

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

18 CFR Part 37

[Docket Nos. RM05–17–005 and RM05–25–005; Order No. 890–D]

Preventing Undue Discrimination and
Preference in Transmission Service

November 19, 2009.

AGENCY: Federal Energy Regulatory
Commission, Energy.

ACTION: Order on Clarification.

SUMMARY: The Federal Energy Regulatory Commission affirms its basic determinations in Order Nos. 890, 890–A, 890–B, and 890–C, granting 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 Commission grants clarification regarding the requirement to undesignate network resources used to serve off-system sales.

DATES: *Effective Date:* This rule will become effective November 25, 2009.

FOR FURTHER INFORMATION CONTACT: Christina Hayes, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6194.

SUPPLEMENTARY INFORMATION:

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

Order on Clarification

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

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890–A, 73 FR 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g and clarification*, Order No. 890–C, 126 FERC ¶ 61,228 (2009).

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*

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 twelve years since Order No. 888, however, flaws in the *pro forma* OATT undermined, in part, 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 Nos. 890–A, 890–B, and 890–C, the Commission largely affirmed the reforms adopted in Order No. 890. The Commission concluded that, taken together, these reforms will better enable the *pro forma* OATT to achieve the core objective of remedying undue discrimination in the provision of transmission service. In Order No. 890–C, the Commission granted clarification regarding the degree of consistency required in the calculation of ATC by transmission providers and denied rehearing regarding the requirement to undesignate network resources used to serve off-system sales. Duke Energy Corporation (Duke) has sought clarification of the latter determination.

I. Reforms of the OATT*A. Designation of Network Resources*

3. In Order No. 890–C, the Commission affirmed the requirement that network resources used to supply sales of system power off-system must first be undesignated.³ The Commission explained that transactions in which the buyer and seller are both located on the same transmission system are distinct from transactions involving sales of energy from a network customer to an off-system buyer. In the latter circumstance, the off-system buyer will not be using network service to take delivery from the host transmission provider but, instead, must identify the points of receipt and delivery for the transaction on the host transmission provider's system. The Commission stated that the point-to-point transmission reservation and the corresponding resource-specific undesignation provide the transmission provider with the information it needs

relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (DC Cir. 2000) (*TAPS v. FERC*), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³ See Order No. 890–C, 126 FERC ¶ 61,228 at P 17 (*citing* Order No. 890–B, 123 FERC ¶ 61,299 at P 206).

regarding the location of 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.

Request for Clarification

4. Duke argues that the Commission's determination in Order No. 890–C is inconsistent with the *pro forma* OATT and Order No. 888. Duke contends that Order No. 890–C indicates that network customers purchasing system power from an off-system seller cannot take network service from the off-system seller's transmission provider, but instead must procure point-to-point service from the transmission system on which the off-system seller is located. Duke asserts that this is inconsistent with section 31.3 of the *pro forma* OATT, which permits network loads of network customers to not be physically interconnected with the transmission provider from whom they take network service. Duke notes that the Commission has acknowledged in prior cases that, although not generally used for through-and-out service, network service can be used to serve loads on neighboring transmission systems.⁴ Duke seeks confirmation that, where an off-system buyer is buying system power from a seller that is a network customer on an adjacent transmission system, the off-system buyer needs transmission service on both the system on which the seller is located and the system on which the buyer is located, but that it remains the choice of the buyer as to whether to procure network or point-to-point service.

5. If the Commission confirms that an off-system buyer is permitted to take network service from both transmission providers, Duke questions whether the seller needs to undesignate specific generating resources or whether it can undesignate a slice of its system. Duke contends that resource-specific undesignations are needed only if the buyer is using point-to-point service on the transmission system on which the seller is located for delivery, not if the off-system buyer takes network service on that system.⁵ Duke suggests that, where the buyer is a network customer on both transmission systems, the reason for requiring resource-specific

⁴ Duke Request for Clarification (*citing* *Midwest Indep. Trans. System Operator, Inc.*, 109 FERC ¶ 61,168, at P 80 (2004)).

⁵ Duke Request for Clarification at 4–5 (*citing* Order No. 890–C, 126 FERC ¶ 61,228 at P 18).

undesignation by the seller is eliminated. Duke requests clarification that a slice of system undesignation by the seller would be appropriate in such circumstances.

Commission Determination

6. We confirm that, where an off-system buyer is buying system power from a seller that is a network customer on an adjacent transmission system, the buyer needs transmission service on both the system on which the seller is located and the system on which buyer is located, but that it remains the buyer's choice as to whether to procure network or point-to-point service. The Commission's reference in Order No. 890-C to the use of point-to-point service to take delivery of system power was not intended to restrict the buyer's choice to instead use network service. As Duke notes, there may be a situation in which a buyer and seller of capacity from a network resource both take network service on the same transmission system and the power is delivered under section 31.3 of the *pro forma* OATT to another transmission system on which the buyer's network load is located. In such a situation, both the buyer and seller of power are network customers of the transmission system on which the sale of power takes place. We clarify, to the extent necessary, that the seller in such a situation may support the transaction by undesignating its resources on a system basis.

7. In Order No. 890-C, the Commission noted that the Reliability Standards governing the calculation of ATC were pending Commission review. Concurrent with this order, the Commission in Docket No. RM08-19-000 is directing the North American Electric Reliability Corporation (NERC) to develop modifications to certain of these Reliability Standards to address the modeling of network resources and its impact on the calculation of ATC. To the extent Duke or other parties have concerns regarding the appropriate modeling of network resource designations on the calculation of ATC, the Commission encourages those parties to raise their concerns in NERC's standards development process.

II. Information Collection Statement

8. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.⁶ 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 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.

III. Document Availability

9. 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.

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

11. 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.

IV. Effective Date and Congressional Notification

12. This order does not substantively alter the requirements of Order Nos. 890, 890-A, 890-B or 890-C and, therefore, will become effective as of the date of publication in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-28216 Filed 11-24-09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. FDA-1977-N-0013] (formerly Docket No. 1977-N-0094L)

RIN 0910-AF36

Organ-Specific Warnings; Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a final rule that appeared in the **Federal Register** of April 29, 2009 (74 FR 19385) (as amended in the **Federal Register** of June 30, 2009 (74 FR 31177)). The final rule requires important new organ-specific warnings and related labeling for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic (IAAA) drug products. The new labeling informs consumers about the risk of liver injury when using acetaminophen and the risk of stomach bleeding when using nonsteroidal anti-inflammatory drugs (NSAIDs). This document is intended to clarify some provisions in the final rule which may be unclear. Specifically, this document addresses how blister cards can be labeled to comply with the new required labeling, clarifies the length of time that the "See new warnings" flag is required to appear in the labeling, and provides some optional wording to clarify the liver injury warning on OTC acetaminophen products containing multiple active ingredients.

DATES: *Effective Date:* This final rule is effective April 29, 2010.

Compliance Date: The compliance date for all products subject to this final rule, including products with annual sales less than \$25,000, is April 29, 2010.

FOR FURTHER INFORMATION CONTACT:

Arlene Solbeck, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5411, Silver Spring, MD 20993-0002, 301-796-2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending the final rule that was published in the **Federal Register** of

⁶ 5 CFR 1320 (2007).