

Updating the Federal Energy Regulatory
Commission's Pro Forma Tariff:
A Vehicle for Change?

April 4, 2005

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Overview

- FERC Signals Need for Tariff Modifications
- Possible Changes:
 - All Load Under the Tariff
 - Codify Rollover Rights and Firm Redirect Policy
 - Regional Planning and the Obligation to Build
 - Wind Interconnection
 - NERC Functional Model Approach
 - Market Monitors
 - Financial Penalties

Overview

- Implementation of Tariff Modifications
 - Notice and Comment Rulemaking
 - Pursuant to authority under FPA Sections 205 and 206
 - FERC used similar approach in Order No. 888
 - Case-by-Case Basis
 - OMOI settlements
 - Section 206 investigations

FERC Signals Need for Modification

"It looks like we're certainly going to be making some changes [to the OATT.]"

- *Chairman Pat Wood, December 7, 2004*

"It's pretty clear that there are changes that need to be made to the OATT to respond to today's market conditions."

- *Comm'r Nora Mead Brownell, December 7, 2004*

"It's possible that we need to take a more formal look at Order 888."

- *Comm'r Suedeen Kelly, November 21, 2004*

FERC Signals Need for Modification

- Wind Interconnection Technical Conference
 - FERC sought proposed revisions to pro forma tariff.
 - Proposals could include:
 - eliminating imbalance penalties;
 - increasing scheduling flexibility;
 - pricing imbalances on avoided cost and/or to aggregate imbalances over a greater time period and allow netting;
 - creating new forms of transmission service.
 - Some intervenors urged Commission to hold discussion of *pro forma* tariff changes and focus on wind power.

Why Change the Tariff?

- Inherent differences between network and point-to-point transmission service. Network Service provides more flexibility than point-to-point.
- FERC recognized this in Order No. 888 as necessary in order to accommodate different types of customers with different needs.

Why Change the Tariff?

- FERC now sees the difference between the two types of service as potentially interfering with market development.
- FERC wants to move more toward a single type of transmission service, which in turn moves the industry closer to Day 2 Markets.

Why Change the Tariff?

- The fundamental problem FERC has with the tariff is the first come, first served concept.
- FERC wants to take IPPs off the margin. To do this it must eliminate the first come, first served principle that underlies the tariff.

Why Change the Tariff?

- Rollover rights were the initial effort to take IPPs off the margin by requiring transmission provider to build in order to maintain existing rights.
- For FERC, LMP is the ultimate solution. It eliminates first come, first served issue.
- Even with LMP, there is still a problem: who pays to upgrade the system?

Proposed Changes to Tariff from SMD NOPR

- SMD NOPR proposed adoption of SMD tariff but also proposed interim changes to the *pro forma* tariff that could be done immediately.
- SMD NOPR changes fell into two categories:
 - Revise provisions to allow for all load under the tariff; and
 - Codify the existing Commission policy on rollover rights and firm redirects.

All Load under the Tariff

- The Commission proposed a number of changes to the *pro forma* tariff that would have brought all load under the tariff.
 - What does this mean in practical terms?
 - Operational Issues
 - All network customers, including the transmission provider, will be treated the same. Terms and conditions of the tariff apply equally.
 - Probably not much of a change; it is being done that way today.
 - But what about rate implications?

All Load under the Tariff - Rate Implications

- The concept of “all load under the tariff” could have significant implications for transmission providers in bundled retail states.
- If the concept is extended to rates, the end result may be FERC jurisdiction over the transmission component of bundled retail sales.

All Load under the Tariff - Rate Implications

- FERC side-stepped issue in the RTO context.
 - *GridSouth* and *SeTrans*
 - Although FERC said it would not modify state-set rates for the transmission component of bundled retail sales, it required transmission owners to file TSA with FERC that contained state rate.
 - FERC included language in its orders that made many people nervous: “consistent with FPA” and “in accordance with our discounting policy.”
 - SeTrans sponsors sought clarification; SeTrans had created special TSA for transmission owners.

All Load under the Tariff - Rate Implications

- *Ameren* shows potential rate implications associated with all load under the tariff.
 - Commission accepted Ameren TSA which placed its retail load under the Midwest ISO tariff.
 - Several months later when Ameren attempted to move to the MISO formula rate, some intervenors raised the discrimination argument.
 - FERC set the issue for hearing.

SMD NOPR Amendments - Rollover Rights and Redirects

- SMD NOPR proposed language that would codify rollover rights and firm redirect policy.
- Rollover Rights amendments:
 - A customer may submit a request to rollover its contract up to sixty days prior to the date the current agreement expires.
 - The TP may only deny a customer its right to rollover due to future load growth if the TP includes in the original service agreement a specific, reasonably forecasted need for the transfer capability to serve load growth.

SMD NOPR Amendments - Firm Redirects

- Firm Redirect Policy:
 - A long-term firm customer that requests to use alternate point(s) of receipt or delivery retains its right of first refusal for service at the original point(s) of receipt and delivery at the time the current service agreement expires.

Obligation to Plan and Build

“[S]hould [there] be an obligation to plan [the building of transmission facilities] or an obligation to build in the OATT?”

“I would love to know the real reason why transmission investment isn’t occurring...”

–Commissioner Kelliher, December 7, 2004

Obligation to Build

Pro Forma Tariff, Section 28.2:

... The Transmission Provider shall include the Network Customer's Network Load in its transmission system planning and shall, consistent with Good Utility Practice, *endeavor to construct* and place into service sufficient transmission capacity 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.

Obligation to Build

Pro Forma Tariff, Section 13.5:

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 all customers taking firm 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 Section 15.4.

Obligation to Build

- *Pro forma* tariff already has an obligation to build. Obligation tied to transmission service under the *pro forma* tariff.
- FERC looking to apply RTO planning model to the *pro forma* tariff. Key issues include:
 - Unclear how it would be implemented in utility-specific context with no RTO ordering transmission owners to build. Regional planning process?
 - Success in the RTO context is yet to be determined.

Planning Process -Existing OATT Obligations

- Section 28.2: As part of the transmission provider's responsibilities, the "Transmission Provider *will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice.*"
- Section 30.9: For Network Customer Owned Facilities: In order to receive consideration for billing credits the Network Customer must demonstrate that its *facilities are integrated into the planning of the Transmission Provider*, customers can get credits when facilities are jointly planned with the Transmission Provider.

Planning Process

- Current Obligations:
 - Assumes joint planning process, but nothing more specific.
- RTO Planning Process:
 - RTO tariffs all have separate attachments with detailed planning processes.
 - FERC will likely want something similar to this.
- Problem: Generation is not tied to load, so how can planning take place?

Altering Imbalance Penalties

- FERC reviewing possible changes to the *pro forma* tariff to encourage the development of wind energy. Proposals could include:
 - eliminating imbalance penalties;
 - increasing scheduling flexibility;
 - pricing imbalances on avoided cost;
 - aggregating imbalances for longer period; and
 - allowing for netting.

NERC's Reliability Functional Model

The Commission Recently Supplemented its Reliability Policy Statement to Comply with NERC's Revised Reliability Standards

"NERC has taken an important step toward delivering on the promise of maintaining full grid reliability. We are counting on active NERC compliance audits to assure these standards are vigorously implemented,"

- *Chairman Wood, February 9, 2005*

"The first step is to make reliability standards clear enough to be fairly enforced, and the next is to see that they are vigorously enforced,"

- *Commissioner Kelliher, February 9, 2005*

NERC's Reliability Functional Model

- NERC 's“Functional Model” approach consists of the functions that ensure reliability and explains the relationship between the responsible entities.
- The Functional Model: Four Guiding Principles
 - It defines the functions that must be performed.
 - A responsible entity must make sure that all tasks are performed.
 - A responsible entity that performs certain functions must be certified.
 - Some tasks may not result in a reliability standard.

NERC's Reliability Functional Model

- In SPP and MISO, FERC has already sought to accommodate NERC's functional model.
- *Pro Forma* Tariff makes numerous references to Control Area.
- FERC could propose aligning the *pro forma* tariff and NERC's functional model.

Market Monitor Requirements

"[I]n my mind, we have an obligation to deal with market power."

– Comm'r Brownell, December 13, 2004

"[T]he Commission has twice found that 888 allows for the exercise of undue discrimination in transmission service."

- Comm'r Joseph Kelliher, December 7, 2004

Market Monitor Requirements

- IMM's can perform many functions that might help prevent undue discrimination, such as:
 - report to FERC on the nature and extent of any impediments to, competition in and the economic efficiency of a transmission provider's markets and services;
 - recommend to the transmission provider changes to market rules, tariffs, or other actions to improve competition or efficiency in the transmission provider's markets and services;
 - review the transmission reservation, confirmation, and approval process; and
 - review and comment on transmission expansion plans.

Market Monitor Requirements

- Amendments to the OATT might include:
 - requirement to retain an IMM;
 - provisions describing the functions of the IMM;
and
 - provisions regarding how a transmission provider would maintain its relationship with the IMM.

Financial Penalties

- Commissioners have suggested that it might be appropriate to impose financial penalties for violations of the tariff.
- Issues:
 - What sorts of violations? Timing Requirements?
 - Does FERC have the authority to do this?
 - Who ultimately pays? Shareholders?
 - What about RTOs? Who ultimately pays?

Implementation

- Implementation of Tariff Modifications
 - Notice and Comment Rulemaking
 - Pursuant to authority under FPA Sections 205 and 206
 - FERC used similar approach in Order No. 888
 - Case-by-Case Basis
 - OMOI settlements
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Implementation

“It might be better timing just to do all these together.”

- *Speaking of the potential universe of changes to the OATT including accommodation of wind generation, market power issues, and the physical model of the grid. Chairman Wood, December 7, 2004*

Conclusion

- Energy markets are at a crossroads. RTOs and energy markets have developed in the Northeast and Midwest. RTOs are stalled in the South and West.
- FERC poised to make additional changes to the *pro forma* tariff in order to foster more competitive markets in regions of the country that do not currently have RTOs.

Conclusion

- Not entirely clear how FERC will approach the issue, but more likely that FERC will propose changes to the *pro forma* tariff through a notice and comment rulemaking rather than on a case-by-case basis.

SMD NOPR Amendments

Redlined Against Pro Forma Tariff

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SMD NOPR Proposed Amendment - 1.19 Native Load Customers

The wholesale and retail power customers of 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. The Transmission Provider will take Network Service under Part III of the Tariff on their behalf.

SMD NOPR Proposed Amendment - 13.5 Obligations for Facility Additions or Redispatch Cost

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~~ all customers taking firm 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 Section 15.4.

SMD NOPR Proposed Amendment - 13.6 Curtailment of Firm Transmission Service

If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers, including transmission service taken by the Transmission Provider for native load, 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.

SMD NOPR Proposed Amendment - 14.2 Reservation Priority

Non-Firm Point-to-Point Transmission Service shall be available from transmission 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 to reservations with a longer duration of service. ...

SMD NOPR Proposed Amendment - 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.~~

SMD NOPR Proposed Amendment - Sections 28.2 and 28.3

28.2 Transmission Provider Responsibilities: ... The Transmission Provider, ~~on behalf of its Native Load Customers~~ as a Network Customer, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. ...

28.3 Network Integration Transmission Service: The Transmission Provider will provide firm transmission service over its Transmission System to ~~the~~ all Network Customers 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 historical use of the Transmission System to reliably serve its Native Load Customers.

SMD NOPR Proposed Amendment - 33.2 Transmission Constraints

... 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.~~

SMD NOPR Proposed Amendment - 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~~ all Network Customers, including the Transmission network service taken by the Transmission Provider on behalf of its Native Load Customers, will ~~each~~ bear a proportionate share of the total redispatch cost based on their respective Load Ration Shares.

SMD NOPR Proposed Amendment - 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 all Network Customers, including the Transmission Provider on behalf of its Native Load Customers in proportion to their respective Load Ration 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.

SMD NOPR Proposed Amendment - 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. ... 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. ...~~

Section 2 Reservation Priority for Existing Firm Service Customers

- 2 ~~Initial Allocation and Renewal Procedures~~ Reservation Priority for Existing Firm Service Customers
- 2.1 ~~Initial Allocation of Available Transmission Capability~~ Right of First Refusal: (whole section struck and former section 2.2 *Reservation Priority for Existing Firm Service Customers* inserted)
- 2.2 Notice of Rollover: Consistent with requests for new service described in Section 13.2 of Part II of the Tariff, a Transmission Customer must submit its request to exercise rollover rights no later than sixty (60) days prior to the date the current service agreement expires.

Section 2 Reservation Priority for Existing Firm Service Customers

- 2.3 Future Load Growth: The Transmission Provider may reserve existing transmission capacity needed for future load growth reasonably forecasted within the Transmission Provider's current planning horizon. The Transmission Provider may decline a Customer the ability to roll over its firm transmission service with a term of one year or longer only if the Transmission Provider includes in the original service agreement a specific, reasonably forecasted need for the transfer capability to serve load growth at the end of the term of the service agreement.
- 2.4 Redirects: A Customer receiving firm transmission service with a term of one year or longer which requests to use alternate point(s) of receipt or delivery retains its right of first refusal for service the original point(s) of receipt and delivery at the time the current service agreement expires.