

122 FERC ¶ 61,089
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.

Orlando Utilities Commission

Docket Nos. NJ07-6-000
NJ07-6-001

ORDER CONDITIONALLY GRANTING
PETITION FOR DECLARATORY ORDER

(Issued February 1, 2008)

1. On July 13, 2007, as amended on December 7, 2007, Orlando Utilities Commission (Orlando) submitted a petition for declaratory order requesting a finding that its updated “safe harbor” open access transmission tariff (OATT) continues to be an acceptable reciprocity tariff. Orlando also requests waiver of the filing fee.
2. In this order, we will conditionally grant Orlando’s petition for a declaratory order, as set forth below. In addition, we grant Orlando’s request for waiver of the filing fee.

I. Background

3. Orlando is an electric utility authorized by the State of Florida to produce, transmit and distribute electric energy at wholesale or retail. It is not a public utility within the Commission’s jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).¹ After the issuance of Order No. 888,² Orlando sought and obtained a determination by

¹ 16 U.S.C. §§ 824(d), (e) (2000 & Supp. V 2005).

² *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, *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).

the Commission that it had an acceptable reciprocity tariff.³ Subsequently, Orlando submitted additional filings to ensure that its OATT would continue to qualify for safe harbor status.

4. In Order No. 890,⁴ 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.⁵ Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability (ATC), 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.

II. Orlando's Reciprocity Tariff Filing

5. In this filing, Orlando submits a petition for a declaratory order determining that its amended and restated OATT, which incorporates revisions to the *pro forma* OATT adopted by the Commission in Order No. 890, continues to be an acceptable safe harbor tariff. Orlando states that it has updated its OATT, with modifications that substantially conform or are superior to the recommended changes set forth in Order No. 890.

6. Orlando also requests waiver of the filing fee applicable to petitions for declaratory orders.

III. Notice of Filing

7. Notice of Orlando's July 13, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 41,720 (2007), with interventions and protests due on or before August 3, 2007. None were filed. Notice of Orlando's December 7, 2007 filing was published in the *Federal Register*, 73 Fed. Reg. 2474 (2008), with interventions and protests due on or before January 7, 2008. None were filed.

³ *Orlando Utilities Commission*, 81 FERC ¶ 61,397 (1997), *reh'g denied*, 84 FERC ¶ 61,069 (1998).

⁴ *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, FERC Stats. & Regs. ¶ 31,261 (2007).

⁵ *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 26-61.

IV. Discussion

A. Reciprocity Tariff

8. In Order No. 888, the Commission established a safe harbor procedure for the filing of reciprocity tariffs by non-public utilities.⁶ Under this procedure, non-public utilities may voluntarily submit to the Commission a transmission tariff and petition for declaratory order requesting a finding that the tariff meets the Commission's comparability (non-discrimination) standards. If the Commission finds that the terms and conditions of such a tariff substantially conform or are superior to those in the *pro forma* OATT, the Commission will deem it to be an acceptable reciprocity tariff and will require public utilities to provide open access transmission service upon request to that particular non-public utility.⁷ Order No. 890 requires that a non-public utility that already has a safe harbor OATT (e.g., Orlando) must amend its OATT so that its provisions substantially conform or are superior to the new *pro forma* OATT in Order No. 890 if it wishes to continue to qualify for safe harbor treatment.⁸

9. We have compared the non-rate terms and conditions of Orlando's proposed amended and restated OATT to those in the Commission's *pro forma* OATT. We find that, with certain modifications discussed below, Orlando's proposed OATT substantially conforms with or is superior to the requirements of the *pro forma* OATT. However, we note that Orlando's OATT will not be a safe harbor tariff until Orlando incorporates into its OATT the modifications discussed below.

1. Penalties for Failure to Meet Study Deadlines

10. Orlando explains that it modified the *pro forma* OATT's requirements for notification and penalties when transmission providers do not meet the 60-day due diligence deadlines for conducting studies contained in sections 19.3 and 19.4 of the *pro forma* OATT (corresponding to sections 20.3 and 20.4 of Orlando's OATT). Orlando states that it modified section 20.9 of its OATT to reflect that it shall provide notification through its OASIS in the event it does not meet the due diligence deadline and provide an explanation for the delay. Orlando explains that in lieu of paying

⁶ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760; *see also* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,281-87.

⁷ In Order No. 888-A, the Commission clarified that, under the reciprocity condition, a non-public utility must also comply with the Open Access Same-Time Information System (OASIS) standards of conduct requirements or obtain waiver of them. *See* Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,286.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 191.

penalties for failing to meet the 60-day due diligence deadline, it will post its status in meeting the study completion deadline on its OASIS.⁹

11. We will accept Orlando's proposal to provide notification through its OASIS because providing notification on OASIS ensures transparency of the process in which Orlando processes transmission requests. However, Orlando has not supported its removal of the penalty provision from section 20.9 of its OATT. Therefore, we find that this deviation from the *pro forma* OATT is not acceptable. Accordingly, Orlando's OATT will not be a safe harbor tariff until Orlando includes the penalty provision in its OATT.

2. Unreserved Use Penalties

12. 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.¹⁰ We note that Orlando's OATT does not contain an unreserved use penalty rate and, as a result, Orlando may not charge transmission customers for unreserved use penalties.¹¹

3. Creditworthiness Procedures

13. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.¹²

14. Orlando's filing includes an Attachment L, which states that "[t]he Transmission Provider's credit review procedures are posted on its OASIS." We find it acceptable that Orlando include its Attachment L on its OASIS instead of in its OATT. However, it does

⁹ Orlando also modified *pro forma* OATT section 32.5 (corresponding to section 33.5 of Orlando's OATT) to reflect the changes made to 20.9 of Orlando's OATT.

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

¹¹ See *MATL LLP*, 121 FERC ¶ 61,094, at P 31 (2007); *Deseret Generation & Transmission Co-operative Inc.*, 121 FERC ¶ 61,233, at P 18 (2007).

¹² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

not appear that Orlando has addressed all the elements required by Order No. 890 in sufficient detail. Specifically, in order to maintain a safe harbor tariff, Orlando must include more information on how it evaluates a customer that does not have an investment grade rating, and explain how it calculates the collateral requirement for customers that are not deemed creditworthy. Orlando must also include: (1) a list of acceptable types of collateral/security; (2) a procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements; (3) a procedure for providing customers a written explanation for any change in credit levels or collateral requirements; (4) a reasonable opportunity to contest determinations of credit levels or collateral requirements; and (5) a reasonable opportunity to post additional collateral.¹³ Therefore, to ensure that its OATT continues to be a safe harbor tariff, Orlando must demonstrate that its credit review procedures include all the elements required by Order No. 890.¹⁴

4. Reservation Priority for Existing Firm Service Customers

15. In addition, we note that Orlando states that it has not adopted revisions to section 2.2 of the *pro forma* OATT, which specify that the right of first refusal attaches to contracts of five years or longer, and is subject to exercise upon not less than one year's notice. Orlando explains that it has not adopted section 2.2 because its pre-Order 888 contract with the Florida Municipal Power Pool may be jeopardized if section 2.2 is adopted, and states that this change, which reflects its non-public utility status, substantially conforms to the *pro forma* OATT.

16. Because Orlando's proposal is unopposed and beneficial to its customers, we conclude that this deviation from the *pro forma* OATT is acceptable.

5. Capacity Benefit Margin

17. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the capacity benefit margin (CBM)¹⁵ set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. In response to that compliance requirement, Orlando

¹³ See *id.* P 1657.

¹⁴ See *Deseret*, 121 FERC ¶ 61,233 at P 7.

¹⁵ CBM 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.

indicates that CBM is not used by Orlando.¹⁶ Because Orlando does not use CBM no changes are needed to its rate design.¹⁷ We conclude that Orlando's statement in its filing with regard to CBM complies with Order No. 890, and accordingly, we will accept it.¹⁸

B. Methodology to Assess Available Transfer Capability

18. Orlando submitted a revised version of Attachment C (Methodology to Assess Available Transfer Capability) to its OATT as required by Order No. 890. Orlando's OATT will not be a safe harbor tariff until Orlando incorporates into its Attachment C the modifications discussed below.

1. ATC Methodology

19. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling, operating and planning horizons.¹⁹ Further, the actual mathematical algorithms must be posted on the transmission provider's website, with the link noted in the transmission provider's Attachment C.²⁰

20. We have reviewed Orlando's filing and find that Orlando's revised Attachment C does not provide a clear description of the specific ATC mathematical algorithms for its scheduling, operating and planning horizons, both for firm and non-firm ATC calculations as required. Orlando also fails to provide the link to Orlando's website with the actual mathematical algorithms. Therefore, Orlando's OATT does not comply with Order No. 890. In order to ensure that its OATT continues to be a safe harbor tariff, Orlando must revise its Attachment C to provide a description of the specific ATC

¹⁶ Orlando Utilities Commission, FERC Electric Tariff, Original Sheet No. 113.

¹⁷ See *MATL*, 121 FERC ¶ 61,094 at P 21.

¹⁸ We note that to the extent Orlando uses CBM in the future or provides a CBM set-aside at the request of a customer, it should revise its transmission charges consistent with the requirements of Order No. 890 in order to ensure that its OATT continues to be a safe harbor tariff. See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

¹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C; see also *id.* P 323.

²⁰ *Id.* P 325, 328.

mathematical algorithms as described above, and provide the link to Orlando's website with the actual ATC mathematical algorithms, as required in Order No. 890.

2. Detailed Explanation of the ATC Components²¹

a. Existing Transmission Commitments

21. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of ETC; (ii) the calculation methodology used to determine the transmission capacity to be set aside for native load (including network load), and non-OATT customers (including, if applicable, an explanation of assumptions on the selection of generators that are modeled in service) for both the operating and planning horizons; (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; and (v) its processes for ensuring that non-firm capacity is released properly (e.g., when real-time schedules replace the associated transmission service requests in its real-time calculations).²²

22. We have reviewed Orlando's filing and find that Orlando's revised Attachment C does not provide a clear description of how rollover rights are accounted for and that its explanation for its processes for ensuring that non-firm capacity is released properly is not clear. Therefore, Orlando's OATT does not comply with Order No. 890. In order to ensure that its OATT continues to be a safe harbor tariff, Orlando must revise its Attachment C to provide a clear description of how rollover rights are accounted for, and explain its processes for ensuring that non-firm capacity is released properly, as required in Order No. 890.

b. Transmission Reserve Margin

23. In Order No. 890, the Commission required a transmission provider to explain: (i) its definition of TRM; (ii) its TRM calculation methodology (e.g., its assumption on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources) for both the operating and planning horizons; (iii) the databases used in its TRM assessments; and (iv) the conditions under which the transmission provider uses TRM. If the transmission provider does not use TRM, it must so state.²³

²¹ The ATC components are total transfer capability (TTC), existing transmission commitments (ETC), capacity benefit margin (CBM), and transmission reserve margin (TRM).

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C.

²³ *Id.*

24. We have reviewed Orlando's filing and find that Orlando's revised Attachment C does not present a detailed explanation of its TRM calculation methodology for both the operating and planning horizons. Orlando also fails to provide a list of databases used to calculate TRM. Therefore, Orlando's OATT does not comply with Order No. 890. In order to ensure that its OATT continues to be a safe harbor tariff, Orlando must revise its Attachment C to provide a detailed explanation of its TRM calculation methodology for both the operating and planning horizons and a list of databases used to calculate TRM, as required in Order No. 890.

C. Rates

25. In its July 13, 2007 filing, Orlando includes updates to the rates in Schedules 7 and 8 of its OATT and updates to the revenue requirement under Attachment H of its OATT to reflect the use of 2005 data in the calculation of transmission charges. Orlando states that "the modified charges for Point-to-Point transmission service in Schedules 7 and 8 contained in the [Orlando] OATT ... are the same rates that [Orlando] charges itself."²⁴ On December 7, 2007, Orlando further updated its rates under Schedules 7 and 8, as well as the revenue requirement under Attachment H to reflect the use of 2006 data.²⁵ Orlando's December 7, 2007 filing also states that the charges "are the same rates that [Orlando] charges itself."²⁶

26. We have previously explained that the review standard for reciprocity tariff rates is that the non-public utility must provide sufficient information for us to conclude that its rates are comparable to the rates that it charges itself.²⁷ We find that Orlando has provided sufficient information for us to conclude that Orlando's revised rates are comparable to the rates it charges itself. Accordingly, we find that the proposed rates meet the standard for a reciprocity tariff.

²⁴ Orlando Utilities Commission's July 13, 2007 Petition at Appendix D at P 3.

²⁵ Orlando's December 7, 2007 filing includes an updated Attachment K, which sets forth its transmission planning process. The updated Attachment K included in Orlando's December 7, 2007 filing has not yet been accepted and will be addressed in Docket No. NJ08-6-000.

²⁶ Orlando Utilities Commission's December 7, 2007 Petition at Appendix C at P 3.

²⁷ See, e.g., Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,761; Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,288-89; *Long Island Power Authority*, 84 FERC ¶ 61,280, at 62,333 (1998); *Salt River Project Agricultural Improvement and Power District*, 83 FERC ¶ 61,280, at 62,162 (1998).

D. Filing Fee

27. We will grant Orlando's request for waiver of the filing fee. As we stated in Order No. 888-A, "[the Commission's] regulations specifically exempt states, municipalities, and anyone who is engaged in the official business of the Federal Government from filing fees. Because of the nature of the safe harbor and waiver provisions, we will also waive the filing fee for declaratory orders for all other non-public utilities in these circumstances."²⁸

28. Accordingly, we will conditionally grant Orlando's petition for a declaratory order. We find that, with certain modifications discussed above, Orlando's proposed OATT substantially conforms with or is superior to the requirements of the *pro forma* OATT. We note that Orlando will not have a safe harbor tariff until it incorporates the modifications discussed above.

The Commission orders:

(A) Orlando's petition for declaratory order is hereby conditionally granted, as discussed in the body of this order.

(B) Orlando's request for waiver of the filing fee is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,288-89 (footnote omitted).