

Significant FERC Action on Gas Pipeline Capacity Release, Electricity Reliability Enforcement, and Electricity Open Access Policy

The Federal Energy Regulatory Commission took the following significant actions at its June 19, 2008 public meeting.

Relaxed Restrictions on Gas Pipeline Capacity Releases

In a final rule (Order No. 712), FERC made a number of changes to its rules regarding its pipeline capacity release program. One major change is permanently removing the rate cap on capacity release transactions of one year or less. This enables shippers to offer competitively priced alternatives to pipelines' negotiated rate offerings and will provide more accurate price signals. Rates for capacity releases of more than one year are still capped.

A second rule change exempts capacity releases made as part of asset management agreements from the prohibition on tying capacity releases to extraneous conditions. An asset management agreement is a contract where a capacity holder releases its pipeline capacity to another party, typically a marketer, that has greater expertise in maximizing the value of pipeline capacity and negotiating beneficial transactions in the gas commodity markets. Under such agreements, the asset manager agrees either to purchase from, or supply the gas needs of, the capacity holder. The new rule also clarifies, among other things, that price ceilings do not apply to any consideration provided by an asset manager to a releasing shipper. These changes will allow more flexibility to customize arrangements to meet unique customer needs.

FERC also clarified that the prohibitions on tying arrangements do not apply to including conditions in a capacity release concerning the sale and repurchase of gas in storage inventory. As a result, a shipper releasing storage capacity may now require the replacement shipper to take title to any gas in the released storage capacity at the time of the release and return the storage capacity to the releasing shipper at the end of the release with a specified amount of gas in storage.

Finally, the new rule exempts capacity releases made under state-approved retail access programs from the tying prohibitions and from the bidding requirements placed on capacity releases. These exemptions are made to facilitate retail open access programs.

This final rule will take effect 30 days after publication in the *Federal Register*.

Approved Civil Penalty-Setting Guidelines for Electricity Reliability Standard Violations

The Commission approved "violation severity levels" proposed by the North American Electric Reliability Corporation (NERC), the organization certified by FERC to develop and enforce mandatory reliability standards for grid users. Previously, FERC approved 83 reliability standards setting out performance requirements that must be met. Each requirement has been assigned a violation risk factor that represents the risk (lower, medium or high) to reliability presented by a violation of the requirement. After a violation

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has occurred, NERC assesses the degree to which a requirement was violated (lower, moderate, high or severe). This is the violation severity level. A base level penalty for the violation is determined by reference to the NERC Sanction Guidelines and finding the intersection of the "violation risk factor" and the "violation severity level." For violations of requirements with a "high" violation risk factor, base level penalties can range from \$4,000 to \$125,000 for "lower" violation severity levels and from \$20,000 to \$1,000,000 for those with "severe" violation severity levels. In assessing a penalty, NERC may also consider adjustment factors, such as whether the violation is a repeat violation or whether there are extenuating or aggravating circumstances. NERC must file a notice of a penalty with the Commission and the entity subject to the penalty has 30 days to seek FERC review. FERC may also review the penalty on its own motion, depending on the seriousness of the violation.

In this order, FERC approved, with some revisions, the proposed assignments of violation severity levels to the requirements of the reliability standards. The assignments are effective as of the date of the order.

Reaffirmed Open Access Policies

FERC previously issued Orders No. 890 and 890-A that reformed its Open Access Transmission Tariff (OATT) for electric transmission providers. The Commission approved Order No. 890-B that largely reaffirms its rules on open access, and makes some clarifications.

The Commission grants rehearing regarding how excess transmission capacity created by upgrades should be allocated among transmission customers and now concludes that it is premature to make this determination. The Commission also imposes additional reporting requirements regarding transmission capacity reassignments made during the study period when the price cap on reassignments is temporarily lifted. During this period, which ends on October 1, 2010, transmission providers must include in their quarterly reports the identity of the reseller, indicate whether the reseller is affiliated with the transmission provider, and report the price that would have been charged under the OATT had the secondary customer purchased primary service.

In addition, the Commission reaffirms that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent Available Transfer Capability (ATC) values on either side of an interface. FERC also reiterates that transmission planning is critical because it is the means by which customers consider and access new sources of energy.

The Commission also affirms, and in some cases clarifies, policies regarding: (1) the methodology for calculating ATC, (2) standardization of energy and generation imbalance charges, (3) rights to renew point to point transmission service ("rollover rights"), and (4) rules regarding the designation and undesignation of network resources.

Order No. 890-B was issued June 23, 2008 and becomes effective 60 days after publication in the *Federal Register*.

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