. 890. Therefore, we require Progress Energy, in its compliance filing, to modify its penalty provisions to base the unreserved use penalty on the firm point-to-point rate and provide that penalties will be charged based on the specific period of unreserved use.

27. With regard to the applicability of unreserved use charges to network service customers, section 13.4 of the *pro forma* OATT provides that the customer using the unreserved service shall be deemed to have executed a service agreement to govern that service.²⁴ This means that all unreserved uses of the transmission provider's system are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service. Accordingly, the modifications proposed to Schedule 10 and Attachment H of its OATT are unnecessary. We direct Progress Energy to file, within 30 days of the date of this order, a further compliance filing reflecting the removal of these modifications.

²¹ *Id.* P 834, 848.

²² *Id.* P 848.

²³ *See Puget Sound Energy, Inc.*, 121 FERC ¶ 61,230, at P 12-13 (2007).

²⁴ *See Arizona Public Service Company*, 121 FERC ¶ 61,246, at P 62-63 (2007).

3. Late Study and Unreserved Use Penalty Revenue Distribution Mechanism

a. Progress Energy's Filing

28. Progress Energy did not file a mechanism to distribute to ratepayers revenues collected from late study penalties or unreserved use penalties.

b. Comments and Protest

29. FMPA contends that the crediting provision for revenues from penalties for late studies or unreserved use should be part of Progress Energy's OATT. FMPA also requests that Progress Energy add a provision to its OATT regarding an annual informational filing describing its assessment of penalties and distribution of penalty revenues in any future filings that contain provisions for the actual implementation of penalties.²⁵

c. Progress Energy's Answer

30. Progress Energy argues that such a methodology for distributing penalty revenues for late studies or unreserved use is a new rate mechanism that requires a separate section 205 filing, and thus it did not include the methodology in the instant compliance filing. Further, Progress Energy states that it was already preparing a proposal to distribute penalty revenues and it intended to submit the proposal in a separate section 205 filing "in the very near future."²⁶ Progress Energy responds that it will comply with the annual filing requirements in Order No. 890, but will not incorporate it into its OATT unless that is required of all Transmission Providers.

d. Commission Determination

31. In Order No. 890, the Commission required transmission providers to make a compliance filing, proposing a mechanism to identify non-offending transmission customers and a method for distributing the unreserved use penalties revenue received to the identified transmission customers, as well as late study penalties to unaffiliated transmission customers.²⁷ Moreover, the transmission provider is required to make an annual filing with the Commission, which provides information regarding the penalty revenue the transmission provider has received and distributed. Transmission providers

²⁵ FMPA protest at 10-11.

²⁶ Progress Energy Answer at 7. The Commission notes that it has not received this filing as of the date of this order.

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 861.

must provide: (1) a summary of penalty revenue credits by transmission customer, (2) total penalty revenues collected from affiliates, (3) total penalty revenues collected from non-affiliates, (4) a description of the costs incurred as a result of the offending behavior, and (5) a summary of the portion of the unreserved penalty revenue retained by the transmission provider.²⁸

32. Progress Energy did not file a methodology to distribute penalty revenues in the instant compliance filing; however, it stated that it is preparing a proposal to distribute penalty revenues and intending to submit the proposal in a separate filing. We acknowledge that the discussion of the process for distributing operational penalties in Order No. 890 is somewhat unclear. However, in Order No. 890-A, the Commission clarified that “each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider’s methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties.”²⁹ The Commission stated that the one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties. The Commission also explained that transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if altered on Commission review. Finally, the Commission clarified that it requires “all operational penalty revenues to be distributed, with no exception. In the case of unreserved use penalties, we require penalty revenues to be distributed to non-offending customers and, in the case of late study penalties, we require penalty revenues to be distributed to all non-affiliates of the transmission provider.”³⁰ Accordingly, Progress must submit a one-time section 206 compliance filing to propose its methodology for distributing unreserved use penalty revenues as required in Order No. 890-A.

33. In addition, under Order No. 890, Progress Energy is required to make annual filings providing a summary of penalty revenue credits by transmission customer, total penalty revenues collected from affiliates, total penalty revenues collected from non-affiliates, a description of the costs incurred as a result of the offending behavior, and a summary of the portion of the unreserved penalty revenue retained by the transmission provider.³¹ The Commission explained in Order No. 890-A that the annual compliance report must be submitted on or before the deadline for submitting FERC Form-1, as established by the Commission’s Office of Enforcement each year.³²

²⁸ *Id.* P 864.

²⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

³⁰ *Id.* P 475.

³¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 864.

³² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

34. Finally, we reject, as unsupported, FMPA's request to require that all penalty provisions in the Progress Energy OATT contain a requirement that the transmission provider make the annual informational filing. In this regard, we note that Order Nos. 890 and 890-A did not require that the methodology pertaining to the annual informational filings be included in a transmission provider's OATT. Therefore, Progress Energy need not add language to its OATT describing the requirements of the annual summary filing.

4. Attachment D: System Impact Studies

a. Progress Energy's Filing

35. Progress Energy filed a revised Methodology for Completing a System Impact Study, set forth in Attachment D.

b. Comments and Protest

36. Seminole argues that Progress Energy's new description of its Methodology for Completing a System Impact Study is less detailed than its earlier version. Seminole urges Progress Energy to reinstate the more detailed Attachment D.

c. Progress Energy's Answer

37. Progress Energy contends that the new version properly describes the methodology to complete a System Impact Study at a high level, and that further details are unnecessary and may conflict with other planning initiatives, such as the Attachment K Transmission Planning Process.

d. Commission Determination

38. In Order No. 890, the Commission stated that compliance filings must only contain the revised provisions adopted in Order No. 890, rather than the transmission provider's entire *pro forma* OATT. The Commission also stated that, in a compliance filing, the revised OATT should only be changed to the extent that the provisions were revised in Order No. 890. In Order No. 890, the Commission did not require changes to the methodology for completing a System Impact Study.

39. We reject without prejudice the proposed tariff revisions as beyond the scope of this compliance filing. If Progress Energy wishes to revise such provisions, it must file the proposed revisions in a separate FPA section 205 filing. Therefore, we direct Progress Energy to make a compliance filing reflecting the removal of its proposed revisions and the inclusion in its tariff of its originally approved methodology for completing a System Impact Study.

5. Imbalance Penalty Revenue Distribution Mechanism

40. 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.³³ Progress Energy has not responded to the Commission's directive regarding the distribution of imbalance revenues in Order No. 890.³⁴ We direct Progress Energy to file, within 30 days of the date of this order, a further compliance filing that proposes, consistent with Order No. 890, a mechanism to credit revenues above the transmission provider's incremental costs to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

6. Attachment J: Procedures for Addressing Parallel Flows

41. 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 Transmission Provider." The Commission in the NERC Transmission Loading Relief Order³⁵ 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.³⁶ As a result, all transmission providers must complete Attachment J

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

³⁴ *Id.* P 727.

³⁵ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

³⁶ *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242, at P 961-65, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

42. Progress Energy has not filed any procedures in Attachment J. Progress Energy 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")'s 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.

The Commission orders:

(A) Progress Energy's compliance filing, as modified, is hereby accepted effective July 13, 2007, and August 1, 2007, as discussed in the body of this order.

(B) Progress Energy 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.