

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 35 and 37

(Docket Nos. RM05-17-000 and RM05-25-000; Order No. 890)

Preventing Undue Discrimination and Preference in Transmission Service

(Issued April 11, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Granting Extension of Compliance Action Dates.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is extending certain deadlines for compliance actions required by Order No. 890, the final rule issued in this proceeding on February 16, 2007.

DATES: The date by which transmission providers must implement certain reforms adopted in Order No. 890 is hereby extended by 60 days, to July 13, 2007, as set forth in Appendix A of this order.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Preventing Undue Discrimination and
Preference in Transmission Service

Docket Nos. RM05-17-000
RM05-25-000

ORDER GRANTING EXTENSION OF COMPLIANCE ACTION DATES

(Issued April 11, 2007)

1. On March 21, 2007, Tampa Electric Company (Tampa Electric) together with Florida Power & Light Company (FPL) filed a motion for extension of deadlines relating to the implementation of additional functionality for the Open Access Same-Time Information System (OASIS) and the posting of new transmission-related metrics as outlined in Order No. 890.¹ On March 29, 2007, Tampa Electric and FPL supplemented their motion with a preliminary assessment of technical work required to implement the additional OASIS functionality and the posting of new transmission-related metrics.
2. On March 23, 2007, the Edison Electric Institute (EEI) filed a motion requesting that the Commission extend to 120 days from publication of Order No. 890 in the Federal Register all deadlines currently set as less than 120 days as applied to transmission providers that are not members of an Independent System Operator (ISO) or Regional Transmission Organization (RTO). On March 29, 2007, EEI filed a second motion to

¹ Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), reh'g pending (Order No. 890).

extend the filing deadline for ISO and RTO transmission providers' "strawman" proposals detailing compliance with each of the nine planning principles adopted in Order No. 890.

3. On April 3, 2007, E.ON U.S. LLC (E.ON) filed a motion stating its support of EEI's request to allow utilities not participating in an ISO or RTO an additional 60 days to comply with the non-rate terms and conditions set out in Order No. 890, but requesting a 90-day extension for submission of its Federal Power Act (FPA) section 206 compliance filing due to E.ON's particular circumstances.

4. Finally, on April 9, 2007, Portland General Electric Company (PGE) filed a motion seeking an extension of deadlines associated with the optional filing under FPA section 205 regarding previously-approved variations from the pro forma Open Access Transmission Tariff (OATT).

5. For the reasons outlined below, the Commission grants in part the March 23, 2007, motion of EEI and denies the March 29, 2007, motion of EEI, as well as the subsequent motions of E.ON and PGE. Accordingly, the joint motion of Tampa Electric and FPL, as supplemented, is rejected as moot.

I. Background

6. On February 16, 2007, the Commission issued Order No. 890 on Preventing Undue Discrimination and Preference in Transmission Service in these dockets.² In Order No. 890, the Commission amended its regulations and the pro forma OATT, adopted in Order No. 888,³ to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The Commission designed Order No. 890 to: (1) strengthen the pro forma OATT to ensure that it achieves its original purpose of remedying undue discrimination; (2) provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission's enforcement; and (3) increase transparency in the rules applicable to planning and use of the transmission system.

7. Order No. 890 established a number of compliance requirements with corresponding deadlines, each necessary to achieve its stated goals. Among other things, transmission providers that have not been approved as ISOs or RTOs, and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 60 days after publication of Order No. 890 in the Federal Register, i.e.,

² Id.

³ 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).

May 14, 2007, filings under section 206 of the FPA that contain the non-rate terms and conditions set forth in the order.⁴ Within 75 days of publication, i.e., May 29, 2007, all transmission providers must post a “strawman” proposal for compliance with each of the nine planning principles adopted in Order No. 890.⁵ The Commission also requested that the North American Electric Reliability Corporation (NERC) and the North American Energy Standards Board (NAESB) file, within 90 days from publication, i.e., June 13, 2007, a joint status report that contains a work plan for completion of business practices and standards related to calculation of Available Transfer Capability (ATC).⁶ NAESB was further requested to file a status report and work plan for the completion of the OASIS functionality or uniform business practices related to reforms adopted in Order No. 890.⁷ The Commission required each transmission provider to develop, within 90 days from publication, i.e., June 13, 2007, its own OASIS functionality or business practices necessary to implement certain reforms ordered in Order No. 890 pending completion of the NERC and NAESB processes.⁸ Finally, the Commission required transmission providers to comply with a number of new regulations by Order No. 890’s effective date of May 14, 2007.

8. In addition to these compliance obligations, the Commission provided an optional 205 procedure for transmission providers seeking to maintain previously-approved

⁴ Order No. 890 at P 139.

⁵ Id. at P 135.

⁶ Id. at P 223.

⁷ Id. at P 141.

⁸ Id.

variations from the Order No. 888 pro forma OATT that were affected by the reforms adopted in Order No. 890. To the extent a transmission provider wishes to maintain these previously-approved variations, the Commission stated that the transmission provider would have to demonstrate that the relevant tariff provisions continue to be consistent with or superior to the pro forma OATT as modified by Order No. 890. The Commission provided that such demonstrations could be made in an FPA section 205 filing submitted within 30 days after publication of Order No. 890 in the Federal Register, i.e., April 16, 2007. The Commission stated that each applicant should request that these proposed tariff provisions be made effective as of the date of the transmission provider's section 206 compliance filing.⁹

II. Motions for Extension

9. Tampa Electric and FPL seek extension of compliance deadlines related to the implementation of additional OASIS functionality and the posting of new transmission-related metrics. As explained in their motion, Tampa Electric and FPL currently use FLOASIS, the OASIS for transmission providers in Florida. Tampa Electric and FPL state that they are currently negotiating an agreement with a new host, Open Access Technology International, Inc. (OATI), and anticipate that their new OASIS system will not be operational until July 1, 2007. If forced to meet the deadlines set forth in Order No. 890, Tampa Electric and FPL contend that they would be required to develop new software and manual processes on the current FLOASIS, which would become obsolete once they switch to the new OATI-hosted OASIS platform.

⁹ Id. at P 139.

10. EEI, on behalf of transmission providers not affiliated with an ISO or RTO, seeks in its March 23, 2007, motion an extension of certain of the compliance requirements in Order No. 890 involving deadlines set at less than 120 days from publication of the order in the Federal Register. This would include: the FPA section 206 compliance filing requirement, the “strawman” proposal deadline, and the deadlines set for the NERC and NAESB status reports. EEI contends that the volume and nature of the compliance requirements set forth in Order No. 890 render these corresponding deadlines infeasible. To support its argument, EEI describes in detail many of the steps it believes are necessary for completion of the compliance requirements, such as the development of new software or modifications to existing software.

11. In addition, EEI states particular concern regarding the time needed to develop software upgrades necessary to implement conditional firm service and planning redispatch. EEI also contends the current compliance schedule does not allow sufficient time to ensure that the new software and processes will not harm reliability. EEI therefore requests reconsideration of the Commission’s decision to make reforms involving NERC and NAESB activities effective in advance of associated development of business practices and standards. EEI requests the Commission abandon its requirement that transmission providers implement reforms on an individual basis prior to issuance of the final NERC and NAESB rules.

12. EEI also requests the Commission delay other compliance deadlines until the Commission issues further clarification of Order No. 890. Specifically, EEI contends that without additional guidance from the Commission regarding revising transmission

rates to reflect capacity benefit margin (CBM) set-aside, and prior to the issuance of the final NERC and NAESB standards, there may be significant inconsistencies in rate design among utilities, which could lead to hearing and settlement proceedings. EEI also states that transmission providers that make firm system sales need further clarification regarding the manner in which network resources should be designated and that, in the absence of such guidance, the Commission should not penalize transmission providers for their attempts to implement Order No. 890.

13. EEI further asks that the Commission clarify that the changes to Schedule 4 and Schedule 9 regarding imbalance charges need not become effective until the billing cycle immediately following the effective date of the revised pro forma OATT. EEI argues that requiring transmission providers to bill in two different billing methods for the same service over the course of a month would create the need for a complex software workaround.

14. In conjunction with its various requests, EEI proposes to organize a public conference on or about May 14, 2007, for participants to discuss progress made in their compliance efforts and any obstacles that have arisen.

15. On March 29, 2007, EEI filed a second motion on behalf of transmission providers that are members of an ISO or RTO, requesting a similar extension for filing of the “strawman” proposals for those entities. EEI contends in this motion that it is not feasible for ISOs and RTOs, and their transmission-owning members, to obtain robust input from a broad range of stakeholders in time to meet the current 75-day deadline. According to EEI, this deadline will be particularly challenging for most ISOs, RTOs and transmission owners because of the time required to coordinate planning obligations.

16. Answers to the EEI motions were filed by the American Public Power Association, National Rural Electric Cooperative Association, Transmission Access Policy Study Group, and Transmission Dependent Utility Systems (together the APPA Joint Commenters), the Mid-Continent Power Pool (MAPP) on behalf of its public utility members, Puget Sound Energy, Inc. (Puget), and the Electric Power Supply Association (EPSA). MAPP and Puget state full support of EEI's March 23, 2007, motion, reiterating many of the arguments made by EEI. While the APPA Joint Commenters do not object to the extensions of time requested by EEI, they request that the Commission provide at least 45 days to comment on transmission providers' compliance filings if the requested extensions are granted. In support of their request, the APPA Joint Commenters contend that consolidation of the 60-day, 75-day, and 90-day deadlines into a single 120-day deadline will impose increased burdens on interested parties reviewing those previously-staggered filings and postings. EPSA states its support of the APPA Joint Commenters' request.

17. The APPA Joint Commenters also express particular concern with two elements of the EEI motions. First, they argue that the Commission should only grant an extension of the requirement to complete software modifications on a case-by-case basis and, even then, only on a showing of clear and convincing need. Second, the APPA Joint Commenters argue that, if the Commission grants EEI's request to delay posting of the "strawman" proposals, the associated technical conferences should also be delayed in order to maintain a 15- to 45-day period for stakeholder review of the "strawman" postings.

18. On April 3, 2007, E.ON filed a motion supporting EEI's request to allow utilities

not participating in an ISO or RTO an additional 60 days to comply with the non-rate terms and conditions set out in Order No. 890. E.ON contends, however, that it is different from most stand-alone utilities because it must coordinate compliance efforts with the Southwest Power Pool, the independent transmission organization for E.ON's transmission system, as well as the Tennessee Valley Authority, which serves as the reliability coordinator for E.ON's transmission system. E.ON therefore requests a 90-day extension to submit its FPA section 206 compliance filing, rather than the 60-day extension requested by EEI.

19. On April 9, 2007, PGE filed a motion requesting an extension of the deadline to submit FPA section 205 filings relating to previously-approved variations from the pro forma OATT. To the extent the Commission grants EEI's request for an extension of the date to submit the FPA section 206 compliance filings, PGE requests that the Commission also generically extend the date of the FPA section 205 filings by 60 days. PGE further requests that, as to its own FPA section 205 filing, the Commission permit it

to delay that filing until after the Commission issues its order on rehearing in this proceeding.

III. Commission Determination

20. The Commission partially grants EEI's request and extends the date on which reforms adopted in Order No. 890 would have otherwise been effective by 60 days, i.e., to July 13, 2007, except as provided for below. Specifically, all transmission providers that have not been approved as ISOs or RTOs, and whose transmission facilities are not under the control of an ISO or RTO, are required to submit FPA section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 within 120 days of publication of the order in the Federal Register, i.e., July 13, 2007.

Similarly, transmission providers must take all other actions necessary to implement the reforms adopted in Order No. 890, except as provided for below, on or before July 13, 2007, unless a later compliance date was otherwise specified in the order.¹⁰

21. With regard to the requirement for transmission providers to post "strawman" proposals for compliance with the nine planning principles adopted in Order No. 890, we deny EEI's requests for extension and retain the requirement that such postings be made within 75 days of publication of the order in the Federal Register, i.e., May 29, 2007.

The "strawman" proposals are necessary to facilitate the technical conferences that the

¹⁰ Order No. 890 also requested NERC and NAESB to submit status reports within 90 days of publication of the order in the Federal Register, i.e., June 13, 2007, containing work plans for developing standards and business practices associated with reforms adopted in Order No. 890. The limited extension of time granted here applies to actions to be taken by transmission providers and, thus, the NERC and NAESB filing deadlines remain unchanged.

Commission has scheduled in June 2007 to encourage discussion as to how transmission providers ultimately intend to fulfill their planning requirements. Due to the delay in Federal Register publication, the “strawman” posting date is more than 100 days after Order No. 890 was issued, which is consistent with EEI’s assertion that the Commission typically provides 90 to 120 days for RTO and ISO efforts that require stakeholder participation.¹¹ In any event, the “strawman” proposals are only one aspect of the compliance process. The actual Attachment K compliance filing deadline is not until October 11, 2007. Transmission providers will therefore have roughly four months to prepare their Attachment K filings after the Commission holds technical conferences to discuss the “strawman” proposals. We believe this is sufficient time to ensure timely compliance with the Attachment K filing deadline.

22. With regard to imbalance charges, however, we agree that it would be reasonable for a transmission provider to extend the date on which the imbalance-related provisions adopted in Schedule 4 and Schedule 9 become effective until the first day of the billing cycle following the effectiveness of the underlying imbalance-related reforms.

Specifically, transmission providers submitting their imbalance provisions in section 206 filings on or before July 13, 2007, may specify that those provisions will become effective on the first day of the billing cycle following the filing date. We agree that this

¹¹ EEI March 29 Motion at 2.

modest extension of the effectiveness of imbalance-related reforms will facilitate the implementation of those reforms.

23. The Commission is not convinced that EEI's remaining requests for extension or further generic modification of Order No. 890's compliance obligations are necessary. Although the Commission is aware of the challenges of compliance with Order No. 890, we are not persuaded that the related deadlines, as modified herein, are unreasonable or unclear. Order No. 890 is the result of a multi-year proceeding during which the Commission sought and received multiple rounds of comments from over 300 parties. The various compliance obligations in Order No. 890, including CBM-related modification of rates and implementation of interim workarounds pending development of final NERC and NAESB standards and business practices, were established after full consideration of these comments and the Commission's determination that related reforms are necessary to remedy the potential for undue discrimination.¹² EEI has not persuaded us that generic modification of those obligations pending final standards and

¹² With specific regard to the CBM-related rate changes required in Order No. 890, we believe that EEI's concerns are misplaced. Order No. 890 expressly contemplated transmission providers proposing necessary changes to rate design to ensure that point-to-point customers do not pay a transmission charge that includes the cost of the CBM set-aside, provided that the subject of such rate filings be limited solely to the issue of CBM-related cost recovery. See Order No. 890 at P 263. Nothing in Order No. 890 precludes transmission providers from proposing modification of rates for other services (such as network service) as necessary to recover CBM-related costs previously paid by point-to-point customers and, therefore, it is not necessary to extend the deadline for those filings.

practice development by NERC and NAESB would be appropriate.¹³ Any issues specific to a transmission provider's ability to comply with the requirements of Order No. 890, as modified herein, may be considered during the compliance process on a case-by-case basis. For similar reasons, we deny the APPA Joint Commenters' request to establish in advance of the compliance process the number of days parties will have to comment on compliance filings.

24. The Commission also denies E.ON's request to extend its FPA section 206 compliance filing deadline by 90 days instead of the 60-day extension requested by EEI, granted above. All transmission providers must coordinate their compliance efforts with personnel internal and external to their organizations. We recognize these efforts will be complicated but, as explained above, they are the logical outgrowth of this multi-year proceeding. E.ON fails to justify the need for differential treatment during the compliance process.

25. Finally, the Commission denies PGE's request to extend the FPA section 205 deadlines relating to previously-approved variations from the pro forma OATT. The optional section 205 procedure was established so that transmission providers would have an opportunity to demonstrate that any previously-approved variations continue to be

¹³ Although Order No. 890 directed NERC and NAESB to develop standards and business practices necessary to implement ATC-related reforms within 270 and 360 days of publication of the order in the Federal Register, respectively, it did not establish a specific timeframe for NAESB's development of business practices necessary for remaining reforms. Instead, NAESB was requested to submit a work plan within 90 days of publication of the order in the Federal Register, upon review of which the Commission will issue an order establishing further compliance deadlines as necessary. See Order No. 890 at P 141.

consistent with or superior to the terms and conditions of the reformed pro forma OATT, thereby allowing those transmission providers to retain those variations during implementation of Order No. 890. It is not necessary, as PGE assumes, to extend the 30-day deadline for submission of the section 205 filings simply because we extend the deadline for the section 206 compliance filings above.¹⁴ The purpose of each filing is distinct and PGE offers no reason as to why transmission providers may need additional time to prepare their section 205 filings, which relate only to tariff provisions the Commission has already reviewed and approved. Moreover, deferring the deadline for PGE's FPA section 205 filing until after our order on rehearing in this proceeding would not achieve PGE's stated goal of ensuring that its previously-approved deviations remain in effect during the compliance process.¹⁵ In the section 206 compliance filing, each transmission provider must conform the non-rate terms and conditions of its OATT to the reformed non-rate terms and conditions of the pro forma OATT. Failure to request that previously-approved variations remain in place in advance of submitting the compliance filing will result in those provisions being eliminated during the compliance process.

26. In light of the extension of certain deadlines for compliance with Order No. 890 provided for above, the request for extension submitted by FPL and Tampa Electric is moot.

¹⁴ As provided in Order No. 890, however, transmission providers should request that the tariff provisions proposed in their optional 205 filings be made effective as of the date the transmission provider submits its section 206 compliance filing, which must now be on or before July 13, 2007. See id. at P 139.

¹⁵ See PGE Motion at 3.

The Commission Orders:

(A) The date on which the reforms adopted in Order No. 890 would have otherwise been effective is hereby extended by 60 days, i.e., to July 13, 2007, except as otherwise provided in the body of this order.

(B) The request for extension submitted by FPL and Tampa Electric is dismissed as moot.

(C) The request for extensions submitted by E.ON and PGE are denied.

(D) The Secretary shall promptly publish a copy of this order in the Federal Register.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Summary of Compliance Filing Requirements

For a more detailed description of compliance obligations please refer to Order No. 890 paragraph number. For further information related to Order No. 890, such as electronic versions of the pro forma OATT showing tariff changes adopted in Order No. 890 in redline/strikeout format, and further information regarding docketing of compliance filings and specific filing instructions, please visit our website at the following location: <http://www.ferc.gov/industries/electric/indus-act/oatt-reform.asp>.

Deadline (days after publication in the Fed. Reg.)	Compliance Action	Order No. 890 Paragraph #
30 (4/16/2007)	Optional Implementation FPA section 205 filings allowing transmission providers to propose previously approved variations from the <u>pro forma</u> OATT that have been affected by <u>pro forma</u> OATT reforms to remain in effect subject to a demonstration that such variations continue to be consistent with or superior to the revised <u>pro forma</u> OATT (non RTO/ISO transmission providers). Such optional filings must request a 90 day effective date to facilitate Commission review under section 205.	P 139
75 (5/29/2007)	Transmission Providers must post a “strawman” proposal for compliance with each of the nine planning principles adopted in Order No. 890. This may be posted on the Transmission Providers website or its OASIS site.	P 443
90 (6/13/2007)	NERC/NAESB status report and work plan for completion of ATC related business practices and standards.	P 223
	NAESB status report and work plan for completion of OASIS functionality or uniform business practices (other than those related to ATC).	P 141
120 (7/13/2007)	Transmission providers that have not been approved as ISOs or RTOs, and whose transmission facilities are not under the control of an ISO or RTO, must submit FPA section 206 filings that contain the non-rate terms and conditions set forth Order No. 890. These filings need only contain the revised provisions adopted in Order No. 890. Transmission providers utilizing the optional implementation FPA section 205 filing described above, need only submit tariff sheets necessary to implement the remaining modifications required under the Order No. 890, <u>i.e.</u> , modifications related	P 135

	to tariff provisions that did not implicate previously-approved variations.	
120 (7/13/2007)	Transmission Providers must submit redesigned transmission charges that reflect the Capacity Benefit Margin set-aside through a limited issue section 205 rate filing as part of their initial ATC related compliance filings.	P 263
180 (9/11/2007)	Submit compliance filings with Attachment C (ATC) of the pro forma OATT.	P 140
210 (10/11/2007)	ISOs and RTOs, and transmission providers located within an ISO/RTO footprint, submit FPA section 206 filings that contain the non-rate terms and conditions set forth in Order No. 890. These filings need only contain the revised provisions adopted in Order No. 890 or a demonstration that previously approved variations continue to be consistent with or superior to the revised pro forma OATT.	P 157 P 161
210 (10/11/2007)	Submit compliance filings with Attachment K (Planning) of the pro forma OATT or RTOs and ISOs file a demonstration that their planning processes are consistent with or superior to the planning principles in Order No. 890.	P 140 P 422
N/A	N/A Transmission Providers must file a revised Attachment C to incorporate any changes to NERC's and NAESB's reliability and business practice standards to achieve consistency in ATC within 60 days of completion of the NERC and NAESB processes.	P 325
N/A	After the submission of FPA section 206 compliance filings, transmission providers may submit FPA section 205 filings proposing rates for the services provided for in the tariff, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are "consistent with or superior to" the pro forma OATT.	P 135