

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM05–17–003 and RM05–25–003; Order No. 890–B]

Preventing Undue Discrimination and Preference in Transmission Service

Issued June 23, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission affirms its basic

determinations in Order Nos. 890 and 890–A, granting rehearing and clarification regarding certain revisions to its regulations and the *pro forma* open-access transmission tariff, or OATT, adopted in Order Nos. 888 and 889 to ensure that transmission services are provided on a basis that is just, reasonable, and not unduly discriminatory. The reforms affirmed in this order are designed to: Strengthen the *pro forma* OATT to ensure that it achieves its original purpose of remedying undue discrimination; provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission’s enforcement; and increase transparency

in the rules applicable to planning and use of the transmission system.

DATES: *Effective Date:* This rule will become effective September 8, 2008.

FOR FURTHER INFORMATION CONTACT: W. Mason Emmett (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6540.

Daniel Hedberg (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

	Paragraph Number
I. Introduction	1
II. Reforms of the OATT	7
A. Consistency and Transparency of ATC Calculations	7
1. Consistency	8
2. Transparency	25
B. Transmission Pricing	38
1. Energy and Generation Imbalances	38
2. Credits for Network Customers	46
3. Capacity Reassignment	68
4. Operational Penalties	87
5. “Higher Of” Pricing Policy	102
6. Other Ancillary Services	109
C. Non-Rate Terms and Conditions	116
1. Modifications to Long-Term Firm Point-to-Point Service	116
2. Rollover Rights	141
3. Acquisition of Transmission Service	155
4. Designation of Network Resources	162
5. Clarifications Related to Network Service	216
6. OATT Definitions	220
III. Information Collection Statement	250
IV. Document Availability	251
V. Effective Date and Congressional Notification	254
Appendix A: Petitioners’ Acronyms	
Appendix B: <i>Pro Forma</i> Open Access Transmission Tariff	

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order on Rehearing and Clarification

I. Introduction

1. On February 16, 2007, the Commission issued Order No. 890,¹ addressing and remedying opportunities for undue discrimination under the *pro forma* Open Access Transmission Tariff (OATT) adopted in Order No. 888.² The

pro forma OATT was intended to foster greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service. In the ten years since Order No. 888, however, flaws in the *pro forma* OATT undermined its ability to realize the core objective of remedying undue discrimination. The Commission acted in Order No. 890 to correct these flaws

by reforming the terms and conditions of the *pro forma* OATT in several critical areas, including the calculation of available transfer capability (ATC), the planning of transmission facilities, and the conditions of services offered by each transmission provider.

2. In Order No. 890–A, the Commission largely affirmed the reforms adopted in Order No. 890. The Commission noted that work was well underway to develop consistent practices governing the calculation of ATC in coordination with the North American Electric Reliability Corporation (NERC) and the North American Energy Standards Board (NAESB). When complete, the reliability standards developed through NERC and the business practices developed

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh’g*, Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890–A).

² *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded*

Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (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) (*TAPS v. FERC*), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

through NAESB will eliminate the broad discretion that transmission providers have in calculating ATC, increasing nondiscriminatory access to the grid and ensuring that customers are treated fairly in seeking alternative power supplies.

3. The Commission also noted the substantial resources that transmission providers have dedicated to the development of transmission planning processes in response to Order No. 890. Transmission planning is critical because it is the means by which customers consider and access new sources of energy and have an opportunity to explore the feasibility of non-transmission alternatives. It is therefore vital for each transmission provider to open its transmission planning process to customers, coordinate with customers regarding future system plans, and share necessary planning information with customers.

4. In addition, transmission providers have implemented new service options for long-term firm point-to-point customers and adopted modifications to other services. Instead of denying a long-term request for point-to-point service because as little as one hour of service is unavailable, transmission providers now consider their ability to offer a modified form of planning redispatch or a new conditional firm option to accommodate the request. This increases opportunities to efficiently utilize transmission by eliminating artificial barriers to use of the grid. Charges for energy and generation imbalances also have been standardized, including relaxed penalties for intermittent resources. This standardization reduces the potential for undue discrimination, increases transparency, and reduces confusion in the industry that resulted from the prior lack of consistency.

5. The Commission concluded that, taken together, these and other reforms adopted in Order No. 890 will better enable the *pro forma* OATT to achieve the core objective of remedying undue discrimination in the provision of transmission service. The Commission therefore rejected requests to eliminate, or substantially modify, the various reforms adopted in Order No. 890. The Commission did, however, grant rehearing and clarification regarding certain revisions to its regulations and the *pro forma* OATT.

Several petitioners have sought further rehearing and clarification of the

Commission's determinations in Order No. 890-A.³

6. The Commission largely affirms the determinations reached in Order No. 890-A, granting limited rehearing and clarification to address certain specific matters raised by petitioners. Revisions to the *pro forma* OATT are required to implement several of these determinations, although none disturb the fundamental nature of the reforms adopted in Order No. 890. We therefore do not anticipate any difficulty in their implementation or disruption in ongoing compliance efforts. We direct transmission providers that have not been approved as RTOs or ISOs, and whose facilities are not in the footprint of an RTO or ISO, to submit a Federal Power Act (FPA) section 206 filing that contains the revised non-rate terms and conditions of the *pro forma* OATT stated in Appendix B within 60 days of publication of this order in the **Federal Register**. We direct RTO and ISO transmission providers, transmission providers whose facilities are in the footprint of an RTO or ISO, and WSPP to submit an FPA section 206 filing that contains the revised non-rate terms and conditions of the *pro forma* OATT as stated in Appendix B within 90 days of publication of this order in the **Federal Register**.

II. Reforms of the OATT

A. Consistency and Transparency of ATC Calculations

7. In Order No. 890-A, the Commission affirmed its conclusion in Order No. 890 that the lack of consistency and transparency in the methodology for calculating ATC creates the potential for undue discrimination in the provision of open access transmission service. To remedy this lack of consistency and transparency, the Commission directed public utilities, working through the NERC reliability standards and NAESB business practices development processes, to produce workable solutions to implement ATC-related reforms adopted by the Commission. A number of petitioners seek rehearing and/or clarification regarding the Commission's ATC-related determinations in Order No. 890-A, which we address below.

1. Consistency

a. Necessary Degree of and Process To Achieve Consistency

8. The Commission affirmed the decision in Order No. 890 to require

³ A list of petitioners filing requests for rehearing and/or clarification is provided in Appendix A.

consistency of all ATC components⁴ and certain definitions, data inputs, data exchange, and modeling assumptions in order to reduce the potential for undue discrimination in the provision of transmission service. In response to petitioner requests, the Commission clarified that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface, regardless of whether they use the same or different ATC methodologies. The Commission also reiterated that its regulations require the posting of ATC values associated with a particular path, not available flowgate capacity (AFC) values associated with a flowgate. The Commission clarified, however, that a transmission provider is free to post both ATC and AFC values. The Commission further clarified that transmission-owning utilities in an RTO region can request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver.

Requests for Rehearing and Clarification

9. Duke, EEI, and E.ON U.S. object to the requirement that ATC values be consistent on either side of an interface and suggest alternatively that transmission providers be required to achieve consistent TTC values on either side of the interface. Duke contends that achieving consistency in TTC values will not necessarily result in consistent ATC values. EEI agrees, arguing that ATC will be identical on both sides of an interface only in the unlikely event that the transmission providers each simultaneously receive and process corresponding transmission requests and schedules for the same type of product. EEI contends that transmission providers therefore will have to expend substantial effort and resources to constantly monitor and investigate differences in ATC values, the burden of which EEI argues outweighs any benefit realized.

10. Joined by E.ON U.S., Southern suggests that the Commission clarify that "consistent ATC values" does not mean that ATC or TTC values on either side of an interface must be identical. Southern argues that interpreting "consistent" to mean "identical" would be contrary to reliable planning and not reasonably achievable. Southern contends that there are a number of reasons why adjacent transmission

⁴ The ATC components are total transfer capability (TTC), existing transmission commitments (ETC), capacity benefit margin (CBM), and transmission reserve margin (TRM).

providers may have varying ATC and TTC values on an interface, including partial path transmission service, CBM and TRM, and the impacts of multiple interfaces.

11. EEI and E.ON U.S. also request the Commission clarify that the process of achieving consistency of TTC values should occur through the ongoing NERC and NAESB processes. They argue that the Commission in Order No. 890 only required the consistency of components, definitions, data and assumptions with respect to ATC and its components, including TTC. They contend that the Commission did not require consistency in ATC values or provide for a means to reconcile differences in ATC calculations performed by multiple transmission providers. EEI and E.ON U.S. suggest that it may take additional time for NERC and NAESB to develop standards and business practices to achieve consistency in TTC values or reconcile differences between ATC values at common interfaces. Duke requests confirmation that compliance with the NERC and NAESB methodologies regarding TTC and related calculations, once they have been adopted and implemented, is sufficient to comply with the consistency requirement imposed in Order No. 890-A.

12. Entergy requests the Commission to clarify that Order No. 890-A was not intended to reverse the Commission's prior determination that Entergy and other transmission providers can rely on the scenario analyzer to satisfy the ATC posting requirements in part 37 of the Commission's regulations.⁵ Although Entergy uses an AFC methodology, it posts ATC values on a path-specific basis by providing transmission customers a scenario analyzer tool that allows them to instantaneously evaluate transfer capability on a source-to-sink basis. Entergy states that its scenario analyzer is also relied on by other transmission providers, such as the Southwest Power Pool, Inc. and the Midwest Independent Transmission System Operator, Inc. Entergy states that the scenario analyzer will notify the customer the proposed request could be approved if sufficient AFC exists.

13. Entergy notes that the Commission has previously concluded that "Entergy's AFC methodology meets the established minimum posting requirements for transmission capability set forth in Order No. 889,"⁶ which Entergy argues were not changed in

Order Nos. 890 or 890-A. If the Commission intended in Order No. 890-A to modify the requirements for posting ATC, or reverse its determination that the scenario analyzer complies with the posting requirements, Entergy requests clarification regarding what specific actions are required of transmission providers that rely on the AFC process. Entergy also asks that those transmission providers be allowed to continue using the scenario analyzer until those measures are in place. Entergy states that the sole purpose of the scenario analyzer has been to comply with the Commission's posting requirements and that transmission providers should not be required to maintain two different and duplicative systems for meeting those requirements.

14. E.ON U.S. requests clarification that all transmission-owning utilities within an RTO region can request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver, and not just transmission-owning utilities that are members of the RTO. E.ON U.S. states that many of its neighboring systems utilize AFC instead of ATC, requiring it to calculate AFC in order to transact with the adjacent RTO members, to alleviate seams issues with these neighboring systems, and increase transparency for across the border transactions. E.ON U.S. contends that AFC calculations are much more accurate means to determine if capacity is available on a flowgate than are ATC calculations. If the Commission declines to grant the requested clarification, E.ON U.S. seeks rehearing on the grounds that the Commission is creating new seams where they do not currently exist by requiring transmission capacity to be calculated differently on both sides of the border for such transactions.

Commission Determination

15. The Commission affirms the clarification provided in Order No. 890-A that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface.⁷ We disagree with petitioners arguing that "consistent" ATC values should not be interpreted as identical. We recognize that factors such as timing of reservation requests, acceptances, and confirmations, and multiple interfaces between and among transmission providers, can make it difficult to achieve coincidental, identical postings of ATC values on both sides of an interface. However, as

the Commission explained in Order No. 890, if all of the ATC components and certain data inputs and assumptions are consistent, the ATC calculation methodologies being finalized by NERC through the reliability standards development process should produce predictable and sufficiently accurate, consistent, equivalent, and replicable results.⁸ We therefore disagree that the directive to coordinate and exchange data and assumptions to achieve consistent ATC values on either side of an interface was newly imposed in Order No. 890-A. The Commission simply clarified that the requirement stated in Order No. 890 applies equally to calculations of ATC on either side of an interface.

16. Public utilities have already been directed to work through the NERC and NAESB processes to achieve such consistency in ATC and TTC values. In response to Duke, the Commission will address whether the resulting reliability standards and business practices adequately satisfy this consistency requirement on review of those reliability standards and business practices. We note that public utilities were recently granted an extension of time to finalize their work through the NERC and NAESB processes. In Order No. 890, the Commission directed each transmission provider to file a revised Attachment C to its OATT to incorporate any changes associated with the revised reliability standards and business practices within 60 days of completion of the NERC and NAESB processes. We clarify that these revised Attachment C filings are due 60 days after the date on which the relevant reliability standards or business practices takes effect, not their submission for Commission review.

17. We grant the clarification requested by Entergy regarding the Commission's February 11, 2004 determination that Entergy's AFC methodology meets the minimum posting requirements for transmission capability set forth in Order No. 889.⁹ The Commission did not amend in Order Nos. 890 or 890-A the obligation for transmission providers to post ATC values associated with a particular path instead of AFC values associated with a flowgate.¹⁰ Prior determinations by the Commission that a particular practice satisfies that obligation, or waiving that

⁵ Citing *Entergy Servs., Inc.*, 106 FERC ¶ 61,115 (2004); 18 CFR 37.6(b)(2)(i) (2007).

⁶ See *Entergy Servs., Inc.*, 106 FERC ¶ 61,115 at P 50.

⁷ See Order No. 890-A at P 52.

⁸ See Order No. 890 at P 210.

⁹ See *Entergy Servs., Inc.*, 106 FERC ¶ 61,115 at P 50.

¹⁰ See 18 CFR 37.6(b)(1)(i); see also Order No. 890 at P 211; Order No. 890-A at P 51.

obligation altogether, therefore remain intact.¹¹

18. We disagree with E.ON U.S. that non-member transmission-owning utilities within an RTO region are similarly situated to member transmission-owning utilities, which the Commission noted in Order No. 890–A may request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver. RTO members that have retained control over certain transmission facilities operate those transmission facilities in coordination with the RTO. In comparison, non-RTO members provide transmission service independently and, therefore, for purposes of ATC calculation are similar to a transmission provider outside the RTO region. Nevertheless, we reiterate that a transmission provider is free to post both ATC and AFC values if it believes such postings provide additional transparency.¹²

b. ATC Components—CBM and TRM

19. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to require public utilities, working through NERC and NAESB, to develop clear standards and business practices for how the CBM value is determined, allocated across transmission paths and flowgates, and used. The Commission also affirmed the requirement that transmission providers design their transmission charges so that the class of customers not benefiting from the CBM set-aside, *i.e.*, point-to-point customers, does not pay a transmission charge that includes the cost of the CBM set-aside. The Commission explained that only network customers and the transmission provider on behalf of its native load may request that transmission capacity be set aside as CBM and, therefore, only those users of the system should bear its costs. The Commission also rejected requests to use CBM for reserve-sharing arrangements, reiterating that TRM is the appropriate category for reserve-sharing.

Requests for Rehearing and Clarification

20. Southern requests rehearing of the Commission's statement that non-firm point-to-point transmission customers only receive an indirect benefit from CBM. Southern contends that under normal conditions without generation deficiencies, non-firm point-to-point customers may use CBM set-aside capacity. Southern states that it has not

called upon CBM to meet a generation deficit emergency in six years, resulting in that capacity consistently being made available to non-firm customers. Southern argues that non-firm customers therefore directly benefit from CBM and should bear transmission charges that include the cost of the capacity they are actually utilizing. If the Commission does not wish to make a generic determination, Southern asks the Commission to clarify that the issue of whether non-firm customers benefit from CBM will be addressed on a case-by-case basis.

21. TDU Systems request clarification of the Commission's statement in Order No. 890–A that TRM is the appropriate category for reserve sharing arrangements. TDU Systems request confirmation that, if a transmission provider is using another form of set-aside for reserve sharing purposes, such as CBM, the transmission providers' customers are entitled to comparable use of the form of set-aside. TDU Systems argue that comparability cannot be achieved where the transmission provider does not offer use of transmission capacity set-asides to LSE customers comparable to the use that the transmission provider allows itself.

Commission Determination

22. The Commission affirms the requirement adopted in Order No. 890, and affirmed in Order No. 890–A, that transmission providers design their transmission charges so that the class of customers not benefiting from the CBM set-aside, *i.e.*, point-to-point customers, does not pay a transmission charge that includes the cost of the CBM set-aside.¹³ We disagree with Southern that non-firm customers benefit directly from the CBM set-aside. The Commission acknowledged in Order No. 890–A that capacity set aside for CBM may be made available to non-firm customers when not otherwise in use.¹⁴ That benefit, however, is indirect and inferior to the direct benefits enjoyed by those entities that have the exclusive right to request the set-aside in the first instance.

23. The Commission acknowledged in Order No. 890–A that use of capacity set aside for CBM by non-firm customers may result in revenues that are credited to the transmission provider's cost of service, to the benefit of point-to-point customers.¹⁵ The Commission stated its expectation that transmission providers would address in rate design filings any possibility for particular customers to

receive an inappropriate credit for non-firm use of capacity set aside for CBM. Further clarification is unnecessary.

24. With regard to reserve sharing arrangements, the Commission clearly stated in Order No. 890–A that TRM is the appropriate category for reserve sharing arrangements and that, in comparison, CBM is used to meet generation reliability criteria in times of emergency generation deficiencies.¹⁶ Therefore, transmission providers must use TRM, not CBM, for reserve sharing arrangements and make ATC set aside for that purpose available to all LSEs on a comparable basis for any reserve sharing arrangements they may have.

2. Transparency

25. In Order No. 890–A, the Commission clarified that all data used to calculate ATC and TTC for any constrained paths and any system planning studies or specific network impact studies performed for customers are to be made available on request, regardless of whether the customer is non-affiliated or affiliated with the transmission provider. The Commission also clarified that underlying load forecast assumptions to be posted on OASIS should include economic and weather-related assumptions. The Commission concluded that posting load forecast and actual load data on a control area and LSE level does not raise serious competitive implications. The Commission stated that it would consider requests for exemption from this posting requirement on a case-by-case basis if there is customer-specific information deemed confidential by the affected customer that impedes the ability of the transmission provider to post this data.¹⁷

26. The Commission further clarified that transmission providers must make available, upon request and subject to appropriate confidentiality protections and CEII requirements, certain modeling data including load flow base cases and generation dispatch methodology and, subject to additional reasonable and applicable generator confidentiality limitations, production cost models (including assumptions, settings, study results, input data, etc.). The Commission declined to require transmission providers to post this information on OASIS.

Requests for Rehearing and Clarification

27. Duke seeks clarification of the requirement to post information requested by an affiliate when that information is already available to the

¹¹ See Order No. 890–A at P 36.

¹² See Order No. 890–A at P 51.

¹³ See Order No. 890 at P 263; Order No. 890–A at P 86.

¹⁴ See Order No. 890–A at P 87.

¹⁵ *Id.*

¹⁶ *Id.* P 85.

¹⁷ *Id.* P 143.

public. Duke suggests that only a notice that an affiliate requested a publicly-available study needs to be posted, and not the actual study, because the additional effort of posting the actual study would be redundant, burdensome, and without purpose.

28. Duke, EEI and Southern request rehearing to eliminate the requirement to post the underlying assumptions used to develop load forecasts on a daily basis, including economic and weather-related assumptions. They claim that the requirement is a substantial modification of regulations adopted in Order No. 890, is unduly burdensome, and may cause transmission providers to violate their contractual obligations by releasing proprietary assumptions and forecasts obtained from forecasting service providers. Southern also complains that it is unclear what is meant by "economic assumptions" and any requirement to provide daily updates of such assumptions would be unduly burdensome given the amount of effort required and negligible benefit that customers might gain from the information.

29. Duke argues that the Commission's expansion of posting requirements to include load forecast assumptions daily is an entirely new requirement for which notice and comment has not been provided. Duke contends that Constellation's request for rehearing of Order No. 890 mentioning load forecast assumptions was inadequate to provide notice because Constellation did not request that load forecast assumptions be posted on a daily basis or that load forecast assumptions unrelated to ATC calculations be posted.

30. If the Commission declines to eliminate this posting requirement, Duke suggests that it be amended to require a one-time (*i.e.*, not daily) posting of a list of factors that go into the peak load forecast, such as day of the week, a day's status as holiday or non-holiday, temperature, dew point, precipitation forecast, *etc.* If the Commission continues to require the daily posting of information, Duke seeks clarification regarding the granularity of such information given that it could vary widely over a control area. Duke questions whether, for example, PJM would have to post weather forecasts for each of its subregions. Until the Commission grants the requested clarification, Duke argues that the posting requirement should be waived or transmission providers should be permitted to satisfy the requirement by reference to commercial/government weather websites.

31. Southern seeks clarification of the requirement to make available, on request, the modeling data identified in paragraph 148 of Order No. 890-A. Southern states that it does not use all of the specified modeling data to calculate ATC, TTC, CBM and/or TRM. In particular, Southern argues that neither production cost models nor special protection systems and operation guides are used in its ATC calculations and that production cost models in particular are not even maintained by its transmission function given its highly sensitive nature. Southern asks the Commission to clarify that transmission providers are required to provide only the specified modeling data actually used in performing those calculations and that a transmission provider is not required to manufacture and/or produce the data in the event it does not use a particular input in its ATC calculations.

32. Duke also argues that production cost models and generation dispatch methodologies typically contain commercially sensitive or proprietary information or information that should not be released to the public. Duke acknowledges that the Commission stated that availability of production cost models would be subject to reasonable and applicable generator confidentiality limitations,¹⁸ but argues that still would allow employees or consultants of competing entities to be provided access to sensitive data. Duke therefore asks the Commission to confirm that reasonable and applicable generator confidentiality limitations means that the proprietary/sensitive information may be released only to transmission function personnel that are restricted from further disclosure, including to their own merchant functions. Duke also requests clarification that the transmission provider's merchant/generation function and third-parties are to be treated identically as to their right to classify which information that they have given to a transmission provider is proprietary/sensitive, in accordance with Commission policies.

Commission Determination

33. The Commission clarifies in response to Duke that, when an affiliate requests information that is already available to the public, the transmission provider need only post a notice that an affiliate requested the particular information, not the actual information. This clarification applies, however, only to those instances in which the actual

information is already publicly available.

34. We affirm the requirement that each transmission provider post on a daily basis its load forecast, including underlying assumptions, and actual daily peak load for the prior day.¹⁹ In the NOPR, the Commission specifically raised the possibility of requiring transmission providers to make available their underlying load forecast assumptions for all ATC calculations.²⁰ The Commission adopted that proposal in Order No. 890, but failed to amend its regulations accordingly.²¹ The Commission corrected that oversight in Order No. 890-A.²² We therefore disagree with Duke that transmission providers were not on notice that posting of load forecast data and related assumptions might be required.

35. We clarify, however, that the Commission intended for transmission providers to post the underlying factors used to make load forecasts that have a significant impact on calculations, such as temperature forecasts, not all economic and other data that underlies each and every daily load forecast. Transmission providers must post a description of their load forecast method including how economic and weather assumptions are used in load forecasting. The Commission's intent is to increase transparency in the transmission provider's process of forecasting, providing assurance to customers that loads are consistently being forecast using methodologies which are not subject to daily manipulation to favor affiliates.

36. We also affirm the requirement to make available, upon request and subject to appropriate confidentiality protections and CEII requirements, certain modeling data including load flow base cases and generation dispatch methodology and, subject to additional reasonable and applicable generator confidentiality limitations, production cost models (including assumptions, settings, study results, input data, *etc.*).²³ We clarify in response to Southern that a transmission provider is not required under Order Nos. 890 or 890-A to manufacture or otherwise make available modeling data that it does not use in its ATC calculations. However, if the specified modeling data are used for the calculation of ATC, or any of its components, they must be

¹⁹ 18 CFR 37.6(b)(3)(iv) (2007).

²⁰ See *Preventing Undue Discrimination and Preference in Transmission Services*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,603, at P 194 (2006) (NOPR).

²¹ See Order No. 890 at P 416.

²² See Order No. 890-A at P 143.

²³ See Order No. 890-A at P 148.

¹⁸ Citing Order No. 890-A at P 148.

made available as required in Order No. 890–A.

37. We agree with Duke that production cost models and generation dispatch methodologies may contain commercially sensitive or proprietary information. Transmission providers are therefore permitted to condition the release of such information on appropriate confidentiality restrictions. With regard to production costs models, reasonable applicable generator confidentiality limitations could include, among other things, restrictions on the release of proprietary and commercially sensitive information to those engaged in the marketing, sale, or purchase of electric power at wholesale. We agree that the transmission provider's merchant and/or generation personnel and third-parties are to be treated identically as to their right to classify proprietary or commercially sensitive information that they provide to a transmission provider, as well as their right to receive such data from the transmission provider.

B. Transmission Pricing

1. Energy and Generation Imbalances

a. Generator Imbalance Penalties

38. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to adopt standardized generator imbalance provisions in Schedule 9 of the *pro forma* OATT. The Commission clarified that a transmission provider only has to provide generator imbalance service from its own resources to the extent that it is physically feasible to do so (*i.e.*, the transmission provider is able to manage the additional potential imbalances without compromising reliability). Each transmission provider may state on its OASIS the maximum amount of generator imbalance service that it is able to offer from its resources based on an analysis of the physical characteristics of its system. Alternatively, a transmission provider may consider requests for generator imbalance service on a case-by-case basis, performing as necessary a system impact study to determine the precise amount of additional generation it can accommodate and still reliably respond to the imbalances that could occur.

39. The Commission clarified that neither of these options relieves the transmission provider of its obligation to provide generator imbalance service if it is able to acquire additional resources to do so. If it is not physically feasible for the transmission provider to offer generator imbalance service using its own resources, either because they do not exist or they are fully subscribed,

the transmission provider must attempt to procure alternatives to provide the service, taking appropriate steps to offer an option that customers can use to satisfy their obligation to acquire generator imbalance service as a condition of taking transmission service. If no such resources are available, the transmission provider must accept the use of dynamic scheduling to the extent a transmission customer has negotiated an appropriate arrangement with a neighboring control area.

Request for Clarification

40. E.ON U.S. seeks clarification of the time frame within which the transmission provider must post the availability of service (*e.g.*, an hourly, 24-hour, or monthly interval). E.ON U.S. also asks the Commission to clarify the time frame required for obtaining imbalance service from other sources and the extent to which a transmission provider is obligated to seek such resources. E.ON U.S. suggests that this obligation could be interpreted as requiring only a single search or a constant search for resources over a long period of time. E.ON U.S. seeks further clarification regarding the point in the process when the transmission provider must inform the generator that it must arrange for dynamic scheduling because no other option is available.

Commission Determination

41. The Commission affirms the decision in Order No. 890–A to allow a transmission provider to post on its OASIS the maximum amount of generator imbalance service it is able to offer without impairing reliability.²⁴ To the extent necessary, we clarify that a transmission provider must post the availability of generator imbalance service and seek imbalance service from other sources in a manner that is reasonable in light of the transmission provider's operations and the needs of its imbalance customers. What is reasonable for some imbalance customers and transmission providers may be unreasonable for others. We therefore decline to set a specific time frame within which the transmission provider must post the availability of generator imbalance service. For the same reason, we decline to set a generic time frame for obtaining imbalance service from other sources in the event it is not physically feasible to offer generator imbalance service using the transmission provider's resources.

42. In the event that there are no additional resources available to enable the transmission provider to meet its

obligation to provide generator imbalance service, the transmission provider must accept the use of dynamic scheduling by a transmission customer.²⁵ The transmission provider cannot, however, require the use of dynamic scheduling, since the customer may choose to make other alternative comparable arrangements to self supply generator imbalance service. If a customer chooses to use dynamic scheduling in this circumstance, it is the option and the responsibility of the transmission customer to seek out and appropriately negotiate dynamic scheduling with a neighboring control area. The transmission provider is required to accommodate the use of dynamic scheduling only to the extent the transmission provider is unable to provide generator imbalance service and the customer has negotiated appropriate arrangements with the relevant control areas.

b. Definition of Incremental Cost

43. In Order No. 890–A, the Commission granted rehearing of its decision to calculate incremental costs for the purpose of assessing imbalance charges based on the last 10 MW dispatched to supply the transmission provider's native load. The Commission determined that it is more reasonable to base imbalance charges on the actual cost to correct the imbalance, which may be different than the cost of serving native load. Accordingly, the Commission modified the definition to require transmission providers to use the cost of the last 10 MWs dispatched for any purpose, *i.e.*, to serve native load, correct imbalances, or to make an off-system sale.

Requests for Rehearing and Clarification

44. EEI and Southern argue that the Commission mistakenly used "*i.e.*" instead of "*e.g.*" when referring to the costs to be included in the calculation of charges for energy imbalance service and generator imbalance service. EEI contends that the specified purposes exclude costs to serve other customers, such as on-system customers who take partial requirements service from the transmission provider. EEI asks the Commission to clarify that it meant to use "*e.g.*" to indicate that the list of examples provided were non-exclusive. Southern similarly requests that Schedules 4 and 9 of the *pro forma* OATT be revised to use "*e.g.*" instead of "*i.e.*"

²⁴ Order No. 890–A at P 289.

²⁵ *Id.* P 290.

Commission Determination

45. The Commission grants rehearing of the definition of incremental cost as described in the preamble of Order No. 890-A and in Schedules 4 and 9 of the *pro forma* OATT. Those schedules define incremental cost and decremental cost as “the Transmission Provider’s actual average hourly cost of the last 10 MW dispatched for any purpose.”²⁶ We agree that use of the term “*e.g.*” instead of “*i.e.*” when referring to the types of energy to be included in the incremental cost calculation better reflects the Commission’s intent to include within that calculation the last 10 MW dispatched for any purpose. We revise the *pro forma* OATT accordingly.²⁷

2. Credits for Network Customers

46. In Order No. 890-A, the Commission affirmed its decision in Order No. 890 to sever the link in the *pro forma* OATT between joint planning and credits for new facilities owned by network customers. As the Commission explained in Order No. 890, the linkage between credits and joint planning gave the transmission provider an incentive to deny coordinated planning to avoid granting credits for customer-owned facilities. The Commission concluded that any efficiencies that may be lost by severing that link should be offset by the increased efficiencies resulting from the coordinated planning reforms adopted in Order No. 890, which the Commission noted will ensure that most, if not all, transmission facilities are planned on a coordinated basis.

47. The Commission similarly affirmed the decision to adopt a revised test to determine whether a network customer is eligible to receive credits for new facilities. Under the revised section 30.9 of the *pro forma* OATT, customers are eligible for credits for those facilities that are integrated with the operations of the transmission provider’s facilities; provided, that integration will be presumed for customer-owned facilities that, if owned by the transmission provider, would be eligible for inclusion in the transmission provider’s annual transmission revenue requirement as specified in Attachment H of the *pro forma* OATT. The Commission clarified in Order No. 890 that this revision did not alter the underlying integration standard. In order to satisfy the integration standard, the customer must

show that its new facility is integrated with the transmission provider’s system, provides additional benefits to the transmission grid in terms of capability and reliability, and can be relied on by the transmission provider for the coordinated operation of the grid.²⁸

48. The Commission explained in Order No. 890-A that adoption of the presumption of credits in section 30.9 was necessary to ensure comparability between network customers and transmission providers serving load. To that end, the Commission clarified that the presumption of integration is rebuttable as applied to both the transmission provider and the network customer. A transmission provider may challenge the presumption that the customer’s facilities are integrated by showing that the customer’s facilities do not actually meet the integration standard, notwithstanding the fact that they are similar to facilities in the transmission provider’s rate base. Similarly, a customer could challenge the presumption that a transmission provider’s facilities are integrated by showing that the facilities, for example, do not provide network benefits. As a result, the Commission clarified that denial of credits for a network customer no longer triggers a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard.

Requests for Clarification and Rehearing

49. NRECA and TAPS ask the Commission to clarify whether it intended to apply a single integration standard to both transmission customer and transmission provider facilities and, if so, what standard will apply. These petitioners contend that several passages in Order No. 890-A suggest that the Commission will now apply a single integration standard, no matter whose facilities are under consideration. They note, for example, the Commission’s statement in paragraph 353 of Order No. 890-A that “[a] transmission provider may overcome the network customer’s presumed integration by demonstrating, with reference to its own facilities that meet the integration standard, that the network customer’s facilities do not meet the standard.”²⁹ They point to another statement that it is “appropriate for both the transmission provider and its customers to be subject to the integration standard to the extent the presumption of integration is

overcome.”³⁰ These petitioners express concern, however, regarding the Commission’s statement that the integration standard for credits under section 30.9 remains unchanged and that precedents applying that standard will continue to apply. They argue that those precedents establish and apply a significantly more stringent test for integration of customer-owned facilities than for facilities of the transmission provider.³¹

50. TAPS suggests that the Commission’s new policy for new transmission facilities must mean one of three things. Its first and preferred possibility is that, in assessing whether the new integration presumption has been overcome, the Commission will apply a single integration standard to both the transmission provider and the transmission customer, *i.e.*, the relaxed standard that has long applied in determining whether a transmission provider’s facilities should be rolled into its rate base. Under a second possibility, a single integration standard also would apply, but transmission providers would be held to the same strict integration standard to which transmission customers seeking section 30.9 credits have long been subject. As a final interpretation, TAPS states that, to overcome the presumption applicable to new transmission facilities, the Commission could continue to apply two different tests: The more stringent one applicable to customers seeking credits and the more relaxed one for transmission providers to include facilities in rate base. TAPS notes, however, that this would be inconsistent with Order No. 890-A’s repeated references to a single, comparable integration standard that applies to both customer and transmission providers.

51. East Texas Cooperatives agree that the case law establishes a different and harder test for integration of customer-owned facilities. East Texas Cooperatives state that, under that precedent, a transmission provider needs only to run the load flow study used in ETEC to challenge credits for a customer-owned facility. East Texas Cooperatives argue that this load flow study cannot be satisfied by any transmission facilities, since it takes out both customer facilities and load and asks if the grid can still run reliably. In comparison, East Texas Cooperatives

³⁰ *Id.* P 354.

³¹ Citing *East Texas Elec. Coop., Inc. v. Central & South West Services, Inc.* 108 FERC ¶ 61,079 (2004), *reh’g denied*, 114 FERC ¶ 61,027 (2006) (ETEC); *Northeast Tex. Elec. Coop., Inc.*, 108 FERC ¶ 61,108, at P 48 (2004), *reh’g denied*, 111 FERC ¶ 61,189 (2005) (NTEC).

²⁶ Schedules 4, 9 of the *pro forma* OATT.

²⁷ We note in response to EEL, however, that the existing reference to native load in Schedules 4 and 9 already includes on-system customers taking requirements service under section 1.23 of the *pro forma* OATT.

²⁸ Order No. 890 at P 754, n. 436 (citing *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,078 (2004), *reh’g denied*, 114 FERC ¶ 61,028 (2006)).

²⁹ Order No. 890-A at P 353.

contend that the cost of transmission provider facilities would continue to be presumptively rolled in subject to challenge unless a party can show that those facilities are so isolated from the grid that they are and will likely remain non-integrated and thus provide no benefit to the system.

52. East Texas Cooperatives therefore argue that the Commission's statement in Order No. 890-A regarding the continued applicability of integration precedent mandates discrimination in favor of transmission provider facilities in violation of the FPA. They contend that eligibility for rolled-in rate treatment of the same facilities would vary solely as a result of their ownership, since customer-owned facilities that are found not to be integrated under a load flow integration test would become integrated if purchased by the transmission provider, which is subject to a more relaxed application of the integration standard. East Texas Cooperatives suggest that the Commission justified its application of a more difficult test to network customers on a presumption that the customer-owned facilities are less integrated than transmission provider facilities. Joined by NRECA and TAPS, East Texas Cooperatives argue that customer-owned facilities are built to serve customer loads just as transmission provider facilities are built to serve transmission provider loads. These petitioners contend that there is no basis in the record for presuming that transmission provider facilities are more integrated than customer facilities.

53. FMPA, NRECA and TDU Systems contend that contradictory statements in Order No. 890-A could be read to apply the more stringent integration standard to customer-owned facilities and a more relaxed integration standard for transmission provider facilities.³² In particular, these petitioners question what standard the Commission was referring to in paragraph 353 of Order No. 890-A when it stated that the transmission provider may overcome the network customer's presumed integration by demonstrating, with reference to its own facilities that meet the integration standard, that the network customer's new facilities do not meet the standard, *i.e.*, the "integration standard" or the "similar in purpose and design" standard. NRECA and TDU Systems argue that the appropriate standard to apply when both claiming and rebutting the presumption of integration is whether the customer's facilities are similar in design and

purpose to those of the transmission provider that are in rates.

54. Florida Power also requests clarification of language in paragraph 353 of Order No. 890-A. Florida Power asks the Commission to confirm that this statement applies only to determine whether the customer is entitled to the presumption in the first place, not to rebut of the presumption once established, and that the standard to which the Commission was referring is whether the customer-owned facilities are similar in design and purpose to facilities owned by the transmission provider that are included in rates. Florida Power also asks the Commission to confirm that the transmission provider could oppose a customer's initial attempt to establish a presumption of credits by showing, by reference to the transmission provider's own facilities that meet the integration standard, that the customer-owned facilities are not similar in design and purpose to facilities owned by the transmission provider that are included in rates.

55. With regard to rebutting the presumption once established, Florida Power requests confirmation that the transmission provider can overcome the presumption by showing that the customer-owned facilities do not meet the integration standard, *i.e.*, that it does not need the network customer's facility to serve the network customer, the transmission provider's other transmission customers, or the transmission provider's retail customers.³³ Florida Power contends that it would not be just and reasonable, or consistent with the cost causation principle, to shift the cost of customer-owned facilities if those facilities do not benefit the transmission provider's system.

56. E.ON U.S. argues that the rebuttable presumption of integration should apply only to customer-owned facilities that are planned through the Attachment K or similar process. If the Commission's expectation that most, if not all, transmission upgrades eligible for credits will be planned in the Attachment K process is true, E.ON U.S. suggests that the rebuttable presumption of integration most reasonably applies only to facilities planned through that process.³⁴ E.ON U.S. contends that linking credits for customer-owned facilities to the Attachment K planning

process would allow the transmission provider an opportunity to coordinate with customers on facilities, while preventing any opportunities for undue discrimination given the non-discretionary nature of the planning obligation. E.ON U.S. argues that failure to plan facilities through the Attachment K or similar process should trigger a presumption against receiving credits for such facilities.

57. Several petitioners request rehearing of the Commission's determination that denial of credits for a network customer would no longer trigger a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard. East Texas Cooperatives contend that this decision improperly reverses the approach adopted in *FP&L*³⁵ and prohibits a network customer from challenging the rolled-in rate treatment of transmission provider facilities even when the customer's own facilities are found ineligible for credits. TAPS contends that reversing this policy is inconsistent with notions of comparability unless the Commission clarifies, as requested above, that the relaxed integration standard applies to both network customers and transmission providers. If a network customer's facilities are disqualified from eligibility for credits due to application of a more stringent integration standard, TAPS and TDU Systems argue that comparability requires the removal of the transmission provider's similar facilities from rates. NRECA agrees, arguing that the transmission provider must be required to remove its facilities from rates if customer-owned facilities that are similar in design and purpose to those transmission provider facilities are found ineligible for credits under the integration standard.

58. TAPS and FMPA ask the Commission to clarify that removal of the trigger applies only to denial of credit for new facilities to which the new presumption of integration applies. TAPS and FMPA point to language in paragraph 352 of Order No. 890-A providing that "the denial of credits for a network customer no longer triggers a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard." Both FMPA and TAPS interpret this language as applying to new facilities only. TAPS contends that the Commission does not and cannot offer any justification for

³³ Citing *Southern California Edison Co.*, 108 FERC ¶ 61,085, at P 9 n.11 (2004); *Southwest Power Pool, Inc.*, 108 FERC ¶ 61,078, at P 18 n.7 (2004), *reh'g denied*, 114 FERC ¶ 61,028 (2006); *ETEC*, 108 FERC ¶ 61,079, at P 26 n.11; *Northern States Power Co.*, 87 FERC ¶ 61,121 at 61,488 (1999).

³⁴ Citing Order No. 890-A at P 426.

³⁵ *Florida Mun. Power Agency v. Florida Power and Light Co.*, 74 FERC ¶ 61,006, at 61,010 (1996), *reh'g denied*, 96 FERC ¶ 61,130, at 61,544-45 (2001), *aff'd sub nom. Florida Mun. Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003) (*FP&L*).

³² Citing Order No. 890-A at P 351-52.

dispensing with the trigger in cases involving requests for credits for existing facilities, in which the presumption of integration adopted in Order No. 890 does not apply. TAPS is concerned that transmission providers will seek to remove the trigger for existing facilities, relying, *inter alia*, on the more general reference in Order No. 890-A to elimination of trigger.

59. Finally, FMPA seeks clarification on how the Commission's determinations on transmission credits will affect pending cases. FMPA asks the Commission to confirm that Order No. 890-A will not be applied to deny or weaken the comparability requirement for facilities at issue in Docket No. ER93-465-000, *et al.* FMPA also asks the Commission to clarify that the transmission credit policy articulated in Order No. 890 and Order No. 890-A will not preclude FMPA's ability to obtain full relief if the D.C. Circuit remands the Commission's decisions at issue in *Fla. Mun. Power Agency v. FERC* regarding charges for transmission that a network customer is physically unable to use.³⁶

Commission Determination

60. The Commission affirms the decision in Order Nos. 890 and 890-A to revise the test for determining whether a network customer is eligible to receive credits for new facilities. Under the revised section 30.9 of the *pro forma* OATT, a network customer is eligible for credits if it demonstrates that its facilities are integrated with the operations of the transmission provider's facilities, provided that integration will be presumed for new customer-owned facilities that, if owned by the transmission provider, would be eligible for inclusion in the transmission provider's annual transmission revenue requirement as specified in Attachment H of the *pro forma* OATT. As the Commission explained in Order No. 890-A, the adoption of this presumption ensures comparability between network customers and transmission providers serving native load given that transmission providers are now obligated to plan their systems on an open and coordinated basis.³⁷

61. Several petitioners question how this revised test is consistent with the Commission's statements that the integration standard applicable to new facilities remains unchanged and that Commission precedent regarding application of that standard will continue to apply.³⁸ As these petitioners

note, the integration standard has historically been applied differently to network customers and transmission providers.³⁹ Transmission facilities owned by the transmission provider enjoyed a presumption of rolled-in rate treatment so long as any degree of integration was shown, while network customers were required to demonstrate affirmatively that their facilities were relied upon by the transmission provider to provide service to its customers.⁴⁰ The Commission therefore described the test for integration for network customer facilities as being more stringent than the test applied to transmission provider facilities.⁴¹ The application of the integration standard was, in fact, more stringent as applied to network customers because they did not enjoy the benefit of presumed integration, as did the transmission provider. The underlying integration standard, however, has been and continues to be the same for all transmission facilities. Only those facilities that are, in fact, integrated with the transmission grid and used by the transmission provider to serve customers should be subject to rolled-in rate treatment. It is in this sense that the precedent continues to apply, providing guidance regarding the treatment of facilities that benefit from the presumption of integration and those that do not.

62. The presumption of integration enjoyed by the transmission provider has never been absolute. Customers have always been able to challenge the inclusion of certain transmission provider facilities by showing that the facilities did not actually provide a systemwide benefit to the transmission grid.⁴² In most instances, however, this has not been the case given that the transmission provider generally plans, constructs and owns its facilities, from the very beginning, to meet delivery obligations, which justifies the presumption of integration.⁴³ In the event the transmission provider denied credits to a network customer, however, the transmission provider lost the benefit of the presumption and the same

integration standard applied to customer-owned facilities was applied to the transmission provider's facilities.⁴⁴ This again demonstrates that the same underlying integration standard has applied to all facilities, regardless of ownership, notwithstanding the presumed integration generally enjoyed by the transmission provider.

63. In light of the planning-related reforms implemented in Order No. 890, the Commission determined it is now appropriate to grant the same presumption of integration to new customer-owned facilities that are similar in scope and design to those transmission provider facilities that are in rates. Implementation of planning-related reforms will now ensure that most, if not all, transmission facilities are planned on a coordinated basis.⁴⁵ However, only those new customer-owned facilities that are similar in design and purpose to the transmission provider's facilities that are in rates will be eligible for the presumption of rolled-in rate treatment. Other customer-owned facilities will be eligible for credits only if the network customer is able to make an affirmative showing that the facilities satisfy the integration standard, *i.e.*, that the facilities are nonetheless integrated notwithstanding their ineligibility for the presumption of integration.⁴⁶

64. To be clear, if the transmission provider disagrees that the customer-owned facilities are similar in design and purpose to its own facilities, it may challenge the threshold application of the presumption with a comparative analysis of its facilities and those for which credits are claimed. Neither the transmission provider nor the network customer need analyze complete satisfaction of the integration standard in order to determine whether, as a threshold matter, the presumption of integration applies. Assuming that the network customer prevails in its claim for presumed integration, then the network customer will enjoy the same rolled-in rate treatment enjoyed by the transmission provider for its similar facilities. As the Commission explained in Order No. 890, this is appropriate to ensure comparability between the transmission provider and network customer now that all transmission facilities will be planned pursuant to an open and coordinated process.⁴⁷

³⁹ Compare *Utah Power & Light Co.*, 27 FERC ¶ 61,258, at 61,485-87 (1984), *reh'g denied*, 28 FERC ¶ 61,088, at 61,165 (1984) (*citing Utah Power & Light Co.*, Opinion No. 113, 14 FERC ¶ 61,112, *reh'g denied*, 15 FERC ¶ 61,076 (1981)) with *ETEC*, 114 FERC ¶ 61,027 at P 42.

⁴⁰ *NTEC*, 111 FERC ¶ 61,189 at P 17.

⁴¹ *Id.* P 15.

⁴² See *Idaho Power Co.*, 3 FERC ¶ 61,108 (1978), *reh'g denied*, 5 FERC ¶ 61,009 (1978); *Minnesota Power & Light Co.*, 16 FERC ¶ 63,012 (1981), *aff'd* 21 FERC ¶ 61,233 (1982).

⁴³ See *Niagara Mohawk Power Corp.*, 42 FERC ¶ 61,143, at 61,531 (1988); *Otter Tail Power Co.*, 12 FERC ¶ 61,169, at 61,420 (1980).

⁴⁴ See *Florida Power & Light Co.*, 105 FERC ¶ 61,287, at P 16 (2003).

⁴⁵ See Order No. 890 at P 736; Order No. 890-A at P 337.

⁴⁶ See, e.g., *Ne. Tex. Elec. Coop., Inc.*, 111 FERC ¶ 61,189 at P 16.

⁴⁷ Order No. 890 at P 435.

³⁶ No. 06-1285 (D.C. Cir. filed July 26, 2006).

³⁷ See Order No. 890-A at P 350.

³⁸ See Order No. 890-A at P 349.

65. The transmission provider may nevertheless overcome the presumption of integration by demonstrating, with reference to its own facilities that meet the integration standard, that the customer-owned facilities are not, in fact, integrated and do not provide benefits to the system. The same is true of transmission provider facilities previously presumed to be integrated. In either case, the challenging party will bear the burden in overcoming the presumption of integration and rolled-in rate treatment. It is for this reason that it would no longer be appropriate to remove the presumption of integration enjoyed by the transmission provider, *i.e.*, apply the more strict integration standard, upon denial of credits to a network customer. In the past, only the transmission provider enjoyed the presumption of integration, which justified elimination of the presumption in the event credits were denied to a network customer. Both transmission providers and network customers now enjoy the benefits of presumed integration, and both may challenge application of the presumption to each other's facilities. We continue to believe that this will ensure that all similar facilities that are, in fact, not part of the integrated network that serves all customers are excluded from rates.⁴⁸ We acknowledge that this approach departs from the approach adopted in *FP&L*.⁴⁹ Our departure is justified, however, because the presumption of integration is now shared with new customer-owned facilities, shifting to the transmission provider the burden of demonstrating that credits for similar customer-owned facilities are not warranted.

66. We reject the suggestion by E.ON U.S. to reestablish a link between credits and joint planning by applying the presumption of integration only to upgrades planned through the transmission provider's Attachment K process. Although we support coordinated, open, and transparent planning, transmission providers are not required to develop transmission plans on a co-equal basis with customers.⁵⁰ It would therefore be unfair to network customers to condition the receipt of credits for new facilities on planning activities that are out of their control. Indeed, reestablishing a link between joint planning and credits would revive disincentives the Commission sought to

correct by severing the link between planning and credits in Order No. 890. We therefore affirm our decision to sever the link between credits and joint planning.

67. To the extent necessary, we clarify that none of the reforms regarding transmission credits adopted in Order No. 890 were intended to apply to facilities existing prior to the effectiveness of the revised section 30.9 nor to pending cases involving such facilities. Denial of credits to a network customer's previously existing facilities therefore still triggers review of the transmission provider's rate base. Similarly, a network customer may not rely on the presumption of integration for its previously existing facilities.

3. Capacity Reassignment

68. In Order No. 890–A, the Commission granted rehearing of its decision in Order No. 890 to remove the price cap on reassignments of transmission capacity, concluding that it is more appropriate to allow reassignments above the cap only during a study period ending on October 1, 2010. The Commission directed staff to closely monitor the development of the secondary market for transmission capacity during this period. To assist staff in this effort, the Commission affirmed the requirement for transmission providers to aggregate and summarize in an electronic quarterly report (EQR) the data contained in service agreements and related OASIS schedules for reassigned capacity. The Commission also directed staff to prepare a report on staff's findings within 6 months of the receipt of two years worth of data, *i.e.*, by May 1, 2010. Upon review of the staff report and any feedback from the industry, the Commission will determine whether it is appropriate to continue to allow reassignments of capacity above the price cap beyond the study period. In the absence of further Commission action, the price cap will resume effect as of October 1, 2010 under section 23.1 of the *pro forma* OATT.

69. The Commission clarified in Order No. 890–A 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 is 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.

Request for Rehearing

70. The APPA Joint Filers argue on rehearing that the decision to remove the price cap for reassignments of transmission capacity during the study period is not supported by substantial evidence that the price cap has discouraged development of a secondary transmission market.⁵¹ The APPA Joint Filers also contend that lifting the price cap on reassigned capacity will harm consumers by making transmission artificially scarce and overpriced. The APPA Joint Filers argue that the existence of congestion creates constrained regions within which market power can be exercised.

71. To further protect consumers, the APPA Joint Filers suggest that the Commission limit the experimental lifting of price caps to short-term reassignments.⁵² The APPA Joint Filers state that long-term firm point-to-point transmission service is particularly important to LSEs looking to secure economic and reliable power supply and that non-firm releases of unscheduled transmission capacity will not help those LSEs needing long-term firm service. The APPA Joint Filers also argue that, by extending the experiment to long-term sales, including reassignments by the transmission provider's merchant function or affiliate, the Commission has discouraged needed transmission construction. If the secondary market is clearing at prices above the transmission provider's rate ceiling, the APPA Joint Filers contend that the parent corporation will have incentives to put as much capacity in the hands of its merchant function or affiliates as possible and to avoid new transmission construction. That result, the APPA Joint Filers argue, would reduce the access of LSEs to the long-term firm transmission service they require to meet their service obligations, in violation of FPA section 217(b)(4). The APPA Joint Filers suggest that the Commission can achieve its goal of determining whether the price cap encourages development of a secondary market and whether there is competition in such a market by lifting the price cap only for short-term reassignments.

72. The APPA Joint Filers also contend that the affirmative obligation

⁴⁸ See Order No. 890–A at P 351.

⁴⁹ *FP&L*, 74 FERC at 61,010 (finding that the integration of facilities into the plans or operations of a transmitting utility is the proper test for cost recognition).

⁵⁰ Order No. 890–A at P 188.

⁵¹ The APPA Joint Filers include: APPA, NRECA, TAPS and TDU Systems.

⁵² Citing *Interstate Natural Gas Ass'n of Am. v. FERC*, 285 F.3d 18 (D.C. Cir. 2002).

of the transmission provider to expand its system in order to accommodate requests for service is inadequate to ensure customers are protected. The APPA Joint Filers note that this obligation has existed since 1996, yet the Commission in Order No. 890 found that it had not succeeded in overcoming transmission providers' incentives to avoid transmission investment, especially in favor of their own generation.⁵³ The APPA Joint Filers contend that the Commission has no factual basis to conclude that entry in the form of expanded transmission capacity will be timely, likely and sufficient to defeat price increases due to transmission market power.

73. The APPA Joint Filers acknowledge that Commission staff will be monitoring the EQRs and other data during the two-year period with the goal of preparing its report, but argue that this does not alleviate the Commission of its obligation to actively monitor resale of transmission capacity during the period to ensure that rates for customers remain just and reasonable and that there are no abuses of market power. The APPA Joint Filers ask the Commission to explicitly establish its intent to continue to exercise its obligations under sections 205 and 206 throughout this period so that resellers are on notice that they cannot charge unjust and unreasonable rates. If the Commission discovers evidence of unjust and unreasonable rates at any time, the APPA Joint Filers urge the Commission to address this as it occurs, including if necessary by terminating the experiment prior to October 1, 2010.

74. With regard to the staff report, the APPA Joint Filers ask the Commission to prescribe the parameters, procedures and data to be collected and provide guidance as to the issues that should be addressed. The APPA Joint Filers suggest that the Commission direct staff to address the following specific matters in the report: Identify whether there is an increase in reassignments by examining data on the amount of reassignments before and after the price caps were lifted; examine prices both offered and accepted to determine the level of market interest in reassigned capacity, whether prices increased, the cause of price changes, and whether prices remained within a zone of reasonableness; examine whether competition among resellers is sufficient to protect consumers from excessive rates; identify the kinds of products resold, such as the length of reassignments and whether reassigning customers redirected service; consider

whether reservations by the transmission provider's merchant function or affiliates increased, whether they reassigned the capacity reserved, and to whom and at what price they reassigned service; indicate whether the transmission provider's interactions with affiliated resellers were covered by the Standards of Conduct; and, assess whether those needing transmission capacity were able to obtain it, whether in the primary or secondary market.

75. To the extent the EQR data or other sources do not provide this information, the APPA Joint Filers suggest that the Commission institute data reporting and collection requirements to obtain that information. The APPA Joint Filers state particular concern regarding the elimination of the reporting requirement under the reseller's market-based rate tariff. The APPA Joint Filers contend that lifting the price cap will allow market-based sellers to use transmission capacity reassignment to support attempts to exercise market power in sales of transmission, electricity, or both. Because a market-based seller no longer needs to report its own transmission reassignments and because the transmission provider will report reassignments only on an aggregate, summary basis, the APPA Joint Filers argue that the EQR data will not permit monitoring to detect patterns or conduct that suggest efforts to manipulate or exercise market power in transmission markets. The APPA Joint Filers contend that, by separating data on the market-based seller's electricity sales from the data on the same seller's transmission reassignments, the Commission has made it difficult to determine whether a market-based seller is manipulating transmission resales to favor its market-based sales because it will be impossible to determine whether a particular capacity reassignment supported a market-based sale. The APPA Joint Filers therefore request that the Commission grant rehearing and retain the requirement that all holders of market-based rate authority report both their electricity sales and their capacity reassignments in the same EQR.

76. Finally, once the staff report is issued, the APPA Joint Filers ask that it be noticed and that the public be provided an opportunity to comment. The APPA Joint Filers contend that the data underlying the report must be made public, with sensitive information subject to appropriate confidentiality protections. If the Commission believes that further extension of the experiment is merited, the APPA Joint Filers ask the Commission to use full notice and comment rulemaking procedures to

ensure a complete record is developed to support any further Commission action.

Commission Determination

77. The Commission affirms its decision to remove the price cap on reassignments of transmission capacity to accommodate a study period expiring on October 1, 2010. For the reasons stated in Order Nos. 890 and 890-A, we continue to believe that lifting the price cap during the study period will foster the development of a more robust secondary market for transmission service customers will have increased incentives to make their service available to others that place a higher value on it, which in turn will send more accurate signals that promote efficient use of the transmission system by fostering the reassignment of unused capacity.

78. Although the Commission agrees with the APPA Joint Filers that transmission capacity, and in particular long-term transmission capacity, is of great importance to LSEs and other customers, we disagree that restricting transactions above the price cap only to short-term reassignments is necessary to preserve access to service under the *pro forma* OATT. As the Commission emphasized in Order Nos. 890 and 890-A, transmission providers are under an affirmative obligation to offer all available capacity to customers on a non-discriminatory basis and to expand their systems as necessary to accommodate additional requests for service.⁵⁴ The *pro forma* OATT does not, and will not, permit the withholding of transmission capacity by the transmission provider and effectively establishes a price ceiling for long-term reassignments at the transmission provider's cost of expanding its system. 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. We therefore disagree that allowing reassignments of transmission capacity above the price cap will reduce the access of any customer to service under the *pro forma* OATT.

79. The APPA Joint Filers are therefore incorrect that lifting the price cap will make transmission capacity

⁵⁴ Order No. 890 at P 808; Order No. 890-A at P 388-89.

⁵⁵ Order No. 890 at P 814; Order No. 890-A at P 392.

⁵³ Citing Order No. 890 at P 424.

artificially scarce and overpriced during the study period. Transmission providers must continue to make primary capacity available at the rates specified in their individual OATTs. 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. For those customers participating in the secondary market, however, lifting the price cap will create additional incentives for others to make service available, increasing the ability to obtain transmission capacity.

80. The APPA Joint Filers incorrectly characterize the Commission's statement in paragraph 392 of Order No. 890 as finding that the transmission provider's obligation to expand the system in response to service requests was inadequate to overcome incentives to avoid transmission investment. In the passage cited, the Commission instead found that this requirement was inadequate to overcome incentives to exclude customers from the transmission planning process.⁵⁶

To remedy that disincentive, the Commission required transmission providers to implement open and transparent planning processes that allow customers and other stakeholders to provide input in the development of transmission plans. The Commission specifically noted that those planning obligations did not address or dictate which investments identified in a transmission plan should be undertaken by the transmission provider.⁵⁷

81. The APPA Joint Filers inappropriately discount the importance of the transmission provider's affirmative obligation to expand its system in response to requests for service. The Commission has historically relied on these and other obligations under the pro forma OATT sufficient to mitigate the potential exercise of transmission market power by transmission providers and their affiliates.⁵⁸ Lifting the price cap on reassignments of transmission capacity does not alter those obligations in any way and, therefore, does not impair the ability of load-serving entities to meet their load service obligations. By lifting the price cap on capacity reassignments, the Commission has instead enhanced the options available to customers seeking transmission service by increasing the incentives for customers with transmission reservations to make

capacity available to others placing a higher value on it.

82. We are nevertheless sensitive to the concerns expressed regarding the potentially negative competitive effects of lifting the price cap on reassignments of transmission capacity. It is for that very reason that the Commission granted rehearing in Order No. 890-A, at the request of the APPA Joint Filers, to limit the period in which the price cap is lifted. During the study period, continuing rate regulation of the transmission provider's primary capacity, competition among resellers, and reforms to the secondary market for transmission capacity, combined with enforcement proceedings, audits, and other regulatory controls, will assure that prices in the secondary market remain within a zone of reasonableness.⁵⁹ Should any customer believe that capacity is being preferentially allocated to a transmission provider's affiliates, that particular holders of transmission capacity are attempting to exercise market power through hoarding or other tactics, or that the transmission provider is failing to meet its expansion obligations, the customer should bring the matter to the Commission's attention through a complaint or other appropriate procedural mechanisms. If the Commission finds evidence of market abuse, it can act to restrict the ability of an offending reseller (and possibly its affiliates) to participate in the secondary market or impose other remedies, including civil penalties, as appropriate to ensure that rates for secondary transmission capacity are just and reasonable.

83. With respect to our expectations for the report to be prepared by Commission staff, we clarify that staff should focus on the competitive effects of removing the price cap for reassigned capacity. 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. Staff should also 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.⁶⁰

84. As requested by the Joint APPA Filers, we have reconsidered our reporting requirements and determined

that it would be useful to direct transmission providers to include certain additional information in their EQRs. We direct transmission providers to include in their EQRs the identity of the reseller and indicate whether the reseller is affiliated with the transmission provider. Each transmission provider also must include 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. We direct transmission providers to submit this additional data for all resales during the study period and to update, as necessary, any previously-filed EQRs on or before the date they submit their next EQR.

85. We disagree that elimination of the reporting requirement under the reseller's market-based rate tariff will impair the ability of staff to perform its analyses. All reassignments of transmission capacity now take place under the transmission provider's OATT and, therefore, it is appropriate for the transmission provider to report those transactions on its EQR. We reiterate that the EQR must contain all relevant transaction data, whether stated in the service agreement governing the reassignment or in a related OASIS schedule.⁶¹ Transmission providers should not aggregate multiple transactions into single line items on the EQR. All terms must instead be fully described and rates provided for each reassignment.⁶²

86. Upon review of the staff report, the Commission will determine whether it is appropriate to institute further rulemaking procedures to amend the *pro forma* OATT to allow reassignments of transmission capacity above the price cap after October 1, 2010. The report will be made public and subject to comment, with sensitive information subject to appropriate confidentiality protections. In the absence of Commission action, the rate charged by the transmission provider for each reassignment, and the corresponding credit to the reseller, may 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

⁵⁶ See Order No. 890 at P 423, n.162.

⁶² See Order No. 890 at P 818, n.499. The Commission's reference to "aggregate[ing] and summarize[ing] in an EWQ the data contained in the service agreements for reassigned capacity" in Order Nos. 890 and 890-A was intended to refer to the transmission provider's obligation to compile reassignments involving multiple parties in a single EQR, not consolidate multiple reassignments into single line items on the EQR.

⁵⁶ *Id.* P 424.

⁵⁷ *Id.* P 438.

⁵⁸ See Order No. 697 at P 408.

⁵⁹ See Order No. 890 at P 811; Order No. 890-A at P 391.

⁶⁰ See *id.* P 406.

opportunity cost capped at the transmission provider's cost of expansion.⁶³

4. Operational Penalties

87. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to subject all transmission providers, including RTOs and ISOs, to operational penalties when they routinely fail to meet the deadlines prescribed in sections 19.2, 19.4, 32.3 and 32.4 of the *pro forma* OATT. The Commission explained that the 60-day due diligence deadlines set forth in those sections serve as a good measure of a transmission provider's use of due diligence since, in its experience, the vast majority of transmission studies can be completed in that time period.

88. The Commission rejected requests to change section 19.9 of the *pro forma* OATT, concluding that transmission providers will have the ability to explain in notification filings the extenuating circumstances that lead to delay in processing transmission service request studies and, in turn, demonstrate their use of due diligence notwithstanding the inability to meet the 60-day target. The Commission also rejected requests to create broad categories or lists of extenuating circumstances that would exempt transmission providers from late study penalties or related posting requirements.

Requests for Rehearing and Clarification

89. E.ON U.S., EEI, and Southern contend that the Commission has failed to justify the use of 60 days as the time frame for processing transmission service request studies with due diligence. These petitioners argue that the Commission's stated experience that the vast majority of studies are completed within 60 days is unsupported by data or any other evidence. Southern further argues that any experience regarding processing times does not reflect the increased redispatch and conditional firm study obligations imposed under Order No. 890. Southern argues that transmission planners are also facing additional workforce pressures due to development of reliability standards, worker shortages, and Attachment K planning processes. Southern suggests that the Commission grant rehearing to allow for an additional 30 days to process transmission studies or, at a minimum, to process conditional firm and redispatch options. Southern acknowledges that the Commission determined in Order No. 890–A that the

mere possibility of penalties did not justify extension of the 60-day study period. Southern argues, however, that the notification and additional posting requirements are in and of themselves penalties, as are the requirements to then complete 90 percent of studies within 60 days.

90. E.ON U.S., EEI, and Southern also ask the Commission to add a clearer due diligence standard to section 19.9 of the *pro forma* OATT. They contend that it is necessary to specify in the tariff the circumstances that will excuse the transmission provider from penalties. These petitioners argue that failure to articulate a clear standard gives the Commission too much discretion in applying penalties and leaves transmission providers guessing as to what due diligence means. Southern argues that a lack of clarity violates due process and the Commission's enforcement policies because transmission providers do not have adequate notice of the circumstances that will subject them to penalties. Southern contends that the risk of late study penalties creates a guilty until proven innocent standard that will result in transmission providers favoring speed over accuracy, which could harm reliability.

91. EEI agrees that failure to expressly include a due diligence standard in section 19.9 provides the Commission undue discretion to apply penalties even if the transmission provider has used due diligence in processing request studies. EEI argues that the language of section 19.9 does not adequately reflect that the inability to complete a study within the 60-day timeframe may be due to customer actions or the need to complete other interdependent studies. At a minimum, EEI asks the Commission to amend section 19.9(iii) to state that the transmission provider will not be subject to penalties if it demonstrates that it exercised due diligence but nonetheless failed to complete a sufficient percentage of its studies within 60 days. EEI also requests that the Commission provide additional guidance in this proceeding as to what factors constitute due diligence that are sufficiently clear and specific that a transmission provider can reasonably determine whether its actions satisfy those guidelines.

92. E.ON U.S., EEI, and Southern further argue that operational penalties should not be imposed until the Commission makes an affirmative finding that the transmission provider did not exercise due diligence in processing request studies. EEI and Southern argue that due process and the Commission's enforcement policies

require notice and hearing procedures prior to application of penalties. If a transmission provider fails to complete 90 percent of studies within a 60-day period, EEI suggests that the transmission provider be rebuttably presumed to have failed to exercise due diligence in processing request studies and that penalties apply only after notice and an opportunity for hearing.

93. Southern suggests that the explanation of extenuating circumstances in a notification filing should automatically suspend the obligation to post additional metrics, the obligation to process 90 percent of study requests within 60 days, and the threat of monetary penalties until the Commission determines that the extenuating circumstances did not exist. Southern states that this would shift the burden of proof to the Commission and no longer treat transmission providers as guilty until proven innocent. E.ON U.S. argues that deferring the obligation to pay penalties until after the Commission has rejected the transmission provider's explanation for delay would be more efficient because transmission providers would not need to seek refunds from customers to whom it has made distribution of penalties for delays the Commission later finds justifiable.

94. E.ON U.S. seeks clarification that not-for-profit transmission providers are responsible for processing transmission request studies within the same time period prescribed for other transmission providers and are equally responsible for paying late study penalties. E.ON U.S. argues that the ability to request cost recovery of late study penalties on a case-by-case basis should not be used to skirt the obligations established in Order No. 890.

95. NYISO asks the Commission to clarify that it did not intend in Order No. 890–A to preclude transmission providers from proposing alternative study deadlines pursuant to FPA section 205. NYISO states that, because it provides a financial reservation based transmission service reservation, it does not receive, or deny, requests for transmission service in the way that Order Nos. 888 and 890 contemplate. NYISO states it conducts transmission studies only in unusual situations, such as when a customer wants to explore whether it would be more economical to pay congestion charges or to fund the construction of new transmission facilities in order to obtain incremental congestion hedging rights from NYISO. As a result, only a handful of system impact study requests have been submitted to the NYISO in the last nine

⁶³ See section 23.1 of the *pro forma* OATT.

years and, according to NYISO, each take substantial time to process.

96. NYISO also requests clarification regarding the transmission provider's liability when delegating responsibilities for conducting transmission studies. NYISO states that it has responsibility for conducting system impact studies under its OATT, while its member transmission owning utilities retained responsibility for conducting facilities studies. NYISO asks the Commission to clarify that its member transmission owning utilities are responsible for ensuring that facilities studies are conducted in a timely manner. NYISO argues that it would be arbitrary and capricious to hold NYISO responsible for failures by the member transmission-owning utilities to comply with their own obligations.

Commission Determination

97. The Commission affirms the decision in Order Nos. 890 and 890-A to subject transmission providers to operational penalties when they routinely fail to meet the 60-day due diligence deadlines prescribed in sections 19.2, 19.4, 32.3, and 32.4 of the *pro forma* OATT.⁶⁴ Transmission providers must have a meaningful stake in meeting study timeframes, and the operational penalty structure adopted by the Commission provides reasonable financial incentives for transmission providers to exercise due diligence in processing service requests in a timely and nondiscriminatory manner.

98. We disagree that the notice procedures adopted in Order No. 890 give inadequate opportunities to explain why studies have been completed late. Due process does not require the use of notice and hearing procedures prior to applying operational penalties for failing to exercise due diligence in processing transmission service request studies within the 60-day study period, nor must the Commission make an affirmative finding regarding the justifications provided in a notification filing prior to the application of penalties. Section 19.9 of the *pro forma* OATT requires the submission of a notification filing and the application of penalties when certain clearly identified triggering conditions occur, *i.e.*, failure to complete studies within the prescribed timeframes. Transmission providers therefore have adequate notice of the actions that may lead to penalties. We note that transmission customers that pay other operational penalties, like unreserved use penalties,

do not receive notice or have hearing procedures prior to paying the penalty.

99. At the same time, to ensure that penalties are not applied to transmission providers when study delays are justified, the Commission has provided an opportunity for each transmission provider to explain the extenuating circumstances that prevented it from meeting the 60-day study completion deadline. Upon review of the notification filing, the Commission will waive the penalties if a transmission provider establishes that its non-compliance is the result of extenuating circumstances.⁶⁵ If the Commission is unable to act on the notification filing prior to the date on which the penalties would apply, the transmission provider will remain liable for paying the penalties, but is not required to distribute those penalties while the notification filing remains pending.⁶⁶ The Commission concluded in Order No. 890, and we affirm here, that this adequately balances the transmission provider's due process rights with the need to provide an incentive to the transmission provider to complete studies on a timely basis.⁶⁷ It is therefore unnecessary, as petitioners argue, to amend the language of section 19.9 of the *pro forma* OATT to specifically include a due diligence standard or otherwise identify in the tariff or elsewhere the circumstances that will excuse the transmission provider from penalties. Consideration of the particular extenuating circumstances causing a transmission provider to repeatedly miss study deadlines is best left to a case-by-case analysis.

100. We also affirm the decision in Order No. 890-A not to extend the 60-day deadline as petitioners request.⁶⁸ The 60-day deadlines have existed for many years.⁶⁹ Although petitioners challenge that conclusion as unsupported, none dispute the proposition that 60 days is generally sufficient to complete most transmission studies and, instead, contend that certain types of studies take longer or that certain transmission providers have less ability to process studies within that period. Yet that is precisely why the Commission has provided an opportunity for each transmission provider to demonstrate that extenuating circumstances prevented it from timely processing the relevant studies notwithstanding its inability to

meet the 60-day target. Transmission providers are free to discuss in their notification filings any factors they believe are relevant, including any of the factors cited by Southern.

101. In response to E.ON U.S., we affirm that all transmission providers, including RTOs and ISOs, are bound by the 60-day timelines of sections 19.2, 19.4, 32.3 and 32.4 and the requirements of section 19.9. The Commission clarifies, in response to NYISO, that transmission providers are free to make filings under FPA section 205 to seek variations from the *pro forma* OATT and demonstrate that alternative tariff provisions are consistent with or superior to the *pro forma* OATT. With regard to the allocation of study responsibilities between NYISO and its transmission owning members, we note that the Commission in Docket No. OA08-13-000 determined that the responsibility for facility studies, and penalties associated with such studies, rests with the transmission owning members under the NYISO tariff.⁷⁰

5. "Higher Of" Pricing Policy

102. In Order No. 890, the Commission concluded that changes to the *pro forma* OATT were not needed to address the practice by some transmission providers of quoting incremental rates as lump sum payments, a practice that is inconsistent with our ratemaking policy. The Commission explained that the transmission provider must continue to include a proposed monthly incremental rate with its offer of service whenever it proposes to charge the customer an incremental rate. The transmission provider also must provide cost support for the derivation of the rate consistent with the cost support that the transmission provider would provide to the Commission in a section 205 rate filing.

103. The Commission affirmed this decision in Order No. 890-A, noting that the capital costs of upgrades, as estimated in a facilities study and eventually specified in a service agreement through an incremental rate, are not subject to change once the customer has executed the service agreement. The Commission explained that it would not be appropriate to vary capital costs over the term of such contracts.

Request for Rehearing

104. Duke, E.ON U.S., and EEI argue that the Commission's statement that

⁶⁴ See Order No. 890 at P 1340; Order No. 890-A at P 741.

⁶⁵ See Order No. 890 at P 1343.

⁶⁶ See *id.* P 1349.

⁶⁷ *Id.*

⁶⁸ Order No. 890-A P 746.

⁶⁹ See Order No. 888-A at 30,324.

⁷⁰ See *N.Y. Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,134 (2008).

capital costs of network upgrades may not vary during the term of a service agreement is inconsistent with other sections of the *pro forma* OATT. Duke notes that section 19.4 of the *pro forma* OATT requires execution (or filing) of a service agreement a mere thirty days after completion of the facilities study and, therefore, the service agreement can only contain a good faith estimate of network upgrade costs. EEI and E.ON U.S. agree, noting section 19.5 further allows for revisions to the good faith estimate to reflect certain changed circumstances. EEI and E.ON U.S. contend that transmission providers generally are not able to determine the actual cost of required facilities until construction is completed, which is long after execution of the service agreement.

105. EEI and E.ON U.S. argue that not allowing capital costs of upgrades to vary after execution of the service agreement will result in the transmission provider either under-recovering the cost of the incremental facilities or the customer overpaying the cost of those facilities and, as a result, charges will not be just and reasonable. These petitioners suggest that the transmission provider be allowed to modify a service agreement to reflect the actual costs of incrementally-charged network upgrades after the facilities are placed in service. Duke agrees, arguing that providing for a true-up at a later date is routine when facility costs are directly assigned, rather than rolled in. Duke suggests that customers be free to negotiate the ability to terminate the service agreement if a cost estimate turns out to far understate actual costs. Duke contends that the Commission's statement regarding the inability of capital costs to vary was merely a general observation and that the Commission should review rate changes on a case-by-case basis.

106. Duke, EEI, and E.ON U.S. further argue that prohibiting recovery of additional capital costs that the transmission provider is likely to incur when repairing or replacing portions of incrementally-charged upgrades during the term of a service agreement denies the transmission provider of its rights under section 205 of the FPA. While the incremental facilities on which the cost of service is based (*e.g.*, a specific substation or line segment) should not be allowed to vary, EEI contends that transmission providers should be allowed to recover the additional capital costs associated with repair or replacement of those facilities. EEI and E.ON U.S. suggest that remedies such as formula rates or a section 205 filing should be available to a transmission

provider to recover these additional costs.

Commission Determination

107. The Commission affirms the determination in Order No. 890 that capital costs specified in a service agreement are not subject to change once the customer has executed the service agreement.⁷¹ We clarify, however, that this statement was intended to refer to agreements in which a customer and transmission provider have specifically identified particular upgrade costs to be paid by the customer, allowing for a clear comparison of incremental costs to the transmission provider's embedded cost rate. In such instances, it would violate fundamental concepts of contract law, as well as undermine the "higher of" pricing policy, to allow either the customer or the transmission provider to unilaterally change the costs previously agreed to by the parties. The Commission therefore explained in Order No. 890-A that it would not be appropriate to vary, *i.e.*, change, capital costs specified in such contracts.

108. Nothing in Order Nos. 890 or 890-A, however, altered the ability of the transmission provider and transmission customer to negotiate alternative pricing arrangements such as recovering estimated costs subject to a true-up when upgrades are complete. The Commission did not mean to imply in Order No. 890-A that such alternative pricing arrangements are necessarily prohibited. As the Commission explained in Order No. 890, application of the "higher of" policy to particular cases, including proposals to adopt flexible pricing arrangements, is largely fact-specific and best addressed on a case-by-case basis during particular rate proceedings.⁷²

6. Other Ancillary Services

109. In Order No. 890-A, the Commission denied a request by Sempra Global to require the transmission provider to offer and make available operating reserves under schedules 5 and 6 of the *pro forma* OATT when transmission service is used to serve load outside the transmission provider's control area. The Commission explained that operating reserves are needed to serve load within the control area in the event of system contingencies and, unless alternative arrangements are made, the transmission provider provides these reserves from its own resources. The

Commission found that it would be inappropriate to require the transmission provider to use its resources to provide additional operating reserves to loads in other control areas because the transmission providers in those control areas are under their own obligations to make operating reserves available. The Commission affirmed those obligations and stated that modifications to the *pro forma* OATT were not necessary to enable generators to engage in firm power sales to loads outside of their control area.

Request for Clarification

110. Sempra Global argues that the Commission did not fully appreciate the problems faced by generators in obtaining operating reserves in the WECC. If transmission providers are not required to offer operating reserves when transmission service is used to serve load outside the transmission provider's control area, Sempra Global asks that the Commission, at a minimum, clarify that generator imbalance service under Schedule 9 of the *pro forma* OATT may be utilized to provide sufficient imbalance energy to keep a customer's schedule whole for at least two hours following a generator derating or forced outage, if necessary to allow the generator sufficient time to find and schedule replacement energy. Sempra Global states that clarification is needed because, if a generator trips within 20 minutes prior to the beginning of the hour, it is too late to schedule replacement energy for the hour that is about to begin.

111. Sempra Global disagrees that the existing requirements of the *pro forma* OATT are sufficient to ensure that operating reserves are available to merchant generators in the WECC, pointing to the differing definitions for "reserves" in the West. Sempra Global explains that in the WECC "Operating Reserves" consist of two main components: Regulating Reserve and Contingency Reserve.⁷³ According to Sempra Global, WECC's Regulating Reserve could include, but would not necessarily be limited to, regulation service offered under schedule 3 of the *pro forma* OATT, while WECC's Contingency Reserve could include, but would not necessarily be limited to, operating reserve services under Schedules 5 and 6 of the *pro forma* OATT.

112. Although independent power generators have access to regulation service under schedule 3 and generator

⁷¹ See Order No. 890-A at P 491.

⁷² See Order No. 890-A at P 883.

⁷³ Citing WECC Standard BAL-STD-002-0—Operating Reserves.

imbalance service under Schedule 9 from their source balancing authority, Sempra Global states that they may not have access to any Contingency Reserves for exports from their host balancing authority. Sempra Global contends that it can be difficult, if not impossible, for generators to contract for Contingency Reserves from a third party without switching to that party's balancing authority or having a dynamic schedule or other telemetry to enable the provider of Contingency Reserves to know when the generator trips and to have the reserves provider's generation respond within ten minutes. Sempra Global contends that intra-hour schedule changes are not normally allowed by most balancing authorities in the West and that Operating and/or Contingency Reserve service can most logically be provided to a balancing authority or reserve sharing group, not an individual customer. Sempra Global states that this complex type of arrangement could not be practicably implemented for short-term transactions, or when the output of a generator is split between multiple buyers and ultimately delivered into multiple balancing authorities.

113. Even if a generator were able to contract with a third party to provide operating reserves, Sempra Global states that it is unaware of any workable mechanism to assure a load (or "sink") balancing authority that it will have access to such reserves when needed. Sempra Global also notes that a generator, as a seller, may not necessarily have a load since transactions frequently involve numerous parties between the generator and the load. Sempra Global states that a generator may not know who the load is until the NERC eTags are generated during the WECC pre-scheduling process, which typically takes place the day before the power flows. Even if the sink balancing authority is known at the time a long-term transaction is entered into, Sempra Global states that a generator still may be unable to procure operating reserves to support the transaction. Sempra Global describes a transaction it entered into in 2002 in which none of the host transmission provider, the purchaser's transmission provider, nor the purchaser itself was willing to offer to provide Sempra Global with operating reserves to support the transaction. Since many LSE purchasers in the West enter into firm energy import transactions specifically to reduce their operating reserves obligations, Sempra Global states that it would be rarely fruitful for a generator to request, as part of its

negotiation with a customer, that the customer acquire reserves from its transmission provider.

Commission Determination

114. The Commission affirms the decision in Order No. 890-A not to require transmission providers to offer and make available operating reserves under Schedules 5 and 6 of the *pro forma* OATT when transmission is used to serve load outside the transmission provider's control area. As the Commission explained, operating reserves are needed to serve load within the control area in the event of system contingencies. Unless alternative arrangements are made, the transmission provider would serve as the provider of last resort for these reserves. We continue to believe it would be inappropriate to require the transmission provider to provide additional operating reserves to loads in other control areas because the transmission providers in those areas are under their own obligation to make operating reserves available.

115. We appreciate Sempra Global's concern that these obligations may be insufficient to enable merchant generators in the WECC to obtain operating reserves in certain circumstances. Since its adoption, however, the *pro forma* OATT has placed the obligation to procure operating reserves squarely on load.⁷⁴ It appears that market rules have developed in the WECC in a way that transfers that responsibility from transmission customers serving load to those providing resources. It does not follow, however, that the *pro forma* OATT—a tariff of general applicability—must be amended to accommodate that regional practice. To the extent transmission providers in the WECC wish to amend their tariffs to accommodate the WECC market rules, they may submit such variations to the Commission for consideration. Alternatively, the market rules themselves could be amended to reflect the structure of obligations under the *pro forma* OATT.⁷⁵

⁷⁴ See Section 3 of the *pro forma* OATT.

⁷⁵ We understand that WECC is in the process of developing a revised standard to address the responsibility for procuring contingency reserves. WECC Standard BAL-002-WECC-1—Contingency Reserves, available at http://www.wecc.biz/documents/library/Standards/2007/BAL-002/BAL-002-WECC-1_1-25-08.pdf. To the extent that there are any conflicts between the revised WECC standard and the *pro forma* OATT, Sempra Global should raise those concerns when that revised standard is submitted for consideration by the Commission.

C. Non-Rate Terms and Conditions

1. Modifications to Long-Term Firm Point-to-Point Service

116. In Order No. 890, the Commission concluded that the methods for evaluating requests for long-term point-to-point transmission service may not be comparable to the manner in which transmission service is planned for bundled retail native load and, therefore, may no longer be just, reasonable and not unduly discriminatory. To remedy this potential for undue discrimination, the Commission amended the *pro forma* OATT to modify planning redispatch requirements and require transmission providers, other than most RTOs and ISOs, to offer a conditional firm option to long-term point-to-point customers. The Commission affirmed that decision in Order No. 890-A and provided certain clarifications regarding the transmission provider's obligation with regard to planning redispatch and conditional firm service.

a. Requirement To Offer Conditional Firm Service

117. In Order No. 890-A, the Commission denied rehearing of its decision not to require transmission providers to offer conditional firm service to network customers. The Commission explained that network customers can designate network resources any time firm transmission is available and that the term of the designation can include periods of less than a year. Network customers can also use secondary network service to access resources during times when firm service is not available. The Commission concluded that this flexibility to use designated network resources and secondary network service to access undesignated resources already provides a service that is like conditional firm that can be used to integrate new resources. The Commission noted, however, that transmission providers employ automatic devices, such as special protection schemes, to take resources offline during certain system conditions. The Commission determined that comparability requires the study of these automatic devices for network customers seeking to designate network resources and revised section 32.3 of the *pro forma* OATT to require the study of automatic devices at the request of a network customer.

Requests for Rehearing and Clarification

118. NRECA and TAPS repeat arguments made on rehearing of Order No. 890 that the Commission must make

conditional firm service available to network customers. NRECA contends that a transmission provider will not reject a resource for its own bundled retail load simply because it may be unavailable for a few hours per year due to congestion. NRECA argues that a transmission provider will, however, reject a request by a network customer to designate that same resource because of the same limited availability. NRECA concludes that conditional firm network service is therefore necessary to eliminate undue discrimination between network customers serving network load and the transmission provider serving its load.

119. NRECA acknowledges that network customers may designate network resources any time firm transmission is available and use secondary network service to access resources when firm service is not available. NRECA notes, however, that the Commission justified granting conditional firm service to point-to-point customers by stating that it made little sense to ask point-to-point customers to cobble together a collection of firm and non-firm requests when only the transmission provider has information about when service may be available or unavailable.⁷⁶ NRECA argues that network customers should not be required to cobble together service comparable to that enjoyed by the transmission provider by designating a resource at some times and accessing it through secondary network service at others.

120. NRECA also argues that the Commission improperly assumed that secondary network service can provide a service that resembles conditional firm service. NRECA contends that the curtailment priority of secondary network service is inferior to conditional firm service. NRECA provides a scenario in which the transmission provider, a conditional firm customer and a network customer using secondary network service are taking power from the same generator in a location that is constrained ten hours per year. NRECA argues that the network customer will be curtailed before the transmission owner and before the conditional firm customer. NRECA adds that conditional firm customers are considered firm customers and will be able to request service far in advance and to the detriment of secondary network customers. NRECA concludes that a network customer can only protect itself from loss of service and loss of scheduling priority by paying for a

network upgrade, which is an obligation not imposed on either the transmission provider or the point-to-point customer.

121. TAPS agrees that the rights of network customers are significantly inferior to those of conditional firm customers. TAPS contends that a network customer would be required to have perfect knowledge, at the time of a network resource designation, as to the effects of constraints in order to limit its decision to periods when transmission is adequate to accommodate the request. TAPS argues that information about constraints gained as a result of an initial designation request is of minimal value since a reframed request would take a later place in the queue.

122. TAPS also argues that the clarification provided in Order 890–A that excess capacity created by transmission upgrades should be allocated first to conditional firm customers based on their initial order in the queue further degrades the benefit of network service. Even if network customers could predict periods for which to request secondary network service and firm designations, TAPS argues that they still could not create a service comparable to conditional firm service given the potential benefit of being firmed up by excess capacity produced by later upgrades. TAPS contends that the exclusion of network customers is discriminatory given the Commission's finding that transmission providers provide conditional service to themselves and the requirement under section 28.2 of the *pro forma* OATT that transmission providers “designate resources and loads in the same manner as any Network Customer under Part III of this Tariff.” TAPS further asserts that the Commission should clarify whether the customer supporting the upgrade is protected from having its upgrade sized to meet the needs of earlier-queued conditional firm customers.

Commission Determination

123. The Commission again affirms the decision not to create a conditional firm network service.⁷⁷ As the Commission explained in Order No. 890–A, the flexibility to use designated network resources and secondary network service to access undesignated resources already provides a service that is like conditional firm service that can be used to integrate new resources. The Commission also revised section 32.3 of the *pro forma* OATT to make clear that network customers have the right to request the study of special protection schemes like those used by transmission

providers in designating resources for their native loads.⁷⁸ Further, Order No. 890 provided that network customers may designate off-system resources supported by conditional firm point-to-point service.⁷⁹ All of these provisions collectively allow network customers to designate resources in the same manner that transmission providers designate resources for their loads. We therefore reject arguments that denial of conditional firm network service results in network service that is inferior to the transmission provider's own use of the system to serve its load.

124. While we agree with NRECA that conditional firm customers will be able to request service in advance of secondary network customers, we find this provides no reason to create a new conditional firm service for network customers. Those seeking conditional firm service should have the ability to request service ahead of secondary network service, a non-firm service. Network customers seeking to designate their resources and avoid the use of secondary network service may request the study of special protection schemes in their system impact study. Taken together, the rights of network customers are therefore not inferior to those of conditional firm customers. Indeed, network customers enjoy advantages over conditional firm customers, including access to reliability redispatch to avoid curtailment of their loads. In any event, we remind NRECA and TAPS that network service and point-to-point service were not designed to be identical and the rights and obligations of each type of customer need not be the same.⁸⁰ Comparability does not require the same service be made available to network customers and point-to-point customers; rather, the concept applies to the service taken for transmission provider's load by the transmission provider as compared to the service for network customer loads.

125. Additionally, we disagree with the conclusions that NRECA draws from its hypothetical scenario involving a network customer using secondary network service, a conditional firm customer, and the transmission provider taking power from the same generator. NRECA's assertion that the transmission provider will not curtail its own deliveries from the resource incorrectly assumes that the transmission provider will employ redispatch instead of something akin to conditional firm service. If the transmission provider is

⁷⁸ *Id.* P 559.

⁷⁹ Order No. 890 at P 1091.

⁸⁰ Order No. 890–A at P 559.

⁷⁶ Citing Order No. 890 at P 925.

⁷⁷ Order No. 890–A at P 558.

designating network resources using service analogous to conditional firm service, it will use a special protection scheme to curtail or limit the transmission service for the resource at the same time a network customer's secondary network service is curtailed. The conditional firm customer also should be curtailed about the same amount as the secondary network service customer because the conditional firm service, by definition, should be subject to curtailment at the secondary network service level during the forecast constraints.⁸¹ NRECA's objection to conditional firm service is therefore based on a misunderstanding of the new service and the way that transmission providers use similar mechanisms to designate resources on their systems.

126. In Order No. 890–A, the Commission clarified that customers supporting upgrades have priority access to the capability created by those upgrades even if conditional firm customers earlier in the queue opt not to support upgrades.⁸² The Commission also stated that “any capacity created in excess of the service request should be allocated to those planning redispatch and conditional firm customers earlier in the queue, based on their order in the queue.”⁸³ TAPS requests clarification of the former determination and objects to the latter determination. We clarify that customers supporting upgrades, whether through direct assignment or rolled-in pricing, will not have their upgrades sized based on the needs of planning redispatch and conditional firm customers that opt not to support upgrades. Upon further consideration, we grant rehearing of Order No. 890–A with regard to how excess capacity created by upgrades should be allocated among transmission customers.⁸⁴ We conclude that it is premature to make this determination given that the complicated series of events leading to such an allocation may never come to pass.⁸⁵ Should transmission providers

⁸¹ We note, however, that network customer load is unlikely to be curtailed due to provision of reliability redispatch. In contrast, conditional firm customers' transactions are more likely to be curtailed during conditional periods because reliability redispatch is not required for point-to-point service.

⁸² Order No. 890–A at P 584.

⁸³ *Id.*

⁸⁴ We note that the clarification provided in Order No. 890–A with regard to the allocation of excess capacity was not required to address the original issue raised by Southern. *See id.* P 571, 584.

⁸⁵ For this circumstance to present itself, all of the following, at a minimum, must occur: (1) Conditional firm or planning redispatch service is granted to a customer unwilling to support upgrades; (2) a customer seeking service over the same transmission capacity agrees to support

encounter this series of events, they should file, prior to completion of the transmission upgrades, proposed tariff provisions to address the allocation of the transmission capacity.

b. Implementation of Planning Redispatch and Conditional Firm Service

(1) Characteristics of Service

127. The Commission reiterated in Order No. 890–A that both the transmission provider and reliability coordinator play a role in ensuring that adequate reliability is maintained when a customer uses third-party provided reliability dispatch. The Commission stated that this would entail review of redispatch plans submitted by the customers, coordination between the transmission provider and reliability coordinator, and signaling third-party generators when the redispatch is needed. It is the customer's ultimate responsibility, however, to ensure that any technical arrangements required by the reliability coordinator are in place in order to maintain reliability.

128. With regard to the conditional firm option, the Commission reiterated that transmission providers are allowed to add a risk factor to their calculation of annual curtailment hours to account for forecasting risks. The Commission clarified that the modeling of conditions to determine the number of non-firm curtailments for any conditional firm request should not incorporate unexpected events, such as hurricanes and ice storms.

Requests for Rehearing and Clarification

129. E.ON U.S. requests that the Commission clarify that the reliability coordinator oversees third-party-provided planning redispatch to ensure there is no conflict with reliability dispatch. E.ON U.S. also states, however, that third-party planning redispatch may have a negative impact on system reliability and ATC and, therefore, the transmission provider should not be completely separated from the third-party planning redispatch process. E.ON U.S. nonetheless argues that the reliability coordinator is in the best position to monitor the reliability impacts of third-party planning redispatch. E.ON U.S. notes that the reliability coordinator and transmission provider sometimes are separate

transmission upgrades to secure its service; (3) the upgrade construction is completed; (4) the upgrades create additional capacity that the customer supporting the upgrades did not request; and (5) the conditional firm or planning redispatch customer will be taking service when construction is completed.

entities, as in E.ON U.S.'s case where Tennessee Valley Authority is the reliability coordinator.

130. E.ON U.S. asks for further clarification that unexpected events that are not incorporated into the calculation of annual curtailment hours for a conditional firm customer do not impact the number of hours the customer can be curtailed. Although the Commission acknowledged in Order No. 890–A the need for flexibility in modeling various conditions, E.ON U.S. notes the Commission did not specify a level of appropriate risk factor to apply when making annual curtailment calculations and further found that unexpected events should not be included in calculating annual curtailment analysis.⁸⁶ E.ON U.S. requests that the Commission clarify whether unexpected events that are not included in the curtailment hours calculation also do not count towards the annual curtailment hours for customers taking conditional firm service.

Commission Determination

131. In Order No. 890, the Commission directed transmission providers to modify their OASIS sites to allow for posting of third-party offers for planning redispatch and to work with NAESB to develop the OASIS functionality and any necessary business practice standards to allow for third-party planning redispatch.⁸⁷ The Commission noted that provision of third-party planning redispatch required coordination between the customer, transmission provider and reliability coordinator, but determined that the customer bears the burden to ensure that the necessary contractual and technical arrangements are in place to maintain reliability.

132. We clarify in response to E.ON U.S. that the role of the reliability coordinator in coordinating third-party planning redispatch is very limited. The transmission provider should have primary responsibility for overseeing the coordination of third-party planning redispatch. For example, if third-party planning redispatch impacts ATC, as E.ON U.S. suggests, the transmission provider will make this determination and relay that information to the customer. It is important to distinguish reliability redispatch, for which reliability coordinators generally play a larger role, from planning redispatch. Planning redispatch is used to create additional transmission capacity in order to accommodate a request for

⁸⁶ Citing Order No. 890–A at P 588.

⁸⁷ Order No. 890 at P 1007.

long-term firm transmission service.⁸⁸ The transmission provider or third-party generation operator must plan to dispatch its generator(s) so that the requested transmission service, otherwise shown unavailable by the transmission provider's ATC model, may be granted. In comparison, reliability redispatch is used to relieve actual system constraints that would otherwise cause curtailment of network customer or transmission provider loads. While the reliability coordinator has a larger role to play in reliability redispatch, its role in coordinating third-party provision of planning redispatch is very limited.

133. With regard to our determination that unexpected events should not be incorporated into the analysis to determine the number of annual curtailment hours applying in any transmission service agreement, we clarify that whether such events impact the accounting for annual curtailment hours depends on the curtailment priority of the service at the time of the event. If an unexpected event occurs when the conditional firm customer is curtailed pursuant to a firm curtailment priority, then the curtailment will not count against the annual hours. In determining whether the annual conditional curtailments are met, transmission providers should count curtailments made when the service is otherwise conditional, *i.e.*, tagged with a secondary network curtailment priority, regardless of whether the curtailment occurred during an unexpected event.

(2) Pricing of Planning Redispatch

134. The Commission affirmed the determination in Order No. 890 that customers taking long-term point-to-point service with planning redispatch will have the option of paying either (i) the higher of (a) actual incremental costs of redispatch or (b) the applicable embedded cost transmission rate on file with the Commission or (ii) a fixed rate for redispatch to be negotiated by the transmission provider and customer and subject to a cap representing the total fixed and variable costs of the resources expected to provide the service. The Commission clarified that, in months in which generation-related payments are collected for planning redispatch, these payments should be treated as a revenue credit to offset the native load customers' fuel adjustment clause. In months in which the embedded cost rate of transmission is collected for planning redispatch, those revenues should be included in the numerator of

the rate calculation as a revenue credit. The Commission stated that transmission providers may propose in an FPA section 205 filing any rate design change that may be necessary through an amendment to its formula rate or in a single rate case filing.

Requests for Rehearing and Clarification

135. E.ON U.S. and EEI request rehearing of the Commission's pricing provisions with respect to the crediting of transmission revenues from planning redispatch. Both repeat arguments that the Commission has forced transmission providers' native load to bear the cost of planning redispatch on behalf of point-to-point customers. They ask the Commission to grant rehearing to require that, when transmission revenues exceed the cost of planning redispatch on a monthly basis, only the amount of the excess transmission revenues should be credited against the cost of transmission service and the remainder should be credited against the fuel adjustment clause. In the alternative, EEI asks the Commission to clarify that, when the transmission revenues exceed the cost of redispatch, all of the revenues should be included as a credit in developing the transmission cost of service that is used to determine the transmission rate, and the generation redispatch costs should be included as a debit in determining the transmission cost of service and also should be credited against the fuel adjustment clause.

136. Southern repeats arguments made on rehearing of Order No. 890 that transmission providers should be able to charge planning redispatch customers the embedded costs of transmission as well as the generation-related costs of providing redispatch. Southern contends that it is unduly discriminatory and arbitrary and capricious to allow a transmission customer to be charged both the costs of generation redispatch and the embedded transmission rate when the redispatch is provided by a third party, but not when redispatch is provided by the transmission provider. In months in which redispatch costs are higher than the embedded cost rate, Southern contends that the transmission provider is similarly situated to a third party generator that provides redispatch because neither would receive transmission revenues for the additional transmission capability created by their redispatch. Southern therefore argues that the policy against "and pricing" is unduly discriminatory as applied to transmission providers and that this disparate treatment of transmission providers and third-party providers of

planning redispatch does not withstand scrutiny.

137. Southern also repeats arguments that the Commission incorrectly concluded in Order No. 890-A that planning redispatch creates additional transmission capacity and does not take away firm service from native load and network customers. Southern contends that planning redispatch merely reallocates, rather than creates, transmission capability by forcing certain generators to run and others not to run, thereby changing power flows. Southern, raising a new argument, asserts that the provision of planning redispatch could result in reduced subsequent, later-queued sales of long-term or short-term transmission service that might have produced higher transmission revenues than the provision of planning redispatch. Southern adds that planning redispatch could prevent a network customer from designating a new network resource by taking all of the transmission capacity near a generating source. Southern therefore contends that the Commission's conclusion in Order No. 890-A that the provision of planning redispatch provides purely incremental service without effect to existing transmission capacity is arbitrary and capricious.

Commission Determination

138. The Commission grants clarification regarding the rate treatment of generation-related revenues and revenues from the embedded cost rate of transmission associated with planning redispatch. In Order No. 888, the Commission concluded that revenues from direct assignment of redispatch costs must be credited to the costs of fuel and purchased power expense included in the transmission provider's wholesale fuel adjustment clause.⁸⁹ This rate treatment is appropriate for all generation-related incremental costs, whether the customer pays the embedded cost transmission rate or the costs of planning redispatch in any particular month. Therefore, we direct that in months in which the embedded cost transmission rate is higher than the generation-related costs of providing redispatch, the revenues in excess of the generation-related costs should be credited against the costs of transmission service and the remaining revenues, those representing the monthly costs of reconfiguring generation resources, should be credited against the fuel adjustment clause.

139. We affirm our decision in Order No. 890-A to deny requests to depart

⁸⁸ See Order No. 890-A at P 603.

⁸⁹ See Order No. 888 at 31,740.

from our long-standing prohibition of “and” pricing for planning redispatch service first adopted in Order No. 888 and followed in Order No. 890.⁹⁰ In Order No. 890, the Commission modified pre-existing planning redispatch obligations and lessened the impact on transmission providers (and their customers) with the continuing support of many transmission providers, including Southern. The Commission also modified pricing provisions to allow for the comparison of monthly generation-related costs of planning redispatch to determine the applicable rate. In directing this monthly comparison, the Commission rejected the former provisions for basing the charge on a life of the contract comparison, concluding that it was appropriate to make planning redispatch service more attractive for transmission providers to provide.⁹¹

140. We also affirm, as the Commission did in Order Nos. 890 and 890–A, the determination in Order No. 888 that planning redispatch creates additional transmission capability.⁹² We agree with Southern that provision of planning redispatch may have an impact on subsequent, later-queued requests to use the transmission grid. It is the nature of networked transmission grids that granting any firm point-to-point or network service will impact the ability of those seeking to use the system in the future. The impact of planning redispatch, or any other firm service, on subsequent uses of the grid does not provide a valid reason for lifting the long-standing prohibition on “and” pricing, nor does it undermine the determination in Order No. 888–A that planning redispatch creates additional transmission capacity. To the extent that Southern argues it could collect additional revenues from network customers’ designation of additional resources were Southern not providing planning redispatch, we find this unconvincing as network customers are charged for service based on their load not the number of resources designated.

2. Rollover Rights

141. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to limit rollover rights to contracts with a minimum term of five years. The Commission rejected requests to condition application of the minimum five-year term on a demonstration that the relevant

generation markets support five-year power supply contracts. The Commission explained that the purpose of its reform of the rollover policy is to align the rights and obligations of the customer with those of the transmission provider, not with the availability of supplies within a market or particular commercial practices in a region. The Commission noted that a point-to-point customer does not need to have a five-year power contract in order to secure a five-year transmission service contract and that the length of the network customer’s service agreement, not the length of the power contract supporting a network resource designation, determines whether a customer is eligible for rollover.

142. The Commission also affirmed the decision in Order No. 890 not to eliminate the requirement to match competing requests in order to retain rollover rights. With regard to the effectiveness of the rollover reforms, the Commission acknowledged that requiring a five-year contract term for pending transmission service requests could cause significant disruption to those transmission customers already in the transmission queue at the time of the effective date of Order No. 890. The Commission therefore revised section 2.2 of the *pro forma* OATT to provide that the current one-year contract commitment requirement will continue to apply to all transmission service requests that were in a transmission provider’s transmission queue as of the effective date of the reforms adopted in Order No. 890 (*i.e.*, July 13, 2007).

Requests for Rehearing and Clarification

143. Entergy objects to the Commission’s statement in Order No. 890–A that the term of the network customer’s underlying service agreement establishes whether a network service reservation is eligible for rollover rights, rather than the term of the relevant designated network resources.⁹³ Entergy argues that this determination is an unexplained departure from existing rollover policy providing that a network service reservation’s eligibility for a rollover is based on the term of the underlying network resource.⁹⁴ Entergy argues that network customers most often execute long-term service agreements, sometimes up to as many as 30 years in length, that act as umbrella agreements under which network customers designate and undesignate different network resources as needed to serve

network load. Entergy explains that the transmission provider studies these reservations as they are submitted and, if they are deliverable to the relevant network load on a firm basis, then they are designated as network resources.

144. Entergy argues that granting rollover rights based solely on the term of a network service agreement, rather than the term of the network resource designation, would effectively ignore the firm deliverability requirement underlying all network resources, allowing a network customer to execute a multi-year service agreement and obtain rollover rights even though it actually may have only designated network resources for as little as one day. Entergy contends that this is not the intent of allowing transmission customers to designate network resources on a short-term basis and constitutes bad transmission policy and undermines reliability.

145. Cargill objects to the revision of section 2.2 of the *pro forma* OATT requiring existing customers to match the longest-term competing request in order to rollover service. Cargill contends that the Commission in Order No. 890 determined that a rollover customer must agree to another five-year contract term or match any longer-term competing request in order to be eligible for a subsequent rollover,⁹⁵ but imposed no similar requirement when exercising a rollover right when a subsequent rollover is not desired. Cargill argues that the new requirement to match the longest-term competing request in order to roll over service violates the first-come, first-served principles affirmed in Order No. 890. Cargill suggests, for example, that one potential customer could submit a competing request well in advance of the incumbent’s rollover, followed by a second longer-term competing request submitted by another potential customer closer in time to the incumbent’s rollover. Cargill contends that the revision to section 2.2 would allow the second customer to effectively preempt the earlier submitted competing request simply because both are vying for capacity subject to the incumbent’s rollover right.

146. Cargill argues that the revised language of section 2.2 therefore violates the first-come, first-served principle of section 13.2 of the *pro forma* OATT and Commission precedent regarding the application of rollover rights,⁹⁶ nullifying the benefit of being the first competitor to submit a competing

⁹⁰ See Order No. 890 at P 1028.

⁹¹ Order No. 890 at P 1025.

⁹² Order No. 888–A at 30,267; Order No. 890 at P 1028; Order No. 890–A at P 602, n.241.

⁹³ Citing Order No. 890–A at P 645.

⁹⁴ Citing *Wis. Pub. Power, Inc. v. Wis. Pub. Serv. Corp.*, 84 FERC ¶ 61,120, at 61,659 (1998) (*WPPPI*).

⁹⁵ Citing Order No. 890 at P 1231.

⁹⁶ Citing *Tenaska Power Services Co. v. Midwest ISO*, 106 FERC ¶ 61,230 at P 28, *reh’g denied*, 107 FERC ¶ 61,308 (2004) (*Tenaska*).

request for capacity subject to a rollover right. Cargill contends that the Commission provided no justification in Order No. 890–A for revising its rollover policy to require a customer to match the longest-term competing request in order to rollover its service. Cargill also argues that the Commission provided no notice or opportunity to comment on this change in Commission policy.

147. TranServ requests clarification of the Commission's determination regarding the application of the new rollover policies to customer requests queued prior to the effective date of the reforms adopted in Order 890. TranServ states that there is continued confusion over exactly when customers would be required to request long-term service for five years or longer to be granted rollover rights. TranServ contends that customers submitting long-term service requests after July 13, 2007, but prior to the effectiveness of revised section 2.2 of the OATT, are not granted the right to rollover service under the previous one-year term rollover policy. TranServ suggests that it may be more appropriate to allow transmission customers that submitted requests for one year or longer after July 13, 2007, but executed a service agreement prior to the effective date of the revised section 2.2, to also be allowed to operate under the one-year term rollover policy through their first rollover date.

Commission Determination

148. The Commission affirms the determination in Order No. 890–A that the length of a network customer's network service agreement, not the length of a power contract supporting a network service agreement, determines whether the network customer is eligible for rollover rights.⁹⁷ A network customer's eligibility for rollover rights is distinct from its ability to rollover a particular resource designation. In order for a network customer to qualify for rollover rights, it must have a network service agreement that satisfies the minimum term necessary for rollover rights. The network customer may then continue to designate and undesignate resources pursuant to that service agreement, subject to the availability of adequate transmission capability to accommodate the request.

149. This does not, as Entergy argues, depart from Commission precedent regarding the network customer's eligibility for rollover rights. At issue in *WPPI* was whether a network customer is required to compete with other firm uses of the system in order to continue its resource designation at the time of

rollover.⁹⁸ In considering that issue, the Commission first addressed whether rollover rights are available to network customers, concluding that all network customers of the transmission system are long-term users of the system and, therefore, meet the minimum term required to qualify for rollover rights. That determination was appropriate when the one-year contract commitment was in effect, since network service agreements are not short-term in nature. However, when the Commission extended the minimum contract commitment for rollover rights from one year to five years, it was necessary to state more clearly that a network customer's threshold eligibility for rollover rights is linked to the term of its network service agreement.

150. We disagree that this determination undermines the ability of the transmission provider to study the potential impact that future resource designations may have on the system. Although a network customer rolling over its network service may match a competing point-to-point request by extending its network service agreement rather than the power contract supporting the resource designation, the Commission specifically noted that any subsequent request to designate a network resource would remain subject to the requirements of the *pro forma* OATT, as with any other request to designate a network resource.⁹⁹ The transmission provider will therefore continue to be able to consider the deliverability of a particular resource at the time of designation. We note that this does not relieve the transmission provider of its obligation under section 28.2 of the *pro forma* OATT to plan, construct, operate and maintain its transmission system in order to provide the network customer with network service over the transmission system.

151. We agree with Cargill, however, that the revisions to the language of section 2.2 of the *pro forma* OATT adopted in Order No. 890–A do not properly reflect the obligation of customers rolling over their service to match competing requests for service. Section 2.2 of the Order No. 888 *pro forma* OATT required customers rolling over their service to accept a contract term for their new service at least as long as that offered by another potential

customer.¹⁰⁰ This obligation was independent of the separate requirement for the rollover customer to request a term of at least one year in order to be eligible for rollover rights on the new service. In amending section 2.2 in Order No. 890, the Commission inadvertently misstated the matching requirement as requiring the customer to match the longer of the term of a competing request or five years in order to roll over its service.¹⁰¹ That was incorrect, as the requirement to commit to at least five years of service is relevant only to whether the new service has rollover rights, not to whether the customer may roll over its existing service.

152. The Commission corrected this misstatement in Order No. 890–A by amending section 2.2 to require customers rolling over the service to match the longest competing request.¹⁰² 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.¹⁰³ 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.

153. We affirm the decision in Order No. 890–A to continue to apply the current one-year contract commitment requirement to all transmission service requests that were in the transmission provider's transmission queue as of the effective date of the reforms adopted in Order No. 890, *i.e.*, July 13, 2007.¹⁰⁴ This does not mean, as TranServ implies, that the five-year contract

¹⁰⁰ See Order No. 888 at 31,665.

¹⁰¹ See Order No. 890 at Appendix C, *pro forma* OATT section 2.2.

¹⁰² See Order No. 890–A at P 695 (“An existing customer may rollover its service for a term of less than five years, but will not then retain a rollover right for this service. We revise section 2.2 of the *pro forma* OATT to make these requirements clear.”).

¹⁰³ See *Tenaska*, 106 FERC ¶ 61,230 at P 48; see also *Cargill Power Marketers, LLC v. Southwest Power Pool, Inc.*, 122 FERC ¶ 61,068 (2008) (distinguishing the “equal to a competing request” language of section 2.2 of the *pro forma* OATT from the “longest confirmed competing request” language of SPP's tariff).

¹⁰⁴ See Order No. 890–A at P 691.

⁹⁷ See Order No. 890–A at P 645.

⁹⁸ See *WPPI*, 84 FERC at 61,659.

⁹⁹ See Order No. 890–A at P 666, n.264. With regard to competing network resource designations, the Commission affirmed in Order No. 890–A that the network customer seeking rollover must match the term of the competing network resource power contract, consistent with *WPPI*. See Order No. 890–A at P 666.

commitment requirement applies to a customer executing a service agreement after that date, but prior to the effectiveness of rollover reforms for the particular transmission provider. The Commission reiterated in Order No. 890–A that the previously existing rollover provisions will remain in effect for the transmission provider until such time as the Commission accepts the transmission provider's Attachment K compliance filing.¹⁰⁵ We therefore agree with TranServ that the one-year contract commitment requirement continues to apply to any customer executing a service agreement prior to the effective date of the transmission provider's revised section 2.2, regardless of when the customer's service request was submitted.

154. Finally, we take this opportunity to clarify the statement in Order No. 890–A that the transmission provider may file the revised rollover language only after the transmission provider's Attachment K planning process is accepted by the Commission.¹⁰⁶ Transmission providers may file the revised rollover language adopted in this proceeding at any point after the Commission has accepted the transmission provider's Attachment K compliance filing, even if such acceptance is subject to further compliance obligations, unless otherwise provided by the Commission in the order addressing the Attachment K compliance filing. The effective date of that revised tariff language should be commensurate with the date of the filing containing the revised language.

3. Acquisition of Transmission Service

a. Reservation Priority

155. The Commission confirmed in Order No. 890–A that longer duration service requests will continue to have priority over shorter duration service requests, with pre-confirmation serving as a tie-breaker for requests of equal duration. Order No. 890–A also affirmed the decision to limit priority for pre-confirmation status to short-term firm and long-term non-firm requests for service. The Commission also revised sections 1.39, 17.2 and 18.2 of the *pro forma* OATT to make clear that pre-confirmation service should be available to all eligible customers seeking short-term firm and non-firm transmission services.

Requests for Rehearing and Clarification

156. Schedule 20A Service Providers request rehearing of the Commission's decision to revise the *pro forma* OATT

to allow pre-confirmation by eligible customers that have not yet executed service agreements. They argue that this revision is inconsistent with how service is reserved on the Phase I/II HVDC–TR transmission system operated by ISO New England and Hydro-Quebec TransEnergie. The Schedule 20A Service Providers state that they have therefore requested approval of a variation from the *pro forma* OATT in their October 11, 2007 compliance filing to accommodate their reservation practices.

157. The Schedule 20A Service Providers also argue more generally that OASIS is not set up to take pre-confirmed applications and, therefore, there is no means by which an eligible customer that is not yet a transmission customer can request pre-confirmed service. They argue that limiting pre-confirmation status to transmission customers does not preclude new customers from seeking service on an equal footing since the obligation to execute a service agreement does not impose an undue burden. To the contrary, they argue that substantial implementation difficulties would arise if transmission providers are forced to recognize pre-confirmation status for eligible customers that do not have access to OASIS. The Schedule 20A Service Providers therefore ask the Commission to grant rehearing to provide that the modifications to sections 1.39, 17.2 and 18.2 of the *pro forma* changes are not necessary or appropriate when applications are not a means for requesting service through OASIS.

Commission Determination

158. The Commission affirms the decision in Order No. 890–A to allow eligible customers to submit pre-confirmed requests for transmission service.¹⁰⁷ The ability to submit pre-confirmed requests should not be limited to existing short-term and non-firm transmission customers. To the extent this policy conflicts with the operations of any given transmission provider, as the Schedule 20A Service Providers suggest, the transmission provider may seek a variation from the terms and conditions of the *pro forma* OATT as necessary to accommodate its operations. We note, for example, that the Commission approved the variation requested by the Schedule 20A Service Providers in Docket No. ER08–54–000.¹⁰⁸

¹⁰⁷ Order No. 890–A at P 790.

¹⁰⁸ See *ISO New England, Inc.*, 123 FERC ¶ 61,133 (2008).

b. Right of First Refusal and Preemption

159. The Commission affirmed in Order No. 890–A the decision not to change the first-come, first-served nature of the reservation process and the right of first refusal. In response to comments that administration of the right of first refusal has the potential to create complicated scenarios, such as when scarce capacity exists, the Commission declined to expand upon the language of the *pro forma* OATT to account for every factual scenario that could arise. The Commission recognized that certain unique cases can present difficult allocation issues, but concluded that such cases arise infrequently and that sections 13.2 and 14.2 of the *pro forma* OATT provide adequate guidance for the vast majority of requests.

Request for Rehearing and Clarification

160. Duke asks the Commission to clarify that a transmission provider need not offer a right of first refusal if it cannot be done in a single offering to other eligible customers. Duke argues that it is unduly complicated to offer a right of first refusal when the offer triggers other transmission customers' rights of first refusal. If it is the Commission's intention that the transmission provider offer cascading rights of first refusal, Duke requests guidance that can be used by NAESB to develop adequate business practices.

Commission Determination

161. The Commission declines to address in this rulemaking proceeding how transmission providers should resolve complicated and fact-specific scenarios such as the cascading rights of first refusal described by Duke. Sections 13.2 and 14.2 of the *pro forma* OATT provide adequate guidance for transmission providers to fairly administer the vast majority of competing requests, including priorities for determining which reservations or requests trump one another as well as the timeframes for eligible customers to respond to competing requests. As the Commission explained in Order No. 890–A, we expect that more complex circumstances such as those suggested by Duke will be relatively limited and, therefore, are best addressed on a case-by-case basis.¹⁰⁹ Transmission providers remain free, however, to develop through the NAESB process standard procedures for processing complicated request scenarios.

¹⁰⁹ See Order No. 890–A at P 816.

¹⁰⁵ See *id.* P 684.

¹⁰⁶ See *id.*

4. Designation of Network Resources

162. In Order No. 890–A, the Commission clarified certain determinations regarding the qualification, documentation and undesignation of resources by a network customer. A number of petitioners request additional rehearing and clarification regarding these issues. We address each of these issues in turn.

a. Qualification as a Network Resource

(1) LD Contracts

163. In Order No. 890, the Commission affirmed its existing policy that a power purchase agreement may be designated as a network resource provided it is not interruptible for economic reasons, does not allow the seller to fail to perform under the contract for economic reasons, and requires the network customer to pay for the purchase. The Commission concluded that power purchases with a firm liquidated damages (LD) provision may be eligible for designation as a network resource if the contract obligates the supplier, in the case of interruption for reasons other than force majeure, to make the aggrieved buyer financially whole by reimbursing them for the additional costs, if any, of replacement power. The Commission found that the “make whole” LD provisions in EEI’s Master Power Purchase and Sale Agreement’s Firm LD product (EEI’s Firm LD Product) and the WSPP Service Schedule C agreement satisfy this requirement. In Order No. 890–A, the Commission affirmed its finding that the make whole LD provisions in the EEI Firm LD Product and the WSPP Service Schedule C agreement are sufficiently firm to make those agreements eligible for designation as a network resource.

Requests for Rehearing and Clarification

164. Duke asks the Commission to confirm that firm LD contracts that are not strictly limited to interruption for reliability reasons, such as the EEI Master Agreement Firm LD Product, no longer can be designated as network resources in the future. Duke contends that the Commission’s statement in Order No. 890–A that “the make whole LD provisions in the EEI firm LD product and WSPP Schedule C agreement are sufficiently firm to make those agreements eligible for designation as a network resource” implies that LD contracts with make-whole provisions may serve as network resources, even if not coupled with provisions that also restrict interruption

for reasons other than reliability.¹¹⁰ Duke requests clarification that both a make-whole provision and a restriction on the grounds for interruption, such as the restriction added to the WSPP Schedule C agreement, are required for an LD contract to be eligible for network resource status.

Commission Determination

165. The Commission reiterates that a power purchase agreement must meet all of the requirements for designation as a network resource in order to be designated by the network customer or transmission provider’s merchant function. The fact that a firm LD contract with a make whole provision is sufficient to satisfy one aspect of these requirements does not mean that it can be designated as a network resource. The remaining requirements must also be met.¹¹¹ As the Commission made clear in Order No. 890, one of those other requirements is that such contracts expressly prohibit interruption for reasons other than reliability.

166. We disagree with Duke that the EEI firm LD product fails to prohibit interruptions for reasons other than reliability. Duke raised a similar argument in its NOPR comments, suggesting that the EEI firm LD product allows power to be interrupted for any reason. The Commission expressly disagreed, finding that power cannot be interrupted for economic reasons under the EEI firm LD product and that the supplier is obligated to provide power except in cases of force majeure.¹¹² Duke is therefore mistaken in implying that the EEI firm LD product is not eligible for designation under Commission policy because of its interruptibility.

(2) Off-System Resources

167. In Order No. 890, the Commission modified section 29.2(v) to state more clearly the information that must be provided for the designation of off-system network resources. Among other things, the network customer must provide its transmission arrangements on the external transmission system(s). In Order No. 890–A, the Commission clarified that this requirement applies to the transmission leg from the resource

being designated to the transmission provider’s transmission system. If an off-system power purchase is sufficiently firm to satisfy the designation requirements, the transmission provider need not be concerned with the upstream transmission leg(s) from the generator(s) to the point where the buyer takes title of the firm power. The Commission concluded that the firm contract itself is the resource being designated and, therefore, it is not necessary to demonstrate the firmness of the upstream transmission.

Requests for Rehearing and Clarification

168. Entergy requests clarification that customers designating an LD contract as an off-system network resource must still arrange a firm transmission path from the generator to the transmission system in order for the purchase to qualify as a network resource, regardless of where title of energy and/or capacity actually passes. If the point where title to energy and/or capacity underlying a network resource transfers is now relevant, Entergy argues that the Commission at a minimum should clarify how that information should be relayed to the transmission provider in the network customer’s attestation and the procedures, if any, that the transmission provider must undertake in order to ensure the veracity of information provided regarding title. Entergy argues that elimination of the requirement to support an LD contract with a firm transmission path from the source generator would violate the long-standing obligation that third-party transmission arrangements delivering purchases be firm and depart from prior governing precedent without a reasoned explanation.¹¹³

Commission Determination

169. The Commission affirms the determination in Order No. 890–A that the requirement in section 29.2(v) of the *pro forma* OATT to identify the transmission arrangements on external systems applies only to the transmission leg from the resource being designated to the transmission provider’s transmission system.¹¹⁴ If an off-system power purchase is sufficiently firm to satisfy the designation requirements, then the transmission provider need not be concerned with the upstream transmission leg(s) from the generator(s) to the point where the buyer takes title of the firm power. As the Commission explained in Order No. 890–A, the resource being designated is the firm

¹¹⁰ Citing Order No. 890–A at 832.

¹¹¹ See, e.g., *id.* P 864 (“The Commission did not state that every firm LD contract can be designated as a network resource, but rather that they are eligible for designation.”) (emphasis in original); Order No. 890 at n. 869 and P 1460 (finding that the then current WSPP Schedule C agreement, while meeting requirements for LD provisions, otherwise allows interruptions for reasons other than reliability and, as a result, would not be eligible for designation as a network resource).

¹¹² Order No. 890 at P 1452.

¹¹³ Citing *WPPI*, 84 FERC at 61,660.

¹¹⁴ See Order No. 890–A at P 867.

contract. The network customer therefore must provide to the transmission provider information regarding its transmission arrangements only from the point that the network customer takes title to the power to the point of delivery to the transmission provider's transmission system, to the extent such points are distinct.

170. We disagree that this determination conflicts with the Commission's decision in WPPI. In that case, the Commission clarified that the transmission provider could require network customers to document compliance with specific requirements for obtaining tariff service and that such documentation might include contractual materials.¹¹⁵ The Commission did not address whether those requirements include the requirement to provide information regarding transmission arrangements between a designated power purchase agreement and the source generator. The Commission concluded in Order No. 890-A that they do not, given that the designated purchased power contract is itself firm.¹¹⁶ Entergy provides no justification for granting rehearing of this determination, which is well-founded in the record of this proceeding.¹¹⁷

171. We disagree that a network customer must separately identify in its attestation the location at which the network customer takes title of purchased power. Section 30.2 of the *pro forma* OATT requires the network customer to attest that, among other things, the network customer owns or has committed to purchase the resource being designated. Implicit in the identification of a resource, then, is the requirement that the network customer has or has committed to acquire title to the resource at that location. As the Commission explained in Order No. 890-A, it is the responsibility of the network customer to assure that the requirements of the *pro forma* OATT are satisfied prior to requesting the designation of a network resource and executing the attestation.¹¹⁸ Review of the network customer's power supply contracts by the transmission provider is therefore not necessary. Submitting an attestation with incorrect information as to its ownership of purchased power would violate section 30.2, subjecting the network customer to potential penalties.¹¹⁹

b. General

172. In Order No. 890-A, the Commission affirmed the decision to allow off-system resources supported by conditional firm point-to-point service to be designated as network resources. The Commission declined to require a network customer with a designated off-system resource supported by conditional firm service to obtain reserves or backup resources to cover the periods when the resource supported with conditional firm point-to-point transmission service might not be delivered. The Commission explained that, in the event conditional firm service is curtailed, the network customer would be required to serve its network load from other resources, just as when the transmission provider curtails the network customer's use of secondary network service. The Commission reiterated that it is not the responsibility of the transmission provider to ensure that the network customer has sufficient resources to meet its load.

Requests for Rehearing and Clarification

173. Duke argues that the Commission, in its finding that transmission providers are not to serve as provider of last resort for their network customers, did not explain how transmission providers can realistically avoid this role or how transmission providers or their merchant function should be compensated in the likely event that the transmission provider will continue to provide power to network customers that are short of energy resources. Duke argues that several of the Commission's policies on designation of network resources create or exacerbate risks that network customers may at times be short of resources. First, Duke cites the Commission's decision to allow a network customer to deliver power from off-system network resources using conditional firm point-to-point service, which it argues may be curtailed with much greater frequency than network resources supported by firm point-to-point service. Second, Duke cites the Commission's rejection of requests to allow transmission providers to verify that a network resource is supported by firm transmission service upstream of the location of the purchase. Third, Duke cites the Commission's policy of allowing power sales contracts that permit interruption by the seller in order to reliably serve native load to qualify as network resources, arguing that such policy may permit double-

counting of resources. Fourth, Duke states concern regarding the grandfathering of existing designations for resources that may be curtailed by the seller for any reason. Finally, Duke argues that the Commission's attestation requirement will not adequately curb the practice of designating unqualified resources as network resources due to a lack of audit resources.

174. Duke requests clarification that transmission providers or their merchant functions may make section 205 filings to provide for penalty rates for network customers that fail to provide enough energy to serve load because network resources were not delivered for reasons that could be expected. Duke explains that the most severe penalty for energy imbalance service under Schedule 4, 125 percent of incremental cost, is not particularly onerous and thus may be insufficient to motivate appropriate behavior. Duke suggests that a rate of two times system incremental costs would be appropriate.

Commission Determination

175. The Commission reiterates that it is not the responsibility of the transmission provider to ensure that the network customer has sufficient resources to meet its load. The Commission has made clear that the requirements for the designation of network resources are not intended to replace or replicate resource adequacy requirements, which impose distinct obligations on the transmission provider and its customers.¹²⁰ To that end, the Commission has determined that a resource's qualification for network resource status does not necessarily mean that the resource can or should be counted as firm capacity for the purposes of resource adequacy.¹²¹ We therefore disagree with Duke that the Commission's policies regarding the designation of network resources creates or exacerbates risks that inadequate resources will be available to meet network load.

176. We decline to address Duke's suggestion that increased penalty rates may be appropriate for network customers that fail to provide enough energy to serve network load because their network resources were not delivered for reasons that could be expected. The Commission has already made clear that it will consider on a case-by-case basis proposals to adopt enhanced imbalance penalties subject to

¹¹⁵ See WPPI, 84 FERC at 61,660.

¹¹⁶ See Order No. 890-A at P 867.

¹¹⁷ See *id.* P 854-55.

¹¹⁸ See *id.* P 921.

¹¹⁹ See Order No. 890 at P 1523-25. As we note below, the Commission can audit a network

customer's compliance with a transmission provider's OATT in a variety of circumstances.

¹²⁰ See Order No. 890 at P 1584; Order No. 890-A at P 835, 837.

¹²¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283, at PP 274-76 (2008), *reh'g pending*.

a showing that they are necessary under the circumstances.¹²²

c. Documentation for Network Resources

177. In Order No. 890, the Commission required network customers and the transmission provider's merchant function to include a statement with each application for network service or to designate a new network resource that attests, for each new network resource identified, that (1) the transmission customer owns the resource, or has committed to purchase the resource pursuant to an executed contract or where execution of a contract is contingent upon the availability of transmission service, and (2) the resource comports with the requirements for designated network resources. The Commission stated that these attestations are not required to be submitted until the service request is confirmed. In Order No. 890-A, the Commission affirmed the requirement that each network customer designating network resources must submit an attestation using the language set forth in sections 29.2 and 30.2 of the *pro forma* OATT.

178. The Commission also affirmed the decision to require each transmission provider to verify that third-party transmission arrangements used to deliver an off-system designated network resource to the transmission provider's system are firm. The Commission explained that, under normal circumstances, this verification requirement should not present a significant burden for the transmission provider because it only requires review of the transmission arrangements from the designated network resource to the transmission provider's system.

Requests for Rehearing and Clarification

179. NRECA and TDU Systems seek confirmation that network customers are not required to submit attestations until the customer confirms the service request on OASIS. These petitioners state that clarification is necessary because some of their members have been told by transmission providers that this attestation is required at the time of application for service, despite the Commission's guidance in the preambles of both Order Nos. 890 and 890-A.¹²³ NRECA and TDU Systems contend that the language of section 29.2 of the *pro forma* OATT is inconsistent with the preamble and should be amended because courts have

held that language in the preamble of a regulation is not controlling over the language in the regulation itself.¹²⁴ If the Commission actually intended to require the attestation at the application stage, they request rehearing on the grounds that a network customer cannot be expected to commit to purchase a resource before the resource has even been studied by the transmission provider.

180. Duke states continued concern regarding the effectiveness of the attestation requirement submitted by network customers that are not subject to the Commission's ratemaking jurisdiction. Duke maintains that, while the Commission plainly has the authority to penalize nonjurisdictional entities that submit false attestations, the Commission has never routinely audited such entities. Unless the Commission begins an audit program that routinely reviews the designation attestations and supporting contracts of nonjurisdictional network customers, Duke argues that noncompliance could be viewed as nearly risk-free. Duke contends that this would be inequitable given that merchant functions of transmission providers are routinely audited. If the Commission lacks the resources to begin routine, random auditing of nonjurisdictional entities' attestations, Duke suggests that the Commission consider permitting market monitors or independent entities to at least perform spot checks and report to the Commission if a questionable attestation has been made.

181. TranServ requests clarification of the means by which a transmission provider may comply with its obligation to verify the firmness of off-system transmission service to deliver designated network resources to the transmission provider's system. TranServ requests that only long-term designations of network resources should require an up-front verification of any off-system transmission arrangements. For shorter-term designations, TranServ suggests that it is sufficient for the transmission provider to verify that all transmission arrangements upstream of the provider's system are supported by firm transmission at the time the transactions from the resource are scheduled. TranServ contends that this would allow more flexibility on the part of the transmission customer in terms of balancing the use of a portfolio of point-to-point transmission rights, while still

providing the necessary assurance to the transmission provider that the designated resource is backed by firm transmission up to the point of delivery to the provider's system.

Commission Determination

182. The Commission grants rehearing to more accurately state the requirement to provide an attestation supporting the designation of network resources pursuant to sections 29.2(viii) and 30.2 of the *pro forma* OATT. In order to designate a network resource, section 30.7 of the Order No. 888 *pro forma* OATT required each network customer to demonstrate that (i) it owns or has committed to purchase generation pursuant to an executed contract or (ii) execution of a contract is contingent upon the availability of transmission service in order to designate a generating resource. In Order No. 890, the Commission adopted the attestation requirement as the means by which the network customer can make this demonstration, revising sections 29.2 and 30.2 accordingly. We affirm this requirement, consistent with the network customer's obligations under section 30.7, and grant rehearing of the Commission's statements in this proceeding indicating that the attestation can instead be submitted at the time a resource designation is confirmed, rather than requested.

183. We disagree with NRECA and TDU Systems that a customer submitting an attestation pursuant to section 29.2(viii) or 30.2 of the *pro forma* OATT must commit to purchase the resources for which designation is requested irrespective of the outcome of the network service request. Consistent with section 30.7, a network customer may attest that execution of a contract is contingent upon the availability of transmission service under Part III of the *pro forma* OATT. Network customers are therefore not required to commit to purchasing a resource prior to submitting a request to designate that resource.

184. In response to Duke, we disagree that it is necessary to establish audit programs specifically for nonjurisdictional entities in order to verify attestations supporting their network resource designations. The Commission could audit any network customer's compliance with a transmission provider's OATT in a variety of circumstances. For instance, network customers (including nonjurisdictional entities) and the transmission provider's merchant function could be asked to support selected attestations during audits of the transmission providers to whom the

¹²² Order No. 890 at P 676.

¹²³ Citing Order No. 890 at P 1531; Order No. 890-A at P 909.

¹²⁴ Citing *Wyoming Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 53 (D.C. Cir. 1999) (citing *Jurgensen v. Fairfax County, Va.*, 745 F.2d 868, 885 (4th Cir. 1984)) and *Rowell v. Andrus*, 631 F.2d 699, 705 (10th Cir. 1980).

attestations were submitted. Thus, no special audit programs are necessary.

185. We deny TranServ's request that the firmness of transmission service used to deliver short-term designations of network resources be verified at the time of scheduling, rather than at the time of designation. The time of designation is when the transmission provider determines that power from a network resource is deliverable to associated network load and, therefore, it is appropriate to require the verification of related transmission service at that time.

d. Undesignation of Network Resources

(1) Risk to ATC Rights

186. In Order No. 890, the Commission clarified that a request for termination of a network resource that is concurrently paired with a request to redesignate that resource at a specific point in time will not result in the network customer permanently forfeiting rights to use that resource as a designated network resource. Any change in ATC that is determined by the transmission provider to have resulted from the temporary termination shall be posted on OASIS during this temporary period. The Commission directed transmission providers to develop OASIS functionality and, working through NAESB, business standards describing the procedures for submitting temporary terminations of network resources, including the identification of any related transmission service requests to be evaluated concomitantly with the request for temporary termination.

Requests for Rehearing and Clarification

187. TranServ requests clarification of the sequence of events and requirements for releasing transmission capability as a result of a customer's request to undesignate one network resource and replace it with an alternate resource. TranServ argues that the process should be deemed similar in nature and treatment to a redirect of firm point-to-point service or a network service request related to the temporary termination of a resource designation, which must be evaluated concomitantly.¹²⁵ Although TranServ acknowledges that network customers should not be "first-in-line" for ATC made available from an undesignation, it contends that transmission providers should evaluate simultaneous transmission service requests with the knowledge that both resource designations will not run concurrently.

Commission Determination

188. In Order No. 890, the Commission directed transmission providers to evaluate as a single request a request for temporary undesignation and related requests for transmission service. Transmission providers were therefore directed to develop, working through NAESB, business practices allowing for electronic identification of related transmission service requests to be evaluated concomitantly with the request for temporary undesignation. This was appropriate in light of the Commission's decision to allow network customers to temporarily undesignate their network resources without forfeiting the right to use the resource at a specified point in the future, provided they pair the temporary undesignation with a request to redesignate the resource.

189. We find that similar procedures for permanent undesignations of network resources are unnecessary given the transmission provider's obligation to consider clustering transmission service requests at the request of customers. If a network customer or the transmission provider's merchant function wishes for the transmission provider to take into consideration the effect of a request to terminate a network resource on a concomitant request to designate another network resource, it may request the transmission provider to cluster the requests. As TranServ acknowledges, this will not alter the priority of the network customer or the transmission provider's merchant function with regard to any ATC that may be made available by undesignating the network resource.

(2) System Sales

190. In Order No. 890-A, the Commission clarified the circumstances in which a network customer must undesignate its resources on a unit-specific basis when making a system sale. The Commission determined that portions of the seller's individual network resources supporting a sale of system power do not need to be undesignated so long as the system sale is itself designated as a network resource by the buyer. Instead, the seller should undesignate a portion of its system equal to the amount of the system sale, but which is not attributed to any specific generators. If the system sale is not designated as a network resource by the buyer, the seller must submit undesignations for each portion of each resource supporting the third-party sale. The Commission stated that most, if not all, system sales sourced

from designated network resources are themselves designated as network resources by the buyer and, therefore, few system sales would require undesignation on a unit-by-unit basis.

Requests for Clarification and Rehearing

191. Several petitioners request rehearing and clarification of the requirement that generating units supporting a sale of system power that is not designated as a network resource by the buyer must be undesignated by the seller on a unit-by-unit basis.¹²⁶ Petitioners generally argue that a seller should not be required to undesignate individual resources used to support any system sale of power.

192. Various petitioners argue that requiring unit-by-unit undesignations by sellers for system sales to buyers who use point-to-point service to deliver the power to their load has certain undesirable effects, including increased cost and administrative burden for system sales, increased tendency of sellers to discriminate against point-to-point buyers, foreclosed opportunities for transactions, decreased liquidity, decreased revenues for sellers, decreased efficiency in transmission use, and further discouragement of network customers from making system sales that do not qualify for designation by the buyer, such as sales into day-ahead RTO markets.¹²⁷

193. Deseret argues that an LSE's access to system sales, rather than a unit-specific or hub-based sales, further assures delivery of a product necessary to fulfill native load requirements. Deseret contends that limiting the flexible undesignation of network resources supporting system sales to instances where the buyer designates the purchase as a network resource is therefore contrary to section 217 of the FPA. Deseret also argues that the Commission's policy unduly preferences buyers that designate the purchase as a network resource. Deseret contends that the Commission has failed to justify why system sales to point-to-point customers are more problematic than sales to network customers, even where the two buyers would be using the resource in the same way. Southern agrees, arguing that there is no support in the record for the Commission's determination regarding the undesignation of resources used for system sales.¹²⁸ Duke states similar concerns, noting that all commenters

¹²⁶ *E.g.*, Deseret, Duke, EEI, NRECA, Pacific Northwest IOUs, Southern, and TranServ.

¹²⁷ *E.g.*, Deseret, NRECA, Southern, and TAPS.

¹²⁸ *Citing National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

¹²⁵ *Citing* Order No. 890 at P 1541.

addressing the issue took the opposite position with regard to slice-of-system sales, *i.e.*, that in all cases the slice, not units, should be undesignated.

194. Several petitioners challenge the Commission's statement that buyers taking advantage of system purchases are almost always network customers.¹²⁹ Deseret explains that, in part due to the remote nature of its loads and the composition of the integrated transmission grid in its region, it is more efficient, both from a cost perspective and a transmission use perspective, for LSEs like itself to serve their loads using point-to-point service, either pursuant to an OATT or under pre-Order No. 888 transmission arrangements. NRECA and TAPS similarly argue that some LSEs rely on point-to-point service instead of network service to serve their native loads. Pacific Northwest IOUs state that the majority of system purchases they make are not designated as network resources, due at least in part to the fact that many purchases are imported for short-term balancing purposes where flexibility is important. Southern agrees that the bulk of system purchases occur in the short-term markets and suggests that buyers may simply not want to bother with designating the purchases as network resources.

195. TAPS argues that the Commission's assumption that unit-specific undesignations will rarely be required supports elimination of the unit-specific undesignations for all transactions. TAPS argues that the better course is to allow system-based undesignation for all system sales given that the ATC refinement efforts remain under development by NERC and NAESB and the Commission will have the opportunity to revisit the undesignation requirements once that work is complete.

196. Some petitioners challenge the Commission's underlying concern, as expressed in Order No. 888 and referenced in Order No. 890-A, that network customers may have an incentive to designate unlimited generation resources absent a prohibition on network resources including any portion of a resource that is committed for sale to a third party.¹³⁰ Pacific Northwest IOUs argue that a buyer's decision as to whether or not to designate a system sale as a network resource has no bearing on the seller's incentive or disincentive to overdesignate network resources. Pacific

Northwest IOUs contend that the seller will designate those resources which it believes are necessary to serve its load regardless of how a buyer chooses to use a system sale from the seller. Southern agrees, arguing that the costs associated with acquiring resources that meet all the requirements for designation serve as an appropriate economic incentive not to overdesignate. These petitioners note that the Commission already addressed concerns regarding over-designation of network resources in Order No. 888 by determining that "a transmission customer, like a transmission provider, has an incentive not to oversubscribe its capacity requirements because the cost of excessive reserve margins will be prohibitive."¹³¹ Pacific Northwest IOUs argue that the procedural complexities associated with designating network resources provide further incentives not to overdesignate and that such incentives exist regardless of how a buyer uses a system purchase.

197. EEI contends that a seller will charge more for a power sale that it cannot recall without paying a penalty, or that it cannot recall at all, than it will charge for a sale that it can recall. EEI argues that there is therefore an additional financial disincentive to overdesignate network resources regardless of whether a seller undesignates a slice of its entire system or a portion of each generator involved in the sale. EEI acknowledges that transmission service that the buyer takes in connection with a system sale might affect ATC associated with the transaction. EEI suggests, however, that the Commission address any concerns about reservations of transmission service by buyers of slice-of-system energy directly through requirements that apply to buyers rather than sellers. EEI argues that restricting the type of transmission service the buyer may choose with respect to a slice-of-system purchase violates the basic tenet of open access transmission service that a transmission customer has the freedom to take whatever transmission service is available to it under the *pro forma* OATT.

198. Some petitioners argue that the policy of requiring resource-specific undesignations for system sales which are not designated as network resources by the buyer creates implementation problems.¹³² These petitioners state that the entity making the sale may have no knowledge as to whether the sale is being used as a network resource and,

thus, would not know which undesignation rule to apply. Petitioners also note confusion over what the seller's undesignation obligation would be were the buyer to undesignate its purchase after the sale is made, particularly when such activity is not known to the seller. E.ON U.S. requests clarification that the seller in a slice-of-system sale will not have violated the transmission provider's OATT as a result of its counterparty's failure to designate or undesignate the network resource as required, so long as the seller treated the slice-of-system sale appropriately by relying on the counterparty's actions at the commencement of the transaction. Pacific Northwest IOUs question whether an undesignation may be made on a project basis when the resource has been designated on a project basis.

199. Several petitioners question the relevance of an off-system buyer's designation of a system sale as a network resource on another transmission provider system. Duke argues that a sale by its merchant function to an off-system network customer designating the purchase as a resource and a sale by its merchant function to an off-system power marketer intending to resale the power elsewhere must both be accomplished by scheduling point-to-point service from Duke to the neighboring system. Duke contends that it makes no sense to require its merchant to undesignate generating units used to serve one sale but not the other, particularly since its merchant would have no knowledge of subsequent changes in the designation status of the resource purchased by the off-system network customer.

200. EEI states similar concern regarding the ability of a seller to know the sink where energy from a system power sale is delivered to an off-system buyer since the buyer may resell it to another customer. EEI contends that the seller may not have access to the OASIS of the transmission provider where the buyer is located and, therefore, may not be able to determine whether the buyer has designated the purchase as a network resource. EEI notes that, while the Commission directed NERC and NAESB to develop processes to allow transmission personnel to obtain access to the OASIS of other transmission providers to verify the firmness of transmission arrangements delivering off-system designated network resources, the Commission did not grant the same level of OASIS access to the merchant function making sales of system power.

201. Pacific Northwest IOUs ask the Commission to specifically clarify that

¹²⁹ *E.g.*, Deseret, NRECA, Pacific Northwest IOUs, Southern, and TAPS.

¹³⁰ *E.g.*, EEI, Pacific Northwest IOUs, and Southern (*citing* Order No. 888 at 31,753-53; Order No. 890 at P 951).

¹³¹ *Quoting* Order No. 888 at 31,754.

¹³² *E.g.*, Duke, E.ON U.S., EEI, and Pacific Northwest IOUs.

the limitations stated in Order No. 890–A apply only to on-system sales and that sellers may undesignate a slice of their system used to support off-system sales regardless of how the buyer treats, designates, or uses the purchased power. Pacific Northwest IOUs state that this would be consistent with the Commission's apparent focus on on-system sales in its discussion of this issue in Order No. 890–A. In support of their request, Pacific Northwest IOUs state that the off-system buyer's use of the system sale has no impact on the seller's transmission system, including ATC.

Commission Determination

202. The Commission affirms the determination in Order No. 890–A that a network customer and the transmission provider's merchant function must undesignate each portion of each resource that is used to support a sale of system power if the buyer has not designated the purchase as a network resource.¹³³ The requirement that network customers undesignate their network resources when making firm third-party sales was first imposed in Order No. 888 to ensure that all designated network resources can, in fact, be called upon by the transmission provider to serve network load:

Absent a requirement that network resources always be available to meet a customer's network loads, reliability of service to the network customer as well as to native load and other network customers could be affected * * *. If a network customer desires to enter into a firm sale from its designated network resource * * *, it must eliminate the appropriate resources or portions thereof from its designated network resources pursuant to pro forma tariff section 30.¹³⁴

203. The restriction on third-party sales from designated network resources therefore enhances the ability of the transmission provider to plan and operate its system to integrate designated resources with the customer's loads. Without the restriction, transmission providers could reduce ATC by maintaining the same existing transmission commitments for anticipated uses of the network customer's designated resources even though the network customer has otherwise committed those same resources to other parties on a firm basis.

204. The Commission in Order No. 890 therefore retained the requirement to undesignate network resources that are used to support firm third-party

sales, reiterating that the undesignation and redesignation requirements work together to promote reliability, prevent undue discrimination, promote comparable treatment of customers, and increase the accuracy of ATC calculations.¹³⁵ In Order No. 890–A, however, the Commission clarified that the requirement to undesignate on a resource-by-resource basis does not apply to system sales in the event the buyer has also designated the purchase as a network resource.¹³⁶ This clarification was provided in response to complaints by various petitioners that keeping track of individual generating units and amounts of generation from each unit being used to support system sales is unduly burdensome or impossible.¹³⁷

205. At the outset, we note that the discussion in Order No. 890–A appears to have caused confusion by not specifically stating that the exception to the requirement to undesignate capacity supporting a system sale on a resource-by-resource basis for system sales that are designated as network resources by the buyer applies only to transactions in which the buyer and seller are located on the same transmission system. As the Commission explained in Order No. 890–A, when a seller's network resources are used to support an on-system system sale, the buyer meets the informational requirements of section 29.2(v) simply by identifying the seller's system as the resource, because the detailed operating characteristics for those generators were already provided when they were designated by the seller.¹³⁸ The transmission provider is therefore already modeling power transfers from those resources to the seller's load. The designation of a system sale as a network resource by the buyer provides the transmission provider adequate information to also simulate power transfers from that resource to the buyer's load given that the transmission provider already has information on the system resources resulting from the seller's designation of the underlying resources. It is not necessary to require the seller to undesignate individual resources and, instead, the undesignation can be done on a system basis, *i.e.*, by undesignating an aggregate portion of network resources equal to the amount of the system sale, but which is not attributed to any specific resource.

206. In comparison, when the buyer does not designate the system purchase

as a resource, the buyer will not be using network service to take delivery of associated energy. In order for the buyer to schedule point-to-point service to take delivery, the transmission customer must identify the points of receipt and delivery for the transaction, *i.e.*, the points on the host transmission system where capacity and energy will be received from the seller and delivered to the buyer.¹³⁹ The point-to-point transmission reservation and the corresponding resource-specific undesignation provide the transmission provider with the information it needs regarding location of the particular resources being used by the seller to source the transaction in order to model the effect of the transaction on its transmission system and set aside ATC accordingly. Without this information, transmission capacity associated with integrating the seller's resources with its load could continue to be set aside for the seller's benefit, even though the resources have been committed for sale to third parties on a firm basis.¹⁴⁰

207. We therefore disagree that there is no support for distinguishing sales of system power that have been designated as network resources by the buyer and those that have not. Several petitioners argue that the individual undesignation of network resources used to supply system sales will not have an effect on ATC or the reliable operation of the transmission system regardless of the type of transmission service used to deliver the power to the buyer. EEI, however, acknowledges that the type of transmission service used by the buyer of system power may affect ATC associated with the transaction, and we agree. It is for that reason that the Commission directed transmission providers to address the effect on ATC of designating and undesignating network resources as part of the ongoing NERC/NAESB ATC

¹³⁹ See *pro forma* OATT, sections 1.35, 1.36 and 13.7. The Commission therefore stated in Order No. 890–A its expectation that most, if not all, system sales sources from designated network resources are themselves designated as network resources by the buyer. See Order No. 890–A at P 947. Even if this is not the case, as a number of petitioners argue, the Commission continues to be concerned that system sales from units that are not designated by the buyer as a network resource may impair the reliable planning and operation of the transmission provider's system.

¹⁴⁰ We clarify in response to the Pacific Northwest IOUs that the Commission's reference to the undesignation of "units" in paragraph 947 of Order No. 890–A was unintentionally narrow. The restriction on certain third-party sales from a designated network resource applies to each resource or portion thereof under section 30.4 of the *pro forma* OATT.

¹³⁵ See Order No. 890 at P 1576.

¹³⁶ See Order No. 890–A at P 947.

¹³⁷ See *id.* P 936–37.

¹³⁸ See *id.* P 889.

¹³³ See Order No. 890–A at P 947.

¹³⁴ See Order No. 888–A at 30,326.

standardization effort.¹⁴¹ This does not mean, as EEI suggests, that distinguishing the seller's undesignation obligation on the actions of the buyer undermines the buyer's access to service under the *pro forma* OATT. The buyer is free to request either network or point-to-point service as it believes best fits its needs in light of the resources it wishes to deliver.

208. We disagree that it is unduly burdensome or complicated to condition the seller's ability to make system sales from designated network resources on the buyer's decision to designate the purchase as a network resource. As explained above, the Commission has long prohibited firm sales to third parties from any designated network resource. The Commission has made an exception for system sales that also have been designated as a network resource by a buyer located on the same transmission system. This increases, not decreases, opportunities for network customers and the transmission providers' merchant functions to engage in transactions. Although the Commission could further expand these opportunities by eliminating the undesignation requirement altogether, to do so could adversely affect the transmission provider's ability to reliably plan and operate its system. Because the undesignation restrictions apply equally to all designated resources and are necessary to ensure that the transmission provider can provide reliable service to all customers, they are therefore consistent with our obligations under FPA section 217.

209. We also conclude that concerns regarding the ability to verify or monitor the buyer's decision to designate a purchase of system power as a network resource are overstated in light of the clarification that the buyer and seller must be on the same transmission system. In Order No. 890, the Commission directed transmission providers, working through NERC, to develop OASIS functionality for the designation of network resources and for queries of information provided with designation requests.¹⁴² Parties to a sale of system power on the same transmission system will therefore have ready access to the treatment of the resource. Sellers also may rely on commitments made by the buyer to designate the purchase as a network resource.

¹⁴¹ See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1041, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

¹⁴² See Order No. 890 at P 1477.

210. We reiterate that, if the particular ATC methodology used by a transmission provider allows for flexibility in implementing the undesignation requirements for system sales, the transmission provider may propose a variation to the *pro forma* OATT in an FPA section 205 filing. In Order No. 890-A, the Commission stated that such requests should address the Commission's concern, as stated in Order No. 888, that network customers may have the incentive to designate unlimited generation resources absent a prohibition on network resources including any portion of a resource that is committed for sale to a third party.¹⁴³ Several petitioners argue that the Commission mischaracterized the concern stated in Order No. 888, since there the Commission found that the cost of excessive reserve margins acts as a financial disincentive to overdesignate resources.¹⁴⁴ However, the reason the cost of reserve margins acts as a disincentive to overdesignate resources is because designated resources may be used only for certain specified purposes. It therefore remains appropriate to require those seeking a variation from the *pro forma* OATT with respect to eligibility for network resource status to address the Commission's concern regarding overdesignation of resources. In addition, to the extent necessary, we clarify that the transmission provider should also address the Commission's concern, also stated in Order No. 888-A and reiterated above, that sales from designated network resources not impair the reliable planning and operation of the transmission provider's system.

(3) General

211. In response to requests for rehearing, the Commission in Order No. 890-A amended sections 1.26 and 30.4 of the *pro forma* OATT to make clear that network resources do not have to be undesignated before they are used to support the provision of reserve energy under a Commission-approved reserve sharing agreement.

Requests for Rehearing and Clarification

212. E.ON U.S. requests clarification that the exception to the requirement for undesignation for resources used to support the provision of reserve energy under a Commission-approved reserve sharing agreement also applies to back-up power sales, which E.ON U.S. describes as long-term, cost-based sales aimed at substituting power for generation that is not available for

reasons such as planned or forced outages, curtailments, or unit de-ratings. E.ON U.S. argues that, like reserve sharing arrangements, back-up power sales are made for reliability purposes and may require the provision of energy within a timeframe that is too short for the seller to undesignate the resource. E.ON U.S. states that back-up power sales are not limited to *per se* emergency situations, but rather are necessary to avert emergencies.

213. TDU Systems seek clarification of the determination in Order No. 890-A that network resources do not have to be undesignated before they are used to support the provision of reserve energy under a Commission-approved reserve sharing agreement. TDU Systems question whether the Commission intended to impose an additional approval process for reserve-sharing agreements being made from designated network resources. TDU Systems seek guidance regarding which reserve sharing agreements qualify as Commission-approved and what criteria a reserve sharing agreement must meet in order to be approved. TDU Systems ask whether, for example, existing Commission-approved bilateral interchange agreements providing for emergency and maintenance services between and among utilities qualify. TDU Systems also seek clarification that Order No. 890-A is not excluding from this exception interchange agreements or reserve-sharing agreements among non-jurisdictional entities.

Commission Determination

214. The Commission declines to expand the categories of third-party sales that can be made from designated network resources to include back-up power sales, as requested by E.ON U.S. Network customers and the transmission provider's merchant function are permitted to use designated network resources to fulfill obligations under reserve-sharing agreements given the particular nature of those transactions, which involve the need to deliver power to counterparties promptly during emergency situations. E.ON U.S. acknowledges that, unlike reserve-sharing agreements, back-up power sales are not limited to emergency situations. E.ON U.S. has not justified further expanding the categories of third-party sales that may be made from designated network resources.

215. In response to TDU Systems, we grant rehearing of Order No. 890-A to eliminate the requirement that a reserve sharing program be approved by the Commission in order for a network customer or the transmission provider's

¹⁴³ See Order No. 890-A at P 951.

¹⁴⁴ Quoting Order No. 888 at 31,754.

merchant function to use a designated network resource to meet its reserve sharing obligations.¹⁴⁵ As TDU Systems explain, certain reserve sharing arrangements may not be subject to our jurisdiction, and the Commission did not intend in Order No. 890–A to establish new criteria for reviewing and approving reserve sharing arrangements in this proceeding. We clarify, however, that, for purposes of sections 1.26 and 30.4 of the *pro forma* OATT, a reserve sharing program must limit service to the sharing of contingency reserves among the members for emergencies¹⁴⁶ and the ability to use designated network resources to support reserve sharing obligations does not extend to other types of third-party sales. Any use of designated network resources for reserve sharing events would be subject to justification during an audit.

5. Clarifications Related to Network Service

216. In Order No. 890–A, the Commission reiterated that the *pro forma* OATT permits transmission customers to exclude the entirety of a discrete load from network service and serve such load with the customer's behind the meter generation and through any needed point-to-point service, thereby reducing the network customer's load ratio share. In other situations, use of point-to-point service by network customers is in addition to network service and, therefore, does not serve to reduce their network load. With regard to concerns about insufficient transmission to serve a network customers' entire load, the Commission stated that it failed to understand how, under normal circumstances, the transmission provider has no capacity to serve a load that has been designated by the network customer. Once a load has been designated, it is the obligation of the transmission provider to serve that load and to plan its system so that the load can be accommodated in the future.

Requests for Rehearing and Clarification

217. Pacific Northwest IOUs request clarification that there is no *per se* prohibition on a transmission customer using both point-to-point and network service to serve load in the same

balancing authority area, provided that the point-to-point service is acquired in addition to the customer's network service payment obligation and provided that all other conditions for the use of point-to-point service are satisfied. Pacific Northwest IOUs argue that, for certain compliance and commercial reasons (e.g., lack of sufficient allocated network service), point-to-point service can be an appropriate and important adjunct to network service even considering the added cost of the point-to-point purchase. Where load ratio share obligations are not at issue, Pacific Northwest IOUs argue that transmission customers should be permitted to use both point-to-point and network service.

218. EEI and E.ON U.S. request clarification of the Commission's statement in Order No. 890–A that, once a load has been designated by the network customer, it is the obligation of the transmission provider to serve that load and to plan its system so that the load can be accommodated in the future.¹⁴⁷ These petitioners ask the Commission to confirm that a transmission provider has the obligation to serve and plan for a network customer's load only to the extent that the customer has designated sufficient network resources to serve that load. In their view, section 28.2 of the *pro forma* OATT requires only that a transmission provider plan for and construct transmission facilities sufficient to deliver energy from the network customer's network resources to meet the customer's network load on a basis comparable to the transmission provider's delivery of its own generating and purchased resources to its native load customers. EEI contends that the requirement of section 29.2(v) to provide projections of network resources further confirms that the transmission provider is only required to plan for and construct transmission facilities required to deliver the network customer's energy from resources designated or forecasted by the network customer. E.ON U.S. argues that failure to provide the requested clarification could result in transmission providers having to guess where facilities will need to be built in order to serve load.

Commission Determination

219. The Commission clarifies, to the extent necessary, that there is no *per se* prohibition on a transmission customer using both point-to-point and network transmission service, but that any use of point-to-point service by a network customer does not decrease the size of

the network customer's load for purposes of calculating its load ratio share payment obligations except to the extent the discrete load being served has been excluded in its entirety from network service. In response to EEI and E.ON U.S., we clarify that the Commission did not intend in Order No. 890–A to modify the obligation of transmission providers under section 28.2 of the *pro forma* OATT to endeavor to construct and place into service sufficient transfer capability to deliver the network customer's network resources to serve its network load on a basis comparable to the transmission provider's delivery of its own generating and purchased resources to its native load customers. The statement questioned by petitioners was made in response to requests for an exception from load ratio pricing when a particular network load cannot be entirely served by the transmission provider's system without upgrades.¹⁴⁸ The Commission rejected that request, explaining that the transmission provider should be planning its system to serve its network customers' designated loads and that situations in which a particular designated load cannot be served are best addressed on a case-by-case basis. We agree, however, that the obligation of the transmission provider to adequately plan for the needs of its network customers is of course dependent on the network customer designating adequate network resources as well as providing information regarding its forecasted loads and resources, as required under section 29.2 of the *pro forma* OATT.

6. OATT Definitions

a. Non-Firm Sales

220. In Order No. 890, the Commission adopted the following definition of Non-Firm Sales to identify more clearly those types of sales that are permitted from designated network resources: "An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller." The Commission concluded that it would be inappropriate to adopt commenter suggestions to relax the definition of a Non-Firm Sale to include any sale that is not otherwise firm enough to be designated as a network resource.

221. In Order No. 890–A, the Commission clarified that, under normal circumstances, a system sale that permits curtailment without penalty to serve the seller's native load

¹⁴⁵ We also revise sections 29.2(viii), 30.1 and 30.2 of the *pro forma* OATT to include references to the use of network resources to meet reserve sharing obligations. These tariff revisions do not relieve participants to an otherwise jurisdictional reserve sharing arrangement of any obligations they may have under FPA section 205 to obtain Commission approval for that arrangement.

¹⁴⁶ See, e.g., *Sw. Reserve Sharing Group*, 83 FERC ¶ 61,314 (1998), *reh'g denied*, 95 FERC ¶ 61,071 (2001).

¹⁴⁷ See Order No. 890–A at P 971.

¹⁴⁸ See Order No. 890–A at P 971.

would fall within the definition of a Non-Firm Sale since the seller would have the right to rely on that capacity in the event it is needed to serve native load, which the Commission stated is the principle concern in restricting sales from designated network resources to non-firm sales. The Commission disagreed with petitioners arguing that the definition of Non-Firm Sales includes transactions that permit interruption with financial liability, whether make whole or limited to certain penalties, explaining that any interruption in service that would create liability on the part of the seller would create conflicting incentives regarding use of the network resource.

222. The Commission also denied requests to amend the definition of Non-Firm Sales to accommodate the particular market operations of each RTO and ISO. The Commission acknowledged that centralized dispatch in those markets may very well eliminate any effect that temporary resource undesignations and redesignations have on dispatch or ATC calculations and, therefore, tailoring the rules governing the designation of network resources to each RTO/ISO market could be appropriate.

Requests for Rehearing and Clarification

223. TAPS argues that the Commission's determinations in Order No. 890 regarding the sales that may be made from a network resource without undesignation leaves the OATT in a state of confusion that will make compliance by transmission providers and network customers hazardous. TAPS contends allowing sales that are curtailable for native load reliability purposes, not economics, to be considered non-firm sales is in conflict with the plain language of the definition, which is strictly limited to sales that are interruptible for any or no reason. TAPS contends this modifies without explanation the Commission's clarification provided in Order No. 890 that energy sales that can be interrupted to maintain system reliability are considered firm sales.¹⁴⁹

224. TAPS argues that the Commission's focus in Order No. 890-A on the ability to curtail sales (without liability) for native or network load is inconsistent with the Non-Firm Sales definition and produces illogical results, allowing the same recallable sale to be simultaneously both non-firm for the seller and firm for the buyer and, as a result, be designated twice. At the same time, TAPS argues, the Commission expanded the class of sales that are

neither firm nor non-firm sales by clarifying that sales that may be interrupted for any reason, but with potential liability, do not fall within the definition of Non-Firm Sales. TAPS contends that finding a total bar on recall for native load economic purposes, as in the case of curtailable sales, to be less of a disincentive than the ability to recall for native load with potential liability, no matter how small, defies common sense and is not supported by evidence. TAPS notes that commenters at the July 30 technical conference in this proceeding stated that sellers were moving away from participation in the Midwest ISO day-ahead market because of uncertainties about redesignation if an undesignated resource selling into that market were needed in real time to serve native load due to a real-time contingency. TAPS argues that the obligation to pay the real-time locational marginal price (LMP) would not create a disincentive to recall the sale if needed for native load and, to the contrary, the flexibility to interrupt for any reason or no reason to meet native load needs is so valuable that uncertainties associated with undesignation deter sales into RTO markets from resources that are designated within and outside the RTO.

225. TAPS contends that distinguishing between curtailable sales that may be made from designated network resources and fully interruptible sales that entail some financial liability runs counter to the fundamental principle that it is the nature of the delivery obligation, not the LD provisions, that determine whether a resource is sufficiently firm to qualify for designation as a network resource.¹⁵⁰ TAPS states that Order No. 890 suggested that the existence of any financial liability controls whether a sale may be deemed a non-firm sale, regardless of the nature of the seller's obligation to deliver, while Order No. 890-A relies on restrictions to warrant exclusion of unit contingent sales from the definition of Non-Firm Sales.¹⁵¹ TAPS argues that the Commission has failed to provide any consistently applied standard that network customers and transmission providers can use to determine whether a sale qualifies as a non-firm sale, much less one that conforms to the new definition.

226. TAPS also argues that the Commission's determinations do not make sense from the standpoint of

freeing up ATC since sales that are curtailable for reliability reasons may be designated as network resources by both the buyer and seller. TAPS contends that dual designation potentially double counts resources for ATC purposes, tying up firm ATC potentially on a long-term basis. In contrast, TAPS continues, day-ahead hourly sales that can be interrupted for any or no reason, that have been treated as non-firm, and that are not and could not be designated as network resources by the buyer require undesignation because the potential for any financial consequence of interruption disqualifies them as Non-Firm Sales. TAPS argues that the only ATC that might be created by such undesignations would be very short-term. Pending the results of on-going standards development work with NERC and NAESB, TAPS contends it is not clear whether such short-term undesignations will create firm capacity more useable than the unused non-firm capacity released by the transmission provider without undesignation.

227. TAPS objects to the Commission's determination in Order No. 890-A that issues related to sales into RTO markets should be dealt with in the context of individual requests for deviation from the *pro forma* OATT. Although issues pertaining to the ability of a network customer within an RTO to use its network resources to participate in the RTO's day-ahead market can be addressed in the RTO tariff, TAPS argues that restrictions on use by a network customer outside the RTO of its network resources designated on another transmission provider's system cannot be addressed through modifications to the RTO's tariff. TAPS therefore argues that the Commission can avoid discouraging network customers (and transmission providers) located outside an RTO from selling into the RTO's day-ahead market only by modifying the *pro forma* OATT.

228. TAPS maintains that the Commission's application and interpretation of the Non-Firm Sales definition creates new barriers to precisely the type of cross-border sales the Commission is trying to encourage.¹⁵² TAPS argues that supply limitations resulting from applying undesignation requirements to sales into RTO day-ahead markets could needlessly increase prices in such markets and potentially affect reliability. Those located outside RTO markets, TAPS continues, would be most reluctant to sell into RTO markets

¹⁵⁰ Citing *id.* P 1452; *Dynegy Midwest Generation, Inc. v. Commonwealth Edison Co.*, 101 FERC ¶ 61,295, at P 1 (2002), *reh'g dismissed as moot*, 108 FERC ¶ 61,175 (2004).

¹⁵¹ Citing Order No. 890-A at P 1016.

¹⁵² Citing *Wis. Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,269, at P 58 (2007).

¹⁴⁹ Citing Order No. 890 at P 1688, 1692.

during peak conditions, when transmission is scarce and there are concerns about redesignation in the event the energy is needed for native load, thus depriving RTOs of supply offers when they need them the most.

229. TAPS further argues that the lack of clarity in the Commission's application of the Non-Firm Sales definition may discourage sales into organized markets even in situations where there is a trivial financial consequence to permissible interruptions that the Commission could not rationally conclude would pose any disincentive to recall for network load needs. TAPS states that RTO scheduling deadlines may result in some short period of liability for real-time LMPs even where market participants retain rights to change their bids and schedules. For example, TAPS explains, market participants submitting offers into MISO's real-time market from external generators must provide notice prior to 30 minutes before the operating hour in order to make effective their right to change their offers in the real-time market, *i.e.*, to interrupt for any or no reason. TAPS states that the network customer seeking to recall its interruptible sale would therefore be subject to financial consequences during the notice period. TAPS questions whether that financial responsibility is sufficient to bar sales without undesignation.

230. TAPS suggests that the Commission reassess what it was seeking to achieve through clarification of the non-firm sales that can be made from network resources without undesignation, remove the definition of Non-Firm Sales, and enunciate clear and consistent principles for discerning whether, considering the nature of the delivery obligation, a sale can be made from a network resource without undesignation. Such principles, TAPS argues, should not assume that the mere existence of any financial liability creates improper incentives, thereby giving undue emphasis to what is likely to be a minor factor affecting a network customer's ability to interrupt the sale in favor of native load, assuming the contract permits interruption for any reason or no reason. TAPS contends that the Commission should expressly permit short-term sales, such as sales into organized day-ahead and real-time markets, that involve no obligation to deliver (and can be entered by virtual traders with nothing to deliver) to be made from a network resource without undesignation.

231. If the Commission retains the Non-Firm Sale definition, TAPS asks the Commission to construe it

consistently with the firmness of the delivery obligation and make clear that it takes more than the liabilities associated with sales into day-ahead, and to eliminate any doubt same-day, RTO markets to disqualify such interruptible sales from treatment as Non-Firm Sales. Because of the importance of supporting short-term competitive markets, TAPS alternatively requests that the Commission make this clear by creating an additional exception to section 30.4 of the *pro forma* OATT, like the new exception for sales pursuant to Commission-approved reserve sharing agreements, to permit use of network resources without undesignation for day-ahead and same-day sales that are subject to interruptions, without regard to the liabilities associated with such interruptions.

232. At a bare minimum, TAPS argues, the Commission should provide more realistic guidelines for the level of liability it views as providing incentives that disqualify an interruptible sale from being considered a Non-Firm Sale so that concerns about avoiding potential tariff violations do not discourage transactions that the Commission intends to permit without undesignation. TAPS suggests, for example, that the Commission might reasonably conclude that liabilities restricted to notice periods applicable to the interruption of a sale do not trigger the need for undesignation. TAPS argues that it is plainly inconsistent with market realities for the Commission to assume that any liability for interruption of a third-party sale, no matter how insignificant, will create incentives incompatible with the use of network resources for network load.

233. E.ON U.S. agrees with TAPS that excluding sales into the Midwest ISO market is a disincentive for sellers to participate in that market because the Commission's undesignation requirements are not easily adaptable to such market activity. E.ON U.S. also asks the Commission to revise the definition of Non-Firm Sales to include sales into organized RTO markets. In the alternative, E.ON U.S. requests that the Commission clarify that it will consider transmission providers' modifications to the definition of Non-Firm Sales in order to accommodate sales into RTO/ISO markets.

Commission Determination

234. The Commission affirms the decision in Order No. 890-A not to amend the definition of Non-Firm Sales adopted in Order No. 890.¹⁵³ Section

30.4 of the *pro forma* OATT, as amended in this order, restricts the operation of a network customer's designated network resources such that the output of those facilities does not exceed the sum of the network customer's designated load, non-firm sales, losses, and sales under a reserve sharing agreement. This prohibits the transmission provider or a network customer from using a designated resource for third-party sales that do not fall within one of the specified categories. At times, the Commission has generally referred to this prohibition as a limitation on firm third-party sales from designated network resources.¹⁵⁴ To be more specific, network customers may not operate designated network resources except for those purposes specified in section 30.4.

235. The limitation on the use of designated network resources is closely related to the restriction on the type of resources that may be designated for use to serve network or native load. Together, these rules ensure that only the appropriate amount of network resources is designated and, in turn, that excessive amounts of transmission capacity for network and native load uses are not set aside and therefore made unavailable to others seeking transmission service. We recognize that there is a trade off between the long-term structural efficiencies promoted by the network resource rules and the real-time market efficiencies that would come from allowing alternative, flexible use of designated network resources. In Order No. 888, the Commission balanced these considerations and determined that concerns regarding the over-designation of resources and the reliable operation of the system supported the more restrictive rules to which TAPS objects.

236. In Order No. 888, the Commission explained that restricting the ability to designate resources only to those resources that are owned or committed for purchase provides a financial incentive for network customers and the transmission provider's merchant function not to oversubscribe their capacity requirements.¹⁵⁵ Because a designated network resource must be owned or committed for purchase and may be used only for certain purposes, network customers and the transmission provider's merchant function are encouraged to designate only those resources that they anticipate needing to serve network load. Otherwise, costs

¹⁵⁴ See NOPR at P 422; Order No. 890 at P 1539; Order No. 890-A at P 951.

¹⁵⁵ See Order No. 888 at 31,754.

¹⁵³ See Order No. 890-A at P 1016.

would be incurred to acquire resources that could go unused. These financial incentives are essential to ensuring just and reasonable transmission service to all customers since, each time a network resource is designated, the transmission provider sets aside ATC as necessary to allow that resource to be used to serve network or native load. If network customers and the transmission providers' merchant function were allowed to earn revenues from alternative sales without appropriate limitations, the financial disincentive to over-designate network resources would be diminished. This in turn could negatively impact other customers since an increase in the number of resource designations can decrease the amount of ATC that is available for competing uses.

237. TAPS fails to address this broader policy consideration and, instead, focuses solely on the short-term benefits that may result from relaxing the designation rules. We agree that more flexible use of designated network resources could increase efficiencies in the short-term, but conclude that such efficiencies would come at the expense of long-term efficiency in the operation of the transmission system. Allowing designated network resources to be used for additional short-term purposes as proposed by TAPS would undermine competing incentives not to over-designate resources in the first place and could lead to transmission capacity being set aside for network and native load use to the detriment of other customers.¹⁵⁶

238. In light of these competing considerations, the Commission in Order No. 890 carefully crafted the definition of Non-Firm Sales to ensure that, pursuant to section 30.4, network resources are not used to support sales in a way that creates conflicting incentives regarding the designation and use of network resources.¹⁵⁷ Petitioners have failed to demonstrate that elimination or amendment of this definition is either necessary or appropriate. TAPS contends that the obligation of a seller to pay the real-time LMP if it fails to deliver in response to bids in a day-ahead market may be negligible and, therefore, such sales should be considered non-firm for purposes of the network resource rules. While that obligation may be minimal in

some circumstances, it may be substantial in others, particularly during conditions when sellers are most likely to want or need to recall such power. The sales that TAPS argues are non-firm enough to be made from a network resource do have financial implications, potentially creating disincentives to interrupt delivery if capacity is actually needed for native or network load, even though ATC may have otherwise been set aside for that use.

239. We agree with TAPS, however, that the language of the definition does not accurately capture the clarification provided in Order No. 890-A that designated network resources may be used to support third-party sales that permit curtailment without penalty to serve the seller's network or native load.¹⁵⁸ There the Commission stated that such sales fall within the definition of Non-Firm Sales since the seller would have the right to rely on that capacity in the event it is needed to serve native load. Upon further consideration, we conclude that such sales do not fall within the definition of Non-Firm Sales because they do not permit interruption for any or no reason, as required by the definition. We therefore grant rehearing of the determination that such sales fall within the definition of Non-Firm Sales.

240. We nevertheless affirm the underlying conclusion in Order No. 890-A that designated network resources may be used to support sales that permit curtailment without penalty to serve the seller's native or network load and amend section 30.4 of the *pro forma* OATT to make that clear. As the Commission explained in Order No. 890-A, those transactions give the seller the right to rely on the underlying capacity in the event it is needed to serve native or network load.¹⁵⁹ In Order No. 890-A, the Commission characterized this as its principal concern in restricting sales from designated network resources to non-firm sales. TAPS misconstrues this statement as indicating the Commission is not also concerned about competing incentives created by third-party sales from designated network resources or the effect of such sales on the calculation of ATC. As we explain above, that is not the case and, to the extent necessary, we clarify that the contractual ability of the seller to rely on capacity to serve native or network

load is but one of the concerns underlying the Commission's policy restricting the type of third-party sales that can be made from network resources.

241. We acknowledge that, under the Commission's designation policies, sales that may be curtailed without penalty to serve native or network load may be designated as a network resource by both the seller and the buyer.¹⁶⁰ We also acknowledge that allowing these sales from designated network resources could be viewed as inconsistent with the policy considerations that cause us to otherwise limit the type of sales that may be made from those resources. We conclude, however, that this exception is necessary to ensure that the seller is able to access these resources during curtailment conditions, when power is needed by the seller to meet its load. Curtailments are triggered by system reliability conditions, and requiring the seller to redesignate a network resource in order to recall a curtailed delivery would impede the seller's ability to quickly respond to those conditions. We note that transmission providers have been directed to address the effect on ATC of designating and undesignating network resources as part of the ongoing NERC/NAESB standardization effort.¹⁶¹ Any concerns regarding the proper modeling of designations involving resources that have been sold to others on a curtailable basis should be addressed through the NERC/NAESB process.

242. We disagree with TAPS that allowing sales that are curtailable without penalty to be supplied from designated network resources is inconsistent with Order No. 890. TAPS contends that the Commission adopted in Order No. 890 the NOPR proposal to clarify that, for the purposes of applying section 30.4, energy sales that can only be interrupted to maintain system reliability would be considered firm sales.¹⁶² Although the Commission noted that proposal in Order No. 890, it did not specifically adopt it and, instead, simply adopted the proposed definition of Non-Firm Sale and incorporated that definition into section 30.4.¹⁶³ Southern then requested clarification of Order No. 890 on this issue, asking whether sales permitting curtailment without penalty to serve the

¹⁵⁶ Because rates for network service are calculated on a load-ratio basis, the amount of resources designated has no impact on the transmission rate paid by the customer and, therefore, does not discourage the over-designation of resources by network customers.

¹⁵⁷ See Order No. 890 at P 1691; Order No. 890-A at P 1017.

¹⁵⁸ See Order No. 890-A at P 1016.

¹⁵⁹ See Order No. 890-A at P 1016. From the seller's perspective, then, the resource satisfies the definition of Network Resource in section 1.26 of the *pro forma* OATT because it can be called upon to meet the seller's load on a non-interruptible basis during system reliability conditions.

¹⁶⁰ See *WPPI*, 84 FERC at 61,652 (contracts curtailable by the seller to preserve service to native load are eligible for designation as a network resource).

¹⁶¹ See Order No. 693 at P 1041.

¹⁶² See NOPR at P 462.

¹⁶³ Compare Order No. 890 at P 1688 with *id.* P 1692.

seller's native load can be treated as non-firm sales under section 30.4.¹⁶⁴ The Commission ultimately addressed the issue, then, in Order No. 890-A by stating that such sales could be treated as non-firm sales.¹⁶⁵ The Commission corrects that determination above, resolving the potential inconsistency cited by TAPS.

243. We also disagree that the Commission's treatment of sales curtailable without penalty to serve native or network load conflicts with the determination in Order No. 890-A that, under normal circumstances, unit contingent sales would not fall within the definition of a Non-Firm Sale because delivery typically can be interrupted only for the specific reasons identified in the underlying agreement.¹⁶⁶ While it is true that sales curtailable without penalty to serve native or network load may be curtailed only for specified reasons, *i.e.*, system reliability conditions, it does not follow that allowing those sales to be made from designated network resources conflicts with disallowing unit contingent sales. As we explain above, it is appropriate to allow curtailable sales from designated network resources because of the particular reliability-related situations giving rise to the seller's ability and need to curtail deliveries for the benefit of native or network load.

244. We reiterate that the Commission is not insensitive to concerns about the effect the undesignation policies may have on RTO/ISO markets. As the Commission explained in Order No. 890-A, RTOs and ISOs have adopted many variations from the *pro forma* OATT to facilitate development of their markets, with some entirely eliminating the designation/undesignation requirements for network resources.¹⁶⁷ The Commission has since specifically directed the Midwest ISO to revise its OATT to eliminate the requirement that network resources be undesignated prior to selling into the Midwest ISO markets, finding that undesignation is not necessary to account for effects on ATC because those markets are centrally dispatched without regard to physical transmission rights.¹⁶⁸

245. We disagree, however, that changes to the *pro forma* OATT are necessary to facilitate sales into the organized day-ahead markets from designated network resources located

outside the RTO/ISO regions. Even if such sales are fully interruptible by the seller, the competing economic incentives that may arise from failure to deliver support the requirement to first undesignate the network resource prior to using it to support such sales. As we explain above, failing to require undesignation could result in the host transmission provider reducing ATC by maintaining the same existing transmission commitments for the seller's use of the designated network resource even though the seller is otherwise using the resource to support off-system sales.

246. We therefore continue to believe that it is reasonable to require sellers to undesignate resources being used to supply third-party sales for which there is liability for interruption except in those circumstances identified in section 30.4 of the *pro forma* OATT. However, we appreciate that the restrictions on the use of designated network resources can have a negative impact on real-time liquidity by limiting the flexibility of network customers and the transmission provider's merchant function. Since adoption of the *pro forma* OATT, the Commission has recognized that there may be circumstances in which a transmission provider believes that the *pro forma* OATT does not provide sufficient flexibility and, as a result, transmission providers have been given the opportunity to propose superior non-rate terms and conditions to address such concerns.¹⁶⁹ We encourage network customers and transmission provider merchant functions to work with their transmission providers to explore ways to accommodate the more flexible use of designated network resources suggested by TAPS without adversely affecting other customers or the reliable operation of the system.

b. Transmission Customer

247. Section 1.49 of the *pro forma* OATT defines a Transmission Customer as "Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff." The Commission did not amend this definition in Order Nos. 890 or 890-A.

Requests for Rehearing and Clarification

248. Southern requests rehearing of the Commission's definition of Transmission Customer to include an eligible customer with an executed or proper unexecuted service agreement under Part II or Part III of the *pro forma* OATT. Southern contends that the existing reference in the second sentence of the definition merely relates to how the term is used in Part I and that the proposed revision is therefore necessary to avoid the implication that a transmission customer does not include network customers in other portions of the *pro forma* OATT.

Commission Determination

249. The Commission did not propose to amend the definition of Transmission Customer in the NOPR, nor did commenters propose such an amendment in response to the NOPR. As a result, the definition of Transmission Customer was not addressed in Order Nos. 890 or 890-A. Southern's request for rehearing is therefore beyond the scope of this proceeding.

III. Information Collection Statement

250. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.¹⁷⁰ The revisions to the information collection requirements for transmission providers adopted in Order No. 890 were approved under OMB Control Nos. 1902-0233. This order further revises these requirements in order to more clearly state the obligations imposed in Order No. 890, but does not substantively alter those requirements. OMB approval of this order is therefore unnecessary. However, the Commission will send a copy of this order to OMB for informational purposes only.

IV. Document Availability

251. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

252. 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

¹⁶⁴ See Order No. 890-A at P 1011.

¹⁶⁵ See *id.* P 1016.

¹⁶⁶ See *id.* P 1016.

¹⁶⁷ See *id.* P 1017.

¹⁶⁸ See *Midwest Indep. Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 89 (2008).

¹⁶⁹ Order No. 888 at 31,770.

¹⁷⁰ 5 CFR 1320 (2007).

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.

253. 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*, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

V. Effective Date and Congressional Notification

254. Changes to Order Nos. 890 and 890-A adopted in this order on

rehearing and clarification will become effective September 8, 2008.

By the Commission.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

The following appendices will not appear in the Code of Federal Regulations:

Appendix A: Petitioners' Acronyms

Abbreviation	Petitioner names
APPA Joint Filers	American Public Power Association, National Rural Electric Cooperative Association, Transmission Access Policy Study Group, and Transmission Dependent Utility Systems.
Cargill	Cargill Power Marketers, LLC.
Deseret	Desert Generation & Transmission Co-operative, Inc.
Duke	Duke Energy Corp.
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn Generation and Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
EI	Edison Electric Institute.
Entergy	Entergy Services, Inc.
E.ON U.S.	E.ON U.S. LLC.
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn Generation and Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
FMPA	Florida Municipal Power Agency.
Florida Power	Florida Power & Light Co.
NRECA	National Rural Electric Cooperative Association.
NYISO	New York Independent System Operator.
Pacific Northwest IOUs	Avista Corp., Idaho Power Co., PacifiCorp, Portland General Electric Co., and Puget Sound Energy, Inc.
Schedule 20A Service Providers	Bangor Hydro-Electric Co., Boston Edison Co., Commonwealth Electric Co., and Cambridge Electric Light Co.
Sempra Global	Sempra Global.
Southern	Southern Company Services, Inc.
TranServ	TranServ International, Inc.
TAPS	Transmission Access Policy Study Group.
TDU Systems	Transmission Dependent Utilities Systems.

Appendix B—RM05-17-003 & RM05-25-003 (Issued)

Pro Forma Open Access Transmission Tariff

Table of Contents

I. Common Service Provisions

- 1 Definitions
 - 1.1 Affiliate
 - 1.2 Ancillary Services
 - 1.3 Annual Transmission Costs
 - 1.4 Application
 - 1.5 Commission
 - 1.6 Completed Application
 - 1.7 Control Area
 - 1.8 Curtailment
 - 1.9 Delivering Party
 - 1.10 Designated Agent
 - 1.11 Direct Assignment Facilities
 - 1.12 Eligible Customer
 - 1.13 Facilities Study
 - 1.14 Firm Point-To-Point Transmission Service
 - 1.15 Good Utility Practice
 - 1.16 Interruption
 - 1.17 Load Ratio Share
 - 1.18 Load Shedding
 - 1.19 Long-Term Firm Point-To-Point Transmission Service
 - 1.20 Native Load Customers
 - 1.21 Network Customer
 - 1.22 Network Integration Transmission Service

- 1.23 Network Load
- 1.24 Network Operating Agreement
- 1.25 Network Operating Committee
- 1.26 Network Resource
- 1.27 Network Upgrades
- 1.28 Non-Firm Point-To-Point Transmission Service
- 1.29 Non-Firm Sale
- 1.30 Open Access Same-Time Information System (OASIS)
 - 1.31 Part I
 - 1.32 Part II
 - 1.33 Part III
 - 1.34 Parties
 - 1.35 Point(s) of Delivery
 - 1.36 Point(s) of Receipt
 - 1.37 Point-To-Point Transmission Service
 - 1.38 Power Purchaser
 - 1.39 Pre-Confirmed Application
 - 1.40 Receiving Party
 - 1.41 Regional Transmission Group (RTG)
 - 1.42 Reserved Capacity
 - 1.43 Service Agreement
 - 1.44 Service Commencement Date
 - 1.45 Short-Term Firm Point-To-Point Transmission Service
 - 1.46 System Condition
 - 1.47 System Impact Study
 - 1.48 Third-Party Sale
 - 1.49 Transmission Customer
 - 1.50 Transmission Provider
 - 1.51 Transmission Provider's Monthly Transmission System Peak

- 1.52 Transmission Service
- 1.53 Transmission System
- 2 Initial Allocation and Renewal Procedures
 - 2.1 Initial Allocation of Available Transfer Capability
 - 2.2 Reservation Priority For Existing Firm Service Customers
- 3 Ancillary Services
 - 3.1 Scheduling, System Control and Dispatch Service
 - 3.2 Reactive Supply and Voltage Control from Generation or Other Sources Service
 - 3.3 Regulation and Frequency Response Service
 - 3.4 Energy Imbalance Service
 - 3.5 Operating Reserve—Spinning Reserve Service
 - 3.6 Operating Reserve—Supplemental Reserve Service
 - 3.7 Generator Imbalance Service
- 4 Open Access Same-Time Information System (Oasis)
- 5 Local Furnishing Bonds
 - 5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds
 - 5.2 Alternative Procedures for Requesting Transmission Service
- 6 Reciprocity
- 7 Billing and Payment
 - 7.1 Billing Procedure

- 7.2 Interest on Unpaid Balances
- 7.3 Customer Default
- 8 Accounting for the Transmission Provider's Use of the Tariff
- 8.1 Transmission Revenues
- 8.2 Study Costs and Revenues
- 9 Regulatory Filings
- 10 Force Majeure and Indemnification
- 10.1 Force Majeure
- 10.2 Indemnification
- 11 Creditworthiness
- 12 Dispute Resolution Procedures
- 12.1 Internal Dispute Resolution Procedures
- 12.2 External Arbitration Procedures
- 12.3 Arbitration Decisions
- 12.4 Costs
- 12.5 Rights Under the Federal Power Act
- II. Point-To-Point Transmission Service
- 13 Nature of Firm Point-To-Point Transmission Service
- 13.1 Term
- 13.2 Reservation Priority
- 13.3 Use of Firm Transmission Service by the Transmission Provider
- 13.4 Service Agreements
- 13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs
- 13.6 Curtailment of Firm Transmission Service
- 13.7 Classification of Firm Transmission Service
- 13.8 Scheduling of Firm Point-To-Point Transmission Service
- 14 Nature of Non-Firm Point-To-Point Transmission Service
- 14.1 Term
- 14.2 Reservation Priority
- 14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider
- 14.4 Service Agreements
- 14.5 Classification of Non-Firm Point-To-Point Transmission Service
- 14.6 Scheduling of Non-Firm Point-To-Point Transmission Service
- 14.7 Curtailment or Interruption of Service
- 15 Service Availability
- 15.1 General Conditions
- 15.2 Determination of Available Transfer Capability
- 15.3 Initiating Service in the Absence of an Executed Service Agreement
- 15.4 Obligation to Provide Transmission Service that Requires Expansion or Modification of the Transmission System, Redispatch or Conditional Curtailment
- 15.5 Deferral of Service
- 15.6 Other Transmission Service Schedules
- 15.7 Real Power Losses
- 16 Transmission Customer Responsibilities
- 16.1 Conditions Required of Transmission Customers
- 16.2 Transmission Customer Responsibility for Third-Party Arrangements
- 17 Procedures for Arranging Firm Point-To-Point Transmission Service
- 17.1 Application
- 17.2 Completed Application
- 17.3 Deposit
- 17.4 Notice of Deficient Application
- 17.5 Response to a Completed Application
- 17.6 Execution of Service Agreement
- 17.7 Extensions for Commencement of Service
- 18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service
- 18.1 Application
- 18.2 Completed Application
- 18.3 Reservation of Non-Firm Point-To-Point Transmission Service
- 18.4 Determination of Available Transfer Capability
- 19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests
- 19.1 Notice of Need for System Impact Study
- 19.2 System Impact Study Agreement and Cost Reimbursement
- 19.3 System Impact Study Procedures
- 19.4 Facilities Study Procedures
- 19.5 Facilities Study Modifications
- 19.6 Due Diligence in Completing New Facilities
- 19.7 Partial Interim Service
- 19.8 Expedited Procedures for New Facilities
- 19.9 Penalties for Failure to Meet Study Deadlines
- 20 Procedures if the Transmission Provider is Unable To Complete New Transmission Facilities for Firm Point-To-Point Transmission Service
- 20.1 Delays in Construction of New Facilities
- 20.2 Alternatives to the Original Facility Additions
- 20.3 Refund Obligation for Unfinished Facility Additions
- 21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities
- 21.1 Responsibility for Third-Party System Additions
- 21.2 Coordination of Third-Party System Additions
- 22 Changes in Service Specifications
- 22.1 Modifications On a Non-Firm Basis
- 22.2 Modification On a Firm Basis
- 23 Sale or Assignment of Transmission Service
- 23.1 Procedures for Assignment or Transfer of Service
- 23.2 Limitations on Assignment or Transfer of Service
- 23.3 Information on Assignment or Transfer of Service
- 24 Metering and Power Factor Correction at Receipt and Delivery Point(s)
- 24.1 Transmission Customer Obligations
- 24.2 Transmission Provider Access to Metering Data
- 24.3 Power Factor
- 25 Compensation for Transmission Service
- 26 Stranded Cost Recovery
- 27 Compensation for New Facilities and Redispatch Costs
- III. Network Integration Transmission Service
- 28 Nature of Network Integration Transmission Service
- 28.1 Scope of Service
- 28.2 Transmission Provider Responsibilities
- 28.3 Network Integration Transmission Service
- 28.4 Secondary Service
- 28.5 Real Power Losses
- 28.6 Restrictions on Use of Service
- 29 Initiating Service
- 29.1 Condition Precedent for Receiving Service
- 29.2 Application Procedures
- 29.3 Technical Arrangements To Be Completed Prior to Commencement of Service
- 29.4 Network Customer Facilities
- 29.5 Filing of Service Agreement
- 30 Network Resources
- 30.1 Designation of Network Resources
- 30.2 Designation of New Network Resources
- 30.3 Termination of Network Resources
- 30.4 Operation of Network Resources
- 30.5 Network Customer Redispatch Obligation
- 30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With the Transmission Provider
- 30.7 Limitation on Designation of Network Resources
- 30.8 Use of Interface Capacity by the Network Customer
- 30.9 Network Customer Owned Transmission Facilities
- 31 Designation of Network Load
- 31.1 Network Load
- 31.2 New Network Loads Connected With the Transmission Provider
- 31.3 Network Load Not Physically Interconnected With the Transmission Provider
- 31.4 New Interconnection Points
- 31.5 Changes in Service Requests
- 31.6 Annual Load and Resource Information Updates
- 32 Additional Study Procedures for Network Integration Transmission Service Requests
- 32.1 Notice of Need for System Impact Study
- 32.2 System Impact Study Agreement and Cost Reimbursement
- 32.3 System Impact Study Procedures
- 32.4 Facilities Study Procedures
- 32.5 Penalties for Failure To Meet Study Deadlines
- 33 Load Shedding and Curtailments
- 33.1 Procedures
- 33.2 Transmission Constraints
- 33.3 Cost Responsibility for Relieving Transmission Constraints
- 33.4 Curtailments of Scheduled Deliveries
- 33.5 Allocation of Curtailments
- 33.6 Load Shedding
- 33.7 System Reliability
- 34 Rates and Charges
- 34.1 Monthly Demand Charge
- 34.2 Determination of Network Customer's Monthly Network Load
- 34.3 Determination of Transmission Provider's Monthly Transmission System Load
- 34.4 Redispatch Charge
- 34.5 Stranded Cost Recovery
- 35 Operating Arrangements
- 35.1 Operation under the Network Operating Agreement

35.2	Network Operating Agreement
35.3	Network Operating Committee
Schedule 1	
	Scheduling, System Control and Dispatch Service
Schedule 2	
	Reactive Supply and Voltage Control From Generation Sources Service
Schedule 3	
	Regulation and Frequency Response Service
Schedule 4	
	Energy Imbalance Service
Schedule 5	
	Operating Reserve-Spinning Reserve Service
Schedule 6	
	Operating Reserve-Supplemental Reserve Service
Schedule 7	
	Long-Term Firm and Short-Term Firm Point-To-Point
Schedule 8	
	Non-Firm Point-To-Point Transmission Service
Schedule 9	
	Generator Imbalance Service
Attachment A	
	Form of Service Agreement for Firm Point-To-Point Transmission Service
Attachment A-1	
	Form of Service Agreement for the Resale, Reassignment or Transfer of Point-To-Point Transmission Service
Attachment B	
	Form of Service Agreement for Non-Firm Point-To-Point Transmission Service
Attachment C	
	Methodology to Assess Available Transfer Capability
Attachment D	
	Methodology for Completing a System Impact Study
Attachment E	
	Index Of Point-To-Point Transmission Service Customers
Attachment F	
	Service Agreement for Network Integration Transmission Service
Attachment G	
	Network Operating Agreement
Attachment H	
	Annual Transmission Revenue Requirement for Network Integration Transmission Service
Attachment I	
	Index of Network Integration Transmission Service Customers
Attachment J	
	Procedures for Addressing Parallel Flows
Attachment K	
	Transmission Planning Process
Attachment L	
	Creditworthiness Procedures

I. Common Service Provisions

1 Definitions

1.1 Affiliate

With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under

common control with, such corporation, partnership or other entity.

1.2 Ancillary Services

Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.3 Annual Transmission Costs

The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission.

1.4 Application

A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.5 Commission

The Federal Energy Regulatory Commission.

1.6 Completed Application

An Application that satisfies all of the information and other requirements of the Tariff, including any required deposit.

1.7 Control Area

An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

1. Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
2. Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
3. maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and
4. provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

1.8 Curtailment

A reduction in firm or non-firm transmission service in response to a transfer capability shortage as a result of system reliability conditions.

1.9 Delivering Party

The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.10 Designated Agent

Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.11 Direct Assignment Facilities

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

1.12 Eligible Customer

i. Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.

ii. Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

1.13 Facilities Study

An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.14 Firm Point-To-Point Transmission Service

Transmission Service under this Tariff that is reserved and/or scheduled

between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.15 Good Utility Practice

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

1.16 Interruption

A reduction in non-firm transmission service due to economic reasons pursuant to section 14.7.

1.17 Load Ratio Share

Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III of the Tariff and calculated on a rolling twelve month basis.

1.18 Load Shedding

The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.19 Long-Term Firm Point-To-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.20 Native Load Customers

The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.21 Network Customer

An entity receiving transmission service pursuant to the terms of the

Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.22 Network Integration Transmission Service

The transmission service provided under Part III of the Tariff.

1.23 Network Load

The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.24 Network Operating Agreement

An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.25 Network Operating Committee

A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration Transmission Service under Part III of this Tariff.

1.26 Network Resource

Any designated generating resource owned, purchased or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program.

1.27 Network Upgrades

Modifications or additions to transmission-related facilities that are integrated with and support the

Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.28 Non-Firm Point-To-Point Transmission Service

Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of this Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.29 Non-Firm Sale

An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.

1.30 Open Access Same-Time Information System (OASIS)

The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.31 Part I

Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.32 Part II

Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.33 Part III

Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.34 Parties

The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.35 Point(s) of Delivery

Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-To-Point Transmission Service.

1.36 Point(s) of Receipt

Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-To-Point Transmission Service.

1.37 Point-To-Point Transmission Service

The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.38 Power Purchaser

The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.39 Pre-Confirmed Application

An Application that commits the Eligible Customer to execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

1.40 Receiving Party

The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.41 Regional Transmission Group (RTG)

A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.42 Reserved Capacity

The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.43 Service Agreement

The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.44 Service Commencement Date

The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.45 Short-Term Firm Point-To-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.46 System Condition

A specified condition on the Transmission Provider's system or on a neighboring system, such as a constrained transmission element or flowgate, that may trigger Curtailment of Long-Term Firm Point-to-Point Transmission Service using the curtailment priority pursuant to Section 13.6. Such conditions must be identified in the Transmission Customer's Service Agreement.

1.47 System Impact Study

An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.48 Third-Party Sale

Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.49 Transmission Customer

Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.50 Transmission Provider

The public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff.

1.51 Transmission Provider's Monthly Transmission System Peak

The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.52 Transmission Service

Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.53 Transmission System

The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transfer Capability

For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority for Existing Firm Service Customers

Existing firm service customers (wholesale requirements and transmission-only, with a contract term of five years or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. 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; provided

that, the firm service customer shall have a right of first refusal at the end of such service only if the new contract is for five years or more. The existing firm service customer must provide notice to the Transmission Provider whether it will exercise its right of first refusal no less than one year prior to the expiration date of its transmission service agreement. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of five years or longer. Service agreements subject to a right of first refusal entered into prior to [the date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890] or associated with a transmission service request received prior to July 13, 2007, unless terminated, will become subject to the five year/one year requirement on the first rollover date after [the date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890]; provided that, the one-year notice requirement shall apply to such service agreements with five years or more left in their terms as of the [date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890].

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation or Other Sources.

The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Provider is required to provide (or offer to arrange with the local Control Area Operator as discussed below), to the extent it is physically feasible to do so from its resources or from resources available to it, Generator Imbalance Service when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer using Transmission Service to deliver energy from a generator located within the Transmission Provider's Control Area is required to acquire Generator Imbalance Service, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider. A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all of the Ancillary Services identified in this section that were provided by the Transmission Provider associated with the unreserved service. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used but did not reserve.

If the Transmission Provider is a public utility providing transmission service but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, 6 and 9) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods are described on the Schedules that are attached to and made a part of the

Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.7 below list the seven Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service

The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control From Generation or Other Sources Service

The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service

Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service

Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service

Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service

Where applicable the rates and/or methodology are described in Schedule 6.

3.7 Generator Imbalance Service

Where applicable the rates and/or methodology are described in Schedule 9.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR part 37 of the Commission's

regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities) and 18 CFR part 38 of the Commission's regulations (Business Practice Standards and Communication Protocols for Public Utilities). In the event available transfer capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

The Transmission Provider shall post on OASIS and its public Web site an electronic link to all rules, standards and practices that (i) relate to the terms and conditions of transmission service, (ii) are not subject to a North American Energy Standards Board (NAESB) copyright restriction, and (iii) are not otherwise included in this Tariff. The Transmission Provider shall post on OASIS and on its public Web site an electronic link to the NAESB Web site where any rules, standards and practices that are protected by copyright may be obtained. The Transmission Provider shall also post on OASIS and its public Web site an electronic link to a statement of the process by which the Transmission Provider shall add, delete or otherwise modify the rules, standards and practices that are not included in this tariff. Such process shall set forth the means by which the Transmission Provider shall provide reasonable advance notice to Transmission Customers and Eligible Customers of any such additions, deletions or modifications, the associated effective date, and any additional implementation procedures that the Transmission Provider deems appropriate.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code ("local furnishing bonds"). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6 Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate Affiliates. A Transmission Customer that is a member of, or takes transmission service from, a power pool, Regional Transmission Group, Regional Transmission Organization (RTO), Independent System Operator (ISO) or other transmission organization approved by the Commission for the operation of transmission facilities also agrees to provide comparable transmission service to the transmission-owning members of such power pool and Regional Transmission Group, RTO, ISO or other transmission

organization on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate Affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedure

Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to

make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues

Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues

Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure

An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

10.2 Indemnification

The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider.

11 Creditworthiness

The Transmission Provider will specify its Creditworthiness procedures in Attachment L.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon] by mutual agreement, such dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

12.2 External Arbitration Procedures

Any arbitration initiated under the Tariff shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable Commission regulations or Regional Transmission Group rules.

12.3 Arbitration Decisions

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of

such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Tariff and any Service Agreement entered into under the Tariff and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.

12.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

1. The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or
2. One half the cost of the single arbitrator jointly chosen by the Parties.

12.5 Rights Under The Federal Power Act

Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

II. Point-To-Point Transmission Service Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transfer of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term

The minimum term of Firm Point-To-Point Transmission Service shall be one day and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority

(i) Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, *i.e.*, in

the chronological sequence in which each Transmission Customer has requested service.

(ii) Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction or reservation. However, Pre-Confirmed Applications for Short-Term Point-To-Point Transmission Service will receive priority over earlier-submitted requests that are not Pre-Confirmed and that have equal or shorter duration. Among requests or reservations with the same duration and, as relevant, pre-confirmation status (pre-confirmed, confirmed, or not confirmed), priority will be given to an Eligible Customer's request or reservation that offers the highest price, followed by the date and time of the request or reservation.

(iii) If the Transmission System becomes oversubscribed, requests for service may preempt competing reservations up to the following conditional reservation deadlines: One day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transfer capability is insufficient to satisfy all requests and reservations, an Eligible Customer with a reservation for shorter term service or equal duration service and lower price has the right of first refusal to match any longer term request or equal duration service with a higher price before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. When a longer duration request preempts multiple shorter duration reservations, the shorter duration reservations shall have simultaneous opportunities to exercise the right of first refusal. Duration, price and time of response will be used to determine the order by which the multiple shorter duration reservations will be able to exercise the right of first refusal. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff.

(iv) Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff.

All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after September 8, 2008 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements

The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations. An Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved and that has not executed a Service Agreement will be deemed, for purposes of assessing any appropriate charges and penalties, to have executed the appropriate Service Agreement. The Service Agreement shall, when applicable, specify any conditional curtailment options selected by the Transmission Customer. Where the Service Agreement contains conditional curtailment options and is subject to a biennial reassessment as described in Section 15.4, the Transmission Provider shall provide the Transmission Customer notice of any changes to the curtailment conditions no less than 90 days prior to the date for imposition of new curtailment conditions. Concurrent with such notice, the Transmission Provider shall provide the Transmission

Customer with the reassessment study and a narrative description of the study, including the reasons for changes to the number of hours per year or System Conditions under which conditional curtailment may occur.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs

In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint by redispatching the Transmission Provider's resources, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27 and agrees to either (i) compensate the Transmission Provider for any necessary transmission facility additions or (ii) accept the service subject to a biennial reassessment by the Transmission Provider of redispatch requirements as described in Section 15.4. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement prior to initiating service.

13.6 Curtailment of Firm Transmission Service

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system and the system directly and indirectly interconnected with Transmission Provider's Transmission System, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. If multiple transactions

require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. Long-Term Firm Point-To-Point Service subject to conditions described in Section 15.4 shall be curtailed with secondary service in cases where the conditions apply, but otherwise will be curtailed on a pro rata basis with other Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission

capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transfer capability is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved.

13.8 Scheduling of Firm Point-To-Point Transmission Service

Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 10 a.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a

Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to *twenty (20) minutes* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term

Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority

Non-Firm Point-To-Point Transmission Service shall be available from transfer capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned first to requests or reservations with a longer duration of service and second to Pre-Confirmed Applications. In the event the Transmission System is constrained, competing requests of the same Pre-Confirmation status and equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible

Customers that have already reserved shorter term service have the right of first refusal to match any longer term request before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after September 8, 2008 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements

The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment B) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations.

14.5 Classification of Non-Firm Point-To-Point Transmission Service

Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission

Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly basis, but not to exceed one month's reservation for any one Application, under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service

Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than 2 p.m. [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering

Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System or the systems directly and indirectly interconnected with Transmission Provider's Transmission System. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, (4) transmission service for Network Customers from non-designated resources, or (5) transmission service for Firm Point-to-Point Transmission Service during conditional curtailment periods as described in Section 15.4. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (e.g., hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for

Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transfer Capability

A description of the Transmission Provider's specific methodology for assessing available transfer capability posted on the Transmission Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transfer capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement

If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall file with the Commission, within thirty (30) days after the date the Transmission Customer provides written notification directing the Transmission Provider to file, an unexecuted Point-To-Point Service Agreement containing terms and conditions deemed appropriate by the Transmission Provider for such requested Transmission Service. The Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate the Transmission Provider at whatever rate the Commission ultimately determines to be just and reasonable, and (ii) comply with the terms and conditions of the Tariff including posting appropriate security deposits in accordance with the terms of Section 17.3.

15.4 Obligation To Provide Transmission Service That Requires Expansion or Modification of the Transmission System, Redispatch or Conditional Curtailment

(a) If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, consistent with its planning obligations in Attachment K, provided the Transmission Customer agrees to compensate the Transmission Provider for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice and its planning obligations in Attachment K, in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

(b) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to provide redispatch from its own resources until (i) Network Upgrades are completed for the Transmission Customer, (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide the redispatch, or (iii) the Transmission Customer terminates the service because of redispatch changes resulting from the reassessment. A Transmission Provider shall not unreasonably deny self-provided redispatch or redispatch arranged by the Transmission Customer from a third party resource.

(c) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will offer the Firm Transmission Service with the condition that the Transmission Provider may curtail the service prior to the curtailment of other Firm Transmission Service for a specified number of hours per year or during System Condition(s). If the Transmission Customer accepts the service, the Transmission Provider will use due diligence to provide the service until (i) Network Upgrades are

completed for the Transmission Customer, (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide such service, or (iii) the Transmission Customer terminates the service because the reassessment increased the number of hours per year of conditional curtailment or changed the System Conditions.

15.5 Deferral of Service

The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules

Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers

Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

- (a) The Transmission Customer has pending a Completed Application for service;
- (b) The Transmission Customer meets the creditworthiness criteria set forth in Section 11;
- (c) The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;

(d) The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation;

(e) The Transmission Customer provides the information required by the Transmission Provider's planning process established in Attachment K; and

(f) The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements

Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application

A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to: [Transmission Provider Name and Address], at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a

Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

- (i) The identity, address, telephone number and facsimile number of the entity requesting service;
- (ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;
- (iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;
- (iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;
- (v) A description of the supply characteristics of the capacity and energy to be delivered;
- (vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;
- (vii) The Service Commencement Date and the term of the requested Transmission Service;
- (viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;
- (ix) A statement indicating that, if the Eligible Customer submits a Pre-Confirmed Application, the Eligible Customer will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service; and

(x) Any additional information required by the Transmission Provider's planning process established in Attachment K.

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

17.3 Deposit

A Completed Application for Firm Point-To-Point Transmission Service also shall include a deposit of either one month's charge for Reserved Capacity or the full charge for Reserved Capacity for service requests of less than one month. If the Application is rejected by the Transmission Provider because it does not meet the conditions for service as set forth herein, or in the case of requests for service arising in connection with losing bidders in a Request For Proposals (RFP), said deposit shall be returned with interest less any reasonable costs incurred by the Transmission Provider in connection with the review of the losing bidder's Application. The deposit also will be returned with interest less any reasonable costs incurred by the Transmission Provider if the Transmission Provider is unable to complete new facilities needed to provide the service. If an Application is withdrawn or the Eligible Customer decides not to enter into a Service Agreement for Firm Point-To-Point Transmission Service, the deposit shall be refunded in full, with interest, less reasonable costs incurred by the Transmission Provider to the extent such costs have not already been recovered by the Transmission Provider from the Eligible Customer. The Transmission Provider will provide to the Eligible Customer a complete accounting of all costs deducted from the refunded deposit, which the Eligible Customer may contest if there is a dispute concerning the deducted costs. Deposits associated with construction of new facilities are subject to the provisions of Section 19. If a Service Agreement for Firm Point-To-Point Transmission Service is executed, the deposit, with interest, will be returned to the Transmission Customer upon expiration or termination of the Service Agreement for Firm Point-To-Point Transmission Service. Applicable interest shall be computed in accordance with the Commission's regulations at 18 CFR 35.19a(a)(2)(iii), and shall be calculated from the day the deposit check is credited to the Transmission Provider's account.

17.4 Notice of Deficient Application

If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application, along with any deposit, with interest. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application

Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transfer capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of Service Agreement

Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but not later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request the filing of an unexecuted service agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application and any deposit submitted shall be refunded with interest. Nothing herein limits the right of an Eligible Customer to file

another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service

The Transmission Customer can obtain, subject to availability, up to five (5) one-year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof within 15 days of notifying the Transmission Provider it intends to extend the commencement of service. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application

Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) The Point(s) of Receipt and the Point(s) of Delivery;

(iv) The maximum amount of capacity requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service; and

(vii) The electrical location of the ultimate load.

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

(viii) A statement indicating that, if the Eligible Customer submits a Pre-Confirmed Application, the Eligible Customer will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

18.3 Reservation of Non-Firm Point-to-Point Transmission Service

Requests for monthly service shall be submitted no earlier than sixty (60) days before service is to commence; requests for weekly service shall be submitted no earlier than fourteen (14) days before service is to commence, requests for daily service shall be submitted no earlier than two (2) days before service is to commence, and requests for hourly service shall be submitted no earlier than noon the day before service is to commence. Requests for service received later than 2 p.m. prior to the day service is scheduled to commence will be accommodated if practicable [or such reasonable times that are generally accepted in the region and are

consistently adhered to by the Transmission Provider].

18.4 Determination of Available Transfer Capability

Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transfer capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service: (i) thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service. [Or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

19 Additional Study Procedures for Firm Point-to-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. Once informed, the Eligible Customer shall timely notify the Transmission Provider if it elects to have the Transmission Provider study redispatch or conditional curtailment as part of the System Impact Study. If notification is provided prior to tender of the System Impact Study Agreement, the Eligible Customer can avoid the costs associated with the study of these options. The Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn and its deposit,

pursuant to Section 17.3, shall be returned with interest.

19.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 20.

19.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify (1) any system constraints, identified with specificity by transmission element or flowgate, (2) redispatch options (when requested by an Eligible Customer) including an estimate of the cost of redispatch, (3) conditional curtailment options (when requested by an Eligible Customer) including the number of hours per year and the System Conditions during which conditional curtailment may occur, and (4) additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. For customers requesting the study of redispatch options, the System Impact Study shall (1) identify all resources located within the Transmission Provider's Control Area that can significantly contribute toward relieving the system constraint and (2) provide a measurement of each

resource's impact on the system constraint. If the Transmission Provider possesses information indicating that any resource outside its Control Area could relieve the constraint, it shall identify each such resource in the System Impact Study. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer as soon as the System Impact Study is complete. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required

Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Transmission Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications

Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities

The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service

If the Transmission Provider determines that it will not have adequate transfer capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities

In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an "Expedited Service Agreement" pursuant to which the Eligible Customer would agree to compensate the Transmission Provider for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

19.9 Penalties for Failure To Meet Study Deadlines

Sections 19.3 and 19.4 require a Transmission Provider to use due diligence to meet 60-day study completion deadlines for System Impact Studies and Facilities Studies.

(i) The Transmission Provider is required to file a notice with the Commission in the event that more than twenty (20) percent of non-Affiliates' System Impact Studies and Facilities Studies completed by the Transmission Provider in any two consecutive calendar quarters are not completed within the 60-day study completion deadlines. Such notice must be filed within thirty (30) days of the end of the calendar quarter triggering the notice requirement.

(ii) For the purposes of calculating the percent of non-Affiliates' System Impact Studies and Facilities Studies processed outside of the 60-day study completion deadlines, the Transmission Provider shall consider all System Impact Studies and Facilities Studies that it completes for non-Affiliates during the calendar quarter. The percentage should be calculated by dividing the number of those studies which are completed on time by the total number of completed studies. The Transmission Provider may provide an explanation in its notification filing to the Commission if it believes there are extenuating circumstances that prevented it from meeting the 60-day study completion deadlines.

(iii) The Transmission Provider is subject to an operational penalty if it completes ten (10) percent or more of non-Affiliates' System Impact Studies and Facilities Studies outside of the 60-day study completion deadlines for each of the two calendar quarters immediately following the quarter that triggered its notification filing to the Commission. The operational penalty will be assessed for each calendar quarter for which an operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered the Transmission Provider's notification filing to the Commission. The operational penalty will continue to be assessed each quarter until the Transmission Provider completes at least ninety (90) percent of all non-Affiliates' System Impact Studies and Facilities Studies within the 60-day deadline.

(iv) For penalties assessed in accordance with subsection (iii) above, the penalty amount for each System Impact Study or Facilities Study shall be equal to \$500 for each day the Transmission Provider takes to complete that study beyond the 60-day deadline.

20 Procedures if the Transmission Provider Is Unable To Complete New Transmission Facilities for Firm Point-to-Point Transmission Service

20.1 Delays in Construction of New Facilities

If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions

When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions

If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the

Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any deposit made by the Transmission Customer shall be returned with interest pursuant to Commission regulations 35.19a(a)(2)(iii). However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions

The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions

In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures

pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications on a Non-Firm Basis

The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement ("Secondary Receipt and Delivery Points"), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modification on a Firm Basis

Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, except that such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer

shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service

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, compensation to Resellers shall be at rates established by agreement between the Reseller and the Assignee.

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.

24 Metering and Power Factor Correction at Receipt and Delivery Points(s)

24.1 Transmission Customer Obligations

Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data

The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor

Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The

power factor requirements are specified in the Service Agreement where applicable.

25 *Compensation for Transmission Service*

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 *Stranded Cost Recovery*

The Transmission Provider may seek to recover stranded costs from the Transmission Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any specific proposed stranded cost charge under Section 205 of the Federal Power Act.

27 *Compensation for New Facilities and Redispatch Costs*

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved by redispatching the Transmission Provider's resources to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native

Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 *Nature of Network Integration Transmission Service*

28.1 *Scope of Service*

Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 *Transmission Provider Responsibilities*

The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice and its planning obligations in Attachment K in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transfer capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice and Attachment K, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers.

28.3 *Network Integration Transmission Service*

The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 *Secondary Service*

The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Secondary service shall not require the filing of an Application for Network Integration Transmission Service under the Tariff. However, all other requirements of Part III of the Tariff (except for transmission rates) shall apply to secondary service. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 *Real Power Losses*

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

28.6 *Restrictions on Use of Service*

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System. The Transmission Provider shall specify any appropriate charges and penalties and all related terms and conditions applicable in the event that a Network Customer uses Network Integration Transmission Service or secondary service pursuant to Section

28.4 to facilitate a wholesale sale that does not serve a Network Load.

29 Initiating Service

29.1 Condition Precedent for Receiving Service

Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer, provided that (i) the Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.

29.2 Application Procedures

An Eligible Customer requesting service under Part III of the Tariff must submit an Application, with a deposit approximating the charge for one month of service, to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any) included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection). For each on-system Network Resource, such description shall include:

- Unit size and amount of capacity from that unit to be designated as Network Resource
- VAR capability (both leading and lagging) of all generators
- Operating restrictions
- Any periods of restricted operations throughout the year
- Maintenance schedules
- Minimum loading level of unit
- Normal operating level of unit
- Any must-run unit designations required for system reliability or contract reasons

- Approximate variable generating cost (\$/MWH) for redispatch computations

- Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource;

For each off-system Network Resource, such description shall include:

- Identification of the Network Resource as an off-system resource
- Amount of power to which the customer has rights
- Identification of the control area from which the power will originate
- Delivery point(s) to the Transmission Provider's Transmission System

- Transmission arrangements on the external transmission system(s)

- Operating restrictions, if any

—Any periods of restricted operations throughout the year

—Maintenance schedules

—Minimum loading level of unit

—Normal operating level of unit

—Any must-run unit designations required for system reliability or contract reasons

- Approximate variable generating cost (\$/MWH) for redispatch computations;

(vi) Description of Eligible Customer's transmission system:

- Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider

- Operating restrictions needed for reliability

- Operating guides employed by system operators

- Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources

- Location of Network Resources described in subsection (v) above

- 10 year projection of system expansions or upgrades

- Transmission System maps that include any proposed expansions or upgrades

- Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year;

(viii) A statement signed by an authorized officer from or agent of the Network Customer attesting that all of the network resources listed pursuant to Section 29.2(v) satisfy the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the

availability of transmission service under Part III of the Tariff; and (2) the Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program; and

(ix) Any additional information required of the Transmission Customer as specified in the Transmission Provider's planning process established in Attachment K.

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgement must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements to be Completed Prior to Commencement of Service

Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer, or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer, to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities

The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer's constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 Filing of Service Agreement

The Transmission Provider will file Service Agreements with the Commission in compliance with applicable Commission regulations.

30 Network Resources

30.1 Designation of Network Resources

Network Resources shall include all generation owned, purchased or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources

The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made through the Transmission Provider's OASIS by a request for modification of service pursuant to an Application under Section 29. This request must include a statement that the new network resource satisfies the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) The Network Resources

do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. The Network Customer's request will be deemed deficient if it does not include this statement and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

30.3 Termination of Network Resources

The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource by providing notification to the Transmission Provider through OASIS as soon as reasonably practicable, but not later than the firm scheduling deadline for the period of termination. Any request for termination of Network Resource status must be submitted on OASIS, and should indicate whether the request is for indefinite or temporary termination. A request for indefinite termination of Network Resource status must indicate the date and time that the termination is to be effective, and the identification and capacity of the resource(s) or portions thereof to be indefinitely terminated. A request for temporary termination of Network Resource status must include the following:

- (i) Effective date and time of temporary termination;
- (ii) Effective date and time of redesignation, following period of temporary termination;
- (iii) Identification and capacity of resource(s) or portions thereof to be temporarily terminated;
- (iv) Resource description and attestation for redesignating the network resource following the temporary termination, in accordance with Section 30.2; and
- (v) Identification of any related transmission service requests to be evaluated concomitantly with the request for temporary termination, such that the requests for undesignation and the request for these related transmission service requests must be approved or denied as a single request. The evaluation of these related transmission service requests must take into account the termination of the network resources identified in (iii) above, as well as all competing transmission service requests of higher priority.

As part of a temporary termination, a Network Customer may only redesignate

the same resource that was originally designated, or a portion thereof. Requests to redesignate a different resource and/or a resource with increased capacity will be deemed deficient and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

30.4 Operation of Network Resources

The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses, plus power sales under a reserve sharing program, plus sales that permit curtailment without penalty to serve its designated Network Load. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System. For all Network Resources not physically connected with the Transmission Provider's Transmission System, the Network Customer may not schedule delivery of energy in excess of the Network Resource's capacity, as specified in the Network Customer's Application pursuant to Section 29, unless the Network Customer supports such delivery within the Transmission Provider's Transmission System by either obtaining Point-to-Point Transmission Service or utilizing secondary service pursuant to Section 28.4. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Network Customer's schedule at the delivery point for a Network Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Network Resource's designated capacity, excluding energy delivered using secondary service or Point-to-Point Transmission Service.

30.5 Network Customer Redispatch Obligation

As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all

Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With the Transmission Provider

The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources

The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer

There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities

The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider, to serve its power and transmission customers. For facilities added by the Network Customer subsequent to [the effective date of a Final Rule in RM05-25-000], the Network Customer shall receive credit for such transmission facilities added if

such facilities are integrated into the operations of the Transmission Provider's facilities; provided however, the Network Customer's transmission facilities shall be presumed to be integrated if such transmission facilities, if owned by the Transmission Provider, would be eligible for inclusion in the Transmission Provider's annual transmission revenue requirement as specified in Attachment H. Calculation of any credit under this subsection shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load

The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider

The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected With the Transmission Provider

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of (1) electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that

entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points

To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests

Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (e.g. the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner.

31.6 Annual Load and Resource Information Updates

The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff including, but not limited to, any information provided under section 29.2(ix) pursuant to the Transmission Provider's planning process in Attachment K. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures for Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall, within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest.

32.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify (1) any system constraints, identified with specificity by transmission element or flowgate, (2) redispatch options (when requested by an Eligible Customer) including, to the extent possible, an estimate of the cost of redispatch, (3) available options for installation of automatic devices to curtail service (when requested by an Eligible Customer), and (4) additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. For customers requesting the study of redispatch options, the System Impact Study shall (1) identify all resources located within the Transmission Provider's Control Area that can significantly contribute toward relieving the system constraint and (2) provide a measurement of each resource's impact on the system constraint. If the Transmission Provider possesses information indicating that any resource outside its Control Area could relieve the constraint, it shall identify each such resource in the System Impact Study. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer as soon as the System Impact Study is complete. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System

Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Eligible Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

32.5 Penalties for Failure To Meet Study Deadlines

Section 19.9 defines penalties that apply for failure to meet the 60-day study completion due diligence deadlines for System Impact Studies and Facilities Studies under Part II of the Tariff. These same requirements and penalties apply to service under Part III of the Tariff.

33 Load Shedding and Curtailments

33.1 Procedures

Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System and on systems directly and indirectly interconnected with Transmission Provider's Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints

During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints

Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries

If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement or pursuant to the Transmission Loading Relief procedures specified in Attachment J.

33.5 Allocation of Curtailments

The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding

To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability

Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network

Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Commission policy, along with the following:

34.1 Monthly Demand Charge

The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load

The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load

The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the

coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge

The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Network Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any proposal to recover stranded costs under Section 205 of the Federal Power Act.

35 Operating Arrangements

35.1 Operation under the Network Operating Agreement

The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement

The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other

real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either (i) operate as a Control Area under applicable guidelines of the Electric Reliability Organization (ERO) as defined in 18 CFR 39.1, (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies the applicable reliability guidelines of the ERO. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee

A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1—Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates set forth below. To the extent the Control Area operator performs this

service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 2—Reactive Supply and Voltage Control From Generation or Other Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities and non-generation resources capable of providing this service that are under the control of the control area operator are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation or Other Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation or Other Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation or Other Sources Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based on the rates set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

Schedule 3—Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use

of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The amount of and charges for Regulation and Frequency Response Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 4—Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator. The Transmission Provider may charge a Transmission Customer a penalty for either hourly energy imbalances under this Schedule or a penalty for hourly generator imbalances under Schedule 9 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other.

The Transmission Provider shall establish charges for energy imbalance based on the deviation bands as follows: (i) Deviations within ± 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied

hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of incremental or decremental cost; (ii) deviations greater than ± 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost or 90 percent of decremental cost, and (iii) deviations greater than ± 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 125 percent of incremental cost or 75 percent of decremental cost.

For purposes of this Schedule, incremental cost and decremental cost represent the Transmission Provider's actual average hourly cost of the last 10 MW dispatched for any purpose, *e.g.*, to supply the Transmission Provider's Native Load Customers, correct imbalances, or make off-system sales, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.

Schedule 5—Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The amount of and charges for Spinning Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 6—Operating Reserve— Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load or other non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The amount of and charges for Supplemental Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 7—Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below:

(1) *Yearly delivery*: one-twelfth of the demand charge of \$____/KW of Reserved Capacity per year.

(2) *Monthly delivery*: \$____/KW of Reserved Capacity per month.

(3) *Weekly delivery*: \$____/KW of Reserved Capacity per week.

(4) *Daily delivery*: \$____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(5) *Discounts*: Three principal requirements apply to discounts for transmission service as follows (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For

any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

(6) *Resales*: The rates and rules governing charges and discounts stated above shall not apply to resales of transmission service, compensation for which shall be governed by section 23.1 of the Tariff.

Schedule 8—Non-Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-To-Point Transmission Service up to the sum of the applicable charges set forth below:

(1) *Monthly delivery*: \$____/KW of Reserved Capacity per month.

(2) *Weekly delivery*: \$____/KW of Reserved Capacity per week.

(3) *Daily delivery*: \$____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(4) *Hourly delivery*: The basic charge shall be that agreed upon by the Parties at the time this service is reserved and in no event shall exceed \$____/MWH. The total demand charge in any day, pursuant to a reservation for Hourly delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any hour during such day. In addition, the total demand charge in any week, pursuant to a reservation for Hourly or Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any hour during such week.

(5) *Discounts*: Three principal requirements apply to discounts for transmission service as follows (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission

Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

(6) *Resales*: The rates and rules governing charges and discounts stated above shall not apply to resales of transmission service, compensation for which shall be governed by section 23.1 of the Tariff.

Schedule 9—Generator Imbalance Service

Generator Imbalance Service is provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. The Transmission Provider must offer this service, to the extent it is physically feasible to do so from its resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Generator Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area Operator. The Transmission Provider may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule or a penalty for hourly energy imbalances under Schedule 4 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other.

The Transmission Provider shall establish charges for generator imbalance based on the deviation bands as follows: (i) Deviations within +/– 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of each month, at 100 percent of incremental or decremental cost, (ii) deviations greater than +/– 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of

the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost or 90 percent of decremental cost, and (iii) deviations greater than +/- 7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of incremental cost or 75 percent of decremental cost, except that an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW. An intermittent resource, for the limited purpose of this Schedule is an electric generator that is not dispatchable and cannot store its fuel source and therefore cannot respond to changes in system demand or respond to transmission security constraints.

Notwithstanding the foregoing, deviations from scheduled transactions in order to respond to directives by the Transmission Provider, a balancing authority, or a reliability coordinator shall not be subject to the deviation bands identified above and, instead, shall be settled financially, at the end of the month, at 100 percent of incremental and decremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

For purposes of this Schedule, incremental cost and decremental cost represent the Transmission Provider's actual average hourly cost of the last 10 MW dispatched for any purpose, e.g., to supply the Transmission Provider's Native Load Customers, correct imbalances, or make off-system sales, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.

Attachment A—Form of Service Agreement for Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ ("Transmission Customer").

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed

Application for Firm Point-To-Point Transmission Service under the Tariff. 3.0 The Transmission Customer has provided to the Transmission Provider an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.

4.0 Service under this agreement shall commence on the later of (1) the requested service commencement date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as it is permitted to become effective by the Commission. Service under this agreement shall terminate on such date as mutually agreed upon by the parties.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

Transmission Customer:

7.0 The Tariff is incorporated herein and made a part hereof. In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name _____
Title _____
Date _____

Transmission Customer:

By: _____
Name _____
Title _____
Date _____

Specifications for Long-Term Firm Point-To-Point Transmission Service

1.0 Term of Transaction: _____
Start Date: _____
Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

3.0 Point(s) of Receipt: _____

Delivering Party: _____

4.0 Point(s) of Delivery: _____

Receiving Party: _____

5.0 Maximum amount of capacity and energy to be transmitted (Reserved Capacity): _____

6.0 Designation of party(ies) subject to reciprocal service obligation: _____

7.0 Name(s) of any Intervening Systems providing transmission service: _____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)

8.1 Transmission Charge: _____

8.2 System Impact and/or Facilities Study Charge(s): _____

8.3 Direct Assignment Facilities Charge: _____

8.4 Ancillary Services Charges: _____

Attachment A-1—Form of Service Agreement for the Resale, Reassignment or Transfer of Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ (the Assignee).

2.0 The Assignee has been determined by the Transmission Provider to be an Eligible Customer under the Tariff pursuant to which the transmission service rights to be transferred were originally obtained.

3.0 The terms and conditions for the transaction entered into under this Service Agreement shall be subject to the terms and conditions of Part II of the Transmission Provider's Tariff, except for those terms and conditions negotiated by the Reseller of the reassigned transmission capacity (pursuant to Section 23.1 of this Tariff) and the Assignee, to include: contract effective and termination dates, the amount of reassigned capacity or energy, point(s) of receipt and delivery.

Changes by the Assignee to the Reseller's Points of Receipt and Points of Delivery will be subject to the provisions of Section 23.2 of this Tariff. 4.0 The Transmission Provider shall credit the Reseller for the price reflected in the Assignee's Service Agreement or the associated OASIS schedule. 5.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

Assignee:

6.0 The Tariff is incorporated herein and made a part hereof. In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name

Title

Date

Assignee:

By: _____
Name

Title

Date

Specifications For The Resale, Reassignment Or Transfer of Long-Term Firm Point-To-Point Transmission Service

1.0 Term of Transaction: _____
Start Date: _____
Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

3.0 Point(s) of Receipt: _____
Delivering Party: _____

4.0 Point(s) of Delivery: _____
Receiving Party: _____

5.0 Maximum amount of reassigned capacity: _____

6.0 Designation of party(ies) subject to reciprocal service obligation: _____

7.0 Name(s) of any Intervening Systems providing transmission service: _____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)

8.1 Transmission Charge: _____

8.2 System Impact and/or Facilities Study Charge(s): _____

8.3 Direct Assignment Facilities Charge: _____

8.4 Ancillary Services Charges: _____

9.0 Name of Reseller of the reassigned transmission capacity: _____

Attachment B—Form of Service Agreement for Non-Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ (Transmission Customer).

2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.

3.0 Service under this Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer.

4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the

representative of the other Party as indicated below.

Transmission Provider:

Transmission Customer:

7.0 The Tariff is incorporated herein and made a part hereof.

In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name

Title

Date

Transmission Customer:

By: _____
Name

Title

Date

Attachment C—Methodology To Assess Available Transfer Capability

The Transmission Provider must include, at a minimum, the following information concerning its ATC calculation methodology:

(1) A detailed description of the specific mathematical algorithm used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule) and planning horizon (beyond the operating horizon);

(2) A process flow diagram that illustrates the various steps through which ATC/AFC is calculated; and

(3) A detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons.

(a) For TTC, a Transmission Provider shall: (i) Explain its definition of TTC; (ii) explain its TTC calculation methodology; (iii) list the databases used in its TTC assessments; and (iv) explain the assumptions used in its TTC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

(b) For ETC, a Transmission Provider shall explain: (i) Its definition of ETC;

(ii) the calculation methodology used to determine the transmission capacity to be set aside for native load (including network load), and non-OATT customers (including, if applicable, an explanation of assumptions on the selection of generators that are modeled in service); (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; (v) its processes for ensuring that non-firm capacity is released properly (e.g., when real-time schedules replace the associated transmission service requests in its real-time calculations); and (vi) describe the step-by-step modeling study methodology and criteria for adding or eliminating flowgates (permanent and temporary).

(c) If a Transmission Provider uses an AFC methodology to calculate ATC, it shall: (i) Explain its definition of AFC; (ii) explain its AFC calculation methodology; (iii) explain its process for converting AFC into ATC for OASIS posting; (iv) list the databases used in its AFC assessments; and (v) explain the assumptions used in its AFC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

(d) For TRM, a Transmission Provider shall explain: (i) Its definition of TRM; (ii) its TRM calculation methodology (e.g., its assumptions on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources); (iii) the databases used in its TRM assessments; (iv) the conditions under which the Transmission Provider uses TRM. A Transmission Provider that does not set aside transfer capability for TRM must so state.

(e) For CBM, the Transmission Provider shall state a specific and self-contained narrative explanation of its CBM practice, including: (i) An identification of the entity who performs the resource adequacy analysis for CBM determination; (ii) the methodology used to perform generation reliability assessments (e.g., probabilistic or deterministic); (iii) an explanation of whether the assessment method reflects a specific regional practice; (iv) the assumptions used in this assessment; and (v) the basis for the selection of paths on which CBM is set aside.

(f) In addition, for CBM, a Transmission Provider shall: (i) Explain its definition of CBM; (ii) list the databases used in its CBM calculations; and (iii) demonstrate that there is no double-counting of contingency outages when performing CBM, TTC, and TRM calculations.

(g) The Transmission Provider shall explain its procedures for allowing the use of CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). If the Transmission Provider's practice is not to set aside transfer capability for CBM, it shall so state.

Attachment D—Methodology for Completing a System Impact Study

To be filed by the Transmission Provider

Attachment E—Index of Point-To-Point Transmission Service Customers

Customer _____

Date of Service Agreement _____

Attachment F—Service Agreement for Network Integration Transmission Service

To be filed by the Transmission Provider

Attachment G—Network Operating Agreement

To be filed by the Transmission Provider

Attachment H—Annual Transmission Revenue Requirement for Network Integration Transmission Service

1. The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service shall be _____

2. The amount in (1) shall be effective until amended by the Transmission Provider or modified by the Commission.

Attachment I—Index of Network Integration Transmission Service Customers

Customer _____

Date of Service Agreement _____

Attachment J—Procedures for Addressing Parallel Flows

To be filed by the Transmission Provider

Attachment K—Transmission Planning Process

The Transmission Provider shall establish a coordinated, open and transparent planning process with its Network and Firm Point-to-Point

Transmission Customers and other interested parties, including the coordination of such planning with interconnected systems within its region, to ensure that the Transmission System is planned to meet the needs of both the Transmission Provider and its Network and Firm Point-to-Point Transmission Customers on a comparable and nondiscriminatory basis. The Transmission Provider's coordinated, open and transparent planning process shall be provided as an attachment to the Transmission Provider's Tariff.

The Transmission Provider's planning process shall satisfy the following nine principles, as defined in the Final Rule in Docket No. RM05-25-000:

Coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects. The planning process shall also provide a mechanism for the recovery and allocation of planning costs consistent with the Final Rule in Docket No. RM05-25-000.

The Transmission Provider's planning process must include sufficient detail to enable Transmission Customers to understand:

(i) The process for consulting with customers and neighboring transmission providers;

(ii) The notice procedures and anticipated frequency of meetings;

(iii) The methodology, criteria, and processes used to develop transmission plans;

(iv) The method of disclosure of criteria, assumptions and data underlying transmission system plans;

(v) The obligations of and methods for customers to submit data to the transmission provider;

(vi) The dispute resolution process;

(vii) The transmission provider's study procedures for economic upgrades to address congestion or the integration of new resources; and

(viii) The relevant cost allocation procedures or principles.

Attachment L—Creditworthiness Procedures

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices and must specify quantitative and qualitative criteria to determine the level of secured and unsecured credit.

The Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that

protects the Transmission Provider against the risk of non-payment.

Additionally, the Transmission Provider must include, at a minimum, the following information concerning its creditworthiness procedures:

- (1) A summary of the procedure for determining the level of secured and unsecured credit;
- (2) A list of the acceptable types of collateral/security;
- (3) A procedure for providing customers with reasonable notice of

changes in credit levels and collateral requirements;

(4) A procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements;

(5) A reasonable opportunity to contest determinations of credit levels or collateral requirements; and

(6) A reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.

[FR Doc. E8-14948 Filed 7-7-08; 8:45 am]

BILLING CODE 6717-01-P