130 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Southwest Power Pool, Inc. Docket No. EL09-40-000

ORDER ON PAPER HEARING

(Issued January 21, 2010)

1. On March 19, 2009, the Commission instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)[1] to determine whether certain language in section 2.2 of the Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (OATT) may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.[2] In this order, we direct SPP to conform section 2.2 of the SPP OATT to section 2.2 of the *pro forma* OATT (Reservation Priority for Existing Firm Service Customers), within 30 days of the date of issuance of this order, as discussed below.

I. Background

2. In Order No. 890,[3] the Commission modified section 2.2 of the *pro forma* OATT to provide that in order for a transmission customer to be eligible to renew or rollover its transmission service its transmission contract must have a five-year minimum contract term and such customer must exercise a rollover right by providing notice of its intent to rollover its service at least one year prior to the expiration of its contract.[4] The

[1] 16 U.S.C. § 824e (2006).

[2] *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,243 (2009) (March 19, 2009 Order).

[3] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 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).

[4] Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1245.

Commission considered but did not revise the Order No. 888[5] requirement that an existing transmission customer match competing offers as to term and rate in order to rollover its service. Specifically, section 2.2 of the Order No. 888 *pro forma* OATT provided that,

> If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service…. [6]

3. SPP filed its revisions to section 2.2 of its OATT incorporating the rollover rights revisions adopted in Order No. 890 on October 11, 2007, in Docket No. OA08-5-000. In its order issued on May 16, 2008, the Commission found that SPP's coordinated and regional planning process, filed in Docket No. OA08-61-000, had not yet been accepted by the Commission and directed SPP to refile the rollover compliance language within thirty days after Commission acceptance of SPP's transmission planning process.[7] On July 11, 2008, in Docket No. OA08-61-000, the Commission accepted SPP's transmission planning process.[8]

4. On August 11, 2008, SPP submitted a filing to comply with the May 16, 2008 Order. In that filing, among other things, SPP revised section 2.2 of its OATT to adopt the five-year minimum contract term and the one-year notice provisions pursuant to Order No. 890. In addition, SPP stated that it planned to retain previously-approved variations from the Order No. 888 *pro forma* OATT, including language specifying that,

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[5] *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).

[6] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at *pro forma* OATT, section 2.2.

[7] *Southwest Power Pool, Inc.*, 123 FERC ¶ 61,176, at P 41 (2008) (May 16, 2008 Order).

[8] *See Southwest Power Pool, Inc.*, 124 FERC ¶ 61,028 (2008).

> If at the time of [the existing customers notification to SPP of its intent to exercise its rollover right], the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to the longest term competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service….[9]

5. In its March 19, 2009 Order, the Commission found that, in light of the Commission's affirmation in Order No. 890 of the Order No. 888 *pro forma* OATT's "equal to a competing request" matching language, SPP's longest-term matching requirement may no longer be just and reasonable or may be unduly discriminatory.[10] The Commission found that SPP's section 2.2 may produce a form of competition between customers vying for the same capacity on the system that is inconsistent with the reservation priorities otherwise required in the *pro forma* OATT.[11] The Commission instituted an investigation, under section 206 of the FPA, into the justness and reasonableness of this language.

II. Notice of Filing and Responsive Pleadings

6. Notice of the Commission's institution of the paper hearing was published in the *Federal Register*, 74 FR 13428 (2009), with initial comments to be filed within 30 days of the date of the March 19, 2009 Order, and reply comments to be filed within 30 days of the date on which initial comments are filed.

7. Missouri Joint Municipal Electric Utility Commission, the Oklahoma Municipal Power Authority, and the West Texas Municipal Power Agency (collectively, TDU Intervenors), SPP, and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed comments. Cargill Power Markets, LLC (Cargill) and Tenaska Power Services Co. (Tenaska Power) filed motions to intervene and comments. SPP and Cargill filed reply comments.

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[9] *See* SPP OATT, section 2.2. For the purposes of this order, we will refer to this language as the "longest-term matching requirement."

[10] March 19, 2009 Order, 126 FERC ¶ 61,243 at P 12.

[11] *Id.*

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Paper Hearing Process

1. Initial Comments

a. SPP

9. SPP states that its section 2.2 is just and reasonable and that the Commission has already found the longest-term matching requirement to be equal or superior to the *pro forma* OATT.[12] SPP also states that in Order No. 890 the Commission did not revise the matching requirement of section 2.2 of the Order No. 888 *pro forma* OATT; therefore, SPP was not required to re-justify its previously-approved variance.[13] SPP argues that the *pro forma* OATT's matching requirement may be just and reasonable, but that does not make the *pro forma* language the only just and reasonable approach to processing rollover requests.

10. SPP also states that its longest-term matching requirement puts incumbent firm customers on notice that they must match the longest-term transmission service request, not the first transmission service request in the queue. SPP states that the longest-term matching requirement also provides notice to customers seeking to compete for transmission service over a path eligible for rollover service that a later-submitted transmission service request for a longer term may be awarded the transmission service over an earlier request with a shorter term.

11. SPP also argues that section 2.2 of the SPP OATT is not unduly discriminatory; rather, it enables more potential customers to compete for service over a path eligible for rollover service. SPP argues that section 2.2 of its OATT reduces barriers to entry as more potential customers may compete for service, which promotes Order No. 890 policy goals of maximizing competition for the use of existing transmission paths and promoting long-term transmission contracts. In addition, SPP argues that by allowing more than just the first customer in the queue to compete for service over a particular path, section 2.2 of

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[12] SPP Initial Comments at 2 (citing *Southwest Power Pool, Inc.*, 96 FERC ¶ 61,034 (2001) (July 2001 Order)).

[13] *Id.* at 4 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157).

the SPP OATT "awards capacity to those who value it the most," which is consistent with the Commission's competition goals.[14]

b. Golden Spread

12. Golden Spread states that section 2.2 of SPP's OATT makes it difficult for incumbent customers to plan to meet load-serving obligations by effectively inviting other potential transmission customers to wait until the last minute to submit competing requests. Golden Spread asserts that Commission approval of such language is contrary to section 217(b)(4) of the FPA.[15]

13. With regard to customers seeking to use transmission capacity made available when an incumbent customer does not rollover its transmission service, Golden Spread argues that section 2.2 of SPP's OATT is inconsistent with sections 13.2 and 29.2 of the *pro forma* OATT, which provide a higher priority for earlier submitted transmission service requests.[16] Golden Spread adds that SPP did not attempt to justify the longest-term matching requirement in its August 11, 2008 filing.

c. Tenaska Power

14. Tenaska Power argues that SPP's longest-term matching requirement is inconsistent with the Commission's broader policy requiring transmission service requests to be processed on a "first-come, first-served" basis. Tenaska Power argues that SPP's requirement deprives incumbent and competing transmission customers of the certainty and predictability they need to move forward with their transactions and projects. Tenaska Power notes that in the March 19, 2009 Order the Commission stated that SPP's section 2.2 results in a form of competition that is inconsistent with the reservation priorities otherwise required in the *pro forma* OATT, and that in Order No. 890 the Commission reaffirmed the "equal to a competing request" requirement of

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[14] *Id.* at 9 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1255).

[15] 16 U.S.C. § 824q(b)(4) (2006). Section 217 to the FPA, entitled "Native Load Service Obligation," addresses transmission rights held by load-serving entities. FPA section 217 allows load-serving entities to use their own and contracted-for transmission capacity to deliver energy as required to meet their service obligations, without being subject to charges of unlawful discrimination.

[16] Sections 13.2 and 29.2 of the *pro forma* OATT and the SPP OATT address "Reservation Priority" for firm point-to-point transmission service and "Application Procedures" for network integration transmission service, respectively.

the Order No. 888 *pro forma* OATT.[17] Tenaska Power also states that, in Order No. 890-B the Commission emphasized that under the Commission's long-standing policy regarding the processing of rollover requests, there is "only one potential competitor for rollover customers seeking long-term service, i.e., the first customer in the queue requesting competing service."[18] Tenaska Power interprets the Commission's statement to mean that there is only one potential competitor at any given time and that, if this first customer subsequently drops out of the queue, then the next-highest queued customer requesting service would become the sole potential competitor to the incumbent customer.[19]

15. Tenaska Power states that the Commission has made clear that, in processing rollover requests, "priority must be based solely on queue time," and consequently, "a later submitted new request cannot bump an earlier submitted new request for a shorter duration."[20] Tenaska Power states that under section 2.2 of SPP's OATT, if there are multiple customers in the queue vying for the same rollover eligible transmission capacity and each subsequent, lower-queued customer has requested a longer term of service than the customer immediately ahead of it in the queue, the incumbent customer would have to match an indefinitely large number of competing requests with progressively longer terms. If the incumbent customer refuses to match the term of any of these lower-queued requests, Tenaska Power states that the lower-queued request would be able to jump ahead of higher-queued requests. Thus, Tenaska Power reasons, the longest-term matching requirement nullifies the first-come, first-served priority principle and deprives incumbent and potential competing customers of the business certainty and predictability that they need to execute their business strategies.[21]

d. <u>TDU Intervenors</u>

16. TDU Intervenors state that in 2001 SPP proposed the longest-term matching requirement in Docket No. ER01-1989-000 as part of a broader proposal that would have

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[17] Tenaska Power Comments at 6 (citing March 19, 2009 Order, 126 FERC ¶ 61,243 at P 12).

[18] *Id.* at 7 (quoting Order No. 890-B, 123 FERC ¶ 61,299 at P 152).

[19] *See id.* at 7 n.24.

[20] Tenaska Power Comments at 7 (citing *Tenaska Power Services v. Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,230, at P 28, *order on reh'g*, 107 FERC ¶ 61,308 (2004) (*Tenaska Power Services*).

[21] *Id.* at 8 (citing *pro forma* OATT, section 13.2).

allowed SPP to require an incumbent customer to exercise its rollover right repeatedly throughout the term of its contract, within 60 days of notification by SPP that it had received a competing request, rather than allowing the customer to wait until 60 days prior to the end of the term. According to TDU Intervenors, in that proceeding, SPP did not offer a rationale for its longest-term competing requirement and the Commission did not expressly approve SPP's longest-term matching requirement.

17. TDU Intervenors argue that, even if SPP's longest-term matching requirement was justified in 2001, SPP's matching requirement is not justified today. According to TDU Intervenors, the Order No. 890 rollover reforms have reduced incumbent customers' rollover rights from the rights they had under Order No. 888.[22] TDU Intervenors add that in reforming section 2.2 the Commission considered the question of whether an incumbent customer should have to match the longest-term request or the first-queued request and consciously rejected any change to the *pro forma* OATT's matching requirement.[23]

e. <u>Cargill</u>

18. Cargill argues that if SPP is not obligated to honor the first-come, first-served principle, queue position becomes irrelevant to SPP's decision to award transmission capacity when an incumbent customer refuses to match the longest-term request that is competing for the capacity at stake. Cargill also argues that the Commission did not discuss SPP's proposed longest-term matching requirement in the July 2001 Order and, as such, the Commission should not accord SPP's longest-term matching requirement any just and reasonable presumption, or consider it consistent with or superior to the language of the *pro forma* OATT.[24]

19. Cargill also argues that the longest-term matching requirement enables two potential forms of "gaming" the process of acquiring transmission service. First, Cargill states, because customers seeking transmission service can view queues of pending transmission service requests on SPP's OASIS, a customer can add a year or even a month to its later-queued request to "one-up" an earlier-queued request. Second, Cargill argues that because the incumbent's submission of a rollover request closes the window for new requests for service over the rollover eligible path, the incumbent customer could alert a colluding party when the incumbent plans to submit a renewal request, thereby giving that party the opportunity to submit the longest-term competing request.

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[22] *See* TDU Intervenors Comments at 3.

[23] *See id.* at 4 (citing Order No. 890-B, 123 FERC ¶ 61,299 at P 152).

[24] Cargill Initial Comments at 3-4 (citing July 2001 Order, 96 FERC ¶ 61,034).

20. Additionally, Cargill states that the Commission has made clear that section 13.2 of the SPP OATT addresses requests for new transmission service or situations where the incumbent customer does not exercise its rollover rights.[25] However, Cargill argues, under SPP's section 2.2, if the incumbent customer submits a rollover request but then does not match the longest-term competing request, SPP awards the service to the applicant with the longest requested term of service not the applicant with the earliest queued request. Cargill argues that this violates the first-come, first served principle.

2. Reply Comments

a. SPP

21. SPP states that none of the commenters refute SPP's argument that its rollover policy is consistent with the primary goal of the Commission's *pro forma* matching requirement—i.e., to maximize the use of the transmission system by requiring longer term transmission service arrangements. SPP argues that requiring it to adopt a first-come, first-served rollover policy would require SPP to enter into shorter term transmission service agreements and would provide customers with an incentive to quickly apply for the shortest possible term of service to "lock in" a short-term request.

22. In response to Tenaska Power's argument that SPP's rollover requirement deprives customers of certainty and predictability, SPP states that incumbent customers have the opportunity to review all competing requests before submitting a renewal request, which allows incumbent customers to determine their maximum potential matching requirement. SPP argues that competing customers have certainty because they will know they will be competing with later-submitted transmission service requests with longer requested service terms. SPP states that it is in a competing customer's best interest to avoid delaying submitting its request because the incumbent customer may submit its renewal request at any time.[26]

23. SPP also states that there is no evidence that section 2.2 of the SPP OATT provides opportunities for gaming or collusion, that Cargill has failed to provide any evidence that such collusion has occurred, and that SPP has not encountered any instances of such collusion since it began processing rollover requests. SPP adds that, to the extent a customer's initial request is trumped by a subsequent longer term request,

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[25] *Id.* at 7 (citing *Cargill Power Markets, LLC v. Southwest Power Pool, Inc.*, 122 FERC ¶ 61,068, at P 18 (2008), *order on reh'g*, 124 FERC ¶ 61,110 (2008) (*Cargill Power*)).

[26] *See* SPP Reply Comments at 5.

there is nothing preventing that customer from submitting a second request trumping the longer request.[27] SPP concludes that Cargill's concern is unsubstantiated speculation.

24. In addition, SPP disagrees with TDU Intervenors and Cargill that section 2.2 should not be presumed to be just and reasonable. SPP states that in the July 2001 Order the Commission applied the "consistent with or superior to" standard in its review of SPP's matching requirement.[28] SPP also disagrees that in Order No. 890-B the Commission considered and rejected requiring an incumbent customer to match the longest-term competing request. SPP argues that at no point in Order No. 890-B did the Commission reject or address the merits of rollover provisions that include "longest-term competing request" language. SPP adds that the Commission has stated that it "has never found that there is only one way to process rollover requests."[29] SPP argues that years after the Commission accepted SPP's longest-term matching requirement the Commission accepted a similar provision under the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) OATT.[30] SPP also argues that in PJM an incumbent customer must match any competing request within 30 days of the request, or lose its rollover rights.[31] SPP states that, as a consequence, incumbents may have to meet successive, potentially longer-term requests as they are submitted in order to retain rollover rights.

b. <u>Cargill</u>

25. Cargill asserts that the Midwest ISO's and SPP's business practices addressing rollovers are materially different and that the Midwest ISO's business practices cause the Midwest ISO to implement the rollover provisions in a manner consistent with the first-come, first-served principle. Cargill states that SPP implements section 2.2 of its OATT in a manner such that SPP accepts all transmission service requests submitted prior to the incumbent's request to rollover its service as "competing requests" and gives such requesting customers the opportunity to confirm, subject to the incumbent's right to

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[27] *Id.* at 10.

[28] *Id.* at 6.

[29] *Id.* at 7 (citing *Cargill Power*, 122 FERC ¶ 61,068 at P 17; *Tenaska Power Services*, 106 FERC ¶ 61,230 at P 48).

[30] *Id.* at 7-8 (referencing Midwest ISO Transmission and Energy Markets Tariff, section 2.2(a)(ii)).

[31] *Id.* at 8 & n.22.

match the longest-term competing request.[32] Cargill states that unlike SPP, the Midwest ISO does not deem all transmission service requests submitted prior to the incumbent customer's rollover request to be competing requests. Instead, Cargill states, the Midwest ISO accepts requests for transmission service to be provided over capacity currently held by an incumbent customer only up to the amount of capacity held by that incumbent customer.[33] According to Cargill, applicants with accepted requests then have the opportunity to confirm their requests, subject to the incumbent customer's right to match the term of any competing request that meet certain criteria.[34] Cargill concludes that, because SPP and the Midwest ISO implement the rollover provisions of their tariffs in very different ways, SPP cannot rely on the Midwest ISO's rollover provision to establish the justness and reasonableness of SPP's longest-term matching requirement.

3. Commission Determination

26. The Commission finds, as discussed below, that the longest-term requirement of section 2.2 of SPP's OATT is unjust and unreasonable, and unduly discriminatory.[35] We direct SPP to revise section 2.2 of its OATT to conform to the matching language of the *pro forma* OATT.

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[32] Cargill Reply Comments at 2 (citing SPP Business Practice, section 2.12).

[33] *Id.* at 2 (citing MISO Business Practice, section 9.1.2(4)).

[34] *Id.* at 2-3 (citing MISO Business Practice, section 9.1.2(4)(i)).

[35] While the Commission did not require ISOs and RTOs like SPP to re-justify pre-existing tariff provisions that were not substantively affected by Order No. 890, whether the Commission found the longest-term matching requirement to be just and reasonable in 2001 in Docket No. ER01-1989-000 is irrelevant to deciding whether it continues to be just and reasonable today. A tariff provision found reasonable at one time does not preclude the Commission, as it has done here, from instituting a section 206 proceeding, and reviewing whether a provision continues to be just and reasonable. *See Md. PSC v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,169, at P 31 (2008). We also find unpersuasive SPP's claim that a new customer would have an incentive to quickly apply for the shortest possible term of service to "lock in" a short-term request if SPP were to adopt the matching language of the *pro forma* OATT. SPP's argument is unpersuasive because the matching language of the *pro forma* OATT does not provide an incentive to new customers to quickly apply for the shortest possible term. In fact, a new customer that wants to "win" the capacity from the existing customer has every incentive to submit a request for the longest possible term in order to make it difficult for the existing customer to match its request, thereby making it more likely that the new customer receives the capacity.

27. SPP argues that its longest-term matching requirement is just and reasonable and not unduly discriminatory, and promotes goals articulated in Order No. 890. We disagree. The Commission initially adopted section 2.2 of the *pro forma* OATT to give reservation priority to existing firm transmission customers when their contracts expire or become subject to renewal or rollover. The Commission stated that all firm transmission customers, upon expiration of their contracts or at the time their contracts become subject to renewal or rollover, should have the right to continue to take transmission service from their existing transmission provider subject to the then-existing requirements that the contract have a term of at least one year and the existing customer agree to match the rate and term of a request submitted by the potential customer.[36] The Commission also stated:

> Our policy rationale for giving an existing firm transmission customer (requirements and transmission-only), served under a contract of one year or more, a reservation priority (right of first refusal) when its contract expires is that it provides a mechanism for allocating transmission capacity when there is insufficient capacity to accommodate all requestors. If there are capacity limitations and both customers (existing and potential) are willing to pay for firm transmission service of the same duration, the right of first refusal provides a tie-breaking mechanism that gives priority to existing customers so that they may continue to receive transmission service.[37]

28. Accordingly, the Commission implemented this tie-breaking mechanism by drafting the *pro forma* OATT to provide that, if, at the time of the incumbent customer's rollover notification, a transmission provider's transmission system cannot accommodate all of the requests for transmission service, the incumbent customer must match a contract term at least "equal to a competing request" by any new eligible customer.[38]

29. Subsequently, in Order No. 890, the Commission evaluated whether section 2.2 of the *pro forma* OATT continued to be just and reasonable since it was first adopted in 1996. The Commission considered extensive comments on incumbent transmission customers' rights to rollover service based on the approximately eleven years of experience transmission service providers and transmission service customers had with the rollover provision adopted in Order No. 888.[39] As a result of this review, the

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[36] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,665.

[37] Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, at 30,197 (internal footnotes omitted).

[38] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at *pro forma* OATT, section 2.2.

[39] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1214-1265.

Commission found it necessary to revise the minimum contract terms and the notice requirement.[40] However, the Commission did not find it necessary to adopt any changes to the matching requirement adopted in Order No. 888.[41] The Commission stated that retaining the Order No. 888 *pro forma* matching requirement

> preserves the current policy goal of providing a mechanism for awarding capacity to those who value it most, as well as providing for a tie-breaking mechanism when needed that gives priority to existing customers so that they may continue to receive transmission service. Absent the requirement that the customer match the contract term of a competing request, transmission providers could be forced to enter into shorter-term arrangements that could be detrimental from both an operational standpoint (i.e., system planning) and a financial standpoint.[42]

30. In Order No. 890-B, in response to a request for clarification filed by Cargill, the Commission explained why a longest-term matching requirement is unreasonable. Cargill pointed out that although the Commission had affirmed the "equal to a competing request" language in Order No. 890, in Order No. 890-A the Commission appeared to have revised the *pro forma* OATT to include "longest-term" matching language. The Commission acknowledged that it had inadvertently revised the matching requirement language of the *pro forma* OATT, stating:

> As Cargill points out, the Commission's reference to the longest-term competing request could require a rollover customer taking long-term service to match the length of any competing long-term request. Under the Commission's existing precedent regarding section 2.2 of the *pro forma* OATT, *however, there would be only one potential competitor for rollover customers seeking long-term service, i.e., the first customer in the queue requesting competing service.*[] We did not intend to modify this policy and, therefore, revise the language of section 2.2 to require customers rolling over their service to accept a contract term at least equal to a competing request. Any such competing request should be identified by the transmission provider consistent with the reservation priorities stated in the *pro forma* OATT.[43]

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[40] *See id.* P 1231.

[41] *Id.* P 1255.

[42] *Id.* (internal citations omitted).

[43] Order No. 890-B, 123 FERC ¶ 61,299 at P 152 (citing *Tenaska Power*, 106 FERC ¶ 61,230; Cargill *Power*, 122 FERC ¶ 61,068) (emphasis added) (footnote omitted).

31. Thus, the Commission confirmed that the first customer in the queue requesting service over a rollover eligible path is the potential competitor to the rollover customer. This is consistent with section 13.2 of the *pro forma* and SPP OATTs, which provide that reservation priority for new transmission service requests is based on the first-come, first-served principle. The rollover rights provision of the *pro forma* OATT complements section 13.2 by providing for a tie-breaking mechanism, designed to give an existing customer a reservation priority to allow it to continue to take transmission service subject to the terms of section 2.2 while respecting the first-come, first-served principle.[44] In contrast, SPP's section 2.2 contradicts the first-come, first-served principle by requiring the rollover customer to match the longest-term request, which may not be the first request in the queue. This contradiction was highlighted in *Cargill Power*.

32. In *Cargill Power*, the Commission denied a complaint in which Cargill argued that application of SPP's longest-term matching requirement violated the first-come, first-served principle of Order No. 888. The Commission found that SPP correctly applied the provisions of section 2.2 of its OATT as then effective by requiring the incumbent customer to match the term of a transmission service request submitted by a customer other than Cargill, which had a term longer than Cargill's earlier submitted transmission service request.[45] At the time the Commission acted on that complaint, SPP's filing to comply with the revisions to section 2.2 under Order No. 890 was pending before the Commission. The Commission therefore declined to address in that complaint proceeding how SPP should process competing requests for rollover in the future. Based on the facts before the Commission at that time, the Commission found that it would be premature for it to make such a determination and would prejudge how SPP should process competing requests for rollover under its then pending Order No. 890 OATT.[46] Subsequently, in initiating the instant proceeding and soliciting comments directly addressing the justness and reasonableness of SPP's section 2.2, we are now able to make such a determination.

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[44] While section 13.2 of the *pro forma* OATT provides that reservation priority for new transmission service requests is based on the first-come, first-served principle and section 2.2 of the *pro forma* OATT respects the first-come, first-served principle, the Commission has accepted alternative methods for processing other types of service requests. *See, e.g.*, *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114 (2009) (accepting SPP's reformed large generator interconnection procedures, which includes procedures to study interconnection requests in clusters).

[45] *See Cargill Power*, 122 FERC ¶ 61,068, at P 16 (2008).

[46] *See id.* P 16 & n.5.

33. Moreover, SPP's longest-term matching requirement transforms section 2.2 from a provision meant to address reservation priority for customers under existing contracts when there is insufficient capacity to accommodate all requests to one affecting reservation priority among customers seeking new transmission service. By requiring the incumbent customer to agree to match the longest-term request rather than the first request in the queue, SPP's OATT creates a form of competition among potential customers that was not contemplated under Order No. 888 or Order No. 890.

34. The reservation priority provisions of the *pro forma* OATT are designed to allow customers to consider their transmission service requirements and submit requests that best meet their needs. When a potential customer seeks new transmission service, it evaluates its requirements and submits a transmission service request based on those requirements. SPP states that if a request for transmission service over a rollover eligible path is "trumped" by a later-submitted request with a longer term, the earlier customer can always submit another request with a term longer than that submitted by the later customer.[47] However, a customer should not be forced to add months or years to its term, which it may not be in a position to do based on its business needs, in order to maintain its position in the queue, whether the transmission path the customer seeks to use is one subject to rollover rights or one that is not. This would eviscerate the first-come, first-served principle that has historically provided a non-discriminatory means of reserving priority for transmission service.

35. Furthermore, SPP's longest-term matching requirement has the perverse effect of causing two disparate results depending on whether the incumbent customer initially exercises its rollover right but subsequently chooses not to match the competing term, or whether the incumbent customer chooses not to submit a request to rollover its service at all. In the first instance, the transmission capacity is awarded to the new service customer requesting the longest term, not the first customer in the queue. However, if the incumbent does not exercise its rollover rights at all, the capacity is effectively returned to the queue to be made available to customers on a first-come, first-served basis. It is unreasonable for a customer seeking new transmission service over a rollover eligible path to be unable to rely on its queue position as an indicator of whether or not it will receive the requested service, if this depends on whether the incumbent customer chooses to exercise its rollover right but does not ultimately match the competing request, or whether the incumbent customer chooses not to exercise its rollover right at all.

36. SPP also argues that its longest-term matching requirement supports the Order No. 890 policy goals of awarding capacity to those that value it the most and maximizing the use of the transmission system. As discussed above, in Order No. 890, the Commission evaluated the Order No. 888 rollover provision, finding it necessary to

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[47] *See* SPP Reply Comments at 10.

modify only the minimum term and notice requirements in order to ensure that the rights and obligations of a rollover customer bear a rational relationship to the planning and construction obligations imposed on the transmission provider by the rollover rights.[48] The Commission specifically examined whether a change to the matching requirement was needed and found that the existing requirement for an incumbent customer to match a contract term at least equal to a competing request by an eligible customer preserves the current policy goal of providing a mechanism for awarding capacity to those who value it most.[49] The Commission also found that, absent the requirement that the customer match the contract term of a competing request (i.e., a term at least equal to a competing request), transmission providers could be forced to enter into shorter-term arrangements that could be detrimental from both an operational standpoint (i.e., system planning) and a financial standpoint.[50] Accordingly, the revisions to the rollover rights provision adopted in Order No. 890, coupled with the retention of the matching requirement of section 2.2 of the Order No. 888 *pro forma* OATT balances the original goals underlying the creation of rollover rights for existing customers with the needs for transmission providers to plan for their systems. SPP's longest-term matching requirement upsets this balance.

37. Finally, we disagree with SPP that its rollover provisions are similar to those under the tariffs of the Midwest ISO and PJM, and as such should be found to be just and reasonable. The Midwest ISO's and PJM's tariffs, which include the *pro forma* OATT's "equal to a competing request" language,[51] preserve the first-come, first-served principle underlying the reservation priorities of the *pro forma* OATT. In contrast, SPP's rollover provision contravenes the first-come, first-served principle by requiring the incumbent customer to match the longest-term request and, in the event the incumbent customer chooses not to match, the SPP tariff would award the available capacity to the customer with the longest term rather than the first customer in the queue, as discussed in this order. Therefore, for the reasons discussed above, we find that the longest-term competing requirement of section 2.2 of SPP's OATT is unjust and unreasonable, and unduly discriminatory. We direct SPP to revise its section 2.2 to conform to the matching language of the *pro forma* OATT within 30 days of the date of issuance of this order.

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[48] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231.

[49] *Id.* P 1255.

[50] *See id.*

[51] *See* PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 45; Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 315.

The Commission orders:

SPP shall submit a filing revising section 2.2 of its OATT within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Norris voting present.

(S E A L)

Kimberly D. Bose,
Secretary.