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PROPOSED CHANGES TO OPEN-ACCESS RULES AIM TO IMPROVE CLARITY, TRANSPARENCY OF TRANSMISSION USE & PLANNING

The Federal Energy Regulatory Commission today proposed amendments to regulations adopted in Order Nos. 888 and 889 to ensure transmission services are provided in a nondiscriminatory and just and reasonable basis. The proposal marks the first major reform of the open-access transmission tariff (OATT) enacted 10 years ago.

“We act today to strengthen the OATT and address deficiencies that have become apparent over the decade since its adoption, particularly in the areas of ATC calculation and transmission planning,” said Commission Chairman Joseph T. Kelliher. “These reforms will ensure that the OATT achieves its original purpose – remedying undue discrimination in the provision of transmission service. The reforms are not, however, designed to create new market structures, divest control over transmission, impinge on state jurisdiction, or weaken the protection of native load customers.”

The Commission concluded as long ago as December 1999, in Order No. 2000, that transmission providers retained the incentive and ability to discriminate against third-party users of their transmission systems, particularly in areas where the *pro forma* OATT left the transmission provider with significant discretion. In Order No. 2003, the Commission similarly found that interconnection requirements could be used to discriminate. Today’s notice of proposed rulemaking (NOPR) is another action by the Commission designed to enhance the regulatory framework established in Order No. 888 and Order No. 889.

The Commission received more than 4,000 pages of initial and reply comments in response to its September 2005 Notice of Inquiry (NOI) seeking comment on necessary reforms of the Order No. 888 *pro forma* OATT.

“In proposing to reform Order No. 888, we have relied heavily on the comments,” the Commission said in today’s NOPR, calling the comments received on that NOI and another on calculating available transmission transfer capability “informative and useful.”

Through the new OATT embodied in today's proposal, the Commission seeks to increase transparency and clarity in the planning and use of the transmission system while addressing ambiguities in the original *pro forma* OATT. The lack of specificity in the *pro forma* OATT creates opportunities for discrimination and makes discrimination more difficult to detect when it does occur, the Commission said.

Among the OATT reforms the Commission is proposing are the following:

- **CONSISTENCY AND TRANSPARENCY OF ATC CALCULATIONS.** The absence of a consistent methodology to determine available transfer capability (ATC) provides discretion to transmission providers to deny service to competitors. The Commission proposes to make certain elements of ATC more consistent, and directs public utilities, working through the North American Electric Reliability Council, to address identified areas of concern. It also increases the transparency of ATC calculations through additional *pro forma* OATT requirements and postings on the open-access same-time information systems (OASIS) required under Order No. 889.
- **TRANSMISSION PLANNING, REGIONAL COORDINATION AND TRANSPARENCY.** Vertically integrated utilities lack the incentive to relieve transmission constraints in a nondiscriminatory manner, and existing planning processes lack transparency, each of which contributes to potential undue discrimination in, and otherwise creates barriers to, infrastructure development. The Commission proposes to require transmission providers to participate in an open and transparent regional transmission planning process that adheres to the NOPR's planning principles.
- **TRANSMISSION PRICING.** The Commission proposes to reform pricing policies related to imbalances, credits for customer-owned transmission facilities and capacity reassignment.
- **NON-RATE TERMS AND CONDITIONS.** The NOPR proposes to revise the rules under which a transmission provider must provide rollover rights, and proposes to require the provision of hourly firm point-to-point service. The Commission also concludes that existing methods of evaluating requests for long-term point-to-point service may no longer be just, reasonable and may be unduly discriminatory. The NOPR proposes that transmission providers must use all available redispatch options to satisfy a request for firm point-to-point services and, at the transmission customer's option, study redispatch options before the customer is obligated to incur the costs and delays of a transmission facilities study.
- **INCREASED TRANSPARENCY.** In addition to the ATC and planning reforms, the Commission proposes to require transmission providers to post all business rules, practices and standards on OASIS, and to include credit review procedures in their OATT. The NOPR also would require transmission providers and network customers to use the OASIS to request designation of a new network resource and to terminate the designation of an existing resource.

- **ENFORCEMENT.** The Commission proposes that transmission providers post on OASIS specific performance metrics related to their completion of required studies to evaluate transmission requests. The NOPR also proposes operational penalties and addresses the treatment of operational penalty revenues.

The NOPR retains the use of functional unbundling in conjunction with the OATT to promote competitive wholesale power markets and reduce barriers to market entry through the control of transmission, but does not impose any particular market structure on the industry.

The Commission also reaffirms many of the core elements of Order No. 888:

- **COMPARABILITY.** The NOPR retains the comparability requirement, in which third-party users of the transmission system must be dealt with in a manner comparable to the transmission owner's use of the system.
- **SERVICES.** The Commission proposes to retain the two forms of transmission service, network and point-to-point.
- **NATIVE LOAD.** The NOPR retains the protection of native load customers embodied in Order No. 888, consistent with the new requirement in the Energy Policy Act of 2005 that load-serving entities be provided transmission rights to meet their service obligations.
- **APPLICABILITY.** The Commission reaffirms its decision in Order No. 888 to exercise jurisdiction over unbundled wholesale transmission service, but not the transmission component of bundled retail rates.
- **RECIPROCITY.** The NOPR would maintain the Commission's current approach to reciprocity for nonjurisdictional transmission owners.

Comments on the NOPR are due 60 days after publication in the *Federal Register*.