

122 FERC ¶ 61,201
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.

NewCorp Resources Cooperative, Inc.

Docket Nos. OA07-29-000
OA07-106-000

ORDER ACCEPTING COMPLIANCE FILING AND GRANTING REQUEST FOR
WAIVER OF ORDER NO. 890

(Issued March 5, 2008)

1. On July 13 and September 11, 2007, pursuant to section 206 of the Federal Power Act (FPA), NewCorp Resources Cooperative, Inc. (NewCorp) submitted two compliance filings to conform to the Order No. 890 *pro forma* tariff.¹ This order accepts NewCorp's compliance filings effective July 13, 2007 and grants the requested waivers, as discussed below.

I. Background

A. Order No. 890

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

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) (Order No. 890), *order on reh'g*, Order 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Statutes and Regulations ¶ 31,261 (2007), rehearing request pending.

² *See id.* at P 26-61.

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.³

4. The Commission also stated that the criteria for waiver of the requirements of Order No. 890 is unchanged from that used to evaluate requests for waiver under Order Nos. 888⁴ and 889.⁵

B. NewCorp

5. NewCorp is a transmission only entity organized as an electric cooperative pursuant to Texas law. Its owner and only member is Cap Rock Energy Corporation (Cap Rock). Cap Rock is also NewCorp's only customer. Cap Rock takes network integration transmission service from NewCorp pursuant to a service agreement on file with the Commission.⁶ NewCorp does not provide point-to-point transmission services

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).

⁵ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, *clarified*, 77 FERC ¶ 61,335 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

⁶ *See NewCorp Res. Elec. Coop., Inc.*, 109 FERC ¶ 61,103 (2004).

or serve any other customers. Cap Rock provides bundled retail service to its customers but does not engage in wholesale power sales or provide any transmission services.

6. The NewCorp transmission system is primarily radial and interconnects with the Southwestern Public Service Company (SPS) transmission system. Power is delivered into the NewCorp system from SPS and NewCorp is not interconnected with any other transmission entity. SPS functions as the balancing authority for the NewCorp transmission system.

II. Compliance Filings and Requests for Waiver

7. In the present filings, NewCorp submits changes to bring its tariff into conformance with the Order No. 890 *pro forma* tariff. New Corp states that the changes are made to satisfy requirements addressed in Order No. 890 as well as requirements addressed by earlier Commission orders (i.e., Order Nos. 888-A and 888-B and Order Nos. 661, 2003, and 2006 *et al.*⁷). NewCorp requests waiver of the Commission's regulations necessary to allow it to submit these tariff revisions at this time, and states that good cause exists for granting such waivers. No customer has been harmed, and no party has been denied any tariff service. NewCorp requests an effective date of July 13, 2007 for all of its proposed revisions. NewCorp also requests waiver of certain provisions of the Order No. 890 *pro forma* tariff. First, NewCorp requests continuation of a previously granted waiver to maintain an Open Access Same-Time Information System (OASIS).⁸ The Order No. 890 tariff provisions⁹ would otherwise require a transmission provider to post certain information on its OASIS or internet site. Therefore, NewCorp requests that this waiver be continued and it not be required to maintain an OASIS or make any OASIS postings.

⁷ *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs., ¶ 31,186, *order on reh'g*, Order No. 661-A, FERC Stats. & Regs. ¶ 31,198 (2005); *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub. nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats, & Regs. ¶ 31,221 (2006).

⁸ *See Northern States Power Co.*, 76 FERC ¶ 61,250 (1996).

⁹ *See pro forma* tariff sections 3, 4, 23.3, 30.2 and 30.3.

8. NewCorp argues that continuing this waiver is consistent with Order No. 890. NewCorp also contends that the intent of the OASIS requirement is to ensure that transmission services are provided in a transparent non-discriminatory manner. According to NewCorp they contend that they are a small transmission company which only serves one customer, an affiliate. NewCorp does not have the ability to favor one customer over another and requiring it to maintain an OASIS would subject NewCorp and its customer to unnecessary and excessive costs.

9. Secondly, NewCorp seeks necessary waiver to allow it to retain the creditworthiness provisions of section 11 of the tariff and waiver of the requirement to adopt in Attachment L additional detailed credit procedures. NewCorp maintains that since its only customer is its parent company, adoption of detailed credit procedures is unnecessary and will impose an unwarranted burden on NewCorp.

10. Furthermore, NewCorp requests that the Commission waive the Transmission Load Relief (TLR) provisions.¹⁰ The Commission has required transmission providers who have adopted the North American Reliability Council TLR procedures to include notice in their OATTs indicating this fact.¹¹ NewCorp contends that because it is not a balancing authority or transmission operator as those terms are defined in North American Electric Reliability Council's (NERC) procedures, NewCorp does not have the ability to implement or manage TLRs. NewCorp notes that SPS is its balancing authority and SPS implements and manages any TLRs that affect the NewCorp transmission system. Furthermore, New Corp contends that since it only has one customer it is not necessary to establish TLR provisions to protect customers against any unfair or discriminatory treatment.

11. Next, NewCorp requests waiver of the requirement to incorporate Schedule 9, Generator Imbalance Service,¹² as a schedule in its tariff. Schedule 9 establishes imbalance charges and penalties to be assessed when a difference occurs between the output of a generator located in the Transmission Provider's balancing authority/control area and that generator's delivery schedule.¹³ According to NewCorp, because it does not operate as a balancing authority and there are no generators that interconnect to its transmission system, the provisions of Schedule 9 are inapplicable.

¹⁰ See *pro forma* tariff sections 13.6, 14.7, 33.4 and Attachment J.

¹¹ See *e.g.*, *N. Am. Elec. Reliability Council*, 117 FERC ¶ 61,248, at P 13 (2006).

¹² See *pro forma* tariff section 3, Scheduled 4 and 9.

¹³ Order No. 890 at P 668.

12. Finally, NewCorp has requested waiver of the requirement to develop and include as Attachment C to its OATT revised provisions for the detailed calculation of Available Transfer Capability (ATC). NewCorp notes that such provisions reduce the potential for undue discrimination in the provision of transmission service¹⁴ and argues that this waiver is warranted because NewCorp serves only one transmission customer, its owner, Cap Rock and because no new transmission customers are expected.

Procedural Matters

13. Notice of the compliance filing and request for waiver was published in the *Federal Register*, 72 Fed. Reg. 41726 (2007), with interventions, comments and protests due on or before August 3, 2007. No interventions, comments or protests were filed. Notice of the second request for waiver was published in the *Federal Register*, 72 Fed. Reg. 54025 (2007), with interventions, comments or protests due on or before October 2, 2007. No interventions, comments or protests were filed.

14. With regard to the tariff revisions designed to implement Commission Orders other than Order No. 890, NewCorp requests any waivers of the Commission's regulations necessary to submit these tariff revisions at this time. According to NewCorp, no customer has been harmed and no party has been denied tariff service. NewCorp notes that no party other than its one customer, Cap Rock, could qualify as an eligible customer and NewCorp has not received any other transmission service requests.

15. As discussed below, the Commission accepts the proposed tariff language in these filings in order to bring the NewCorp tariff into conformance with the Order No. 890 *pro forma* tariff and grants waiver, as requested and as discussed below. Also, for good cause shown, the Commission waives its regulations to permit the tariff revisions to be filed at this time and accepts the tariff revisions effective July 13, 2007.

16. More specifically, the Commission grants NewCorp's request to continue the waiver of the OASIS requirements. In *Northern States Power Company et al.*,¹⁵ we granted NewCorp's requested waiver because it did not operate or control an interstate transmission grid. The Commission expressly stated that the waiver should continue until "an entity evaluating its transmission needs complains that it cannot get the information necessary to complete its evaluation."¹⁶ In this instance, NewCorp's situation remains the same and no entity has complained. Thus, the previously granted waiver shall continue and NewCorp does not need to maintain an OASIS.

¹⁴ *Id.* P 207.

¹⁵ 76 FERC ¶ 61, 250 (1996).

¹⁶ *Id.* at 62,297.

17. The Commission similarly concludes that NewCorp's requested waivers to retain the creditworthiness provisions of section 11 of the tariff and of the requirement to adopt in Attachment L additional detailed credit procedures also should be granted. In Order No. 890, the Commission determined that a transmission provider's OATT must include an attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service.¹⁷ The Commission agrees that in light of the fact that NewCorp only has one customer and that customer is its parent company, the creditworthiness requirements and procedures will place an unwarranted burden on NewCorp without any additional benefit.

18. The Commission also grants NewCorp's request for waiver of the TLR provisions in sections 13.6, 14.7, and 33.4 as well as all of Attachment J of the *pro forma* tariff. In the NERC Transmission Loading Relief Order, the Commission amended the *pro forma* OATT to incorporate NERC's TLR procedures.¹⁸ However, as NewCorp describes in its filing, its transmission system is primarily radial in nature and is interconnected to SPS at only one interconnection point and is not interconnected to any other transmission entity.¹⁹ New Corp also states that it is not a balancing authority or Transmission operator and does not have the ability to implement or manage TLRs.²⁰ Additionally NewCorp only has one customer, Cap Rock, and therefore does not need to establish TLR procedures to protect against discriminatory treatment.²¹ Finally, SPS, as the balancing authority for NewCorp, manages and implements TLR procedures. In its OATT, NewCorp references that SPS is its control area operator and the SPS OATT contains the required attachment J referencing the NERC TLR procedures.²²

19. Finally, the Commission grants NewCorp's requested waiver of both the requirement to incorporate Schedule 9 into its tariff and the requirement to develop and include as Attachment C, revised provisions for the calculation of ATC. As explained by NewCorp, it is not a balancing authority and no generators interconnect to its transmission system. As such, provisions designed to determine charges for both energy

¹⁷ Order No. 890 at P 1656-1661.

¹⁸ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 April 4, 2007), FERC Statutes and Regulations ¶ 31,242 at 31,561-62 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053, at P 952-964 (2007).

¹⁹ NewCorp filing at 2.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

²² *Id.* at 31. (Original tariff sheet No. 23).

and generator imbalances are inapplicable to NewCorp. The requirements to file a Schedule 9 and to develop detailed calculations for ATC are therefore waived.

20. Finally, we note that we base this order on the specific facts and circumstances presented in this case. If the factual circumstances relied upon by the Commission in granting the requested waivers change, NewCorp is required to inform the Commission.

The Commission orders:

(A) NewCorp's requested waivers of the requirements of the Commission's regulations, as discussed in the body of this order is granted.

(B) NewCorp's filing is hereby accepted, effective July 13, 2007, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.