

131 FERC ¶ 61,081  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 37

[Docket No. RM10-22-000]

Promoting a Competitive Market for Capacity Reassignments

(April 29, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Based on the Commission's experience to date and a two-year study, released April 15, 2010, the Federal Energy Regulatory Commission proposes in this Notice of Proposed Rulemaking to lift the price cap for all transmission customers reassigning transmission capacity beyond October 1, 2010. The reforms proposed in this order are intended to facilitate the development of a market for capacity reassignments as a competitive alternative to primary capacity.

DATES: Comments are due **[insert date that is 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- Agency Web Site: Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- Mail/Hand Delivery: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Promoting a Competitive Market for Capacity  
Reassignments

Docket No. RM10-22-000

NOTICE OF PROPOSED RULEMAKING

(April 29, 2010)

1. Based on the Commission's experience to date and a two-year study, released April 15, 2010,<sup>1</sup> the Federal Energy Regulatory Commission (Commission) proposes in this Notice of Proposed Rulemaking (NOPR) to lift the price cap for all transmission customers reassigning transmission capacity beyond October 1, 2010. The reforms proposed in this order are intended to facilitate the development of a market for capacity reassignments as a competitive alternative to primary capacity.

**I. Background**

2. In Order No. 888, the Commission concluded that a transmission provider's pro forma Open Access Transmission Tariff (OATT) must explicitly permit the voluntary reassignment of all or part of a holder's firm point-to-point capacity rights to any eligible customer.<sup>2</sup> The Commission also found that allowing holders of firm transmission

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<sup>1</sup> FERC Staff, Staff Findings on Capacity Reassignment (2010), available at: <http://www.ferc.gov> (Staff Report).

<sup>2</sup> Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities

(continued...)

capacity rights to reassign capacity would help parties manage the financial risks associated with their long-term commitment, reduce the market power of transmission providers by enabling customers to compete, and foster efficient capacity allocation.

3. With respect to the appropriate rate for capacity reassignment, the Commission concluded it could not permit reassignments at market-based rates because it was unable to determine that the market for reassigned capacity was sufficiently competitive so that assignors would not be able to exert market power. Instead, the Commission capped the rate at the highest of (1) the original transmission rate charged to the purchaser (assignor), (2) the transmission provider's maximum stated firm transmission rate in effect at the time of the reassignment, or (3) the assignor's own opportunity costs capped at the cost of expansion (price cap). The Commission further explained that opportunity cost pricing had been permitted at "the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two (i.e., 'or' pricing is permitted; 'and' pricing is not)."<sup>3</sup> In Order No. 888-A, the Commission explained that opportunity

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and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,696 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), 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).

<sup>3</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,740.

costs for capacity reassigned by a customer should be measured in a manner analogous to that used to measure the transmission provider's opportunity cost.<sup>4</sup>

4. To foster the development of a more robust secondary market for transmission capacity, the Commission, in Order No. 890, concluded that it was appropriate to lift the price cap for all transmission customers reassigning transmission capacity.<sup>5</sup> The Commission stated that this would allow capacity to be allocated to those entities that value it most, thereby sending more accurate price signals to identify the appropriate location for construction of new transmission facilities to reduce congestion.<sup>6</sup> The Commission also found that market forces, combined with the requirements of the pro forma OATT as modified in Order No. 890, would limit the ability of assignors to exert market power, including affiliates of the transmission provider.

5. To enhance oversight and monitoring activities, the Commission adopted reforms to the underlying rules governing capacity reassignments.<sup>7</sup> First, the Commission

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<sup>4</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,224.

<sup>5</sup> Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 808 (2007), order on reh'g, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), order on reh'g, Order No. 890-B, 123 FERC ¶ 61,299 (2008), order on reh'g, Order No. 890-C, 126 FERC ¶ 61,228 (2009), order on reh'g, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>6</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 808.

<sup>7</sup> Id. P 815.

required that all sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences.<sup>8</sup> Second, the Commission required that assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences.<sup>9</sup> Third, in addition to existing OASIS posting requirements, the Commission required transmission providers to aggregate and summarize in an electric quarterly report the data contained in these service agreements.<sup>10</sup>

6. The Commission also directed staff to closely monitor the reassignment-related data submitted by transmission providers in their quarterly reports to identify any problems in the development of the secondary market for transmission capacity and, in particular, the potential exercise of market power.<sup>11</sup> Thus, the Commission directed staff to prepare, within six months of receipt of two years of quarterly reports, a report summarizing its findings.<sup>12</sup> In addition, the Commission encouraged market participants to provide feedback regarding the development of the secondary capacity market and, in particular, to contact the Commission's Enforcement Hotline if concerns arise.

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<sup>8</sup> Id.

<sup>9</sup> Id. P 816.

<sup>10</sup> Id. P 817.

<sup>11</sup> Id. P 820.

<sup>12</sup> Id.

7. In Order No. 890-A, the Commission affirmed its decision to remove the price cap on reassignments of transmission capacity but granted rehearing to limit the period during which reassignments may occur above the cap.<sup>13</sup> The Commission concluded that it would be most appropriate to lift the price cap on reassignments of capacity only to accommodate the Commission staff study period. Accordingly, the Commission amended section 23.1 of the pro forma OATT to reinstate the price cap as of October 1, 2010.<sup>14</sup> The Commission stated that, upon review of the staff report and any feedback from the industry, the Commission would determine whether it would be appropriate to continue to allow reassignments of capacity above the price cap beyond that date.

8. The Commission also clarified that, as of the effective date of the reforms adopted in Order No. 890, all reassignments of capacity must take place under the terms and conditions of the transmission provider's OATT. As a result, there was no longer a need for the assigning party to have on file with the Commission a rate schedule governing reassigned capacity. To the extent that a reseller has a market-based rate tariff on file, the provisions of that tariff, including a price cap or reporting obligations, will not apply to the reassignment since such transactions no longer take place pursuant to the authorization of that tariff.

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<sup>13</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 388, 390.

<sup>14</sup> Id. P 390.

9. In Order No. 890-B, the Commission clarified that the pro forma OATT does not, and will not, permit the withholding of transmission capacity by the transmission provider and that it effectively establishes a price ceiling for long-term reassignments at the transmission provider's cost of expanding its system.<sup>15</sup> The Commission further found that the fact that a transmission provider's affiliate may profit from congestion on the system does not relieve the transmission provider of its obligation to offer all available transmission capacity and expand its system as necessary to accommodate requests for service.<sup>16</sup> The Commission pointed out that customers that do not wish to participate in the secondary market may continue to take service from the transmission provider directly, just as if the price cap had not been lifted.<sup>17</sup>

10. With regard to the report to be prepared by Commission staff, the Commission clarified that staff should focus on the competitive effects of removing the price cap for reassigned capacity.<sup>18</sup> The Commission stated that staff should consider the number of reassignments occurring over the study period, the magnitude and variability of resale prices, the term of the reassignments, and any relationship between resale prices and price differentials in related energy markets. In addition, the Commission directed staff

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<sup>15</sup> Order No. 890-B, 123 FERC ¶ 61,299 at P 78.

<sup>16</sup> Id.

<sup>17</sup> Id. P 79.

<sup>18</sup> Id. P 83.

to examine the nature and scope of reassignments undertaken by the transmission provider's affiliates and include in its report any evidence of abuse in the secondary market for transmission capacity, whether by those affiliates or other customers.

11. The Commission also granted rehearing and directed transmission providers to include in their electric quarterly reports the identity of the reseller and indicate whether the reseller is affiliated with the transmission provider.<sup>19</sup> The Commission also directed each transmission provider to include in their electric quarterly reports the rate that would have been charged under its OATT had the secondary customer purchased primary service from the transmission provider for the term of the reassignment.<sup>20</sup> The Commission directed transmission providers to submit this additional data for all resales during the study period and to update, as necessary, any previously-filed electric quarterly reports on or before the date they submitted their next electric quarterly reports.

## **II. Discussion**

12. Based on the Commission's experience and the two-year study, the Commission proposes to permanently remove the price cap on the reassignments of capacity and revise section 23 of the pro forma OATT accordingly, as indicated in Appendix A. In addition, the Commission proposes to direct transmission providers to submit

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<sup>19</sup> Id. P 84.

<sup>20</sup> Id.

corresponding revisions to their OATT's within 30 days of publication of the Final Rule in the Federal Register.

13. The secondary market for capacity reassignments experienced strong growth during the study period. Both the number of transactions and capacity volume reassigned rose throughout the two and one half year time span. The number of reassignments increased dramatically from just over 200 in 2007 to almost 32,000 in 2009. Almost 36 TWh flowed on reassigned paths in 2009, up from 3 TWh in 2007. Moreover, the majority of resale prices, 99 percent, were at or below the price cap. While few of the reassignments were at prices above the cap, it appears from the data that reassignment prices comported with pricing differentials between markets. For instance, there were numerous reassignments between points in New England and Quebec with prices comparable to the average spread in energy prices between the regions. These data suggest that resale prices reflect market fundamentals rather than the exercise of market power.

14. During the study period, there were 32 transactions of reassigned capacity by an affiliate of a transmission provider reassigned for more than the tariff rate. However, the percentage of such over-cap reassignments (0.5 percent) was in line with that of over-cap reassignments by non-affiliates (0.4 percent), leading us to believe that affiliate abuse is not an issue. For these reasons, the Commission proposes to find that the Staff Report supports the Commission's decision to lift the price cap beyond October 1, 2010 on all capacity reassignments.

15. The Commission seeks comment on this proposal. Additionally, given that the levels of reassignment and growth of reassignment varies substantially across transmission providers, we believe that there is significant potential for further growth in the reassignment of capacity. Accordingly, the Commission also seeks comments as to whether there are any other reforms that it should undertake to create a more efficient and vibrant secondary market for transmission capacity. Are there non-price limitations or regional factors that may be continuing to limit the utility of reassignment? To the extent any limitations exist, the Commission seeks comment on how they should be addressed. For example, are there reforms to the redirect process that would enable all firm customers to use their firm capacity more flexibly and thereby facilitate capacity reassignment by making point changes by the buyer of reassigned capacity more efficient? In the natural gas industry, the Commission has established a system of secondary firm point priorities to provide greater flexibility in the use of firm capacity.<sup>21</sup>

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<sup>21</sup> Secondary firm priority means that the shipper has scheduling rights to a new point that are superior to interruptible service but inferior to primary firm service for shippers using points specified in their contract. The use of secondary firm service enables shippers obtaining reassigned capacity to establish alternate firm capacity points. See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13,267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939, at 30,428 (1992), order on reh'g, Order No. 636-A, 57 FR 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), order on reh'g, Order No. 636-B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), order on reh'g, 62 FERC ¶ 61,007 (1993), aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 62 FR 10,204 (Mar. 6, 1997), 78 FERC ¶ 61,186 (1997); see also Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,

(continued...)

We request comment on whether such an approach could be used effectively in the electric industry and what impact, if any such an approach would have on system operations.

16. As discussed above, we propose to find that the Commission Staff Report supports the Commission's belief that there are no significant market power concerns to justify retaining price caps for any transmission customer.<sup>22</sup> With regard to affiliate abuse, the Staff Report finds that less than one percent of transactions performed by affiliates during the study period were transacted above the tariff rate during the study period. While staff did not detect affiliate abuse associated with reassignment by affiliates of the transmission provider during the study period, the Commission seeks comment on whether market participants have experienced any such affiliate abuse that would argue for maintaining the price cap on affiliates of the transmission provider, or if other

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Order No. 637, 65 FR 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,304-31,306, clarified, Order No. 637-A, 65 FR 35,706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 65 FR 47,284 (Aug. 2, 2000), 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18, 350 U.S. App. D.C. 366 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255, 368 U.S. App. D.C. 176 (D.C. Cir. 2005).

<sup>22</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 809 (stating that based on ten years of experience regulating capacity reassignments, the Commission believes there are no significant market power concerns to justify retaining the price caps for any transmission customer).

safeguards are needed for such reassignments. How should reassignment by a transmission provider's retail service function (that is not a separate affiliate) be treated?

17. Based on the Commission's experience and the two-year study, the Commission believes that the absence of a price cap for transmission capacity reassignment does not present any major market concerns. Nevertheless, the Commission is committed to ensuring just and reasonable transmission service that is not unduly discriminatory or preferential and, therefore, will continue to monitor the secondary market of capacity reassignments for evidence of abuse of market power. The Commission receives sufficient information to monitor the secondary market for capacity reassignment because pursuant to section 23 of the pro forma OATT: (1) all sales of capacity must be conducted through or otherwise posted on the transmission provider's OASIS on or before the date of service; and, (2) assignees of transmission capacity must execute a service agreement prior to the date on which the reassigned service commences. In addition, transmission providers must aggregate and summarize in an electric quarterly report the data contained in these service agreements.<sup>23</sup>

### **III. Information Collection Statement**

18. The following collection of information contained in this proposed rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the

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<sup>23</sup> 18 CFR 35.10b; see also, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; Notice Providing Guidance on the Filing of Information on Transmission Capacity Reassignments in Electric Quarterly Reports, 124 FERC ¶ 61,244 (2008).

Paperwork Reduction Act of 1995.<sup>24</sup> OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>25</sup>

Burden Estimate: The public reporting and records retention burdens for the proposed reporting requirements and the records retention requirement are as follows.<sup>26</sup>

<b>Data Collection</b>	<b>Number of Respondents</b>	<b>Number of Responses</b>	<b>Hours per Response</b>	<b>Total Annual Hours</b>
Conforming tariff changes	176	1	10	1,760

Cost to Comply: \$200,640

1,760 hours @ \$114 an hour (average cost of attorney (\$200 per hour), consultant (\$150), technical (\$80), and administrative support (\$25))

OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this proposed rule to OMB. If the proposed requirements are adopted they will be mandatory requirements.

Title: FERC-516, Electric Rate Schedules and Tariff Filings;

FERC-717, Standards for Business Practices and Communication Protocols for Public Utilities.

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<sup>24</sup> 44 U.S.C. § 3507(d) (2000).

<sup>25</sup> 5 CFR 1320.11 (2009).

<sup>26</sup> These burden estimates apply only to this NOPR and do not reflect upon all of FERC-516 or FERC-717.

Action: Proposed Collections.

OMB Control Nos. 1902-0096 and 1902-0173.

Respondents: Transmission Providers.

Frequency of responses: One time.

Necessity of the Information:

19. The Federal Energy Regulatory Commission is proposing amendments to the pro forma OATT to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The purpose of this proposed rulemaking is to strengthen the pro forma OATT by encouraging more robust competition. We propose to achieve this goal by removing the price cap previously imposed on reassignments of transmission capacity.

20. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)]

21. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4650, fax: (202) 395-7285. Due to security concerns, comments should be sent electronically to the following e-mail

address: oira\_submission@omb.eop.gov. Please reference the docket number of this proposed rulemaking in your submission.

#### **IV. Environmental Analysis**

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>27</sup> The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.<sup>28</sup>

#### **V. Regulatory Flexibility Act Analysis**

23. The Regulatory Flexibility Act of 1980 (RFA)<sup>29</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This proposed rule would apply to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The

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<sup>27</sup> Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>28</sup> 18 CFR 380.4(a)(15) (2009).

<sup>29</sup> 5 U.S.C. § 601-612.

total number of public utilities that, absent waiver, would have to modify their current OATTs by filing the revised pro forma OATT is 176.<sup>30</sup> Of these only six public utilities, or less than two percent, dispose of four million MWh or less per year.<sup>31</sup> The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.<sup>32</sup> Moreover, the criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Thus, small entities who have received waiver of the requirements to have on file an open access tariff or to operate an OASIS would be unaffected by the requirements of this proposed rulemaking.

## **VI. Comment Procedures**

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative

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<sup>30</sup> The sources for this figure are FERC Form No. 1 and FERC Form No. 1-F data.

<sup>31</sup> Id.

<sup>32</sup> The Regulatory Flexibility Act defines a "small entity" as "one which is independently owned and operated and which is not dominant in its field of operation." See 5 U.S.C. §§ 601(3) and 601(6)(2000); 15 U.S.C. § 632(a)(1) (2000). In Mid-Tex Elec. Coop. v. FERC, 773 F.2d 327, 340-343 (D.C. Cir. 1985), the court accepted the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term "small entities" as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The revised pro forma OATT will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

proposals that commenters may wish to discuss. Comments are due [insert date that is 60 days from publication in the FEDERAL REGISTER]. Comments must refer to Docket No. RM10-22-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## **VII. Document Availability**

28. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business

hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

29. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for eLibrary and the FERC's web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 37

By direction of the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix A****RM05-17-001, -002 & RM05-25-001, -002  
(Issued)****PRO FORMA OPEN ACCESS  
TRANSMISSION TARIFF****23 Sale or Assignment of Transmission Service****23.1 Procedures for Assignment or Transfer of Service:**

(a) ~~Subject to Commission approval of any necessary filings, a~~

Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller.

~~Compensation to Resellers shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion; provided that, for service prior to October 1, 2010, e~~Compensation to Resellers shall be at rates established by agreement between the Reseller and the Assignee.

(b) The Assignee must execute a service agreement with the Transmission Provider governing reassignments of transmission service prior to the date on which the reassigned service commences. The Transmission Provider shall

charge the Reseller, as appropriate, at the rate stated in the Reseller's Service Agreement with the Transmission Provider or the associated OASIS schedule and credit the Reseller with the price reflected in the Assignee's Service Agreement with the Transmission Provider or the associated OASIS schedule; provided that, such credit shall be reversed in the event of non-payment by the Assignee. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. The Assignee will be subject to all terms and conditions of this Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

### **23.2 Limitations on Assignment or Transfer of Service:**

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider for performing any System Impact Study needed to

evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Transmission Provider and the Reseller through an amendment to the Service Agreement.

**23.3 Information on Assignment or Transfer of Service:**

In accordance with Section 4, all sales or assignments of capacity must be conducted through or otherwise posted on the Transmission Provider's OASIS on or before the date the reassigned service commences and are subject to Section 23.1. Resellers may also use the Transmission Provider's OASIS to post transmission capacity available for resale.