Consumption,[551] as well as the above-cited provisions of EPAct 2005. As previously discussed, we have modified Schedule 2 of the pro forma OATT to allow for the provision of Reactive Supply and Voltage Control from demand resources where appropriate.

D. Non-Rate Terms and Conditions

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

a. Planning Redispatch and Conditional Firm Options

901. The current pro forma OATT requires the transmission provider to provide two types of redispatch service: planning redispatch and reliability redispatch.[552] Planning redispatch is a product that Order No. 888 required transmission providers to use, in

[551] See Staff Report: Principles of Efficient and Reliable Reactive Power Supply and Consumption (Docket No. AD05-1-000), available at http://www.ferc.gov/EventCalendar/Files/20050310144430-02-04-05-reactive-power.pdf. Staff noted that in many cases load response and load-side investment could reduce the need for reactive power capability in the system and that increasing reactive power at certain locations (usually near a load center) can sometimes alleviate transmission constraints and allow cheaper real power to be delivered into a load pocket. See id. at 4, 108. The report also noted that distributed generators have the same reactive power characteristics as large generators, with both producing dynamic reactive power, and that the amount of reactive power does not necessarily decrease when voltage decreases. Id. at 27.

[552] In Order No. 888, the Commission referred to planning redispatch as economic redispatch. Here we avoid the term economic redispatch because in the last ten years it has taken a different meaning in the industry and because we will no longer require that planning redispatch be capped at the cost of expansion.

certain circumstances, to create additional transmission capacity to accommodate a request for firm transmission service. Specifically, the existing pro forma OATT requires the transmission provider to expand or upgrade its transmission system or, if it is more economical, plan to redispatch its resources to provide requested firm point-to-point service, provided redispatch does not (1) degrade or impair the reliability of service to native load customers, network customers and other transmission customers taking firm point-to-point service or (2) interfere with the transmission provider's ability to meet prior firm contractual commitments to others.[553] The transmission provider must first identify planning redispatch options in the system impact study in conjunction with identifying relevant system constraints that impact the service request.[554] When a system impact study and facilities study identify planning redispatch as a more economical means of relieving a transmission constraint than a transmission upgrade, the customer is obligated to pay the costs of redispatch consistent with Commission policy.

902. Reliability redispatch is required, when feasible, to relieve system constraints that would otherwise cause curtailment of the network customer or transmission provider loads. To provide reliability redispatch, the transmission provider redispatches all network resources and transmission provider resources on a least-cost basis. The

[553] See pro forma OATT section 13.5.

[554] See pro forma OATT section 19.3.

transmission provider and network customers each pay a load ratio share of these redispatch costs.[555]

NOPR Proposal

903. In the NOPR, the Commission stated its belief that current practices for evaluating long-term firm point-to-point service may not be comparable to the manner in which transmission service is planned for bundled retail native load and may no longer be just, reasonable and not unduly discriminatory. The Commission described two potential solutions: modifications to the planning redispatch provisions and conditional firm point-to-point service.[556] The Commission proposed to modify the existing planning redispatch option by (1) accelerating the study of planning redispatch in the transmission request study process, (2) requiring an estimate of the number of hours of redispatch that may be required to accommodate the requested service, (3) requiring a preliminary estimate of the cost of planning redispatch, and (4) pricing planning redispatch services to facilitate increased availability of the service.[557] The Commission suggested that conditional firm service could also be used to accommodate additional transactions, defining the service

[555] See pro forma OATT sections 33.2-33.3.

[556] Conditional firm point-to-point service (hereinafter conditional firm service) and planning redispatch point-to-point service (hereinafter planning redispatch service) are options available under long-term firm point-to-point service.

[557] The Commission did not propose to modify the reliability redispatch provisions that exist in the network integration transmission sections of the pro forma OATT.

as a form of firm point-to-point service that includes less-than-firm service in a defined number of hours of the year when firm point-to-point service is unavailable. The Commission sought comment on its preliminary view that planning redispatch is the superior option because, in part, it is comparable to the way the transmission provider plans for bundled retail native load.

904. The Commission's October 12 Technical Conference focused, among other things, on issues related to the planning redispatch and conditional firm proposals in the NOPR. On November 15, 2006, the Commission issued a notice (November 15 Notice) requesting supplemental comments on a transparent redispatch proposal submitted by Transparent Dispatch Advocates (TDA proposal)and certain aspects of the conditional firm option.[558] The Commission also requested comments regarding the conditional firm option, including whether it is a complementary service to planning redispatch, whether it should be available for all long-term requests or limited to a request where the customer agrees to pay for upgrades, potential modeling problems, and requirements for defining the conditions under which the service would be curtailable.[559]

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[558] The following summary reflects comments received as initial and reply comments to the NOPR, as well as supplemental comments received in response to the November 15 Notice. Some commenters have changed their positions over time and these summaries reflect the most recent position expressed by commenters.

[559] Questions relating to the TDA proposal are discussed later in this section.

Comments

905. Some commenters agree with the Commission's preference for modifications to planning redispatch over development of conditional firm service.[560] They state that the attributes of conditional firm service are not clearly defined and key implementation issues are unresolved. They state that using planning redispatch to the maximum degree feasible, while not interfering with reliability, is inherent in maximizing the efficient use of the transmission system and should be fully evaluated before undertaking expensive expansion of the transmission system. Other commenters state that conditional firm service will create significant complications for transmission providers and disincentives to build transmission in exchange for limited and questionable benefits for new point-to-point customers or LSEs.[561] EEI, Indianapolis Power and Ameren express doubt that customers would agree to be curtailed during peak usage periods. In response, AWEA contends that existing resources serving load would be able to manage curtailment risks so long as they could reasonably predict the curtailed hours.

906. Most independent power producers and a few other entities support the inclusion of both services in the pro forma OATT, stating that the services are required to remedy

[560] E.g., Exelon, FirstEnergy, ELCON, MidAmerican, Arkansas Commission, MISO, and East Texas Cooperatives.

[561] E.g., EEI, Indianapolis Power, Ameren, and Northwest IOUs.

undue discrimination and provide for comparable transmission service.[562] Western Governors believe that the planning redispatch and conditional firm options are important to fully use the existing transmission grid and to enable new intermittent generation resources to reach markets. To build the case for transmission expansion, the Western Governors argue, it is important to demonstrate that the existing grid is being effectively utilized; approval of both options will help make this necessary demonstration. EPSA and AWEA state that, while they believe transmission providers should be required to offer both services, conditional firm service may be simpler and less costly to implement because it involves the transmission provider directing the customer to turn off its resources during a contingency. Similarly, Bonneville suggests that conditional firm service is a reasonable alternative to planning redispatch where a transmission provider cannot provide both options. Commenters state that the Commission should require transmission providers to offer conditional firm service and planning redispatch and allow customers to choose the option that best suits the physical, commercial and economic circumstances of the request.[563]

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[562] E.g., EPSA, AWEA, Entegra, BP Energy, Newmont Mining, Sempra Global, Suez Energy NA, PPM, Utah Municipals, Williams, Morgan Stanley, PPL, Project for Sustainable FERC Energy Policy, California Commission, CREPC, TranServ, South Carolina E&G, Constellation, Barrick Supplemental, Xcel Supplemental, and Bonneville Supplemental.

[563] E.g., California Commission Supplemental, Williams Supplemental, Constellation Supplemental, and Barrick Supplemental.

907. On the other hand, many commenters argue that the Commission should not require either option because the services are unnecessary, operationally unworkable, and legally unjustified, or because they would harm reliability and the quality of existing network service and provide disincentives for transmission investment.[564] Several commenters state that these services would make curtailments of existing firm service more likely and limit opportunities for use of secondary network service, thereby harming native load protections and reducing reliability, contrary to FPA sections 215 and 217 respectively.[565] Others opposing both options put forth primarily reliability, cost causation and comparability arguments. For example, Duke states that the two options are antithetical to reliable grid operation because they would require a transmission provider to grant a long-term request with the prior knowledge that it cannot be accommodated. International Transmission states that the grid is already operating at capacity and that requiring the transmission provider to accommodate additional megawatt-hours of service during periods of system stress would increase the likelihood of system failure. While it recognizes that conditional firm service has been successful in

[564] E.g., Ameren, Duke, Entergy, Imperial, International Transmission, LPPC, Progress Energy, Santee Cooper, Salt River, Southern, Tacoma, TDU Systems, Community Power Alliance, Northwest IOUs, NorthWestern, NPPD, NRECA, Public Power Council, TVA, SPP Reply, South Carolina E&G Supplemental, E.ON Supplemental, MISO Supplemental, and APPA Supplemental.

[565] E.g., Duke, EEI, LPPC, NRECA, NPPD, Progress Energy, Southern, Utah Municipals Reply, and Duke Reply.

parts of the Western Interconnection, NRECA contends a mandate would undermine responsible planning and expansion of the transmission grid by harnessing the transmission provider's planning and dispatch functions to frame more and more elaborate service conditions for conditional firm service. APPA, Southern and Progress Energy argue that both services may require adoption of a form of organized LMP market, an action that raises significant political opposition and would be contrary to the Commission's commitment in the NOPR to avoid such restructuring. Similarly, other commenters contend that the planning redispatch option is only appropriate for transmission providers who are members of an RTO, ISO or who have an independent administrator of their transmission system.[566] Some of the commenters that urge rejection of both options state that a properly structured conditional firm service is preferable to the modified planning redispatch service should the Commission implement one of the services.[567]

908. Several commenters prefer the development of conditional firm service over the modifications to the planning redispatch service because of the complexities surrounding

[566] E.g., CREPC, TVA, and East Texas Cooperatives.

[567] E.g., EEI, Entergy, Ameren, Progress Energy, Santee Cooper, TAPS, E.ON Supplemental, TDU Systems Supplemental, LPPC Supplemental, Tacoma Supplemental, and PNM-TNMP Supplemental.

redispatch costs and protocols.[568] For example, in supplemental comments, EEI and Community Power Alliance state that, while not ideal, conditional firm service would provide an opportunity to meet customers' transmission needs and is preferable to Transparent Dispatch Advocates' redispatch proposal.[569] They also contend that the conditional firm option would provide faster provision of service and relative certainty of timing and costs for a new customer and its lenders, while ensuring reliability and promoting infrastructure expansion, so long as transmission providers are permitted to work with their customers to devise appropriate service parameters. Entergy believes conditional firm service can provide benefits to transmission customers without unfairly socializing costs to native load and network customers of the transmission provider. Overall, a majority of commenters express support for some form of conditional firm service.[570]

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[568] E.g., Manitoba Hydro, Nevada Companies, Sacramento, Pinnacle, East Texas Cooperatives, Barrick Reply, APPA Supplemental, Community Power Alliance Supplemental, Entergy Supplemental, and TAPS Supplemental.

[569] Section V.D.1.b contains a summary and in-depth discussion of the TDA proposal.

[570] The following entities expressed some level of support for conditional firm service: EPSA, AWEA, Entegra, BP Energy, Newmont Mining, Sempra Global, Suez Energy NA, PPM, Utah Municipals, Williams, Morgan Stanley, PPL, Project for Sustainable FERC Energy Policy, California Commission, Western Governors, CREPC, TranServ, Constellation, Manitoba Hydro, Nevada Companies, Sacramento, Pinnacle, PNM-TNMP, Bonneville, EEI, Entergy, Ameren, Progress Energy, Southern, Santee Cooper, Seattle, LPPC, Salt River, and TAPS.

909. Several commenters argue that, if the services are required, the Commission should add to the services the following requirements: the services should not adversely affect reliability and service to firm customers or provide unduly preferential service to point-to-point customers; the services should be an interim option until transmission upgrades are in place to provide firm service; and, planning redispatch and conditional firm customers should bear the actual costs of the services received, including costs associated with system operational changes needed to accommodate the services.[571]

910. A few commenters believe that the Commission should allow for regional differences in development of the new services.[572]

Commission Determination

911. The Commission has determined that modifications to the current planning redispatch requirement and creation of a conditional firm option are both necessary for provision of reliable and non-discriminatory point-to-point transmission service. The planning redispatch and conditional firm options represent different ways of addressing similar problems. They can be used to remedy a system condition that occurs infrequently and prevents the granting of a long-term firm point-to-point service. These

[571] E.g., EEI, Southern, TAPS, Seattle, APPA, LPPC Supplemental, Tacoma Supplemental and E.ON Supplemental. Issues related to pricing of planning redispatch service are addressed in paragraphs V.D.1.a.3.c below.

[572] E.g., California Commission, PGP, Pinnacle, and Imperial.

options also can be used to provide service until transmission upgrades are completed to provide fully firm service. Planning redispatch involves an ex ante determination of whether out-of-merit order generation resources can be used to maintain firm service. Conditional firm involves an ex ante determination of whether there are limited conditions or hours under which firm service can be curtailed to allow firm service to be provided in all other conditions or hours. As we explain below, both techniques are currently used under certain conditions by transmission providers to serve native load and, hence, it is necessary to make comparable services available to transmission customers in order to avoid undue discrimination.

912. We therefore find these options are complementary services that can remedy undue discrimination, facilitate the provision of long-term transmission service and provide customers with greater flexibility in choosing resources to meet their needs. There is support in the comments for development of some type of conditional firm service that would allow for a longer-term use of the grid when transmission is projected to be unavailable for a small portion of the year. Additionally, we note that both options could help integrate new generation more quickly. For example, when there is a lag between the time that a new generation resource becomes operational and the time that transmission upgrades can be built to accommodate the resource, these options allow power to reach customer loads at an earlier date. This can be particularly beneficial to

renewable resources, such as wind, that can be constructed more quickly than the transmission upgrades necessary to deliver their power on a firm basis over the long-run.

913. We recognize, however, that both options raise reliability concerns. The proposal in the NOPR for planning redispatch service would require the transmission provider to predict system conditions for the term of the service request, a task that becomes more difficult, and hence less accurate, with longer-term requests. This poses several related problems. Because longer-term forecasts are inherently uncertain and the further into the future the forecasts, the less accurate they are, the provision of planning redispatch service can threaten the reliability of service to native load unless very conservative assumptions are used. This incentive to use conservative assumptions to protect native load, in turn, increases the likelihood that planning redispatch service will be denied. This, in turn, will increase the number of disputes as to whether the denials were discriminatory. Such disputes would pose enforcement problems because they will turn on long-term projections regarding load growth, generation resource additions, etc., that by definition involve some degree of subjectivity. Moreover, as we discuss below, there is evidence suggesting that, while transmission providers use planning redispatch to serve native load, they do not use it as a long-term tool to avoid future upgrades indefinitely.

914. In balancing the foregoing considerations, the Commission will modify the approach proposed in the NOPR in two principal respects. First, given the ability of both services to address similar problems, we have reconsidered the proposal that only one of

the options should be required. We find that availability of both planning redispatch and conditional firm in the short-run is necessary to ensure that competitive power suppliers have comparable access to the grid. As discussed below, we will continue to require that transmission providers offer to provide planning redispatch under certain circumstances in which the transmission providers determine that there is insufficient ATC. If customers request study of planning redispatch, transmission providers have an obligation to seriously evaluate the provision of planning redispatch from their own resources and provide customers with information on the capabilities of other generators to provide planning redispatch. If planning redispatch is unavailable from the transmission provider's resources or inadequate to meet customers' needs, transmission providers have an independent obligation to offer conditional firm, if available, as part of the firm point-to-point service.[573] Customers will have the choice of whether to request study of the planning redispatch option, the conditional firm option or both.

915. Second, we will not impose a planning redispatch or conditional firm obligation over the long-run. Such an obligation is not, as described below, necessary to remedy undue discrimination and would otherwise pose reliability problems, put the transmission provider at risk for estimating the costs of long-term redispatch, and undermine

[573] Application of planning redispatch and conditional firm service obligations to RTO and ISO transmission providers is discussed in section V.D.1.a.3.B.i below.

incentives to upgrade the transmission grid. Therefore, we will limit the availability of both service options so that their duration is for a time period over which service can be reasonably provided without impairing reliability.[574] This limitation scales back the existing planning redispatch requirement in section 13.5 of the pro forma OATT that could, in practice, allow for an open-ended obligation to provide planning redispatch in lieu of upgrading the transmission system (e.g., involving forecasts up to 30 years).

916. We discuss in detail the comparability and reliability findings that support these decisions below.

(1) Comparability

NOPR Proposal

917. In the NOPR, the Commission expressed its preliminary view that current practices for evaluating long-term firm point-to-point service may not be comparable to

[574] As explained in more detail below, we adopt limitations that are tailored to the two types of customers that may request the options. First, for customers that agree to support the construction of new transmission facilities, redispatch and conditional firm point-to-point service will be available as a bridge until such time as those facilities are constructed and the relevant conditions must be specified in the initial service agreement and are not subject to change. Second, for customers that do not agree to support the construction of new facilities, the transmission provider will be able to re-evaluate the conditions under which services are provided every two years.

the manner in which transmission service is planned for bundled retail native load and may no longer be just, reasonable and not unduly discriminatory.[575]

Comments

918. Some commenters challenge the Commission's authority to order planning redispatch or conditional firm service as a remedy for potential undue discrimination. EEI and others argue that planning redispatch is not necessary to eliminate actual or perceived undue discrimination because many transmission providers do not rely on redispatch in planning to serve native load.[576] However, EEI also states that when transmission providers do incorporate redispatch into their system planning, they do so generally only when the cost of redispatch is lower than the cost of network upgrades and system reliability is not impacted. Some transmission providers state that they do not currently use planning redispatch in lieu of transmission construction in order to designate their network resources.[577] On the other hand, Entergy and Southern state that

[575] The Commission did not propose to modify the reliability redispatch provisions that exist in the network integration transmission sections of the pro forma OATT.

[576] E.g., EEI, TDU Systems, NRECA, Southern, and Duke Reply.

[577] E.g., Southern, Duke, and Progress. Duke suggests that the Commission exempt transmission providers from the obligation to provide redispatch if they commit not to use redispatch as a planning tool for native load, network customers or merchant functions.

they currently use or have used planning redispatch of their own resources on the same basis that they allow any network customer to redispatch from the network customer's resources. For example, Southern states that it has used the redispatch potential of its generators during off-peak/shoulder periods on an interim basis until completion of transmission upgrades to designate network resources that otherwise might be undeliverable.[578] Entergy disagrees that there is undue discrimination because this service is not available to point-to-point customers, stating that network and point-to-point service are not similarly situated services. TDU Systems state that conditional firm service does not ensure comparability among types of transmission service or between transmission providers and transmission customers. NRECA and others argue that the Commission requires a better understanding of the degree to which comparability is a problem in providing point-to-point service before the Commission makes changes to point-to-point service.[579] In supplemental comments, EEI contends that the record in this proceeding does not demonstrate that conditional firm service is necessary to remedy undue discrimination.

919. Others assert that it is not within the Commission's jurisdiction to order planning redispatch for point-to-point customers because this type of redispatch requires use of the

[578] Southern states that it offered this service on a comparable basis to a non-affiliated transmission customer.

[579] E.g., TDU Systems and EEI Reply.

transmission provider's generation resources.[580] LPPC states that the comparability principle is wrongly applied to the use of generation by a transmission provider. In Salt River's view, the Commission proposal sets up its own form of discrimination by making redispatch of the transmission provider's resources mandatory while making redispatch of generation using firm point-to-point reservations and generation in other control areas voluntary.

920. Those that support development of both services support the Commission's statement in the NOPR that "transmission owners may evaluate transmission availability to serve long-term transmission service request in a manner that is not comparable with the method they use to evaluate transmission needs for bundled retail native load."[581] They argue that this divergent treatment of internal transmission needs versus external transmission requests is unduly discriminatory and violates the FPA. EPSA states that the fact that point-to-point service requests can be rejected due to a few hours of predicted reliability problems in a year is "evidence of a poor use of existing transmission capacity and display clear discrimination against non-affiliated generation and its customers."[582] TransAlta states that its actual experience with planning redispatch in the

[580] E.g., LPPC, NPPD, Progress Energy, and Salt River.

[581] E.g., AWEA, Utah Municipals, Project for Sustainable FERC Energy Policy, EPSA, and Barrick Reply citing NOPR at P 300.

[582] EPSA Reply.

Pacific Northwest demonstrates that planning redispatch is used discriminatorily to the benefit of some customers and the detriment of others.

921. In support of conditional firm service, Manitoba Hydro and Tacoma reiterate their experience that long-term transmission service requests are being denied due to constraints occurring during a small percentage of the time within the requested period of service. EPSA and AWEA similarly state that a transmission provider will reject a long-term firm service request unless it can satisfy every element of the request. Manitoba Hydro and others state that, in an era of transmission under-investment, optimizing the capacity usage is paramount to system reliability.[583] EPSA and AWEA further explain that the concept of turning off a generator to avoid system upgrades is not new; Maine Independence Station avoided expensive system upgrades by installing automatic switching devices to take it offline during certain system conditions. Seattle states that, according to the Seams Steering Committee of the Western Interconnection, utilization on most constrained paths is limited for only a few hundred hours per year and, therefore, it is highly likely that service under a conditional firm product could be offered for even a baseload plant without significantly impacting the capacity factor. Santee Cooper states that, unlike the planning redispatch option, conditional firm service is presumptively within the subject matter jurisdiction of the Commission.

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[583] E.g., EPSA, AWEA, and Project for Sustainable FERC Energy Policy.

922. Entergy states that the most comparable service for long-term point-to-point transmission customers is not a requirement that a transmission provider redispatch its own or network customers' resources to grant long-term firm point-to-point transmission service. The most comparable service instead is a service that allows the transmission provider to curtail the service granted, while permitting the point-to-point customer to obtain alternative, deliverable resources if and when such curtailments occur in real-time.

Commission Determination

923. We reject arguments that planning redispatch service is unnecessary to remedy undue discrimination as a collateral attack on Order No. 888. The obligation to provide planning redispatch was established in Order No. 888. The modifications proposed in the NOPR did not increase the obligation placed on transmission providers to use their generation resources to provide planning redispatch to point-to-point customers. Rather, the proposed modifications merely added specificity to the redispatch information already required in a system impact study and adjusted the timing of when the transmission provider must study planning redispatch options.[584] Therefore, many of the arguments raised, including arguments pertaining to the Commission's jurisdiction over transmission provider generation resources, are impermissible collateral attacks on the current planning redispatch obligation in Order No. 888. Entergy's argument that

[584] See pro forma OATT section 19.3.

planning redispatch should not be available to point-to-point customers because they are not similarly situated to be able to provide redispatch from their own units thus ignores the current obligation for each transmission provider to provide redispatch from the transmission provider's resources, if available, in evaluating a request for long-term point-to-point service.[585]

924. Additionally, information in the comments counters the assertion that transmission providers do not use planning redispatch or service analogous to the conditional firm option for their own loads. Entergy and Southern volunteer that they have planned for redispatch of their own resources in order to designate network resources when ATC was unavailable.[586] As a caveat, Southern states that it has planned for the use of redispatch only for an interim period until upgrades could be constructed to make the transmission service from the designated resource fully firm. Entergy states that it offers planning redispatch service to network customers that plan to use their own resources to provide redispatch in real time. Contrary to EEI's assertion about the record in this proceeding, commenters, such as EPSA and AWEA, explain that some transmission providers already employ automatic devices, such as special protection systems (SPS), to take resources offline during certain system conditions. In a way that is analogous to the

[585] See pro forma OATT section 13.5.

[586] Entergy and Southern. EEI's comments also indicate that at least a few transmission providers do rely on redispatch in planning to serve their native loads.

proposed conditional firm service, these protection schemes are used to increase native loads' firm uses of the transmission system until a contingency occurs that reduces available transmission.[587] This information, taken together, provides ample evidence to support our finding that transmission providers currently evaluate transmission availability to serve long-term firm point-to-point transmission service requests in a manner that is not comparable with the method they use to evaluate their own transmission needs and to integrate their resources to serve bundled retail native load.

925. Furthermore, we wish to emphasize that, in making these findings in support of a conditional firm option, we are not relying on the findings to create a new service. This Final Rule retains the two services adopted in Order No. 888 – point-to-point service and network service. Conditional firm service is not a third service, but rather represents a modification to the existing procedures for granting long-term point-to-point service and the curtailment priorities for that service. The primary purpose of conditional firm is to address the "all or nothing" problem associated with the current procedures for requesting long-term point-to-point service. Currently, a request can be denied because firm service

[587] SPS, also known as remedial action schemes , are used to varying degrees in every NERC reliability region. For example, there are about 65 SPS in the Western Interconnection. See Western Electricity Coordinating Council Operating Procedures, Index, V-1 to V-5 (revised July 2, 2002). There are 8 SPS used by Florida Power and Light in FRCC. See Florida Power and Light Control Area Readiness Audit Report, 19 (March 10-11, 2004). Two SPS are used in the Southern Subregion of SERC. Reliability Coordinator Readiness Audit Report Southern Subregion Reliability Coordinator, 19 (March 27–30, 2006).

is unavailable in a very few hours of the year. For a customer who needs long-term point-to-point service to support a long-term transaction, this leaves the customer in the position of trying to cobble together a collection of shorter-term requests to effectuate its transaction, e.g., arranging firm service in the periods when it is available and non-firm service in the other periods. Such a customer also risks interruption of the non-firm portion of its service for economic reasons, e.g., a day of non-firm service for the customer combining firm and non-firm service could be interrupted for another customer seeking one month of non-firm service. We do not believe such an approach is just and reasonable. It makes little sense to ask the customer to cobble together a collection of firm and non-firm requests when the transmission provider has better information about when the service may be available or unavailable. It is therefore appropriate to require the transmission provider to grant the service on a conditional basis, as we explain further below.

926. We are however modifying the planning redispatch obligation, and similarly limiting the conditional firm option, to better reflect the manner in which redispatch or special protections schemes are used by transmission providers, in recognition of certain legitimate reliability concerns and the inherent difficulty of long-term projections in this area. This Final Rule limits transmission providers' planning redispatch obligations by removing the current obligation to provide planning redispatch for an indefinite period as long as the redispatch is cheaper than the relevant transmission upgrades. We also limit

the conditional firm option by linking it to the transmission upgrades or a biennial assessment of the conditions.

927. We find such an open-ended obligation to provide this service is not necessary to remedy undue discrimination, nor is it consistent with the need to maintain system reliability. As indicated above, transmission providers temporally limit their use of planning redispatch and curtailment of resources and there is no evidence that transmission providers use these options on a prolonged basis, e.g., for more than a few years, without upgrading their transmission systems. Rather, over the long run, transmission providers generally will construct sufficient transmission to integrate their resources on a firm basis. This is consistent with transmission planning requirements and the emphasis placed upon transmission expansion in this Final Rule. The modifications to long-term point-to-point service we adopt are consistent and comparable to the existing use of these options by transmission providers' bundled retail native loads. Thus, the planning redispatch and conditional firm options will be available primarily as interim measures until transmission systems are upgraded to meet the transmission service request. We believe this limitation will have the added benefit of lessening disincentives to provide the service so that more planning redispatch is offered to transmission customers by transmission providers.

928. We disagree with TDU Systems' statement that conditional firm service does not ensure comparability among types of transmission service or between transmission

providers and transmission customers. TDU Systems' assertion is unsupported by any explanation or examples of how the conditional firm service would degrade comparability. Nevertheless, we believe the argument is essentially a collateral attack on Order No. 888. Order No. 888, not this rulemaking, created the distinction between point-to-point transmission service and network integration service. We did so to recognize the different ways in which transmission providers typically use their system. The two services are not precisely the same, nor were they intend to be identical. Nothing in this Final Rule changes these distinctions. Indeed, we are not changing the relative priorities applicable to firm point-to-point service, network integration service and service to bundled native load.[588] These services do, and will continue to, share the same priority – the highest priority of firm service on the transmission provider's system. The only change, as it relates to the conditional firm option, is to allow the customer to elect to have its long-term firm transmission service interrupted under certain defined circumstances. This does not harm other firm customers. Indeed, it has precisely the opposite effect: it permits an interruption to maintain firm service to other customers. Moreover, we find, as indicated above, that conditional firm service is necessary to remedy undue discrimination.

[588] See supra section **Error! Reference source not found.**.

929. The addition of conditional firm service therefore does not significantly alter the existing balance between the point-to-point and network service. Customers of network service retain flexibility that is not enjoyed by point-to-point customers. Moreover, conditional firm does not reduce the availability of secondary network service or the ability of network customers to temporarily undesignate network resources any more than short-term firm point-to-point service already reduces the availability of these network customer options. We therefore reject TDU Systems' arguments and find that the addition of conditional firm service is necessary to remedy undue discrimination and will otherwise increase utilization of the grid without impairing system reliability.

(2) Reliability

(A) Ability to Predict Redispatch Opportunities and System Conditions in the Long Run

Comments

930. Some commenters state that redispatch, used as a planning tool rather than as short-term operational tool, is overly complex, prone to causing disputes, reduces reliability and thus should not be included in the pro forma OATT.[589] Southern asserts that planning redispatch should not be required where it reduces reliability by reducing a utility's reserve margin, shifting the operational, reliability and economic risks from the

[589] E.g., Duke, Entergy, WAPA, NRECA, NPPD, LPPC, and Southern.

new customer to native load, or causing a single contingency to overload the system. Additionally, Xcel states that pledging a network resource to support planning redispatch carries a risk of penalties for inadequate resources in some areas. MISO states that contingency conditions must be considered and respected when evaluating planning redispatch options so that there is no reliance on curtailment of service. MidAmerican and Progress Energy conclude that the customer must accept the risk of selecting planning redispatch service over transmission construction.

931. Several commenters request modification of the existing planning redispatch provisions of the pro forma OATT.[590] They state that the Commission should clarify that the current section 13.5 does not require planning redispatch when it would adversely affect system reliability or service to native load, network customers and other firm point-to-point customers or impair other contractual obligations. Indianapolis Power states that the Commission should modify section 13.5 to require all reasonable redispatch options be examined by the transmission provider.

932. In its reply comments, Southern explains that transmission providers fail to provide the currently required planning redispatch service to point-to-point customers because the service is impractical and would harm reliability. Southern contends that a redispatch scenario identified in a transmission plan may not be available in real time due

[590] E.g., EEI, Indianapolis Power, Public Power Council, Southern, Seattle, Sacramento, and LPPC.

to outages or loop flow. Southern is also concerned about the complications in planning and modeling that would occur if the transmission provider is required to redispatch multiple resources in order to accommodate multiple planning redispatch customers.

933. Similar to their arguments in favor of conditional firm, EPSA and AWEA state that planning redispatch is necessary because a transmission provider will reject a long-term firm service request unless it can satisfy every element of the request, even if reliability violations occur in only a few hours of the year. In its reply comments, EEI responds that there is no evidence to support the assertion that a transmission provider will reject a long-term firm service request unless it can meet every element of that request. EEI states that in such a situation the transmission provider must offer partial service, offer to perform a system impact study, and exercise due diligence in constructing needed upgrades to accommodate the request. EEI adds that the potential customer can also request short-term service. Finally, EEI states that there is no evidence that transmission providers are refusing to redispatch in response to customer request when redispatching resources would have no impact on reliability. In its reply comments, MISO states that denial of service complained of by EPSA and AWEA is a consequence of the customer's economic decision not to build upgrades.

934. Many transmission providers assert that the costs and inequities of achieving the proposed planning redispatch outweigh any new benefits for point-to-point customers.[591] They state that the Commission's proposal is based on an erroneous assumption that redispatch is nearly always feasible; instead when redispatch is most desirable, generators operating at peak would not be available for redispatch.[592] Southern also explains that problems of insufficient transmission capacity cannot be avoided by redispatching generation because there is no guarantee that a redispatch solution will be available during real-time operations. Imperial argues that the personnel and modeling costs to transmission providers of calculating planning redispatch costs prior to a facilities study are too excessive. Xcel concludes from a NERC experiment on market redispatch that redispatch involving non-market-based or bilateral coordination with third parties to protect a delivery path is cumbersome, inefficient, and does not promote reliability.

935. Xcel states that its estimate of hours of planning redispatch is unlikely to be accurate given that it uses a static power flow that is created for a specific peak hour and a specific off-peak hour in a given year. Commenters state that planning redispatch service should not be a guaranteed service because generation or transmission

[591] E.g., Duke, Entergy, Imperial, International Transmission, Salt River, Seattle, Southern, Tacoma, Northwest IOUs, Sacramento, Progress Energy, E.ON, Xcel, TVA, and EEI Reply.

[592] E.g., Sacramento and TVA.

availability, system loads, loop flows from adjoining systems, weather, and fuel availability all entail a component of risk that should not be pushed back on the transmission provider or its native load.[593]

936. Operators of systems that rely primarily on hydroelectric resources argue that planning redispatch should not be considered a viable option for their systems and they should be exempt from OATT planning redispatch obligations because hydroelectric operators are unable to make long-term commitments that a resource will be available to relieve transmission constraints.[594] Bonneville states that the variability in water flows and the interdependence of the generating units contribute to the inability to predict future redispatch ability. Bonneville, WAPA and Bureau of Reclamation state that planning redispatch can conflict with federal obligations to operate federal dams and reservoirs in a manner that does not impact project purposes and provide preference in the sale of hydropower to its preference customers. Tacoma states that planning redispatch must be linked to market price indexes to work in a hydro-based system. Seattle states that in hydro-dominant systems fuel availability and fuel price risk undermine the feasibility of providing long-run redispatch cost estimates that reasonably reflect future costs. Seattle adds on reply that planning redispatch fails to address costs

[593] E.g., Progress Energy, E.ON, WAPA, Entergy, and MidAmerican.

[594] E.g., Bonneville, Seattle, Public Power Council, and WAPA.

pertaining to fish species preservation, recreation and flood control impacts, increased risk of spill, or replacement power that are associated with hydroelectricity.

937. Morgan Stanley argues on reply that the Commission should not exempt hydroelectric system operators from providing planning redispatch; instead, factors unique to hydroelectric systems should be taken into account in determining how much planning redispatch a transmission provider can provide. In supplemental comments, PPM agrees with Morgan Stanley and adds that hydro-based systems, such as Bonneville's, are flexible enough for a transmission provider to use planning redispatch to create additional firm capacity.

938. In their reply comments, Utah Municipals and EPSA state that planning redispatch would not impair reliability because the OATT provisions do not require transmission providers to permit intentional overloading of lines. Since transmission providers are already required to provide planning redispatch now, Utah Municipals contend that any change in the sequence for studying the option cannot have an impact on reliability. EPSA argues that claims of adverse reliability impacts should be dismissed because transmission providers do not make these same claims when they redispatch to enable transmission service to meet their own load obligations. Utah Municipals state that reliability would be most enhanced by completely restricting access to the grid, a policy that Utah Municipals do not recommend because it would be extraordinarily costly and promote discrimination. In its reply comments, Entegra states that customers seeking

planning redispatch are not seeking to shift a disproportionate share of the risks or costs to native load or other users of the system.

939. In its reply comments, EPSA further argues that the Commission should place the burden of showing unreliability in a particular instance on the transmission provider. EPSA also argues that transmission providers should not be allowed to delay service through feasibility studies. EPSA contends that planning redispatch will not delay needed system upgrades and, instead, will ensure optimized use of the existing system that will provide additional information about the system's capabilities to regional planning initiatives. In its reply comments, Morgan Stanley states that the Commission should establish clear standards as to the degree of expected reliability that appends to a firm transmission sale and allow transmission providers to sell as much of the system as can be sold on a firm basis, consistent with maintaining the reasonable standard.

940. EEI and some transmission providers add that the conditional firm product could result in an oversubscription of a transmission system in violation of NERC reliability standards that require the transmission system to be planned to meet all firm needs.[595] ELCON states that conditional firm service may not truly support long-term contracts for firm power but may lead to a greater volume of short-term trading.

Commission Determination

[595] E.g., Ameren, Southern, and EEI.

941. Many commenters are concerned that the options described in the NOPR will impair system reliability. We have taken these comments into account and have tailored the modifications to long-term point-to-point service so as to not impair system reliability. There are two important limitations that provide such protections. First, we make clear that transmission providers are not required to offer planning redispatch or conditional firm service if doing so would impair system reliability.[596] Second, as explained above and discussed in further detail below, we are limiting the time period under which either option is offered. We do so because forecasts of potential redispatch or interruption options become more speculative over time and to require a transmission provider to commit for a substantial period of time, subject to the uncertainty inherent in such long-term projecting, has the potential to degrade reliability. With these two limiting conditions, we find that neither the planning redispatch nor conditional firm option will degrade reliability and, as discussed above, that both are necessary to remedy undue discrimination.

942. We agree with a majority of commenters that over the long term, new resources should be supported by sufficient transmission capacity to deliver their output reliably.

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[596] A transmission provider may not be able to provide conditional firm service without impairing the reliability of its system if it is required, for example, to manage many conditional firm point-to-point reservations across the same path. The ability of system operators to track, tag and manage curtailment of multiple conditional firm reservations is necessarily limited by time, human resources and other reliability-related duties of the operators.

Imposing a planning redispatch or conditional firm obligation over the long-run would not be consistent with the need to increase the reliability of the grid or otherwise necessary to remedy undue discrimination. Rather, it would tend to degrade reliability over time, contrary to the public interest and the underlying goals of EPAct 2005. Projections of planning redispatch options and conditional firm conditions are more accurate in the near term and, hence, should facilitate the efficient use of existing resources without impairing reliability.

943. We therefore impose limits on the transmission provider's current planning redispatch obligations. We do so by removing the obligation to provide planning redispatch for an indefinite period as long as the redispatch is less expensive than the relevant transmission upgrades. Section 13.5 of the pro forma OATT could, in conjunction with rollover rights, allow for an extremely long-term obligation to provide planning redispatch in lieu of upgrading the transmission system. We find that this existing obligation may unreasonably harm reliability and provides incorrect incentives to delay necessary grid expansion. We emphasize that the obligation to provide planning redispatch applies only when the service can be provided reliably.

944. We also limit the time period over which a transmission provider must predict the system conditions or conditional hours that would apply to customers using the conditional firm option. We do so in recognition of the difficulty in attempting to forecast curtailment options over the long-term and the fact that there is no evidence that

transmission providers perform similar forecasts for their native load customers. We do not, however, eliminate entirely the risk of predicting future system conditions or shift it in whole to the requesting transmission customer as requested by certain commenters. We believe that the transmission provider should retain responsibility for incorporating reasonable assumptions into its transmission models so that it can manage this risk, just as it currently manages the prediction risk in its ATC models.

945. We will now turn to certain clarifications and other issues raised by the commenters. We acknowledge that planning redispatch to support annual service may require redispatch of generation during the peak month or months. Since transmission providers plan their generation to meet their peak native load plus reserves, the transmission provider's resources may, in some cases, be fully employed to meet the needs of bundled retail native load and thus may not be available to provide redispatch during the peak period.[597] In such an instance, the unavailability of such resources to provide redispatch service will constitute a legitimate basis for denying planning redispatch service. However, we will not excuse the existing obligation that requires transmission providers to study any available planning redispatch, including redispatch that might provide some but not all of the service requested. Given that some

[597] See, e.g., Arizona Public Service Co. v. Idaho Power Co., 95 FERC ¶ 61,081 at 61,241 (2001) (resources projected to be unavailable during system peak month to provide planning redispatch).

transmission providers have acknowledged their own use of planning redispatch for their network resources,[598] the service must continue to be available to those seeking point-to-point service to ensure comparability.

946. We reiterate that the transmission provider remains obligated to provide planning redispatch from its resources as long as the planning redispatch does not (1) degrade or impair the reliability of service to native load customers, network customers and other transmission customers taking firm point-to-point service or (2) interfere with the transmission provider's ability to meet prior firm contractual commitments to others.[599] We continue to believe these are the appropriate exceptions and will not adopt a broad and undefined reasonableness standard as suggested by Indianapolis Power. We agree with Southern that the transmission provider may consider the impact of the planning redispatch service in reducing its reserve margin below that necessary to maintain reliability or causing a single contingency to overload the system in determining whether the service can be reliably provided.

947. Further we will not excuse transmission providers from the obligation to manage multiple planning redispatch or conditional curtailment obligations simply because some commenters express concerns about planning and modeling impacts. While we do not

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[598] E.g., Entergy.

[599] See also Order No. 888 at 31,739.

take these concerns lightly, we believe they can be managed by transmission providers. The planning redispatch obligation has existed for ten years, and with it the potential for multiple planning redispatch requests. We have no evidence that transmission providers have been unable to manage the process. Moreover, by scaling back the time period for which transmission providers must plan for provision of redispatch, we have greatly reduced any planning and modeling impacts. We believe that whatever additional work the options cause with regard to planning and modeling, it is small and more than offset by the considerable value of the options which allow for more efficient use of the transmission system, expansion of long-term uses of the grid and remedying of undue discrimination.

948. Finally, we recognize the difficulty of predicting, over prolonged periods, whether hydroelectric resources will be available to provide redispatch. We agree with Morgan Stanley that factors unique to hydroelectric systems should be taken into account in determining how much planning redispatch a transmission provider can provide. For example, transmission providers operating hydro-based systems must predict both system load growth and water availability in order to determine whether resources will be available in the next few years to provide redispatch. We acknowledge that certain circumstances may in fact limit long-term redispatch on these systems due to increased prediction risks. We reiterate, however, that all transmission providers, including those operating hydro-based systems, are required to make a determination, regarding whether

planning redispatch service can be provided consistent with system reliability based on the specific facts of a particular request for service. The fact that hydro-based systems may not be able to provide planning redispatch service under many circumstances should not necessarily limit the availability of conditional firm service on these systems. We expect that transmission providers with hydro-based systems will focus on provision of the conditional firm option in a manner consistent with their system conditions.

949. We also repeat that planning redispatch service does not need to be provided if doing so would impair the firmness of service to existing transmission customers. For example, pre-existing federal obligations, such as those described by Bonneville, WAPA and Bureau of Reclamation, would qualify as the type of firm commitments to others that would excuse transmission providers from the planning redispatch obligation to the extent that redispatch impaired service to these customers.

(B) Impact on Network Customers and Native Load

950. Several commenters argue that the use of planning redispatch may remove the ability to use reliability redispatch in real-time operations to respond to system contingencies, resulting in more curtailment of network and native load.[600] In addition to reducing availability of redispatch as an operational tool, NRECA contends that planning redispatch will reduce ATC for network service and the incentive to build new

[600] E.g., EEI, Duke, Imperial, LPPC, PNM-TNMP, Public Power Council, NRECA, NPPD, Southern, and Progress Energy.

transmission. Several commenters state that planning redispatch may unfairly shift costs to network and native load customers.[601] Progress Energy argues that such a mandate places the power grid in serious jeopardy because the system has not been designed to handle the redispatch planning model. Progress Energy and Nevada Companies state that the planning redispatch option could conflict with transmission providers' state resource planning obligations to reliably serve load at least cost. Exelon replies, however, that planning redispatch could increase flexibility for network customers by increasing the availability of point-to-point service across adjacent transmission systems to bring generation to network loads.

951. Some commenters argue that the conditional firm option would adversely impact system reliability by subjecting firm customers to additional curtailments once conditional curtailment hours are exceeded.[602] NRECA and Utah Municipals state that the conditional firm service will reduce the flexibility of network customers by preventing network customers from using secondary network service, a right that NRECA argues is protected by FPA section 217.

Commission Determination

[601] E.g., EEI, TAPS, LDWP, MidAmerican, Southern, Community Power Alliance, and MISO Reply.

[602] E.g., Duke, LPPC, NRECA, NPPD, Progress Energy, Southern, APPA, and South Carolina E&G.

952. We reiterate that transmission providers are not required to offer planning redispatch and conditional firm point-to-point service if doing so would impair the reliable service to firm customers, including native load and network customers. The concerns of the commenters regarding the impacts on native load, network and other existing firm uses are therefore misplaced.

953. Transmission providers are already obligated to provide planning redispatch service pursuant to Order No. 888 and thus arguments that the planning redispatch option will harm existing customers is equally misplaced. Indeed, under the limitation on the duration of planning redispatch service imposed in this Final Rule, transmission providers will be able to better manage the risks of curtailment for current users of the transmission grid. This is because the obligation to redispatch will no longer be an open-ended obligation. Customers will need to commit to upgrade the system or to have their service reassessed periodically. Both of these allow the transmission provider to better plan to serve needs reliably because it reduces the unknowns. With regard to NRECA's argument that planning redispatch will cause less flexibility in real-time and more potential for curtailments of network customers and bundled retail native load, all sales of point-to-point service could to some extent cause more curtailments of network customers and bundled retail native load. Our decision today limits the existing planning redispatch obligation for point-to-point service, rather than expanding it.

954. Similarly, the conditional firm option does not reduce the availability of secondary network service or the ability of network customers to temporarily undesignate network resources any more than short-term firm point-to-point service already reduces the availability of these network customer options. We see no reason to reject the conditional firm option so that transmission providers avoid offering higher-quality service such as conditional firm point-to-point service in order to retain the ability to offer lower-quality service such as secondary network service.

955. Finally, we believe that network customers can benefit from the use of the planning redispatch and conditional firm options available in a point-to-point transmission service request. As described below, long-term point-to-point service that employs the planning redispatch or conditional firm option would qualify as a network resource on any adjoining system importing that resource.

(3) Implementation of Planning Redispatch and Conditional Firm Options

956. Commenters raise various concerns regarding specific implementation issues associated with the planning redispatch and conditional firm options. We address those concerns below, but first provide an overview of the planning redispatch and conditional firm service required in this Final Rule in order to outline the new rights and obligations of transmission providers and customers. Following this overview, we address specific comments relating to the service.

957. Pursuant to the modified obligations adopted in this Final Rule, where a request for long-term point-to-point firm transmission service is made and cannot be satisfied out of existing capacity, the transmission provider shall, at the request of the customer and in the system impact study, identify (1) the transmission upgrades necessary to provide the service, and (2) the options for providing service during the period prior to completion of those transmission upgrades. Additionally, if upgrades cannot be completed prior to expiration of the requested service term, the transmission provider shall, at the request of the customer and in the system impact study, identify options for providing the service during the requested term. The options studied by the transmission provider must include planning redispatch and conditional firm options.[603] The transmission provider, at its discretion, may study and offer a mix of planning redispatch and conditional firm options for a single service request. We provide further detail on each required option below.

958. If the transmission provider determines that planning redispatch is available, it shall provide the customer with non-binding estimates of the incremental costs of redispatch and identify the relevant constrained flowgates for which redispatch will be provided. For the conditional firm option, the transmission provider shall identify the conditions and hours pursuant to which the service may be curtailed, using a secondary

[603] Although partial interim service is not addressed in this rulemaking, we note that the OATT continues to require this service, on an as available basis, if a multi-year service request is denied.

network curtailment priority, to maintain reliability. Specifically, the transmission provider shall identify (1) the specific system condition(s) when conditional curtailment may apply and (2) the annual number of hours when conditional curtailment may apply. Customers agreeing to take conditional firm service must choose one of these options, conditions or hours.

959. Where the customer requests firm service for more than two years, but is unwilling to commit to a facilities study or the payment of network upgrade costs, the transmission provider shall identify and provide the planning redispatch or conditional firm options subject to the following limitation. The transmission provider shall have a periodic right to reassess (1) the planning redispatch required to keep the service firm or (2) the conditions or hours under which the transmission provider may conditionally curtail the service. This reassessment may occur every two years during the term of the service, i.e., at the end of year two, year four, year six, and year eight of a ten-year service. The transmission provider may not implement reassessments during intervening periods nor may it reassess the conditions in order to amend the service agreement in an intervening year should it forego any biennial reassessment.[604]

[604] For example, if a transmission provider opts to forego the reassessment at the end of year two, the transmission provider may not reassess the conditions of the service again until the end of year four of service for imposition of new conditions starting in year five.

960. The service agreement shall specify the relevant congested transmission facilities and whether the transmission provider will provide planning redispatch, a mix of planning redispatch and conditional firm, or conditional firm in order to provide the point-to-point transmission service. For the conditional firm option, customers must choose among and the service agreement must specify either (1) specific system condition(s) during which conditional curtailment may occur or (2) annual number of conditional curtailment hours during which conditional curtailment may occur. We deem that any service agreement that incorporates planning redispatch or conditional firm options is a non-conforming agreement and must be filed by the transmission provider pursuant to section 205 of the FPA. Additionally, transmission providers must file with the Commission any amendments to these service agreements that result from reassessments. If a transmission provider proposes to change the redispatch or conditional curtailment conditions due to a reassessment, the transmission provider must provide the reassessment study to the customer along with a narrative statement describing the study and reasons for changes to the curtailment conditions or redispatch requirements no later than 90 days prior to the date for imposition of these new conditions or requirements. The transmission provider shall assess the conditions based on two years of service or the continuation of the term of service, whichever is less.

961. In situations in which the customer commits to paying the costs associated with upgrades necessary to provide the service on a fully firm basis, the conditions or hours

identified by the transmission provider shall remain in effect until such time as the upgrades have been completed. Also, for such customers, the service agreement shall specify the upgrade costs as determined through the facilities study.

(A) Eligibility for and Timing of Planning Redispatch and Conditional Firm Options

NOPR Proposal

962. In the NOPR, the Commission proposed that customers who request long-term firm point-to-point transmission service and have the service denied because of lack of ATC would be eligible to receive planning redispatch service or, if the Commission chose to adopt the conditional firm service option, conditional firm service. The Commission also proposed earlier evaluation of the planning redispatch option in the system impact study rather than in the facilities study. The Commission proposed that, if it were to adopt conditional firm service, the evaluation of conditional firm availability should occur prior to a system impact study or facilities study.

Comments

963. If the conditional firm option is required by the Commission, many commenters believe it should be a bridge product to span the gap between when the relevant

transmission service request is being studied and when the relevant upgrades become operational.[605] These commenters state that a bridge product is appropriate because it would not depress funding for new transmission infrastructure and would better meet the NOPR's and Congress' grid expansion objectives. In their view, use of a bridge product would avoid equity and free rider problems that may occur if a conditional firm customer is taking long-term service and the transmission system is upgraded during that service. They also argue that the bridge product would better allow for transmission providers to judge the likelihood of curtailment and avoid complicated system modeling and planning issues; as well as protect existing long-term transmission customers. Duke and Ameren state that an annual re-determination of the conditional period is necessary for a bridge product. If the upgrade has not been completed within a three year period, NRECA suggests that the customer be required to make a new long-term firm service request so the provider can update to reflect system conditions at that time.

964. Several commenters suggest that transmission providers should offer conditional firm service as both a bridge product and as a stand-alone long-term firm service.[606]

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[605] E.g., Progress Energy Supplemental, PNM-TNMP Supplemental, LPPC Supplemental, APPA Supplemental, TAPS Supplemental, TDU Systems Supplemental, NRECA Supplemental, EEI Supplemental, Entergy Supplemental, Ameren Supplemental, Powerex Supplemental, and MISO Supplemental.

[606] E.g., Bonneville Supplemental, PPL Supplemental, EPSA and AWEA Supplemental, EEI Supplemental, Barrick Supplemental, and Constellation Supplemental.

Where not used as a bridge service, several commenters state that it should be limited to reservations that do not have rollover rights.[607] Duke argues that the service duration for non-bridge service should be one year, but with renewal rights that give the conditional firm customer a priority over other non-bridge conditional firm service customers seeking capacity. APPA supports one to two-year service offers.

965. In supplemental comments, EEI supports a voluntary conditional firm product with three types of service: a one-year product with no rollover rights; a bridge product for a term of more than one year that is provided until upgrades necessary to accommodate a firm service request are completed; and a non-bridge product of more than one year, with no rollover rights or transmission provider obligation to construct upgrades and subject to the transmission provider's periodic review of its system capability to provide such service. EEI contends that the Commission should encourage transmission providers to offer conditional firm service for more than one year without rollover rights to a customer that is not willing to take service of sufficient length to allow recovery of upgrades costs, if such service can be provided without affecting the reliability and quality of service to firm transmission customers.

966. In support of limitations on the term of conditional firm service, many commenters state that analyzing and modeling system conditions will always be more

[607] E.g., Xcel Supplemental, Duke Supplemental, and EEI Supplemental.

accurate in the near term than in the long term.[608] EEI and Community Power Alliance believe that limitations on system modeling prevent many transmission providers from accurately evaluating their ability to provide conditional firm service over long periods. According to EEI, system conditions change on both the transmission provider's and neighboring systems substantially affecting the ability of the transmission provider to provide conditional firm service and the periods such service is subject to curtailment. While system loads can be predicted with a reasonable degree of accuracy for more than one year, other components of the prediction model, such as transmission and generator outages, typically are not determined more than a year in advance. For example, EEI states that members in the SERC region coordinate transmission and generation outages in a 13-month planning horizon. Duke states that the ability to model the system varies significantly by region. Entergy and MidAmerican believe that system modeling limitations would present serious reliability problems if transmission providers were required to offer a multi-year conditional firm transmission product because even the most advanced modeling software cannot predict long-term conditions that may affect service. Entergy and MidAmerican propose that the Commission allow transmission providers to update the curtailment criteria for a reservation, to reflect, among other

[608] E.g., Nevada Companies Supplemental, TDU Systems Supplemental, LPPC Supplemental, Ameren Supplemental, Community Power Alliance Supplemental, MISO Supplemental, PNM-TNMP Supplemental, NRECA Supplemental, and Xcel Supplemental.

things, changing load assumptions and forecasts over time. MidAmerican argues that without annual reevaluation there would be cost shifts to other firm customers. In its reply comments, MidAmerican explains that this reevaluation can only occur when the actual data becomes available for projecting potential curtailment hours.

967. If a transmission provider offers conditional firm service based on specified system conditions, Bonneville states in supplemental comments that limitations on modeling do not present a problem. If, however, the service is based on a maximum number of conditional curtailment hours per year, Bonneville believes that modeling presents problems in offering longer-term service. Bonneville states that forecasting the number of hours of conditional firm service requires great analysis. To remedy this, Bonneville suggests allowing the transmission provider to make conditional firm offers under which the transmission provider could periodically adjust the number of conditional curtailment hours.

968. In supplemental comments, Constellation proposes that the Commission require transmission providers to offer two types of conditional firm service: service for less than the service term eligible for rollover rights (e.g., five years) if customers do not agree to pay for transmission upgrades; and service for five years or longer with a rebuttable presumption that the customer is obligated to pay for upgrades that are both economic and necessary to relieve the constraint that prevents its service from being fully

firm.[609] EPSA and AWEA maintain that it is critical that the conditions be defined, and remain unchanged, for the term of the service agreement in order to obtain financing of new projects. EPSA and AWEA also propose that, if the contingency is removed during the life of the customer's conditional firm service, the service should convert to traditional firm service. Williams, EPSA and AWEA argue that up-front commitment to continue the conditions for the entirety of a long-term service agreement would take no greater risk than transmission providers take today in committing to other long-term firm transmission service. EPSA and AWEA state that limited term conditional firm service should pose no problems based on system modeling.

969. Several commenters believe that there is no need for any type of special rules for conditional firm customers taking bridge service and required to pay extremely expensive upgrades.[610] If the Commission abandons the "higher of" pricing principle for upgrades, these commenters suggest that any new pricing policies should be consistent with cost-causation principles and not result in any improper socialization.[611] Other commenters

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[609] EPSA and AWEA endorse Constellation's approach in defining and delineating the two forms of conditional firm service.

[610] E.g., Nevada Companies Supplemental, Duke Supplemental, Bonneville Supplemental, Powerex Supplemental, BP Energy Supplemental, MISO Supplemental, PNM-TNMP Supplemental, Entergy Supplemental, Community Power Alliance Supplemental, and Southern Supplemental.

[611] Proposals regarding the "higher of" pricing policy are discussed below.

argue for special rules when upgrades are extremely expensive.[612] Xcel states that customers should have the option to take short-term conditional firm service that would remain subject to limitation and curtailment if upgrades are too expensive. Constellation proposes that customers taking the longer-term service should have the opportunity to show that upgrades would not be just and reasonable given the relevant circumstances, e.g., the cost of upgrades for a single service request is $300 million. If the Commission determines that the bridge requirement in a particular circumstance is unjust and unreasonable, Constellation proposes that the transmission provider would provide the service for the requested term, but there would be no obligation for the transmission customer to pay for such upgrades, and the service would not be eligible for rollover. NRECA contends that instances in which special rules apply should be extremely rare and are best addressed by the transmission provider and customers on an ad hoc basis.

970. Commenters recognize that upgrades required under a bridge conditional firm option could create lumpiness problems,[613] but most commenters suggest that this problem is not unique to the conditional firm option, nor can it be resolved through use of

[612] E.g., Xcel Supplemental, Constellation Supplemental, and NRECA Supplemental.

[613] In the November 15 Notice, the Commission described an example of lumpy capacity as upgrades to provide a requested 100 MW of point-to-point service that results in 1,000 MW of additional transmission capacity.

the option.[614] These commenters support continuation of the Commission's existing policies with regard to lumpiness issues, and some suggest the need to address the issue as it pertains to all upgrades in a future proceeding.[615] In contrast, a few commenters suggest that the Commission should address the lumpiness issue with regard to conditional firm service. PPL, EPSA and AWEA state that the transmission provider should be required to pay the costs of any incremental lumpiness associated with upgrades and the service request. BP Energy contends that any lumpy capacity needs to be resolved on a bilateral contractual basis. Powerex suggests using an "open season" process to finance expensive and lumpy upgrades. California Commission supports pro rating large lumpy upgrades over a large base of new customers, to the extent that it is non-discriminatory and fiscally sound.

971. In supplemental comments, Nevada Companies urge that the time period of a conditional firm bridge product should be left up to the discretion of each transmission provider. They suggest that most, if not all, transmission providers should be able to offer a conditional firm service for a one-year period and most should be able to offer it

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[614] E.g., EEI Supplemental, Xcel Supplemental, APPA Supplemental, Bonneville Supplemental, LPPC Supplemental, NRECA Supplemental, Progress Energy Supplemental, Duke Supplemental, Ameren Supplemental, Entergy Supplemental, Community Power Alliance Supplemental, MISO Supplemental, Williams Supplemental, and PNM-TNMP Supplemental.

[615] E.g., LPPC Supplemental, Bonneville Supplemental, and EEI Supplemental.

for longer periods. Nevada Companies state that they should be able to provide conditional firm service in their control areas for longer periods, possibly for up to five years in some circumstances and in certain locations.

972. BP Energy and Williams disagree that conditional firm service should be a bridge product. They state that such a limitation would provide additional opportunities for undue discrimination and limit competitive alternatives used to serve customer load. According to California Commission, conditional firm service needs to be available for long-term requests unless there exists a valid, proven reason why conditions make it physically or economically impossible to guarantee such service. California Commission states that some limitations on modeling should be accepted as justification for not providing conditional firm or related services only if such provisions for load growth are nondiscriminatory, justified and contractually sound.

973. Commenters take both sides on whether planning redispatch should be evaluated before the customer is obligated to incur the costs and delays of a facilities study. EPSA argues that evaluation prior to a facility study meets nondiscrimination requirements given the methods used by transmission owners to evaluate planning redispatch for their own needs. In its reply comments, Exelon supports the minor changes to planning redispatch proposed by the Commission, including the earlier study of planning redispatch options in the system impact study, and states that these changes will expand choices for customers. EEI states that requiring an offer of planning redispatch prior to

completion of a facilities study would be unduly preferential to point-to-point customers because transmission providers consider the costs of network upgrades and the impacts on system reliability before choosing planning redispatch for their native load. Southern points to the internal inconsistencies of the NOPR that on one hand seek to expedite the study process and on the other hand would require a planning redispatch study provision that would slow the study process.

974. EEI states that the vast majority of facilities studies show that the embedded cost of transmission service is higher than the incremental amortized cost of upgrades. Thus, EEI argues that the Commission's proposal to reform planning redispatch could lead to uneconomic decisions by the customer as well as provide disincentives to upgrade and expand transmission infrastructure.[616] In their reply comments, Utah Municipals respond that most of the time the embedded cost of transmission is higher than the costs of upgrades, adding that customers find requests for a transmission upgrades to be a time consuming and costly impediment to transmission access. Further, Utah Municipals add that limited and occasional redispatch or curtailment, would be more economically efficient than the construction of transmission facilities most of the time.

975. Several commenters state that it would be extremely burdensome to develop, at the system impact study stage, a reliable estimate of the number of hours of redispatch

[616] E.g., Xcel, PPM, and BP Energy.

and the cost of the planning redispatch.[617] These commenters state that this would require substantial investment in probabilistic studies of equipment availability and extensive training of personnel and expansion of data collection, yet still would not provide reliable estimates of the number of hours or costs of the service. MISO states that at a minimum, this would require two years to implement.

976. EEI asserts that conditional firm service should be determined based on system impact studies and facilities studies so that the customer can evaluate the costs of upgrades versus the lack of reliability of the conditional firm service. EEI and others also propose that conditional firm service only be available when upgrades cannot be completed during the term of service or during the period prior to completion of transmission upgrades.[618] In its reply comments, Bonneville disagrees that conditional firm service should be an interim service available only when the customer has agreed to pay for upgrades, stating that such a requirement would undercut the value of conditional firm service. Bonneville adds that, for example, the costs to build upgrades in order to resolve a constraint in a two-month period could raise the costs of the conditional firm service to a prohibitive level for little additional benefit to the customer.

Commission Determination

[617] E.g., EEI, Southern, TVA, SPP, E.ON, and MISO.

[618] E.g., APPA, PNM-TNMP, and Southern.

977. As we explain above, the Commission finds that both planning redispatch and conditional firm point-to-point service must be offered under certain circumstances for the provision of reliable and non-discriminatory point-to-point transmission service. We set forth below the parameters of this service, keeping in mind the concerns expressed by commenters.

978. First, the planning redispatch and conditional firm options need only be made available to customers who request firm point-to-point service of more than a year in duration. When the requested firm point-to-point service is not available and the customer agrees to a system impact study, the transmission provider must evaluate the planning redispatch and conditional firm option at the customer's request. If the customer requests study of the planning redispatch or conditional firm options, the system impact study must identify the following: (1) the system constraints, identified by transmission facility or flowgate, causing the need for the system impact study; (2) additional direct assignment facilities or network upgrades required to provide the requested service; (3) redispatch options, including an estimate of the incremental costs of redispatch and the relevant congested transmission facilities for which redispatch will be provided; and (4) conditional firm options, including the number of conditional curtailment hours and the specific system conditions during which conditional curtailment may occur. Transmission providers may recover the costs of studying these options through the system impact study agreement.

979. Second, we adopt limitations on the nature of the planning redispatch and conditional firm options to reflect the two different types of customers that may request the service: customers who support the construction of upgrades and those who do not.

980. For customers supporting the construction of upgrades, the planning redispatch or conditional firm options will serve as a bridge until upgrades are constructed to remedy the congested transmission facilities. For these customers, the transmission provider must offer planning redispatch or conditional firm service until the time when the upgrades are constructed. The conditions or redispatch applicable to this period must be specified in the service agreement and are not subject to change. We impose this requirement because customers who commit to support transmission upgrades are typically those financing and constructing new resources. These customers require certainty both with regard to upgrade costs and, before upgrades can be constructed, the redispatch requirements or curtailment conditions that may apply to their service. We disagree with Williams and BP Energy that requiring transmission providers to offer this bridge product will present more opportunities for undue discrimination. As we note above, available information on transmission providers' current uses of redispatch and curtailment plans for their retail native load indicates that the mechanisms are used for relatively short periods of time until upgrades are completed to resolve the transmission insufficiencies. Comparable services for long-term point-to-point customers should

therefore be similarly limited to shorter time periods or otherwise linked to transmission upgrades.

981. For customers choosing not to support the construction of new facilities, the planning redispatch or conditional firm options also must be made available as a reassessment product, i.e., subject to certain limitations. Although many transmission providers argue that planning redispatch and conditional firm service should be offered only to customers who seek to upgrade the grid, we disagree. We find that there are legitimate circumstances under which customers may not choose to support system upgrades – either because the costs of construction are too high or because the term of service (e.g., less than five years) does not merit the construction of additional facilities. We will therefore make planning redispatch and conditional firm service available to such customers, but subject to certain limitations to reflect the nature of the services. Specifically, we must select a limitation on the term for the conditions that permit interruption or redispatch, given that, for these customers, the term is not circumscribed by the period during which upgrades are constructed. We adopt two years as the appropriate time period to allow the transmission provider to reassess the conditions under which planning redispatch or conditional firm service is provided. The transmission provider will retain the right to reassess the planning redispatch and conditional firm option after the first two years of service, and every two years thereafter. The transmission provider shall reassess (1) the redispatch required to keep the service

firm or (2) the conditions or hours under which the transmission provider may conditionally curtail the service. The customer will receive service for the requested term unless the transmission provider determines through its biennial reassessment that the firm point-to-point service can no longer be reliably provided. The customer may also choose to terminate the service at the time of reassessment if the service no longer meets it needs.

982. We select two years as providing a reasonable balance between the concerns of potential customers and transmission providers. We recognize that a shorter period would increase the reliability of predictions, as sought by certain transmission providers, but find that a two-year period is consistent with the bridge concept, given that two years is often less than the typical time to construct new facilities. While this is a shorter period than some transmission customers would desire, customers who require greater certainty over the long-term can obtain that certainty by agreeing to support the construction of new facilities. In the long-run, all firm transmission customers, including conditional firm customers, should support the expansion of the grid to reliably serve load.

983. We decline to adopt any of the suggestions to address unique circumstances that may arise in which upgrades are prohibitively expensive. Specifically, we will not adopt Constellation's suggestion that customers be able to rebut the presumption that required upgrades are just and reasonable. In this Final Rule, we provide customers with the

option of obtaining planning redispatch or conditional firm service for a long term, with the ability to roll over a five-year or longer reservation, subject to a limitation that the underlying restrictions on the service, i.e., the conditions for redispatch or curtailment, may be reassessed by the transmission provider every two years. We believe that this option is superior to that proposed by Constellation because it will provide the customer with rollover rights while ensuring that transmission providers can reliably operate their transmission systems. Additionally, since issues of lumpy capacity are present in the provision of transmission services generally, we will not address such issues in this Final Rule as they do not present issues unique to planning redispatch or conditional firm options.

984. Contrary to the assertion of several commenters, we believe that transmission providers would take greater risk in committing to conditions for the entire term of a 10-year conditional option than they take today in committing to provide unconditioned firm point-to-point transmission service for a similar period. Planning for reliable service for existing transmission customers is a difficult process, but it is much more difficult to plan over an extended long-term period for reliable service when the service is firm for most of the hours of the year and less firm for other hours. This is because many transmission providers use annual hourly peak load for two to 10-year planning purposes. They would need to substantially change their planning methods to ensure no change in service for a conditional firm customer that is not expected to be served during the peak hour. We

therefore adopt a two year assessment window to provide an appropriate degree of flexibility for transmission providers' planning needs.

985. We acknowledge, however, that some commenters, such as Bonneville and Nevada Power, state that they may be able to provide conditional firm service over a period longer than two years, without the need for reassessment. The Commission encourages the provision of planning redispatch or conditional firm service for longer periods where it is practical. In the event a transmission provider is able to extend the assessment period, we will allow the transmission provider to waive or extend its right to reassess the availability of the option, provided that the waiver or extension is provided consistently for all similarly situated service.

986. With regard to timing of the study of planning redispatch and conditional firm options, the Commission finds that study of both options is appropriate in the system impact study. The obligation for the transmission provider to study planning redispatch options in the system impact phase is already present in the existing OATT.[619] The Commission clarifies in this Final Rule the specific requirements necessary to meet this obligation. Transmission providers, when requested by potential customers, must provide non-binding estimates of the incremental costs of planning redispatch and identify the relevant congested transmission facilities for which redispatch will be provided.

[619] See pro forma OATT section 19.3.

Transmission providers will not be required to estimate the number of hours of redispatch that may be required to accommodate the requested service as proposed in the NOPR. The Commission is persuaded by commenters that such an estimate is of limited use to potential customers and is difficult, expensive and time-consuming for transmission providers to calculate with any accuracy.

987. Finally, the Commission disagrees that the study of planning redispatch options must necessarily go hand in hand with the study of the costs and construction requirements of facility upgrades. Again, the obligation to study planning redispatch in the system impact study is not new. Our action in reinforcing this existing obligation cannot violate comparability or, in itself, cause the slowing of study processes. We have moved to a later study of conditional firm options so that both options can be studied in tandem. Furthermore, we note that the structure of the reassessment product requires the study of both options at the system impact study phase, since by definition customers opting for the reassessment product are not likely to enter into a facilities study agreement. We acknowledge that the few changes that we are making to the planning redispatch obligation may increase requests for study of the option and certainly the new conditional firm option will need more study than in the past. While we recognize the tension between the adoption of requirements to speed study completion and the increase

in studies' complexity caused by the conditional firm option,[620] we will not forego a beneficial new option for customers because of this tension. We expect that transmission providers will be diligent in completing the system impact studies and in bringing to our attention any difficulties in meeting deadlines caused by the study of the two options.

(B) Who Must Provide Planning Redispatch and Conditional Firm

NOPR Proposal

988. In the NOPR, the Commission requested comment on the applicability of these two options to transmission providers who operate as RTOs and ISOs. The Commission also requested comment on which resources should be required in the provision of planning redispatch. First, the Commission proposed that the planning redispatch requirement apply to the redispatch of the transmission provider's own generation resources, but not to obligate transmission providers to purchase new resources to provide the service. If a transmission provider cannot accommodate a long-term firm point-to-point transmission request through planning redispatch, the Commission proposed requiring the transmission provider to identify additional generators in other control areas that could relieve the constraint. The Commission also requested comment on whether the planning redispatch obligation should be expanded to require the use of

[620] In section **Error! Reference source not found.**, we adopt a requirement that transmission providers post metrics on their performance in processing system impact studies and facilities studies.

network customer resources in addition to transmission provider resources or expanded to require that transmission providers contract to purchase off-system resources to facilitate the planning redispatch.

(i) Application to RTOs and ISOs

Comments

989. RTOs state that reforms regarding planning redispatch and conditional firm services are unnecessary in RTO markets with financial congestion management because these markets already provide sufficient redispatch inside RTOs and sufficient interconnection service for generators located at RTO boundaries to address the Commission's point-to-point service concerns.[621] Ameren and MISO add that the options could disrupt the distribution of financial transmission rights in RTO markets. Others disagree and argue that planning redispatch should be used by RTOs to define the current and future operational environment to ensure that systems are not overbuilt.[622] AWEA contends that, since RTOs and ISOs vary considerably in the services they offer, RTOs and ISOs should be required to demonstrate that their services are consistent with or

[621] E.g., MISO, PJM, California Commission, and ISO New England.

[622] E.g., AWEA, Indianapolis Power Reply, and Exelon Reply.

superior to planning redispatch and conditional firm services. In particular, AWEA argues that RTOs that do not provide financial rights should be required to provide both of these services. Exelon states on reply that the Commission has proposed minor changes to the existing planning redispatch requirement that should not be impractical or too burdensome for RTOs to administer.

990. In its reply comments, California Commission adds that capping the frequency or costs of redispatch in an RTO market would inappropriately shift the costs of congestion to others. Although SPP has successfully used planning redispatch to facilitate short-term firm transmission service and to address interim circumstances associated with long-term firm transmission service,[623] it argues that the Commission's proposed expanded planning redispatch service would slow its batch processing of transmission service, require significant investment of time to evaluate the options given the scope of an RTO, and create speculative redispatch estimates at best. SPP adds that RTOs should simply assist the customer with identification of planning redispatch options so that the customer can bilaterally contract with the generation owners of its choice.

991. MISO adds that conditional firm is inconsistent with RTO market mechanisms, requires burdensome changes to curtailment protocols and reliability coordinator's procedures, and would impact every tool used in real time for congestion management in

[623] Citing Attachment AC of the SPP OATT (Optimal Reservation Processing Method for Short Term Firm Transmission Services).

RTOs. In its reply comments, MISO adds that adoption of conditional firm service would require revisions to seams agreement protocols. California Commission states on reply that the added administrative complexity of conditional firm service is unnecessary in the CAISO because the ISO's transmission service model makes no distinction between firm and non-firm service and provides prospective new customers with information to objectively estimate curtailments. FirstEnergy and MISO express concern regarding disruption of existing RTO communication protocols if these services are required in RTOs.

Commission Determination

992. Notwithstanding the requirements of section IV.C of this Final Rule, the Commission finds that it would be inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm point-to-point service. Customers transacting in RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior reservation in order to access transmission. Voluntary curtailment in order to access transmission is thus not an attractive option given the range of options available for customers transacting in RTOs and ISOs. Further, in RTOs and ISOs with financial transmission rights, conditional firm service may disrupt the distribution of these rights. We therefore believe that there is no need to reform existing RTO and ISO procedures to satisfy concerns underlying the adoption of the conditional firm option.

993. The Commission directs, however, RTOs and ISOs that already provide planning redispatch pursuant to section 13.5 of the pro forma OATT to modify the relevant provisions of their tariffs consistent with our directives in this Final Rule.[624] RTOs and ISOs need not amend their tariffs if the Commission has previously found that these tariffs were just and reasonable without the inclusion of pro forma section 13.5 planning redispatch provisions. We will not require incorporation of the more limited planning redispatch obligations adopted in this Final Rule if RTOs and ISOs have already been excused from the planning redispatch obligations of the existing pro forma OATT.

(ii) Generation Resources Required for Planning Redispatch

Comments

994. Most commenters agree that resources in addition to the transmission provider's resources can and should participate in the provision of planning redispatch. Commenters differ as to whether this participation should be mandatory or voluntary. A few commenters maintain that participation by resources outside the transmission provider's control area could have adverse impacts on reliability in the control area.[625]

[624] This includes the transmission provider's obligation to post monthly redispatch costs for each transmission facility over which planning and reliability redispatch are provided.

[625] E.g., Ameren, PNM-TNMP, Xcel, and WAPA.

995. In arguing for mandatory participation, EEI and others contend that all generation resources owned or operated by all jurisdictional transmission customers in the control area or balancing authority area should be obligated to redispatch to accommodate new requests for service in order to avoid undue discrimination.[626] Exelon argues that transmission providers should redispatch resources of its network customers, subject to appropriate compensation. SPP contends that generation affiliated with transmission owners that have transferred functional control of their transmission assets to an RTO should not have any greater planning redispatch obligation than unaffiliated generation. In its reply comments, Entergy states that the Commission at a minimum should continue to allow network customers to request that transmission providers redispatch network customer resources in order for the customer to designate a new network resource.

996. Others argue for a least-cost economic dispatch to relieve real-time system constraints, including not only the transmission provider's own resources and those of its network customers, but also all non-affiliated resources both within and outside its footprint that choose to be included.[627] EPSA explains that this redispatch would:

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[626] E.g., Southern, FirstEnergy, MidAmerican, and Community Power Alliance.

[627] E.g., AWEA, Project for Sustainable FERC Energy Policy, Exelon, Powerex, Constellation, Williams, Sempra Global, PJM, EPSA, and Entegra Reply. Sempra Global contends that the Commission should require transmission providers to offer redispatch of non-affiliated resources both within and outside its footprint, subject to pre-existing contractual commitments.

require transmission providers to solicit offers from resources to provide energy and perhaps ancillary services; be based on a resource's offer of service and take into account generating resource and transmission operating limits; include performance assurance terms, unit commitment procedures, billing, compensation and bidding protocols, confidentiality protections, and information-sharing protocols; and dispute resolution procedures to avoid disputes rising to the level that would require judicial or regulatory intervention. AWEA supports Deseret's OATT provisions that require the transmission provider to relieve constraints by the least cost means, whether by seeking a change in generation output from the transmission provider's merchant function or from any other feasible generator. Williams suggests that independent generators must be allowed to participate in the provision of planning redispatch service through submission of a formulary rate to the transmission provider. If the Commission intends to have non-affiliated generators participate in planning redispatch, PPL states that the Commission should require transmission providers to negotiate agreements with generators on their systems.

997. TranServ, MidAmerican, and Nevada Companies support a planning redispatch service similar to that employed by the Mid-Continent Area Power Pool, whereby customers arrange for their own redispatch through bilateral or centralized energy markets and submit plans for approval to their transmission provider and reliability coordinator.

998. Several commenters discuss the need for market development in conjunction with the planning redispatch obligation. TranServ and Xcel state that the planning redispatch option may force transmission providers without generation assets to develop some form of energy market to arrive at the costs of redispatch. Southern and Progress Energy add that forced adoption of such a market would raise significant political opposition and be contrary to the Commission's commitment in the NOPR to avoid such restructuring.

999. EPSA, AWEA and PJM support such market development. When a generator in another control area is called upon to relieve a constraint in regions not administered by an RTO, PJM states that the Commission must direct the development of an alternate LMP pricing scheme to establish "system marginal costs" that are consistent with transparent generator pricing in RTO markets. EPSA and PJM argue that vertically integrated utilities in non-RTO areas should turn over functional control of their dispatch function to a disinterested entity or replicate the transparency by publishing generation dispatch. EPSA suggests that the Commission require this transparency to ensure nondiscriminatory redispatch.

1000. A few commenters state that any requirement for the transmission provider to purchase generation from outside the control area to facilitate planning redispatch is functionally unworkable and would adversely impact reliability.[628] EEI supports the

[628] E.g., Xcel, PNM-TNMP, and Public Power Council Reply.

Commission's proposal to have transmission providers identify off-system resources that could provide planning redispatch but requests clarification that no additional investigations or studies are required to identify these additional options. MidAmerican adds that the coordinated, open and transparent planning provisions of the NOPR should provide customers with the ability to identify off-system resources. EEI and Southern state that any redispatch on adjacent systems should be arranged by transmission customers and the service should be curtailed prior to other firm uses of the system if the off-system generator fails to perform. WAPA and Bonneville argue against the use of off-system redispatch, stating that lack of control over these resources could cause reliability problems on the originating transmission system. WAPA also believes that off-system redispatch would not provide the price certainty needed by customers because the redispatched megawatts will differ based on the transmission system parameters, and customers would be required to pay for any loop flow resulting from the off-system redispatch.

1001. In its reply comments, EEI adds that a requirement for transmission providers to solicit planning redispatch proposals from generators inside and outside their control areas would require that transmission personnel become involved in generation and power sales matters in violation of the Commission's Standards of Conduct. Duke argues on reply that such an approach would require that third party generators reveal their costs

to the transmission provider and that a means of estimating costs for all generators subject to planning redispatch would need to be set forth in the pro forma OATT.

1002. LPPC, APPA and TAPS oppose any requirement that transmission providers redispatch their network customer's resources as well as their own to provide planning redispatch, stating that this action would appropriate resources beyond the Commission's jurisdiction, result in endless conflict between transmission providers and resource owners, and interfere with network customer's use of their limited resources.

Commission Determination

1003. Order No. 888 compelled transmission providers to provide planning redispatch from their own resources.[629] The Commission declines to expand that obligation to require transmission providers to solicit third party resources in order to provide planning

[629] See pro forma OATT section 13.5. With respect to SPP's assertion that transmission owners' affiliated generation should have no greater redispatch obligations than unaffiliated generation in RTOs, we find that relevant redispatch obligations in the RTO tariff and transmission owners' tariffs govern this issue. See Southwest Power Pool, Inc., 110 FERC ¶ 61,133 at P 17 (2005) (rejecting proposed provisions that would have removed the obligation for transmission owners to provide planning redispatch).

redispatch. We will, however, require transmission providers to identify in the system impact study (1) generation resources located within the transmission provider's control area, including its own resources, that can relieve the congested transmission facility at issue, and (2) the impact of each identified resource on the congested facilities, e.g., the generator shift factor. The resources identified in the system impact study need not be available to provide the redispatch. Customers must simply be provided with the set of generators that could, if available, make a significant contribution toward relieving the constrained facility at issue. This information, in addition to the information provided through congestion planning studies, will provide the necessary information to customers wishing to solicit third party resources to relieve congested facilities in order to accommodate long-term firm point-to-point service. We note that this information is readily accessible by the transmission provider, as it is the same information used to determine pro rata curtailments of firm resources in contingency situations.

1004. In addition to identifying generation resources within the control area, the Commission also requires identification of resources outside the control area that may be able to relieve congested transmission facilities. To the extent the transmission provider is aware of generation resources outside of its control area that can relieve the constraint, the transmission provider must inform the customer of these resources. To be clear, this does not require the transmission provider to undertake any additional investigation or

study to identify generation options located outside of the control area. To the extent the transmission providers has such information, however, it must provide it to the customer.

1005. The Commission will not mandate the use of network customer resources or other third party resources in the provision of planning redispatch.[630] If they choose, network customers and third parties may voluntarily provide planning redispatch services. A seller is free to post its price to relieve a specific congested transmission facility and its ability to relieve the congestion. To facilitate provision of such service by third parties, we direct transmission providers to modify their OASIS sites to allow for posting of these third party offers. Accordingly, we direct transmission providers to work in conjunction with NAESB to develop this new OASIS functionality and any necessary business practice standards. Transmission providers need not implement this new OASIS functionality and any related business practices until NAESB develops appropriate standards.

1006. Customers may then contract in advance with these third parties or use their own resources to secure planning redispatch services in lieu of or in addition to service from the transmission provider. In this way, customers can arrange for their own planning redispatch through bilateral markets and submit plans for approval to their transmission

[630] Network customers will continue, however, to be obligated to make their network resources available to the transmission provider for reliability redispatch in real time.

provider and reliability coordinator. The arrangements must, however, be sufficiently detailed and coordinated with the transmission provider to ensure that reliability is maintained.

1007. We therefore direct in this Final Rule that transmission providers work with customers to facilitate the use of third party generation, where available, in provision of planning redispatch. This entails review of redispatch plans submitted by customers, coordination between the transmission provider and reliability coordinator, and signaling third party generators when the redispatch is needed. These arrangements will require close coordination between the transmission provider, third party generators and transmission customers. The arrangements must be sufficiently detailed to allow the transmission provider to maintain reliability. Although we will not allow transmission providers to unreasonably deny customers the use of third-party resources to provide planning redispatch, it is the customers' ultimate responsibility to ensure that all the necessary contractual and technical arrangements are in place to maintain reliability. We clarify for Entergy that this would allow transmission providers to continue to provide planning redispatch for network customers from the network customers' resources. We also clarify that transmission providers may curtail transmission customers if a third-party resource fails to perform its contractual redispatch obligation. This or any other remedy for non-performance must be specified in writing between the parties prior to commencement of the service.

1008. For the reasons discussed below regarding the TDA proposal, we decline to adopt the bid-based redispatch model suggested by EPSA. In section V.C.1 of this Final Rule, we similarly reject proposals to impose LMP and independent control of the dispatch function. We believe that a bid-based generation market design is not necessary to remedy undue discrimination in the provision of transmission service. We also believe that our modifications to the planning redispatch requirement, including the OASIS changes directed herein and the requirement that transmission providers make available information on generators capable of providing planning redispatch, will provide potential customers with greater information about redispatch choices and enable greater opportunities for planning redispatch and comparable service.

(C) Pricing of Planning Redispatch

NOPR Proposal

1009. In the NOPR, the Commission sought comment on which type of redispatch pricing would ensure effective use of the planning redispatch option. The Commission described one type of pricing, a formula rate, to include a MW quantity, the incremental cost of fuel at the point of delivery, and the decremental cost of fuel at the point of receipt capped at the price of fuel. The Commission sought further comment on whether it would facilitate planning redispatch to base calculations of the various costs for input into the formula on the difference between the cost of ramping up a generator at the point of delivery and ramping down a generator at the point of receipt. The Commission also

described a redispatch pricing proposal to calculate redispatch charges monthly and charge the higher of actual redispatch costs or the OATT rate each month made by PacifiCorp in response to the NOI.

Comments

1010. While many specific comments were received on the pricing of planning redispatch service, there is little consensus on this subject. Several commenters state that pricing challenges associated with planning redispatch are difficult if not insurmountable.[631]

1011. MidAmerican and EEI argue that the current cap on planning redispatch at the costs of upgrades should be removed because a customer will always choose planning redispatch and the risks that redispatch costs exceed construction costs falls to the transmission provider and is either unrecoverable or passed on to other customers.

1012. According to several commenters, requiring the transmission provider to establish a standard fee for planning redispatch, either on the overall system or on a path-by-path basis, would accomplish cost certainty for the customer and hold the transmission provider accountable for the accuracy of the studies used to assess redispatch requirements.[632] These commenters support a standardized formula-rate for planning

[631] E.g., Powerex, Manitoba Hydro, Seattle, NRECA, Ameren, and E.ON.

[632] E.g., Utah Municipals, Public Power Council, PPM, Entegra, Constellation, TransAlta and TAPS.

redispatch or a capped amount at, or close to, the embedded cost rate. Entegra and TransAlta state that the redispatch pricing proposal may allow transmission providers discretion to charge redispatch costs without providing customers a practical way to verify that claimed redispatch costs have actually been incurred. PGP states that the Commission should allow for regional differences in planning redispatch pricing. APPA does not support a departure from the current redispatch pricing approach, while Seattle states that the existing section 13.5 is unworkable because the cost of planning redispatch is difficult to calculate for both historical and near-term operating horizons, much less over a multi-year planning horizon.

1013. EPSA and AWEA believe that the pricing mechanisms suggested in the NOPR would be open-ended and highly variable over the duration of the reservation and, thus, not meet the needs of customers. EPSA and AWEA assert that, consistent with Commission precedent,[633] a utility must identify and justify its costs in excess of average system costs before service commences in a manner that meets the customer's needs to charge a rate in excess of average system costs, i.e., some customers may require a firm estimate upfront to obtain financing while others may be willing to negotiate a rate based on estimates.[634] EEI states on reply that the policy in American Electric Power related to

[633] American Electric Power Service Corp, 64 FERC ¶ 61,279 (1993) (American Electric Power).

[634] Id. at 62,976.

an expansion cost rate, which is inapposite to redispatch costs because the costs of new construction are easier to estimate in advance than are the costs of planning redispatch. EEI contends that the planning redispatch customer's interest in price certainty is not a sufficient basis for shifting costs to other customers or to the transmission provider.

1014. EPSA and AWEA suggest that, when the cost of planning redispatch is estimated to exceed the transmission rate, the transmission provider should offer either: a formula rate for incremental redispatch costs with the number of hours of redispatch, the resources to be redispatched and the conditions under which redispatch would occur defined in advance or, an incremental cost rate determined at the time of the reservation to cover the reservation period that may include a risk adder for the transmission provider. Morgan Stanley argues that planning redispatch options should include the following: redispatch priced at an market index; where market prices are not available, the price should be the incremental costs; full cost pricing should be allowed for "life of service" (total dollar cost for unlimited redispatch over the term of a contract) or fixed rate contracts for actual redispatch agreed to at the time of contracting; and redispatch costs provided from a third-party provider. Morgan Stanley opposes "higher of" pricing that would allow for monthly charges for redispatch costs or long-term firm transmission service rate.

1015. In contrast, many transmission providers and EEI ask the Commission to allow for recovery of actual costs of redispatch, rather than the estimated costs, with the customer

obligated to pay all costs.[635] Since providing accurate estimates of redispatch costs and hours are difficult, especially with respect to longer-term service requests given the variability of fuel costs, transmission providers contend that they should not bear the risks of inaccurate cost estimates for a service that benefits only the point-to-point customer.[636] Indianapolis Power adds that planning redispatch should be priced to discourage inefficient dispatch of generation. In its reply comments, PPM agrees that planning redispatch is unworkable without certainty of cost recovery for the transmission provider, but believes that with enough information customers can evaluate the risks and gain certainty required for a workable product.

1016. Southern argues that the current pro forma OATT language unreasonably places the risk of uncertainty in estimating redispatch costs on the transmission provider and its native load customers, contrary to basic cost causation principles and native load protections in Order No. 888. Southern suggests that the Commission follow the approach in the Deseret and SPP tariffs, which allow for the transmission provider to recover its actual costs of redispatch. Ameren states that a standard per kWh fee is simpler to administer, but should be structured to recover all of the costs of planning redispatch, including opportunity costs.

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[635] E.g., Southern, MidAmerican, Entergy, FirstEnergy, Ameren, Nevada Companies, E.ON, and South Carolina E&G.

[636] E.g., EEI, Entergy, LPPC, NRECA, MidAmerican, Ameren, and FirstEnergy.

1017. Various commenters argue that the Commission should allow the following redispatch costs to be recovered: fuel; variable operations and maintenance; increased maintenance costs due to cycling; start-up and ramp-down costs; emergency purchases; costs of additional operating reserves; environmental costs; and lost opportunity costs.[637] MidAmerican also argues that a transmission provider should be able to recover the costs of redispatch energy purchased in response to a pre-schedule by a planning redispatch customer regardless of schedule changes by the customer and regardless of any pro rata curtailments affecting such customers due to system reliability.

1018. EEI and Southern argue that customers that choose planning redispatch should pay the cost of transmission service and the cost of redispatch. EEI asserts that allowing recovery of both costs is not prohibited "and" pricing because the services differ, as one is provided by the transmission system and one is provided by generators, and native load and network customers pay pro rata shares of reliability redispatch costs to relieve constraints on the system as well as the basic costs of transmission service. TAPS and TDU Systems take the opposite view and state that the Commission should require planning redispatch pricing consistent with the Commission's "higher of" or "or pricing" policy. In addition, they state that the redispatch charges must be capped up front at fixed dollars and hours at or close to the embedded cost rate.

[637] E.g., LDWP, EEI, Ameren, MidAmerican, and Southern.

1019. Arkansas Commission agrees with the PacifiCorp pricing method in which redispatch costs are recalculated monthly and customers are charged the higher of the redispatch cost rate or the monthly OATT transmission rate. TAPS states that this method avoids "and" pricing, but does not address the complexity or risks associated with determining redispatch costs over a long period. APPA argues that the PacifiCorp proposal, if applied after the fact, could lead to uncertainty and disruption of market transactions. Southern opposes any pricing method that caps the total costs that a planning redispatch customer would bear, including the PacifiCorp proposal, stating that caps allow the planning redispatch customer to shift costs to the transmission provider and its native load customers.

1020. E.ON points to an inherent problem in planning redispatch pricing; transmission providers should be kept whole with regard to actual real-time redispatch costs but customers may not know until after the fact that the planning redispatch was not economic for their purposes. E.ON foresees difficulty in allocating redispatch costs among multiple planning redispatch service customers and requests that the Commission adopt a specific methodology for calculating each request's impact on the system.

Commission Determination

1021. Although there is no consensus regarding which form of pricing methodology is most appropriate for planning redispatch service, there is general agreement among the commenters that the current pricing rules fail to meet the needs of either customers or transmission providers and consequently fail to make planning redispatch an attractive means for customers to obtain access to the grid. Transmission providers and customers both express concern regarding the variability of redispatch costs. Customers worry that actual redispatch costs may greatly exceed estimates and thus seek cost certainty over the term of the service. Conversely, transmission providers claim that accurately estimating future redispatch costs for long duration service is extremely difficult. In fact, transmission providers state that the uncertainty in forecasting long-term redispatch costs is much greater than any uncertainty inherent in determining the costs of transmission upgrades.

1022. The Commission has carefully considered these comments and agrees that the current method for pricing planning redispatch service is no longer just, reasonable or not unduly discriminatory. The Commission takes three principal actions to address the concerns of customers and transmission providers.

1023. The Commission therefore adopts a new pricing method for planning redispatch service. We will no longer require the capping of redispatch costs over the term of the service at the costs of expansion. This change is inextricably linked with the change in the obligation to provide planning redispatch, i.e., the removal of the open-ended

requirement to provide planning redispatch as long as it is more economical than transmission upgrades. We have shortened the planning redispatch obligation to apply before upgrades are built as a bridge product or to apply as part of a reassessment product. In prior cases, the Commission expressed the view that capping cost recovery for long-term transmission service at the costs of expanding the transmission system provides an incentive for transmission providers to undertake expansion when it is warranted.[638] The expansion cost cap should not be applied to the bridge product because (1) upgrades will in fact be constructed and should be paid for by the customer under the "higher of" policy, and (2) an expansion cost cap does not serve as an incentive for expansion because the transmission provider already will have started the process of building transmission facilities for the customer who opts for the bridge product. If planning redispatch is provided as part of a reassessment product, the customer has chosen not to pay for upgrades and thus, the expansion cost cap cannot provide an incentive for transmission expansion.

1024. We will therefore adopt a new pricing methodology. We believe that the PacifiCorp proposal described in the NOPR is the one that balances the competing concerns of transmission customers and transmission providers. Under this pricing methodology, customers will have the option of paying (1) the higher of (a) actual

[638] See, e.g., Florida Power & Light Co., 70 FERC ¶ 61,158 at 61,484 (1995).

incremental costs of redispatch or (b) the applicable embedded cost transmission rate on file with the Commission or (2) 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. If the customer selects the higher of incremental cost or the embedded-cost rate, the transmission provider shall calculate the costs of redispatch monthly and charge the higher of redispatch or the embedded cost rate each month.

1025. We have selected a monthly comparison of embedded costs and redispatch costs on the basis of a number of factors. The Commission has rejected basing the comparison on the life of a long-term firm transmission contract.[639] For administrative efficiency, a transmission provider should be allowed to close its books and not be subject to possible refunds or surcharges at the end of its billing cycle. The standard billing cycle in the industry is one month. Allowing transmission providers to finalize accounting entries will provide certainty to both the transmission provider with regard to revenue recovery and to the transmission customer with regard to cost exposure. We therefore find that a monthly comparison of embedded and incremental cost is appropriate. This method retains "higher of " pricing for customers, but does not subject transmission providers to open-ended liability for refunds and otherwise should make planning redispatch service

[639] Id. at 61,483.

more attractive for transmission providers to provide. Further, given that redispatch often occurs only in selected time periods within a year (e.g., during the peak season, shoulder months, etc.), it is just and reasonable to allow the transmission provider to perform the higher of calculation in each month when the service is provided, not spread those costs over the entire year.

1026. For purposes of calculating planning redispatch charges, incremental costs shall include fuel or purchase power costs caused by ramping up generator(s) at the point of delivery and ramping down generator(s) at the point of receipt. Additionally, where applicable, transmission providers may specify in customer service agreements other incremental costs for inclusion in the monthly actual incremental costs, including opportunity costs. Identification and derivation of these costs must be included in the service agreement. We reiterate our existing requirement that all information necessary to calculate and verify opportunity costs must be made available to the transmission customer.[640] We clarify that the actual costs of redispatch need not be determined annually or at the time that the service agreement is executed; rather, actual redispatch cost should be determined on a monthly basis.

1027. With respect to MidAmerican's request to be able to recover the purchase power costs for a customer requiring planning redispatch, we reiterate that transmission

[640] See Order No. 888 at 31,740.

providers are under no obligation to purchase power to provide planning redispatch services. Should the transmission provider take on the obligation to contract with a third party to provide planning redispatch at the customer's request, however, the customer should be obligated to pay the purchase power costs, including any reservation charge for the power. The flow-through of purchase power costs must be negotiated between customers and transmission providers in a stand-alone agreement if the transmission provider agrees to make purchases on the customer's behalf.

1028. The Commission will not adopt proposals suggested by several transmission providers to allow for recovery of the embedded cost transmission rate and the full costs of redispatch. The Commission's "higher of" pricing policy prohibits the transmission provider from charging both embedded costs and incremental costs such as redispatch costs.[641] We reject EEI's assertion that we should adopt such pricing because native load and network customers pay a load ratio share of redispatch costs and the embedded cost transmission rate. Planning redispatch differs from the reliability redispatch for which transmission providers are only obligated to provide network customers with ability to avoid real-time curtailments. Rather, planning redispatch is a means of creating

[641] See Pennsylvania Electric Company, 58 FERC ¶ 61,278, 62,871-75, reh'g denied, 60 FERC ¶ 61,034 (1992), aff'd sub nom. Pennsylvania Electric Co. v. FERC, 11 F.3d 207 (D.C. Cir. 1993); see also Entergy Services, Inc., 71 FERC ¶ 61,139, 61,452 (1995) (regarding the pricing of redispatch service, the Commission stated "[i]t is a well-settled matter that the Commission will not authorize "and" pricing, i.e., embedded cost pricing plus opportunity (incremental) cost pricing.").

additional transmission capacity,[642] not a generation service, and thus planning redispatch is appropriately priced by applying the Commission's "or" pricing policy. We decline to revisit that longstanding policy in this rulemaking.

1029. With respect to concerns that the expansion cost cap was adopted to provide rate certainty to customers over the term of the service,[643] we believe that the modified pricing policy adopted here will continue to provide appropriate certainty to customers, while also allowing transmission providers to recover just and reasonable costs. For customers purchasing the bridge product, the cost of redispatch will be incurred only during the initial term of the service agreement while new facilities are being constructed. During this term, the cost of redispatch service represents a legitimate cost of providing the service and therefore should be fully recoverable under the higher of policy. Although it is true that redispatch costs are difficult to project, and hence create uncertainty for customers, this does not mean that the transmission provider should not be allowed to recover the legitimate and verifiable costs of providing the service. Moreover, if the customer desires greater certainty regarding redispatch costs during this period, it can elect the fixed rate option discussed above and negotiate a fixed redispatch charge with the transmission provider. Once upgrades are constructed, however, the customer will

[642] Order No. 888A at 30,267.

[643] Florida Power & Light Co., 70 FERC ¶ 61,158 at 61,483 (1995).

receive the certainty of paying a fixed rate for transmission costs and, importantly, any expansion cost will be fixed at the time the initial service agreement is signed. Finally, for customers who do not select the bridge product because they do not want to fund upgrades, it would be unreasonable to cap the cost of redispatch at the cost of upgrades. In such an instance, the customer has elected to forego the price certainty that can be gained by funding the upgrades to remove the constraint that is causing the transmission provider to incur redispatch costs.

(D) Standards of Conduct and Planning Redispatch

NOPR Proposal

1030. In the NOPR, the Commission requested comment on the interaction of planning redispatch requirements with the Commission's Standards of Conduct.

Comments

1031. Commenters generally argue that the independent functioning requirement and the information sharing prohibitions under the Standards of Conduct are irreconcilable with the expanded planning redispatch proposal in the NOPR.[644] Southern, TranServ and Progress Energy contend that the planning redispatch option would require close coordination and communication with market participants including the marketing or energy affiliate, which may create confidentiality and Standards of Conduct problems.

[644] E.g., Nevada Companies, Community Power Alliance, Progress Energy, LPPC, Southern, WAPA, and APPA.

For instance, they state that close coordination and sharing of non-public transmission and customer information would be required to determine the generating units that can be redispatched, the impact that planned and forced outages of redispatched generators will have on the availability of transmission service and the transmission line loadings, and the costs of redispatch. Some commenters request that the Commission adopt an exception to the Standards of Conduct to permit communication between transmission providers and marketing and energy affiliates, acting as generation operators, for the transmission provider to instruct the generation operator to vary its generator's output.[645]

1032. MidAmerican suggests that it is unlikely that any communication protocols could be established that would both comply with the Commission's current Standards of Conduct and permit a transmission provider to coordinate with its marketing affiliate employees to arrange planning redispatch. Rather, MidAmerican argues that the transmission customer would have to waive the Standards of Conduct to enable the transmission function employees to share the necessary information with their marketing affiliate counterparts.

1033. Other commenters argue that violations of the Standards of Conduct can be avoided by various means. PPM suggests that publication of redispatch costs similar to ancillary service costs and elimination of case-by-case sharing of information between

[645] E.g., E.ON, Ameren, and APPA.

the transmission provider and the generation operators would avoid Standards of Conduct issues. MidAmerican states that sole reliance upon bilateral agreements with third parties to provide planning redispatch would resolve the need to modify the Standards of Conduct. In their reply comments, Utah Municipals state that they do not believe the Standards of Conduct pose a barrier to provision of planning redispatch since transmission providers redispatch to serve their own loads currently, but that if so the Commission should make small modifications to the standards.

Commission Determination

1034. The Commission does not believe that any changes to its Standards of Conduct are required for transmission providers to implement the planning redispatch provisions adopted in this Final Rule. The information at issue, e.g., generation redispatch cost, is held by the marketing affiliate and there is no prohibition under our Standards of Conduct on the marketing affiliate transferring such information to the transmission provider. The information sharing prohibitions under the Standards of Conduct are "one way," i.e., they restrict only communications of non-public transmission information from the transmission provider to the marketing affiliate, not vice versa. Therefore, the flow of information from marketing affiliates to transmission providers relating to the costs and

availability of generation resources for planning redispatch is not prohibited under the Commission's Standards of Conduct.[646]

1035. We next turn to the flow of information from the transmission provider to the marketing affiliate. Initially, in order for transmission providers to evaluate planning redispatch options, they must identify the impacted transmission facilities, e.g., flowgates, and determine the marketing affiliate's generators that could provide redispatch over those facilities. Transmission providers already have this information to enable them to provide least cost reliability redispatch. However, transmission providers need not provide information regarding the impacted transmission facilities to its marketing affiliates. Rather, in order for transmission providers to evaluate the future availability of redispatch and estimate the costs of redispatch, they need only tell the marketing affiliate which of its generators would be suitable for redispatch, thus identifying those that require study. This sharing of information relating to the marketing affiliate's generation is not prohibited by the Commission's Standards of Conduct.

1036. In addition, the transmission provider may also need to provide its marketing affiliate with transmission-related information from the transmission customer's service request, such as service quantity and term, to determine the required duration and amount of the redispatch required. We find that such information provided from the transmission

[646] 18 CFR 358.5.

provider to the marketing affiliate is not a prohibited transfer of non-public information because such details of the transmission customer's service request are available via OASIS. The only customer transmission request information not readily available via OASIS is the source and sink information.[647] We see no need for the transmission provider to provide such masked source and sink transmission information to its marketing affiliate as part of this redispatch evaluation process. We do not believe that any further information need be provided by the transmission provider to their marketing affiliates to evaluate the generators available for planning redispatch and their costs. Accordingly, we find there is no need to create an exception to the Standards of Conduct for the sharing of this generation-related information and publicly available transmission customer request information.

(E) Attributes of Conditional Firm

NOPR Proposal

1037. In the NOPR, the Commission described conditional firm service as a modified form of point-to-point service that includes non-firm service in a defined number of hours of the year when firm point-to-point service is not available. The Commission proposed that the conditional firm service agreement would identify the conditional curtailment

[647] See Open-Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,456 (1998), reh'g denied, 86 FERC ¶ 61,139, reh'g denied, 87 FERC ¶ 61,382 (1999).

hours and include an annual or monthly cap on those hours. The Commission further proposed that conditional firm service would be curtailed before firm uses until such times as the conditional curtailment hours were exceeded, after which time the service would be treated as firm. The curtailment priority during the conditional period was proposed as the same as secondary network service. The Commission proposed that customers using the conditional firm option would pay the long-term firm point-to-point rate. The Commission also proposed that conditional firm service qualify for rollover rights, provided that it meets the other rollover right conditions proposed in the Final Rule.

(i) General Terms and Conditions

Comments

1038. Most commenters support pricing conditional firm service at the long-term firm OATT rate and no commenter suggested a different pricing method. Nevada Companies and Bonneville state that the customer seeking conditional firm service should pay the actual costs of the study required to provide the number of conditional curtailment hours.

1039. EPSA and AWEA support the following components of the Commission's conditional firm proposal: conditional firm is available only to customers that first request long-term service; it would provide a year round, long-term product that is firm during all hours of the year except at well-defined periods when the transmission

provider is unable to provide the service; and, in all hours that are not conditional, conditional firm service would be treated as any other firm service with the same curtailment priority as long-term firm network and point-to-point rights.

1040. EEI proposes that conditional firm service be firm in periods when firm service is available according to ATC calculations and non-firm, with a monthly non-firm curtailment priority, for periods when firm ATC is not available. CREPC, Exelon and MidAmerican argue that the Commission should not require conditional firm service until all attributes of the service are clearly defined and key implementation issues are resolved, including modification of NAESB and NERC processes. NAESB states that the Commission can reduce the amount of time required to develop OASIS and transmission loading relief protocols by clearly defining the conditional firm service.

1041. In its supplemental comments, EEI states that the Commission should not require all transmission providers to adopt terms and conditions for conditional firm service that are only workable for some systems, e.g., transmission providers in the Western Interconnection using the rated path methodology compared to many in the Eastern Interconnection using a flow-based methodology; rather, the Commission should allow flexibility in the offer of conditional firm service so that transmission providers are not foreclosed from offering the service.

1042. Several commenters state that transmission providers and customers collectively should design the conditional firm service that best accommodates their respective

needs.[648] In supplemental comments, Bonneville states that the transmission provider, not the customer, must determine the conditions to offer in response to a given request. Bonneville also requests that the Commission clarify that there would be no separate queue for conditional firm service.

Commission Determination

1043. The Commission adopts the conditional firm option as a modified form of long-term firm point-to-point service that includes less-than-firm service in a defined number of hours of the year or during defined system conditions when firm point-to-point service is not available. The service can be curtailed solely for reliability reasons during the defined system conditions or defined number of hours. We reject EEI's suggestion to use a monthly non-firm curtailment because it would allow for curtailment of the conditional service for economic reasons.

1044. In this Final Rule, we define the minimum attributes of the conditional firm option rather than allow individual transmission providers to develop any form of service that could conceivably be labeled conditional firm service. The Commission has been considering a conditional firm product and has been discussing it with the industry for some time. In early 2005, the Commission held a technical workshop to

[648] E.g., LPPC Supplemental, PPL Supplemental, Williams Supplemental, Community Power Alliance Supplemental, Entergy Supplemental, and Southern Supplemental.

> work with market participants to develop clear definitions for additional wholesale electric transmission services, e.g., conditional firm transmission service, develop applicable pro forma tariff language that could be included in public utilities' open access transmission tariffs and address attendant issues.[649]

Although commenters in that proceeding stated that the Commission need not require new services in transmission providers' OATTs because they would be voluntarily developed,[650] no individual transmission provider developed new services in response to the workshop. In fact, seemingly, only one transmission provider in the Eastern or Western Interconnection offers a service that is similar to the conditional firm service adopted in this Final Rule.[651]

1045. Since the issuance of the NOPR, the Commission has provided the industry with three formal opportunities to provide comments on implementation of the conditional firm option. The Commission held a technical conference on implementation issues after issuance of the NOPR and held many informal technical discussions with industry

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[649] Potential New Wholesale Transmission Services, Notice of Final Agenda for Technical Workshop, 70 FR 12865 (Mar. 16, 2005).

[650] E.g., Bonneville Workshop Comments at 1-2 (April 13, 2005) (stating that Bonneville believes the result of the workshop "will be the development of one or more new transmission products."), TAPS Workshop Comments at 2 (April 13, 2005) (suggesting that the Commission should invite and consider proposals by individual utilities rather than act by rulemaking).

[651] In the NOPR, the Commission noted PacifiCorp's 2002 modifications to partial interim service. See NOPR at P 319 n.298. PacifiCorp's service is similar to that proposed by EEI with the exception that customers are charged a pro rated long-term firm rate.

representatives. We have taken these steps in order to make the most reasoned decision concerning the minimum attributes of the conditional firm option. These conferences and workshops have been helpful and have informed our decision on the minimum attributes of conditional firm service. As noted herein, although we are establishing certain minimum attributes, we also allow for some measure of flexibility in provision of the service. We will not, however, approve conditional firm as a concept only. Given our past experience, this would provide little benefit to customers seeking to use the service and no certainty to transmission providers seeking to comply with our regulations.

1046. Further, as discussed in more detail below, we disagree that NERC must modify its processes in order to allow transmission providers to implement this product. However, we will allow for a sufficient period of time for development of business practices and tracking mechanisms to implement the product. We recognize that there may be some regional variation in the way transmission providers approach the provision of conditional firm service beyond the minimum attributes that we establish in this Final Rule. Thus, we do not direct that transmission providers work with NAESB to develop business practices for implementation of the conditional firm service. Rather, we direct transmission providers located in the same region to coordinate such development among themselves. We also encourage participation of non-public utility transmission providers in the region and interested transmission customers in the development of these business practices. Public utility transmission providers should make efforts to include these

interested parties in their regional coordination efforts. We direct transmission providers to implement these mechanisms and business practices within **180 days** after the publication of this Final Rule in the Federal Register.

1047. The Commission adopts the proposal in the NOPR that customers using the conditional firm service pay the long-term firm point-to-point rate. We will not allow complete flexibility in defining the conditional firm option as suggested by EEI because such an option could provide a substantially lower quality service for which transmission providers would be able to recover the long-term firm rate. We also reject EEI's proposal that the service be a mix of firm and non-firm periods. We envision the conditional firm option as one in which firm service is available most of the period of a year. EEI seems concerned about tailoring the product to situations where congestion is so acute that the "conditions" require frequent interruptions. We do not believe this concern is well founded. Because a conditional firm customer is obligated to pay the long-term firm point-to-point rate, we assume that few, if any, customers would accept the service in circumstances where the interruptions (or "conditions") are so frequent or pervasive to make the service unattractive.

1048. Finally, we clarify for Bonneville that customers seeking the conditional firm option must first request long-term firm service. When ATC is unavailable, the transmission provider must study the conditional firm option at the customer's request. There is no separate queue for the conditional firm option.

(ii) Specified System Conditions and Conditional Hours

Comments

1049. Several transmission providers state that they cannot accurately predict the conditional curtailment hours because there are too many variables to consider and ATC analysis does not provide this level of granularity.[652] These commenters contend that load flow modeling for a wide range of possible system conditions required to estimate the conditional curtailment hours would be complex, time-consuming and costly. Given this concern, Southern, PNM-TNMP, and MidAmerican state that any conditional firm service should be subject to a "reasonable efforts" standard and not represent a guarantee of service or a binding estimate of conditional curtailment hours from the transmission provider. Progress Energy states that it would be difficult to determine a specific number of hours that firm service is available, given that the industry uses seasonal models. Ameren states that the conditional curtailment hours should be spelled out in the transmission service agreement.

1050. Several commenters state that the transmission provider should provide customers a choice between defined system conditions and conditional curtailment hours.[653] In

[652] E.g., Imperial, Duke, Progress Energy, MidAmerican, PNM-TNMP, Southern, and EEI.

[653] E.g., Barrick Supplemental, Bonneville Supplemental, BP Energy Supplemental, and EPSA and AWEA Supplemental.

supplemental comments, EPSA and AWEA state that neither option should be arbitrarily excluded; rather, they argue that transmission providers should consult with each customer in determining the defined conditions that could form the basis of the conditional firm service. EPSA and AWEA propose that conditional firm should be firm during all hours of the year except in those hours in which a defined contingency occurs, and the transmission provider is actually unable to provide service. EPSA and AWEA also propose that the system impact study should describe the reliability contingency and the transmission service agreement should clearly define the contingency.

1051. EPSA and AWEA state that conditional firm should only be curtailed after all non-firm services are curtailed on the same constrained path during the period of the defined contingency. Finally, AWEA and EPSA state that transmission providers must maintain the committed capacity subject to the defined contingency only, reflect capacity commitments for conditional firm service in their ATC calculations, and be prevented from further curtailing conditional firm service due to load growth after the execution of the initial service agreement.

1052. AWEA proposes that if a service agreement specifies conditional curtailment hours, the transmission provider must provide firm service except in the curtailable hours defined in the service agreement and the service must be treated as firm unless the transmission provider is actually required to curtail transactions to meet reliability requirements and all non-firm transactions have been curtailed. Once the transmission

provider has reached the annual cap on curtailable hours, AWEA argues the customer's service should convert to traditional firm service for the remainder of that annual period.

1053. Utah Municipals reply that transmission providers should be bound by their calculations of the availability of firm service, even if the firm service is not available year-round.

1054. FirstEnergy and Nevada Companies state that monthly caps, as opposed to annual caps of curtailment hours, would be preferable because they provide more information to the customer and are more appropriate for transmission systems with mostly seasonal constraints. According to Nevada Companies, a curtailment based upon the maximum number of hours per year, without taking into account the specific times or conditions for those curtailments, would be unworkable in the context of a seasonal peak system, such as exists with Nevada Companies.

1055. Several commenters support a variation on conditional firm service that would allow a transmission provider to specify either the transmission facilities/elements that may become constrained or the operating conditions that will result in curtailments of a particular conditional firm service.[654] Many of these commenters propose a defined system condition as the trigger for non-firm curtailment of the service rather than the use

[654] E.g., AWEA, EPSA, Project for Sustainable FERC Energy Policy, Santee Cooper, Seattle, Entergy, and LPPC.

of conditional curtailment hours.[655] Entergy and LPPC propose that such curtailments have the same priority as secondary network service. Entergy contends that this service would be superior to the conditional firm service described in the NOPR because it would be more comparable with the service transmission providers make available to network customers and would minimize the risk to other customers who might otherwise bear the cost of inaccurate conditional curtailment hours, as well as disputes between the transmission provider and the transmission customer regarding the number of conditional curtailment hours. Seattle and Santee Cooper suggest that defining the limitations on the service based on operating conditions, with non-binding estimates of hours of curtailment, would lead to more effective and reliable operation of the transmission system that is consistent with regional requirements.

1056. In supplemental comments, Bonneville asserts that the transmission provider should have the option of offering conditional curtailment hours or specified system conditions in order that the transmission provider can make a prudent choice based on available historical system data.

1057. In supplemental comments, TAPS argues that conditional firm service should be limited to 100 hours per year of conditional curtailment, subject to curtailment on the same basis as firm service beyond those hours, and made available to and integrated with

[655] E.g., Santee Cooper, Seattle, Entergy, LPPC, and Nevada Supplemental.

network customers. In TAPS view, this would result in a more efficient use of the grid, provide customers sufficient certainty to sign long-term power purchase contracts and promote transmission construction. TAPS also believes that the customer should have the option of expressing the curtailment restriction on the basis of specified system conditions in the 100-hour range.

1058. In its supplemental comments, Entergy suggests that the Commission allow more flexibility between the contracting parties to identify the conditional nature of the service, i.e., the Commission should not prescribe parameters of the conditional period that may ignore real-time conditions on the transmission provider's system that require a curtailment.

1059. EEI, Duke, and PNM-TNMP object, in their supplemental comments, to specifying system conditions or the maximum number of curtailment hours per year, stating that requiring either would be incompatible with current curtailment procedures and unfairly shift risks of curtailment to other firm customers. EEI, Progress Energy and Duke argue that the service should be curtailable during a particular season, month or other defined period to provide more certainty to the transmission customer and the transmission provider as to when the service is subject to curtailment.

1060. With regard to modeling methods for estimating the conditional curtailment hours, EEI asks the Commission not to require the transmission provider to use a specific methodology to evaluate whether it can provide conditional firm service. Bonneville

argues that transmission providers need flexibility to modify their ATC methodologies to appropriately model the new service and avoid planning obligations to firm up the conditional curtailment hours of a conditional firm reservation. Nevada Companies suggest that the transmission provider use the appropriate seasonal operating case with updated projections to determine the amount of requested service that can be provided without violating reliability criteria.

1061. Ameren argues that when a transmission provider models system contingency events, the events are not interchangeable with a number of hours. According to Ameren, the two measurements will produce different impacts for the transmission system, and the transmission provider should not be required to make both options available at the customer's option. LPPC and Public Power Council state that transmission providers should not be required to limit the number of curtailments on a monthly or yearly basis because of the inherent unpredictability of future transmission constraints. APPA states that using curtailment based on a specified number of hours will cause the transmission provider to overestimate the number of curtailment hours.

1062. NRECA believes that the Commission should allow for regional flexibility in the determination of the parameters of the service and transmission providers should have maximum flexibility to set conditions that use conservative assumptions (e.g., based on the driest weeks of the year, summer or winter peak period constraints). NRECA believes such service should be conditioned on operating conditions as well as with

reference to a number of times of interruption. In contrast, MISO supports the election of a consistent method of curtailment applied to all customers, in order to make the service easier to implement.

1063. Powerex states that conditional firm service should be offered only on paths where curtailment to existing long-term customers is not expected to occur.

Commission Determination

1064. The Commission requires that, when conducting the system impact study for the conditional firm option, the transmission provider shall identify: (1) the specific system condition(s) when conditional curtailment may apply; and (2) the annual number of hours when conditional curtailment may apply. A customer must select either conditions or hours for incorporation into its conditional firm service agreement.

1065. We require the offer of specific system conditions during which conditional curtailment may apply for several reasons. Specified system conditions give certainty to the customer that it will only be conditionally curtailed when forecasted reliability problems actually occur. Transmission providers benefit from this option because they can point to specific constraints on their system and implement a curtailment plan when those transmission elements are constrained. Additionally, designation of specific system conditions may allow for a better fit of the conditional firm service to a specific transmission provider's system. Consider the example of firm service that is not available on a specific system because a transmission line is taken out of service for

maintenance about two weeks a year. The designation of this line as the specific condition for conditional firm service would allow the transmission provider to provide firm service without having to worry if the maintenance on the line takes an extra week. The conditional firm customer has fewer concerns about undue discrimination by the transmission provider and could benefit from maintenance on the line that was finished one week early. Additionally, we note that many commenters representing transmission providers and customers support this approach.

1066. We will require specificity of system conditions. Acceptable system conditions include, but are not limited to, designation of limiting transmission elements, such as a transmission line, substation or flowgate. We do not believe, however, that designation of system load levels, standing alone, would qualify as an acceptable system condition. Rather, load levels would have to be linked to a specific constraint or transmission element that is associated with the request for service, e.g., load levels in a constrained load pocket. Otherwise, the system load level would not be specific to the part of the system over which service is requested and, hence, have no necessary relation to the problems, if any, created by the service being requested. Furthermore, because most system loads experience load growth every year, conditional curtailments would necessarily increase over a multi-year conditional firm service term.

1067. We recognize that modeling of the conditional curtailment hours entails difficulties beyond those encountered in modeling ATC. To address these difficulties we

are allowing flexibility in determining the number of hours. We clarify that we will not require a standardized method of modeling the conditional curtailment hours. We also note that the Commission's examination of modeling methods in the NOPR was not meant to propose one method over another; rather, it was meant to examine possible ways to determine a number of conditional curtailment hours to encourage dialog on the issue. Additionally, we will allow transmission providers to add a risk factor to their calculation of annual curtailment hours to account for forecasting risks. Further, we note that our adoption of the conditional bridge and reassessment products, detailed above, address modeling difficulties by limiting the number of years that a transmission provider must model in determining both the number of hours and future system conditions. Moreover, we clarify that if the customer selects the annual hourly cap option, the transmission provider has the flexibility to conditionally curtail the customer for any reliability reason during those hours, including but not limited to, the system condition(s) identified in the system impact study. Without this flexibility the hourly cap option and the specific system condition option would be indistinguishable with a cap on the number of hours that the system conditions interruption could occur.

1068. We will require annual caps on the number of hours because calculating an annual cap entails less risk for the transmission provider and its existing firm customers than monthly or seasonal caps. While we will not require monthly or seasonal caps, we encourage transmission providers to offer them if they can overcome modeling barriers

because monthly or seasonal caps give more certainty to customers about the particular aspects of their service. Though we allow for flexibility in modeling and determining the number of conditional curtailment hours for a particular service request, we believe that this will have a minimal impact on conditional firm customers. Transmission providers will be allowed to curtail only for reliability purposes and conditional firm customers during conditional curtailment hours will be curtailed only after all point-to-point non-firm customers have been curtailed.

(iii) Conditional Curtailment Priority

Comments

1069. Some commenters agree with the Commission's proposal that conditional firm service should have secondary network curtailment priority during conditional curtailment hours,[656] while others disagree. Bonneville supports the use of the secondary network curtailment priority arguing that customers will value the service more with the secondary network priority, thus increasing the viability of conditional firm service as an alternative to transmission upgrades. EPSA and AWEA argue that conditional firm service during conditional curtailment hours should be curtailed after all non-firm uses. In their reply comments, TDU Systems oppose EPSA and AWEA's position, arguing that secondary network service should have at least as high a priority as conditional firm

[656] E.g., Bonneville, AWEA Reply, and EPSA Reply.

service. In contrast, EEI argues that setting the curtailment priority equal to secondary network service would adversely impact the reliability of firm service by reducing real-time redispatch options and contradict Order No. 888 precedent that provides priority non-firm service only for network customers that pay a load ratio share of system costs.[657] If conditional firm service is implemented, Powerex states that transmission providers should provide data and evidence demonstrating that the rights of existing long-term firm customers will be protected. EEI takes issue with the Commission's proposal to grant conditional firm customers priority non-firm service during conditional curtailment hours because they would pay for long-term use of the grid, stating that all long-term point-to-point customers pay for service on a long-term basis but, unlike network customers, they do not get priority non-firm service.

1070. Commenters address implementation issues related to the Commission's right of first refusal, tagging, tracking, and curtailment priority proposals, as well as other implementation issues implicated in the conditional firm service. Manitoba Hydro, Bonneville and Seattle support the Commission's proposal that conditional firm service would qualify for right of first refusal when firm service becomes available. Several commenters believe that the Commission's proposal with regard to right of first refusal should be refined to allow automatic assignment to conditional firm customers of firm

[657] Citing Order No. 888 at 31,750.

capacity as it becomes available in the short term.[658] Bonneville asserts that prior to implementation of the new service the industry must work with NAESB to develop a communications protocol to either employ automatic assignment or right of first refusal.

1071. Entergy and Exelon state that the standards for implementing transmission loading relief, including the NERC's Interchange Distribution Calculator (IDC), would need modification to allow for curtailment. Specifically, Entergy contends that the Commission should allow time for the IDC to be modified to specify a different curtailment priority for the same transaction depending on the identity of the constraining element. Imperial states that it may take over a year to develop computer software to correctly handle new curtailment priorities during an emergency. Bonneville disagrees and states that conditional firm service does not present unique issues with respect to curtailment and that it would be curtailable during real time like secondary network service.

1072. EEI states that the conditional firm service as currently proposed would conflict with tagging protocols and NERC criteria because there is currently no way to tag service as both firm and non-firm. EEI states that, if conditional firm service is subject to curtailment during a specific period, the tag can identify those periods and curtailments will be implemented in conditional periods and non-conditional periods in accordance

[658] E.g., EEI, EPSA, TranServ, Bonneville, Constellation and Seattle Reply.

with those tags. However, if conditional service is curtailable in a certain number of hours, or when specific conditions occur, the tag cannot be rewritten in a way that will provide for curtailment without personal involvement of balancing authority operators, which could lead to increased curtailments of firm transmission customers.

1073. Xcel states that limiting curtailments to a specified number of hours per year could result in conditional firm service having greater value than firm, while strictly adhering to a maximum number of curtailment hours could potentially conflict with the reliability standards in section 215 of the FPA. NRECA argues that conditional firm service should be subject to pro rata curtailment with all other firm users during non-conditional times.

Commission Determination

1074. We adopt a secondary network curtailment priority to apply for the hours or specific system conditions when conditional firm service is conditional. During non-conditional periods, conditional firm service is subject to pro rata curtailment consistent with curtailment of other long-term firm service. Thus, secondary network service and conditional firm service when it is conditional will share the same curtailment priority. Also, there is no conflict with reliability standards because conditional firm service will be subject to pro rata curtailment with all other firm uses of the system once conditional curtailment hours, if that is the option selected, are exhausted.

1075. The secondary network curtailment priority is appropriate because the customer is paying the long-term firm point-to-point rate and thus should receive the highest non-firm

curtailment priority during the conditional curtailment hours or during specified system conditions. Adoption of this curtailment priority overcomes what could otherwise be significant implementation hurdles. It allows for implementation of the service without changes to existing NERC TLR practices. NERC and members of the industry need not undertake the time-consuming and expensive process of establishing a new curtailment priority that is between firm and non-firm service as some commenters requested. Use of this curtailment priority also avoids attendant decisions relating to the method of curtailment that should apply, i.e., pro rata or transactional curtailment, for a quasi-firm curtailment priority. It is also consistent with existing interruption provisions of the pro forma OATT which provide that secondary service cannot be interrupted for economic reasons.[659] This is consistent with our determination that conditional firm service when it is conditional is curtailable only to maintain reliable operation of the transmission system.

1076. We reject EEI's argument that the curtailment priority for conditional firm service is inconsistent with Commission precedent regarding priority non-firm service only for network customers. EEI's argument is inapposite. Long-term firm point-to-point customers taking fully firm service without the conditional firm option do not need access to priority non-firm service as EEI suggests. They have assurance that their

[659] See pro forma OATT section 14.7.

service will not be interrupted for economic reasons and will only be curtailed on a comparable basis with network service. This would not be the case for conditional firm customers. We also find that EEI has failed to explain the connection between the conditional firm transmission service and the availability of reliability redispatch options, i.e., generators on its system that can ramp up or down in response to a curtailment. We reject Powerex's request that transmission providers be required to show that existing long-term rights are protected. Each addition of a new long-term firm transaction impacts the rights of existing firm customers to some extent.

1077. We disagree with commenters' suggestion that the NERC IDC must be changed to accommodate conditional firm service. We reiterate that we are not creating a new curtailment priority in this Final Rule. We also disagree that new tags that combine a firm and non-firm priority must be developed in order to implement the conditional firm option. The curtailment priority in a tag can be changed ahead of the operating hour based on a near-term forecast of system conditions.[660] We are cognizant that daily and hourly operations to change the tags for conditional firm customers likely involve the need for control room coordination and development of an appropriate tracking process. As the Commission described in the NOPR, new tracking and tagging business practices

[660] For example, in the Eastern Interconnection, tags can be changed up to 35 minutes before the hour in which a TLR event is scheduled. See NERC Standard IRO-006-3, Transmission Loading Relief Procedures – Eastern Interconnection, section 6.2 (Communications and Timing Requirements) at 23-25 (August 2, 2006).

for this service must be developed by each transmission provider. Thus, we are allowing a sufficient period for the development of these business practices, i.e., 180 days from the date of publication of this Final Rule in the Federal Register. As directed above, transmission providers must coordinate with other transmission providers in their regions to develop these tracking and tagging business practices.

1078. Finally, we address requests to allow for automatic assignment of short-term firm point-to-point service to conditional firm customers. We agree that transmission providers must take into account the conditional firm service in evaluating the availability of short-term firm service. Because conditional firm is a long-term firm use of the system, it should not be interrupted prior to short-term firm service. However, short-term firm service reserved prior to the reservation of conditional firm service should maintain priority over conditional firm service in the periods when conditional firm service is conditional, i.e., when specified system conditions exist or conditional curtailment hours apply. Because the assignment proposal meets both of these objectives, we direct transmission providers to assign short-term firm service to conditional firm customers as the service becomes available. Accordingly, we direct transmission providers to work with NAESB to develop the appropriate communications protocols to implement this attribute of conditional firm service. Transmission providers need not implement this requirement until NAESB develops appropriate communications protocols.

(iv) Rollover Rights

Comments

1079. Several commenters support the Commission's proposal that conditional firm service would qualify for rollover rights.[661] Manitoba Hydro, Bonneville and Seattle state that rollover rights are appropriate where the transmission provider does not have an obligation to plan for service to the conditional firm customer during the conditional curtailment hours. Bonneville adds that, in rolling over conditional firm service, the transmission service agreement should allow for no more than the same number of conditional curtailment hours than in the original service agreement and provide for fewer hours of curtailment if system conditions provide for more firm service. If conditional firm service is used as an interim product until transmission is built, APPA contends that rollover rights would be appropriate.

1080. Others argue that rollover rights for conditional firm service are inappropriate.[662] These commenters do not support the granting of rollover rights, nor do they support the designation of conditional firm service as long-term service. In order to accommodate

[661] E.g., AWEA, EPSA, Manitoba Hydro, Bonneville, TranServ, Seattle, and Utah Municipals Reply.

[662] E.g., EEI, FirstEnergy, Ameren, SPP, and TDU Systems Reply.

conditional firm rollover rights, FirstEnergy contends that the transmission provider would be required to model a number of off-peak load flow cases and provide system reinforcements. Ameren states that the number of hours that the service will be available at some future date after the contract expires will not be known at the time the initial contract is executed. EEI adds that estimating conditional curtailment hours for 10 years of service is an impossible task. MISO states that rollover rights would add more complexity to the AFC/ATC calculation process and competition queues. Entergy and EEI state that, while subsequent firm transmission service should not be placed ahead of the conditional firm service, it is appropriate at the time of a rollover request, and perhaps more frequently, to allow the transmission provider to update the conditional firm service parameters in order to take into account load growth and changes in load for prior services.

Commission Determination

1081. The Commission finds that rollover rights are appropriate for point-to-point service that is provided using planning redispatch or conditional firm options and would otherwise be eligible for rollover rights. The following discussion addresses only rollover rights for service that is paired with a transmission provider's biennial reassessment right. While the Commission agrees with commenters that subsequent firm transmission service requests should not be placed ahead of the conditional firm service, we note above our concerns with the modeling requirements and reliability impacts of an

ongoing service that relies upon unchanging curtailment conditions or redispatch requirements. The biennial assessment right, discussed above, addresses the concern expressed by EEI that transmission providers cannot accurately determine conditional curtailment hours or estimate redispatch costs for a ten year service. The biennial review in conjunction with rollover rights allows the transmission provider to update the parameters of the service in order to maintain reliable operations and allows customers to keep their place in the queue ahead of other customers seeking conditional firm, planning redispatch options, or other firm services.

1082. Rollover rights for the reassessment product can provide significant value to the conditional firm customer. A conditional firm customer opting to roll over will retain priority claim to the portion of its service that is firm. For example, if a five-year conditional firm service initially has a 100-hour annual cap on curtailments, but the cap is later reassessed at 150 hours, the rollover right would continue to give the customer first call on all but the 150 hours as against all other subsequent requests for firm service.

1083. We note that a customer taking conditional firm or planning redispatch options as part of a five-year point-to-point service must declare its intent to roll the service over in the fourth year of service, coincident with the second biennial review. Thus, we task transmission providers and customers, in negotiating their service agreement, with coordinating the timing of the biennial review with the deadline for declaring rollover intent. Specifically, customers deciding whether to renew their service should have

information on additional conditions on the service or additional estimated redispatch costs at least 30 days prior to the relevant rollover deadline. i

1084. Additionally, because the biennial review provides the transmission provider with the ability to plan for and maintain system reliably, we will not allow the rollover right to infringe upon this review. Thus, we direct that the transmission provider has a right to review the conditions or redispatch requirements at the end of the first year of a service that has been rolled over, i.e., year six of service, as consistent with a biennial review of service.[663]

(v) Use of Conditional Firm Options in Designating Network Resources

Comments

1085. Several commenters state that the Commission should not modify current OATT requirements for designating network resources to include resources delivered using conditional firm service; otherwise, reliability would be threatened because network customers could lean on the system during conditional periods.[664] They oppose allowing a resource taking conditional firm service to qualify as a network resource when the associated resource is imported by a network customer from an adjacent system. EEI and

[663] Such a review would occur in the first year of a rolled over service if the initial service term was for five years.

[664] E.g., Entergy Supplemental, Southern Supplemental, MISO Supplemental, Community Power Alliance Supplemental, and Powerex Supplemental.

Duke agree with the Commission's NOPR proposal that conditional firm service should not be available to network customers and further assert that a product that includes a non-firm portion is inappropriate for a load-following service like network service. EEI asserts that because the Commission requires that network resources be deliverable on a non-curtailable basis, resources using conditional firm service cannot be designated as a network resource until the maximum conditional curtailment hours have been reached. EEI and Duke contend that establishing a defined period of curtailment for conditional firm service, either seasonal, monthly, or specific dates, eliminates issues with respect to the designation of network resources because a resource using conditional firm service would be eligible for designation for the part of the year when the service was defined as firm. In its reply comments, Duke states that it cannot reliably operate its system if it is required to serve unplanned load when a network resource is undeliverable due to curtailment of conditional firm service.

1086. Other commenters assert that the Commission should create an exception to allow designation of network resources that use conditional firm service.[665] AWEA adds that resources should not lose their designation when transactions are curtailed pursuant to conditional firm service because this is not the way similar resources with special protection systems are treated. Several commenters state that conditional firm service

[665] E.g., AWEA, EPSA, TAPS, APPA, Utah Municipals Reply, and Barrick Reply.

should qualify as a network resource when the associated resource is imported by a network customer.[666] BP Energy adds that more coordination between the two systems with respect to specifying the set of conditions or specific set of hours is required.

1087. Some commenters state that conditional firm service should be made available to network customers because conditional firm service may trump the provision or scheduling of secondary network service and because network customers should have service that is at a minimum equivalent with point-to-point service.[667] These commenters suggest that the Commission could permit network customers to designate a conditional network resource that would be a firm resource for the hours when a comparable conditional firm point-to-point service is firm. In supplemental comments, NRECA and TAPS argue that "on-system" LSEs should be allowed to designate a network resource where transmission is fully firm for all but the limited time each year, e.g., to 100 hours or less, and "off-system" LSEs should be allowed to treat a network resource supported by conditional firm service as a resource on the host system where it takes network service. NRECA believes that if the criteria for both network service resource designations and for the proposed conditional firm service are based on the physical, engineering characteristics of the transmission system, the network customer should be

[666] E.g., Bonneville Supplemental, TDU Systems Supplemental, PPL Supplemental, and BP Energy Supplemental.

[667] E.g., NRECA, TDU Systems, TAPS, and Utah Municipals Reply.

able to designate the resource as deliverable to load on a non-curtailable basis, except for the specified conditions.

1088. In its reply comments, Bonneville states that since secondary network service cannot be purchased on a long-term basis, the Commission should evaluate whether the design and implementation challenges of creating a conditional firm service for network customers can be overcome. Bonneville also states that other options such as seasonal firm and long-term reservation of secondary network service should be explored in order to allow network customers similar access to monthly ATC.

1089. Nevada Companies state that network customers have load service obligations and should always have unconditional firm service, without exception. However, Nevada Companies state that network customers could benefit from a service similar to conditional firm service. According to Nevada Companies, if a network customer desires to deliver its resources to a point of receipt that is not available all seasons of the year, it could procure firm transmission capacity that is available on a seasonal basis for the delivery of a network resource.

1090. Some commenters state that network customers should be permitted to designate as network resources third party power supplies that are supported by the supplier's conditional firm reservation.[668] In supplemental comments, Xcel states that it does not

[668] E.g., APPA Supplemental, EPSA and AWEA Supplemental.

oppose allowing conditional firm to qualify as a network resource, but it should be clear that the service is an exception to the otherwise "firm is firm" policy that requires all firm users to be curtailed pro-rata.

Commission Determination

1091. The Commission will allow conditional firm point-to-point service to qualify as firm service that supports the designation of network resources imported from other control areas. As we explain in more detail in section **Error! Reference source not found.**, the Commission has longstanding limitations on network resources. Network resources cannot be interrupted for economic reasons and third-party transmission arrangements to deliver the resource to the network must be non-interruptible.[669] EEI is incorrect that, under our precedent, a resource must be "noncurtailable" to qualify as a network resource under the OATT. All resources are "curtailable" – e.g., if a unit trips off line, the resource is, by definition, curtailed. Network resources may also be unavailable due to other reasons besides an unplanned unit outage, such as unplanned transmission outages or environmental restrictions. It is appropriate to allow conditional firm service to support the designation of network resources because the conditional firm option only affects the transmission of the resource to the network, not the interruptibility of the generating resource itself. Conditional firm service satisfies the Commission's

[669] Wisconsin Public Power Inc. v. Wisconsin Public Service Corp., 84 FERC ¶ 61,120 at 61,660 (1998) (WPPI).

requirement for the delivery of the resource to the network to be non-interruptible because such transmission service is curtailable only for specific reliability reasons, not economic reasons.

1092. We decline, however, to adopt the conditional firm option for network service. Commenters argue that conditional firm network service should be made available to prevent conditional firm point-to-point service from "trumping" the scheduling of secondary network service and to ensure that network service is at a minimum equivalent to point-to-point service. Concerns regarding conditional firm point-to-point service "trumping" secondary network service would not be resolved by creating conditional firm network service. The "as available" nature of secondary network service will still permit all firm uses of the system, including conditional firm service, to have a higher reservation priority than secondary network service. Creating a conditional firm network service would not change that reservation priority.

1093. Others argue that conditional firm network service should be required in order to ensure that network service is equivalent to point-to-point service. As noted above, however, the two services are not precisely the same, nor were they intended to be identical. In Order No. 888, the Commission attempted to strike a balance between competing interests in designing network and point-to-point transmission services, each service with its own costs and benefits. It is therefore appropriate that we consider the need for conditional firm service in each context. While we conclude that

implementation of conditional firm network service is not necessary to remedy undue discrimination at this time, we note that allowing conditional firm point-to-point service will nonetheless provide substantial benefits to network customers by allowing the designation of network resources delivered to the network from other control areas using conditional firm point-to-point service. Conditional firm point-to-point service will thereby allow network customers to access new alternative power sources. Transmission providers are free to make a filing under FPA section 205 proposing conditional firm network service.

1094. Finally, in light of our conclusions above that conditional firm service satisfies the Commission's requirements for designating network resources because the delivery of the resource to the network is not interruptible for economic reasons, we do not need to adopt a seasonal, monthly or periodic method for determining the conditions under which conditional service may be curtailed as suggested by EEI and others.

b. Proposals for Transparent Redispatch

NOPR Proposal

1095. In the NOPR, the Commission explained that the major focus of this rulemaking was to strengthen the pro forma OATT in order to remedy undue discrimination rather than create new market structures. The Commission stated its intention to retain the use of an OATT to facilitate the development of competitive wholesale markets by reducing

barriers to entry through the control of transmission assets, not impose any particular market structure on the industry.

Comments

1096. Several commenters argue that the Commission should expand the planning redispatch requirements of the pro forma OATT to incorporate third party provision of redispatch and bidding protocols.[670] In reply comments, Transparent Dispatch Advocates submitted a proposal that, among other things, would require transmission providers to (1) post the real-time cost estimate of providing redispatch service from their resources at congested locations, (2) accept offers from third parties to provide redispatch service, and (3) provide real-time redispatch to resolve transmission constraints. Transparent Dispatch Advocates argue that their proposal is consistent with the scope of the rulemaking because it would not require the adoption of LMP markets or other standardization; rather, it would simply provide cost visibility and proper cost assignment of the dispatch decisions made by transmission providers.

1097. In a notice issued on November 15, 2006, the Commission sought further comment on the TDA proposal. The Commission asked, inter alia, about implementation impediments and confidentiality issues related to posting redispatch costs, whether the

[670] See section V.C.1 of this Final Rule for a discussion of comments regarding independent dispatch and spot market development.

TDA proposal was required to remedy undue discrimination, and whether third party participation in redispatch would require market mechanisms.

Commission Determination

1098. The Commission addresses below two distinct parts of the TDA proposal: (1) expansion of transmission provider's real-time reliability redispatch obligation as well as inclusion of third-party resources in provision of redispatch and (2) posting of real-time redispatch costs or prices.[671] The Commission has carefully considered both the TDA proposal and the comments respecting it. We agree with many of the public policy goals articulated by Transparent Dispatch Advocates, such as increasing the transparency of information and increasing the efficient use of existing infrastructure. However, we also agree with many of the commenters that certain aspects of the TDA proposal are unclear and, depending on its interpretation, may require the creation of new services under the pro forma OATT or new market structures. We are particularly cognizant of the arguments of customer groups such as APPA, NRECA and TAPS that the TDA proposal may be difficult to implement, contentious, and may not provide significant benefits to customers. These customers also are concerned that it may detract from other reforms

[671] Transparent Dispatch Advocates' proposal for mandatory coordination agreements between transmission providers for provision of redispatch service is addressed in section V.C.1 of this Final Rule.

considered in this proceeding that they believe provide greater benefits, such as transmission planning reform.

1099. After considering the views of all the parties, the Commission has sought to strike a reasonable balance between the positions of the commenters. On the one hand, we adopt certain reforms that will provide additional information regarding redispatch costs in a manner that benefits consumers. On the other hand, we will not adopt the portions of the TDA proposal that would require the creation of new services under the pro forma OATT or new market structures. We do not believe that such fundamental changes are necessary or appropriate at this time, nor do we have an adequate record upon which to adopt them.

1100. Specifically, the Commission declines to adopt the TDA proposal to expand transmission providers' real-time reliability redispatch obligations and incorporate third party bids into redispatch. As discussed in detail above, transmission providers will continue to have an obligation to perform reliability redispatch for network customers and provide the planning redispatch described above for point-to-point customers. Transmission providers will not be required, as Transparent Dispatch Advocates request, to incorporate third party resources when providing reliability redispatch or evaluating planning redispatch options for point-to-point or network transmission service. We will, however, institute a posting requirement so that the actual costs of redispatch under existing and future redispatch agreements is made transparent to potential customers.

While we will not require posting of a real-time estimate of redispatch prices as proposed by Transparent Dispatch Advocates, the Commission concludes that the posting requirement required herein will provide important information regarding the costs of redispatch without revealing confidential information that might harm existing markets.

(1) Expansion of Reliability Redispatch Obligation and Inclusion of Third Party Resources

Comments

1101. In reply comments filed September 20, 2006, Transparent Dispatch Advocates argue that the Commission must bring transparency to the dispatch function to make redispatch effective and fair and to thereby remedy the potential for discriminatory provision of transmission service. Transparent Dispatch Advocates assert that the Commission should require each transmission provider to publish a "dynamic real-time value of what it would charge to provide redispatch service at specified congestion locations within the transmission provider's system and at specified flowgates at the border of the transmission provider's system."[672] Transparent Dispatch Advocates contend that the publication of this data would: allow customers to assess available real-time redispatch options; allow customers to access redispatch at actual costs; allow customers to predict with reasonable certainty the costs of redispatch; allow all resource

[672] Transparent Dispatch Advocates Reply at 5.

owners to voluntarily offer redispatch solutions and be properly compensated for their efforts; and over time, support long-term transmission service.

1102. In reply comments, Transparent Dispatch Advocates further request adoption of rules that would either require the transmission provider to account for independent, third party resources in its control area in establishing redispatch costs, or allow independent resources to post real-time, cost-based price and quantity bids for redispatch plus the resource's impact on the constraint on the transmission provider's OASIS. Transparent Dispatch Advocates state that the published redispatch values would be cost-based in non-market environments.

1103. On November 3, 2006, a summary of, and frequently asked questions regarding, the TDA proposal (TDA Summary) was attached to comments filed by San Diego G&E in response to the October 12 Technical Conference and in support of the TDA proposal. In the TDA Summary, Transparent Dispatch Advocates assert that the Commission need only revise the existing redispatch provisions of the pro forma OATT to require posting by the transmission providers of the nature of congestion at pre-designated flowgates and data concerning the response required to relieve congestion. Additionally, the TDA Summary states that the transmission provider would have no obligation to provide for real-time redispatch from its own or affiliated generation; rather, all generators wishing to provide redispatch could volunteer to submit bids. Transparent Dispatch Advocates state that these bids could be either market or cost based depending on whether the bidder has

market-based rates within the control area. The transmission provider would be obligated to evaluate the bids, publish the price for redispatch, and call on generators to provide the requested redispatch in real time. Transparent Dispatch Advocates suggest that transmission providers calculate the price for redispatch by taking the difference between bids received by those generators that the transmission provider would call upon to increase output (i.e., to redispatch) and the costs the transmission provider otherwise would have paid the generator whose output is lowered to relieve the constraint. Transparent Dispatch Advocates contend that their proposal differs from LMP markets because, while LMP sets system-wide clearing prices, their transparent redispatch proposal would apply only at selected flowgates and only with respect to those transacting at those flowgates.

1104. On December 15, 2006, in supplemental comments filed in response to the Commission's November 15 Notice asking for comment on the TDA proposal, Transparent Dispatch Advocates sought to clarify their proposal. Transparent Dispatch Advocates propose that the Commission impose upon transmission providers an obligation to do the following: provide reliability redispatch to point-to-point customers in real-time for comparable treatment to that currently provided to network customers and native load; consider their own resources, network resources, and offers from non-network resources in providing least cost redispatch in real-time; and, publish real-time information about the cost of redispatch (including the prices submitted by non-network

resources) on its OASIS site on a frequent and timely basis. In their supplemental comments, Transparent Dispatch Advocates propose a different method for calculating redispatch prices using the difference between the cost of the generation raised and the pre-redispatch transmission provider's system-wide marginal cost (e.g., system lambda). Transparent Dispatch Advocates further propose that point-to-point redispatch customers taking this service would not be subject to curtailment along with other firm customers in accordance with the current OATT curtailment rules. Transparent Dispatch Advocates argue that their modified proposal would facilitate comparable access to redispatch service and ensure that the existing redispatch provisions of the OATT can be made effective.

1105. Several parties offer comments in support of the TDA redispatch proposal.[673] Constellation encourages the Commission to fully consider the TDA proposal in the appropriate context, whether in this docket or in a separate proceeding. California Commission states that a movement of OATT policy in the direction implied by the TDA proposal is necessary to improve efficiency of generation and transmission investment. BP Energy believes that a redispatch mechanism is necessary to minimize aggregate consumer costs and make redispatch equally available to all participants. PPM supports

[673] E.g., EPSA and AWEA Supplemental, Constellation Supplemental, California Commission Supplemental, PPL Supplemental, BP Energy Supplemental, PPM, and San Diego G&E.

the TDA proposal noting that it would provide sufficient cost certainty for both the transmission provider and the customer and make more efficient use of the existing grid without impacting reliability. Although it opposed the proposal initially, MISO states that it now cautiously supports the TDA redispatch proposal, provided that RTOs do not bear an inappropriate share of costs to modify information technology systems.

1106. Many commenters oppose the TDA proposal stating that the record in this proceeding does not warrant implementing such a complex and uncertain proposal which imposes significant risks, costs and burdens on transmission providers and their native load customers.[674] Public Power Council, Southern, and NRECA do not believe that the Commission should adopt the TDA proposal without an analysis of costs and benefits and note that no party has provided any such analysis. OG&E and Public Power Council state that the costs of congestion likely vary greatly by region and argue that Transparent Dispatch Advocates have provided no evidence that their industry-wide solution solves potential regional redispatch problems.

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[674] E.g., LPPC Supplemental, Community Power Alliance Supplemental, Public Power Council Supplemental, Pacific Coast Parties Supplemental, EEI Supplemental, Duke Supplemental, Southern Supplemental, Southwest Utilities Supplemental, South Carolina E&G Supplemental, Ameren Supplemental, Alabama Commission Supplemental, Florida Commission Supplemental, Georgia Commission Supplemental, North Carolina Commission Supplemental, South Carolina Regulatory Staff, and SEARUC Supplemental.

1107. Several state commissions oppose adoption of the TDA proposal or urge the Commission to impose significant conditions on the proposal to protect retail customers.[675] SEARUC, Alabama Commission, Florida Commission, Georgia Commission, North Carolina Commission and South Carolina Regulatory Staff express concern that the TDA proposal would make competitively sensitive information available to the public on an inconsistent basis, compel the provision of additional services that risk increasing retail costs, harm reliable service to retail ratepayers that state commissions are obligated by state laws to protect, impose administrative difficulties and excessive implementation costs, and compel states or regions to change current practices or market structures in contradiction of EPAct 2005. SEARUC asks the Commission to make clear that implementation of a proposal targeted at enhancing transparency will not result in a federally imposed change in economic dispatch practices or lessen the amount of firm capacity available for service to native load customers. SEARUC also expresses concern regarding the imposition of incremental costs upon retail ratepayers without prior state approval or the implementation of any type of process or organization that has not been approved by state regulators as cost effective for retail customers. SEARUC opposes the mandatory use of LMP or LMP-like pricing, congestion management approach or

[675] E.g., Alabama Commission Supplemental, Florida Commission Supplemental, Georgia Commission Supplemental, North Carolina Commission Supplemental, South Carolina Regulatory Staff, and SEARUC Supplemental.

organized wholesale market structure without prior state endorsement; and the mandatory posting of competitively sensitive, generation plant-specific costs or price information.

1108. Georgia Commission states that radical restructuring is not necessary to achieve the goals stated by the Commission in the NOPR. Alabama Commission, Georgia Commission and South Carolina Regulatory Staff state that analyses associated with potential implementation of new market structures in the Southeast have demonstrated that the implementation costs associated with such structures vastly outweigh the benefits. North Carolina Commission argues that the TDA proposal fails to comply with the Commission's directive in the NOI. In its view, the Commission intended to focus in this proceeding on specific problems that continue to exist and targeted remedies.

1109. North Carolina Commission states that the Transparent Dispatch Advocates' reply comments incorrectly equate the use of redispatch for economic purposes pursuant to 13.5 of the pro forma OATT with its use for reliability purposes. North Carolina Commission maintains that these services are not comparable, and thus the use of redispatch for reliability purposes does not justify requiring a transmission provider to provide it for economic purposes. North Carolina Commission asserts that implementation of the TDA proposal would result in substantial benefits accruing to PJM without commensurate benefits to non-RTO areas. North Carolina Commission, Southwest Utilities and Southern argue that the costs of implementing the proposal are

not justified by any potential efficiency benefits and thus there is a compelling reason to reject the TDA proposal.

1110. Several parties argue that the TDA proposal represents a move toward Standard Market Design (SMD).[676] Alabama Commission, Georgia Commission and North Carolina Commission submit that the TDA proposal shares characteristics with the centralized dispatch and LMP proposals advanced in the SMD proceeding and thus conflict with state commission jurisdiction in much the same manner as the SMD proposal. Georgia Commission and others assert that the only difference between the SMD proposal and TDA proposal is that the TDA proposal would require transmission providers, but not third party merchants, to make their costs transparent.[677] NRECA believes that a real-time pricing scheme based on some value other than actual costs constitutes the creation of a new product and an organized, bid-based market in regions that have not adopted such market structures. NRECA contends that it would be politically unacceptable to reform the OATT in a manner that necessitates the formation of regional bid-based markets in non-RTO areas.

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[676] Commenters reference a proposal in a proceeding terminated by the Commission. See Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, 67 FR 55454 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2003), terminated by, 112 FERC ¶ 61, 073 (2005).

[677] E.g., Community Power Alliance Supplemental, and Entergy Supplemental.

1111. In contrast, California Commission supports the TDA proposal to the effect that transmission providers should be required to post redispatch cost information and to provide real-time redispatch. In supplemental comments, California Commission asserts that this effort is needed to prevent undue discrimination, for improved efficiency of generation and transmission investment and to improve the efficiency, transparency and openness of redispatch, and transmission access generally.

1112. Some commenters argue that the TDA proposal is necessary to remedy undue discrimination.[678] Others disagree.[679] Transparent Dispatch Advocates contend that making real-time economic dispatch available to "non-network transmission customers" is necessary to remedy undue discrimination against those customers as compared with network customers. In their supplemental comments, EPSA and AWEA state that the TDA proposal is necessary to remedy the same undue discrimination targeted by the NOPR proposal pertaining to planning redispatch service. PPL suggests that the TDA proposal may permit transmission customers to benefit from redispatch, which

[678] EPSA and AWEA Supplemental, BP Energy Supplemental, California Commission Supplemental,

[679] E.g., LPPC Supplemental, Community Power Alliance Supplemental, Public Power Council Supplemental, Pacific Coast Parties Supplemental, EEI Supplemental, Duke Supplemental, South Carolina E&G Supplemental, Ameren Supplemental, North Carolina Commission Supplemental, South Carolina Regulatory Staff Supplemental, and North Carolina Commission Supplemental.

transmission owners in non-RTO areas now employ to benefit themselves or their native load customers.

1113. A number of commenters assert that neither the record nor Transparent Dispatch Advocates present evidence of discriminatory treatment of transmission customers with regard to transparent redispatch.[680] South Carolina E&G asserts that implementation of the TDA proposal should not be unjustifiably forced onto individual transmission providers given that there is no demonstration that there is a problem. MidAmerican and Progress Energy and others argue that unsupported assertions of undue discrimination are insufficient to support the TDA proposal. These commenters argue that pursuant to the recent National Fuel decision, the courts would likely require the Commission to overcome substantial hurdles in order to adopt the TDA proposal based on theoretical assertions of undue discrimination.[681] These commenters contend that the National Fuel case would likely require the Commission to demonstrate how potential undue discrimination justifies a costly redispatch proposal, why section 206 rights are

[680] E.g., LPPC Supplemental, Community Power Alliance Supplemental, Public Power Council Supplemental, Pacific Coast Parties Supplemental, EEI Supplemental, Duke Supplemental, MidAmerican and Progress Energy Supplemental, South Carolina E&G Supplemental, Ameren Supplemental, North Carolina Commission Supplemental, North Carolina Commission Staff Supplemental, and North Carolina Commission Supplemental.

[681] E.g., Entergy Supplemental, LPPC Supplemental, Public Power Council Supplemental, and OG&E Supplemental.

insufficient to ensure redispatch is comparably provided, and why the comparability findings of Order No. 888 are no longer sufficient.

1114. In response to assertions that utilities routinely redispatch to meet electric load, LPPC argues that there is nothing discriminatory about a vertically integrated utility's use of its own nonjurisdictional generation to support bundled sales service. LPPC states that the use of generation first to serve native load has been the fundamental operating principal for jurisdictional and nonjurisdictional utilities for decades, and certainly under Order No. 888. LPPC concludes that this is not a problem calling for Commission attention. In response to assertions that TLRs are discriminatory, Duke notes that neither the Transparent Dispatch Advocates nor any other commenter has provided an analysis of the scope, location and magnitude of the TLR problem.

1115. Many commenters contend that the TDA proposal is ambiguous, insufficiently developed or marked by inconsistencies.[682] Pacific Coast Parties argue that the TDA proposal is too sweeping and contains too many uncertainties to allow for meaningful comment. Southwest Utilities believe that it would be premature for the Commission to adopt the TDA proposal without further development, comment, discussion and input

[682] E.g., Pacific Coast Parties Supplemental, Southwest Utilities Supplemental, Entergy Supplemental, EEI Supplemental, PPL Supplemental, Public Power Council Supplemental, Florida Commission Supplemental, SEARUC Supplemental, Progress Energy and MidAmerican Supplemental, APPA Supplemental, NRECA Supplemental, and TAPS Supplemental.

from affected electric industry stakeholders. PPL and Xcel believes that the Commission needs to better define the proposed new service and allow comment on the service before detailed tariff language is developed to implement this proposed new service. Public Power Council contends that, although the proposal appears to seek only the posting of information, in reality, Transparent Dispatch Advocates ask that the Commission require reciprocal redispatch coordination. Public Power Council also argues that the TDA proposal is silent or ambiguous concerning critical issues associated with implementation; the proposal fails to explain the "cost" at which transmission providers would offer redispatch or the price, terms, and conditions of such a transaction.

1116. Several parties refer to seeming discrepancies between Transparent Dispatch Advocates' explanations of the proposal and question whether the TDA proposal entails cost-based or market-based bidding.[683] APPA notes that Transparent Dispatch Advocates state in reply comments that effective redispatch service must reflect actual costs. APPA adds that the TDA Summary, in contrast, provides that any generator with market-based rate authority in the transmission provider's control area could charge a market-based price for generation offered for redispatch service. LPPC, TDU Systems, TAPS, APPA and NRECA express concern about allowing redispatch providers to bid under market-based rate authority. These commenters argue that reliance on existing market-based rate

[683] E.g., Progress Energy and MidAmerican Supplemental, APPA Supplemental, NRECA Supplemental, and TAPS Supplemental.

authority to support redispatch offers no protection against the exercise of market power, given the high concentration of transmission provider-owned generation within its control area. If the Commission adopts the TDA proposal, APPA asserts that the Commission should limit all sellers of generation used for redispatch service to cost-based bids and require all parties to provide cost information.

1117. In supplemental comments, EEI and Public Power Council assert that the Commission in seeking comment on the TDA proposal has not proposed a rule with sufficient clarity to allow meaningful comment and, therefore, it would be inappropriate to adopt the TDA proposal based on this proceeding's record. Pacific Coast Parties add that the Commission cannot adopt the TDA proposal based on the sparse record in this proceeding. MidAmerican and Progress Energy contend that the Commission's notice here does not satisfy Administrative Procedure Act requirements for public notice and comments on the TDA proposal. In their view, the Commission must initiate a separate rulemaking proceeding to evaluate the TDA proposal.

1118. Progress Energy and MidAmerican assert that, under the current pro forma OATT, redispatch is based on a "careful" evaluation of the reliability and cost impacts of using redispatch on a long-term basis and thus the transmission provider is able to serve transmission customers and wholesale load-serving obligations at least cost. In their view, the transmission provider's retail and wholesale customers would absorb the costs

to serve transmission customers that obtain the forced real-time redispatch under the TDA proposal.

1119. Community Power Alliance, North Carolina Commission, Progress Energy and MidAmerican contend that native load customers would be harmed by a requirement that transmission providers sell their excess generation to redispatch customers. They state that such a requirement would prevent or reduce the sale of generation in competitive markets and that these market sales would otherwise reduce costs to native load customers. Moreover, where the transmission provider is required to redispatch its own generation, Progress Energy and MidAmerican argue that Transparent Dispatch Advocates' proposed redispatch would either use more expensive units or cause the transmission providers to lose the opportunity to make higher valued sales, which also increases costs for native load customers.

1120. In supplemental comments, E.ON, Progress Energy and MidAmerican assert that some generators face limits with regard to the amount of time that they are allowed to operate due to air emissions caps and maintenance schedules. They contend that the TDA proposal could cause allowable run time to be "used up" prior to the time that the generator has fulfilled its planned native load obligation, thus requiring that the transmission provider resort to alternative, likely more expensive, power supplies for these obligations.

1121. Several parties assert that Transparent Dispatch Advocates' proposal to substitute redispatch for transmission upgrades will depress transmission investment.[684] LPPC argues that Transparent Dispatch Advocates' proposal conflicts with the Commission's policy of promoting transmission infrastructure development. NRECA states that, to the extent that redispatch is required to fulfill long-term point-to-point service on a particular transmission providers' system, such providers have failed to meet their obligations under the existing OATT to plan and expand the system for those transmission customers' long-term needs. NRECA envisions redispatch customers potentially requesting "ever more convoluted" dispatch rules in order to avoid transmission upgrades. NRECA prefers better enforcement of section 15.4 of the OATT in conjunction with a more open and inclusive planning process. TAPS argues that transmission providers will profit from market-based prices for redispatch and will be discouraged from transmission expansion. TAPS contends that PJM has conceded that LMP signals have proven insufficient to create a robust grid. In TAPS view, this counters Transparent Dispatch Advocates claims that their proposal will reveal the value of transmission upgrades and encourage investment.

[684] E.g., LPPC Supplemental, TAPS Supplemental, NRECA Supplemental, Southern Supplemental, South Carolina E&G Supplemental, and E.ON Supplemental.

1122. Several commenters submit that the TDA proposal raises Standards of Conduct issues.[685] They argue that requiring the TDA proposal would complicate if not undermine the functional separation and information sharing policies of the Standards of Conduct because the transmission function would be performing merchant, or at least merchant-related, functions. According to Community Power Alliance, the requirement that transmission providers allow merchant generators to offer to sell generation to alleviate constraints in order that other customers' transactions could flow would violate Standards of Conduct.

1123. TAPS argues that accurately forecasting the price of long-term firm service may be difficult and thus the TDA proposal would not provide adequate levels of certainty to facilitate long-term service.

1124. Mark Lively asserts that the TDA proposal fails to address other types of redispatch, including loop flow, reactive power, Inadvertent Interchange and intra-hour interchange, and as such will result in suboptimal operation of the network.

1125. OG&E questions whether the TDA proposal would apply to RTOs but if so, OG&E argues that the proposal should be rejected. OG&E contends that the Commission explained in Order No. 2000 that congestion management is a regional

[685] E.g., Nevada Companies Supplemental, Community Power Alliance Supplemental, Southwest Utilities Supplemental, and Southern Supplemental.

function and that the TDA proposal should not apply to a transmission provider located within an RTO.

1126. In supplemental comments, Transparent Dispatch Advocates contend that the transparent dispatch proposal would not involve the establishment of organized markets of any sort; rather, it simply would require the posting of redispatch costs. Transparent Dispatch Advocates state that the proposal only requires the consideration by the transmission provider of additional price data from non-network resources and minimal adjustments in transmission provider's reporting systems.

1127. Several parties disagree with Transparent Dispatch Advocates and argue that the proposal would require the establishment and operation of markets by transmission providers.[686] APPA and TDU Systems assert that under the TDA proposal transmission providers would select bids, from among a variety of affiliated and unaffiliated resources, that most effectively relieve constraints. Community Power Alliance, Georgia Commission, Southern and Entergy assert that the TDA proposal would result in the establishment of formal LMP markets in non-RTO/ISO areas, or at least start down the "slippery slope" to LMP markets. Community Power Alliance and Entergy contend that adoption of the TDA proposal is in conflict with the purpose of the rulemaking as stated

[686] E.g., APPA Supplemental, LPPC Supplemental, TDU Systems Supplemental, NRECA Supplemental, Progress Energy and MidAmerican Supplemental, Southern Supplemental, Duke Supplemental, OG&E Supplemental, Georgia Commission Supplemental, and North Carolina Commission Supplemental.

in the NOPR and Congress' focus on protecting native load and ensuring reliability in EPAct 2005.

1128. APPA argues that the implementation of the TDA proposal would require the following: designation and posting by the transmission provider of chosen flowgates; posting by the transmission provider of the desired characteristics of generation or demand-side responses that could alleviate such constraints; posting by the transmission provider of historical redispatch costs; resolution of whether public utility transmission providers can be required to provide generation resources for redispatch; resolution of whether transmission providers would be discriminated against if they were not permitted to charge market-based rates; administration by the transmission provider of short-term (daily or hourly) market for redispatch, notwithstanding a conflict of interest between the transmission provider's market-making and market-participant roles and possibly third-party monitoring of market administration.

1129. APPA, Xcel, North Carolina Commission, and NRECA raise concerns over the costs of establishing and administering redispatch markets and systems, including the costs of hardware, software, communication systems, billing and reporting systems. North Carolina Commission submits that the costs of implementing the TDA proposal would be substantial because there are no current practices or rules on which to model structures for the TDA proposal. Other commenters similarly assert that the TDA proposal would impose significant administrative burdens and expenses on transmission

providers, especially if an independent entity were required for implementation, and that most of these costs would be shifted to native load customers.[687] Xcel argues that redispatch cannot be cost-effectively managed unless done within the context of a regional Day 2 energy market.

1130. NRECA asserts that transmission providers would need an enormous amount of data, including resource status, marginal generation costs, start up costs, ramp rates, and environmental costs of operation, to redispatch resources. NRECA asserts that the allocation of redispatch costs for multiple customers taking redispatch may be difficult.

1131. Xcel, APPA, and TDU Systems assert that the TDA proposal would not address concerns about subjective redispatch decisions by transmission providers. TDU Systems argue that the proposal would allow for the functional equivalent of an RTO market, without a market administrator that satisfies the independence criteria of Order No. 2000 or Order No. 888. APPA asserts that posting of information concerning the nature of congestion at designated flowgates would be followed by differences of opinion as to how the dispatch entity is exercising its judgment in calculating the costs and in redispatching resources.

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[687] E.g., Community Power Alliance Supplemental, Southwest Utilities Supplemental, Florida Commission Supplemental, Ameren Supplemental, and Entergy Supplemental.

1132. Southwest Utilities and Southern assert that the proposal raises significant questions regarding commercial, operational, economic, and compliance issues that remain unanswered. For example, Southwest Utilities argue that it would appear that under the TDA proposal a transmission provider accepting a third party bid would be required to assume the commercial obligation, including credit risk associated with the bid and the posting of collateral, and would execute the contract with the third party bidder under currently unspecified terms and conditions. Southwest Utilities and Southern further argue that the proposal fails to resolve how operational and economic liability to the redispatch customer would be impacted in the event of non-performance by a third party supplier. Southwest Utilities also assert that it is unclear whether the TDA proposal could function within the rated path/contract path model of much of the Western Interconnection.

1133. Many parties argue that implementation of the TDA proposal would raise jurisdictional issues.[688] Community Power Alliance, South Carolina E&G, Progress Energy, MidAmerican and Southern assert that the TDA proposal conflicts with state and federal laws in that it forces transmission providers to use generation (that was built, dedicated and dispatched to serve retail and wholesale customers at least cost) to serve

[688] E.g., APPA Supplemental, LPPC Supplemental, Community Power Alliance Supplemental, South Carolina E&G Supplemental, Progress Energy and MidAmerican Supplemental, and Southern Supplemental.

other wholesale suppliers and customers. Community Power Alliance argues that states, not the Commission, have authority to regulate how utilities dispatch generation and procure resources. Further, Community Power Alliance asserts that requiring utilities to establish platforms for third-party generators' offers would convert the transmission function into a generation procurement function, violating the scope of the Commission's jurisdiction. Southern, LPPC and North Carolina Commission add that the TDA proposal would be in violation of section 201 of the FPA that expressly limits the Commission's jurisdiction to matters which are not subject to regulation by the States. Southern further asserts that this is made clearer by the exclusion in section 201 of "facilities used for the generation of electric energy" from the Commission's jurisdiction. Southern contends that mandated cost-based sales would also constitute an unlawful taking of private property under the Fifth Amendment of the Constitution.

1134. LPPC states that Transparent Dispatch Advocates seek to reason around section 201 of the FPA in arguing that redispatch "does not involve the sale of electricity for re-sale or consumption; it involves the provision of a service to support transmission service."[689] LPPC counters that, in redispatch, generation is used instead of transmission service rather than in support of transmission service. North Carolina Commission, LPPC and APPA argue that the courts have previously rejected Commission attempts to

[689] Transparent Dispatch Advocates Reply at 17.

extend regulation to matters specifically excluded, statutorily, from regulation on the ground that they are the functional equivalent of a jurisdictional service.[690] LPPC also asserts that section 217 of the FPA specifies that utilities have a right to use their transmission facilities on a priority basis in order to meet their core service obligations.

1135. North Carolina Commission asserts that in Order No. 888 the Commission interpreted its authority under sections 205 and 206 of the FPA to include the effect the Rule may have over generation facilities because preventing undue discrimination is one of the matters specifically provided for in Part II. North Carolina Commission argues that California Independent System Operator v. FERC,[691] however, establishes limits on how broadly sections 205 and 206 can be interpreted. North Carolina Commission contends that sections 205 and 206 historically have been interpreted to apply to the rates for wholesale sales and purchases, rather than to the underlying generating facilities. As a result, North Carolina Commission argues that the adoption of the TDA proposal could not be justified under these provisions of the FPA.

Commission Determination

1136. The Commission agrees with the Transparent Dispatch Advocates proponents that greater transparency of reliability redispatch information can provide benefits to

[690] Citing Northwest Pipeline Corp. v. FERC, 905 F.2d 1403, 1410-11 (10th Cir. 1990); Detroit Edison Co. v. FERC, 334 F.3d 48, 54-55 (D.C. Cir. 2003).

[691] 372 F.3d 395 (D.C. Cir. 2004).

consumers, as well as increase efficient use of the existing transmission grid. We are therefore adopting certain reforms, as explained in the section below, that will increase the availability and transparency of redispatch costs. However, we are adopting these reforms in the context of the existing obligation to provide network and point-to-point transmission service under the pro forma OATT. We will not adopt the portion of TDA proposal that would require the creation of new services or any broader market reforms.

1137. The TDA proposal has generated controversy for several reasons, including the lack of clarity in the proposal, certain inconsistencies that appear in Transparent Dispatch Advocates' various submissions, and concerns that Transparent Dispatch Advocates' true intent is to restructure bilateral markets. We believe that many of the concerns regarding the TDA proposal are overstated, but we do agree that it lacks clarity and consistency in many important respects. For example, it is not clear whether the proposed service would be available to all customers, any point-to-point customer including those taking non-firm service, or solely to long-term firm point-to-point customers.[692] Additionally, while Transparent Dispatch Advocates contend that "the one step" required of the Commission

[692] Compare Transparent Dispatch Advocates Supplemental at 2 n.4 (stating that the proposed service would supplement the existing OATT requirement to provide redispatch to long-term firm point-to-point customers) and Transparent Dispatch Advocates Supplemental at 5 (discussing the proposal as a remedy for undue discrimination against firm point-to-point customers) with Transparent Dispatch Advocates Supplemental at 14-15 (demonstrating the redispatch pricing mechanism for a non-firm transaction).

is to implement a redispatch cost posting requirement,[693] the TDA proposal also would require the Commission to expand the current redispatch obligations under the pro forma OATT and adopt complex settlement mechanisms to account for third party redispatch. The different TDA proposals also vary as compared with each other. For instance, the TDA Summary states that transmission providers would not be obligated to provide their resources for real-time redispatch, but the Transparent Dispatch Advocates Supplemental Comments make clear that the transmission provider would be obligated to use its own (or affiliated) resources to provide this redispatch.

1138. We first address the contention of Transparent Dispatch Advocates that the real-time reliability redispatch obligation of transmission providers must be extended to "non-network transmission customers" to remedy undue discrimination. We disagree. In order to remedy undue discrimination, we have made changes to the pro forma OATT to implement a new conditional firm option for point-to-point service and we make changes to the existing planning redispatch obligation. However, Transparent Dispatch Advocates have failed to show that the unavailability of reliability redispatch for point-to-point transmission customers amounts to undue discrimination. Order No. 888 provided for reliability redispatch for network customers but not for firm point-to-point

[693] Transparent Dispatch Advocates Reply at 18.

customers.[694] There is a good reason for this distinction. The pro forma OATT requires network customers to make their generation resources available to the transmission provider to provide reliability redispatch to maintain the reliability of service to both native load and network customers. There is no corresponding obligation on point-to-point customers to make their generation resources available to provide reliability redispatch. Therefore, the two services are not comparable in this respect, which is why reliability redispatch service was not required for point-to-point customers. However, if a reliability problem does arise, any curtailment of firm point-to-point transmission service must be on a nondiscriminatory and pro rata basis with the treatment of network service

[694] See pro forma OATT section 33.2; see also Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,168 (1998) ("redispatch will be utilized to avoid the curtailment of firm point-to-point services, a requirement that is not imposed under the pro forma tariff."); Mid-Continent Area Power Pool, 87 FERC ¶ 61,190 at 61,726-27 (1999) (finding no obligation to offer reliability redispatch to point-to-point customers and no obligation for point-to-point customers to participate in reliability redispatch).

and native load customers.[695] The Commission has found that this treatment meets the comparability requirements enunciated in Order No. 888.[696]

1139. Next, we also decline to adopt a requirement for transmission providers to incorporate offers to redispatch from third parties into their reliability redispatch or planning redispatch. Mandatory inclusion of third party offers is not necessary to remedy undue discrimination. The pro forma OATT obligates transmission providers to use their resources to provide, where available consistent with reliability, redispatch service because they do so when serving their native load customers. Third party generators do not have this obligation, nor do the Transparent Dispatch Advocates propose to create such an obligation. Rather, under the TDA proposal, transmission providers would remain obligated to provide redispatch service, but third party generators would have only the option of doing so. Transparent Dispatch Advocates are therefore not proposing comparable treatment and we decline to adopt the proposal. This notwithstanding, we believe that redispatch offers by third party generators can increase system reliability and

[695] See, e.g., North American Electric Reliability Council, 88 FERC ¶ 61,046 at 61,123-24 (1999) (explaining that pro rata curtailment is consistent with comparability even if network/native load reduction is accomplished by redispatch and point-to-point customer reduction is not); Northern States Power Co., 83 FERC ¶ 61,338 at 62,369 (1998) (the existence of redispatch options is not a criterion under the pro forma OATT for disproportionate curtailments), reh'g, clarification and stay denied, 84 FERC ¶ 61,128 (1998), remanded on other grounds sub nom. Northern States Power Co. v. FERC, 176 F.3d 1090 (8th Cir. 1999) (Northern States Power).

[696] Northern States Power, 83 FERC ¶ 61,338 at 62,369.

reduce costs to customers by increasing the planning redispatch options available to transmission providers. We therefore are adopting, as explained above, a requirement that transmission providers modify their OASIS to allow for the posting of third party offers to supply planning redispatch. This OASIS posting requirement does not obligate transmission providers to incorporate bids from third parties into their redispatch; rather, posting of third party offers to provide redispatch may be used by transmission customers to secure planning redispatch provided the appropriate agreements are reached between the customer, third party redispatch provider, transmission provider and reliability coordinator.

1140. We disagree with Transparent Dispatch Advocates and their supporters that their proposal for real-time redispatch and third party generation participation would allow for additional long-term rights through planning redispatch. If third party participation in the offer of redispatch is voluntary, transmission providers would not be able to depend upon third party resources in evaluating the availability of resources during the term of the planning redispatch service. Transmission providers therefore would only be able to evaluate the availability of their own resource as they do today. Thus, Transparent Dispatch Advocates have failed to show how its proposal would supplement provision of long-term rights.

1141. Because we find that the TDA proposal for real-time redispatch and third party participation is unnecessary to remedy undue discrimination or comparability issues, we

need not address the issue of the scope of the Commission's jurisdiction as it relates to the TDA proposal.

(2) Redispatch Rate Transparency

Comments

1142. PJM argues that if the Commission does not provide for independently administered real-time spot markets, it should require transmission providers to "make public their dispatch sequence and the real-time marginal costs of electricity."[697] In reply comments, Transparent Dispatch Advocates request that the Commission require publication of "dynamic real-time value of what [each transmission provider] would charge to provide redispatch service at specified congestion locations within the transmission provider's system and at specified flowgates at the border of the transmission provider's system."[698] In supplemental comments, Transparent Dispatch Advocates state that "[t]he essence of the TDA proposal is to require transmission providers to make real-time information about the cost of redispatch available on their OASIS in order to allow more efficient use of the transmission system."[699] Transparent Dispatch Advocates, EPSA and AWEA state that the posting requirement should be

[697] PJM at 6.

[698] Transparent Dispatch Advocates Reply at 5.

[699] Transparent Dispatch Advocates Supplemental at 7.

limited to pre-determined flowgates and that the estimated price for redispatch should be posted frequently and sufficiently in advance of the hour in which the price would be effective in order to allow the transmission customer to change its schedule and avoid redispatch charges.

1143. EPSA, AWEA and Transparent Dispatch Advocates state that since this information is available today and considered by transmission providers in serving their own native load, there are no impediments to implementing their proposed posting requirement. Transparent Dispatch Advocates argue that concerns about release of confidential data can be addressed by using system costs instead of unit-specific cost data to calculate the posted redispatch price. EPSA and AWEA state that there are not confidentiality issues with the Transparent Dispatch Advocates' posting proposal because redispatch costs are not the costs that the transmission provider is incurring to sell energy into the market: they contend that redispatch costs are the net cost incurred by the transmission provider, e.g., the difference between the costs of ramping up and ramping down resources. EPSA and AWEA also state that there would be no competitive concerns over the posting of this information from third party suppliers because the suppliers names need not be used.

1144. Some commenters do not believe that making certain information publicly available will result in confidential information disclosure.[700] PPL states that while confidentiality concerns must be considered, the nature and type of information that is publicly provided may be structured so as to alleviate or minimize such concerns. PPL argues that rather than posting specific generator cost information the all-in price for redispatch may be posted instead. BP Energy argues that posting redispatch prices at specified locations reveals the economic value of adding transmission/generation at those locations, but does not reveal the production cost associated with specific generation resources. BP Energy states that hourly redispatch costs should be posted for all "significant congested interfaces" within a transmission provider's control area and for all interfaces at control area boundaries. PGP asserts that transmission providers with OATTs should post any available information on hourly redispatch costs.[701] PGP and PPL argue, however, that there should be an appropriate lag in the disclosure of actual redispatch costs in order to address confidentiality concerns. Williams states that increased transparency and proper monitoring are immediate, real solutions to "issues" with the posting of the cost of redispatch. Williams asserts that those customers

[700] E.g., EPSA and AWEA Supplemental, BP Energy Supplemental, and California Commission Supplemental.

[701] PGP asserts that the transmission provider should be required to post redispatch information by event and by entity to address concerns about anticompetitive behavior.

requesting redispatch should be provided the cost differential between the original dispatch and the redispatch and that post audit redispatch data and system models can be made available (after the expiration of a non-disclosure period) to provide market certainty of least cost redispatch and appropriate bid selection.

1145. PGP states that the redispatch option should be available irrespective of time frame, but must recognize the limited ability of the transmission provider to identify likely redispatch costs further out in time. Thus, PGP argues, posting redispatch costs in areas without organized markets should focus initially on real-time reliability redispatch, later expanding to longer time frames. PGP asserts that redispatch should be undertaken only when firm bids are available and the transmission customer has accepted responsibility for redispatch costs, which should be based on just and reasonable prices and must be known with a degree of certainty. PGP adds that the transmission provider should establish protocols that support firm bids, which would be published and, if accepted, result in binding obligations on the part of the bidders. PGP argues that it is reasonable for transmission providers to post real-time bids on constrained paths that are otherwise subject to curtailments to ensure compliance with reliability criteria. PGP contends that postings should take place on the transmission providers' OASIS and that all information should be retained by the transmission provider. PGP submits that redispatch bids should be explicitly added to the Commission's Electric Quarterly Reports filing requirements if not already required.

1146. Constellation argues that the Commission should require each transmission provider to post two values to the market on its OASIS site, in order to enhance transparency: historical costs of redispatch at certain specified flowgates (perhaps those most congested historically) and real-time redispatch costs at the same flowgates. Constellation submits that each transmission provider engages in redispatch and thus can readily ascertain the cost of redispatch at various locations. Constellation argues that posting such costs will enable transmission customers to more accurately assess the potential costs of redispatch prior to deciding to incur redispatch costs. Constellation adds that the customer receiving redispatch should be obligated to pay the actual costs of redispatch, regardless of the costs reflected in the postings, which, Constellation contends, should reflect the transmission provider's most accurate and up-to-date information.

1147. Williams believes that Transparent Dispatch Advocates' redispatch proposal offers a partial remedy to transmission congestion caused by insufficient infrastructure and undue discrimination. Williams proposes that affiliate and third-party generators submit either a pre-established rate structure or formulary pricing methodology prior to the provision of redispatch service. Williams states the primary implementation impediment to greater transparency of redispatch cost information is the accuracy and availability of redispatch costs.

1148. BP Energy submits that posting the costs of redispatch is not the same as posting operational cost curves of specific generating units. BP Energy adds that, given the availability of redispatch costs, there is no reason to post the differential in unit-specific costs as a supplement to marginal prices posted at significant locations throughout the control area. PGP states that there is no need to establish markets to provide real-time redispatch. Rather, PGP asserts that limited protocols can be established for specific locations or types of congestion that may be directly relieved via redispatch. PGP believes that the Commission should avoid establishing detailed rules governing redispatch protocols, but rather should permit regional practices to be developed that result in "just and reasonable" charges for redispatch service.

1149. In its reply comments, Southern states that requiring vertically integrated utilities to post their real-time marginal costs of electricity would be discriminatory and violate the Trade Secrets Act.[702] Southern states that RTOs do not make public the marginal costs of the utilities participating in their markets, thus requiring other transmission providers to do so would be discriminatory. Southern states that marginal costs information is commercial or financial information protected by federal statute that if released would put it at a competitive disadvantage and harm its customers by allowing competing generators to price their power just below the published marginal costs.

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[702] 18 U.S.C. 1905.

1150. Several parties assert that the TDA proposal would require the posting of vertically integrated utilities' generation costs and thus would provide competitors and buyers with commercially-sensitive information.[703] Many of these parties assert that posting a utility's incremental costs publicizes the price at which the utility elects to operate resources rather than purchase from a third-party.[704] EEI and South Carolina E&G assert that making this information public may adversely affect competition and markets. Duke argues that having the transmission provider post daily and hourly generator costs assigns it responsibilities that are beyond the typical transmission function. Duke urges the Commission to consider voluntary alternatives to resource-specific cost information that would divulge competitively-sensitive data. SEARUC argues that any incremental transparency improvements not be implemented in such a manner as to make competitively sensitive information available to the public on an inconsistent basis. Nevada Companies assert that the requirement to make such information publicly available to the transmission provider would have to be imposed

[703] E.g., Entergy Supplemental, Community Power Alliance Supplemental, Progress Energy and MidAmerican Supplemental, Southern Supplemental, Southwest Utilities Supplemental, Nevada Companies Supplemental, OG&E Supplemental, Florida Commission Supplemental, PPL Supplemental, Ameren Supplemental, North Carolina Commission Supplemental, and SEARUC Supplemental.

[704] E.g., Entergy Supplemental, Community Power Alliance Supplemental, Southern Supplemental, Duke Supplemental and South Carolina E&G Supplemental.

upon all generators, including independent power producers, so that such information would lose the value it derives from not being publicly known.

1151. Entergy argues that the Commission is statutorily prohibited from requiring the disclosure of information that undermines fair competition under the electric market transparency provisions in sections 220(b)(l) and (2) of the FPA.[705] South Carolina E&G submits that the TDA proposal is inconsistent with this provision of the FPA. Southern further contends that mandating that transmission providers post and offer their generation on an at-cost basis, while allowing third party generators to submit bid prices would also be discriminatory. TAPS asserts that the proposed real-time disclosure of bid and cost information runs contrary to the Commission's policy of a 6-month delay for release of bid information.

1152. NRECA asserts that the Transparent Dispatch Advocates fail to explain why transmission providers coordinating with third parties or neighboring transmission providers will not run afoul of anti-trust and collusion concerns that they are colluding in

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[705] Entergy refers to the following language:

(1) the Commission shall exempt from disclosure information the Commission determines would, if disclosed, be detrimental to the operation of an effective market…; and (2) [i]n determining the information to be made available under this section and the time to make the information available, the Commission shall seek to ensure that consumers and competitive markets are protected from adverse effects of potential collusion and other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

price setting; and how to verify providers are selecting the lowest bid unless they are required to post all third party generator bids as well as their own or their affiliates' cost of providing the service

1153. Ameren asserts that the existing OATT contains requirements for information to be posted by transmission providers, and does not believe that additional posting ought to be required. Ameren provides several recommendations were the Commission to adopt some or the entire TDA proposal. First, Ameren asserts that there are many different ways to estimate this cost and, in order to avoid the creation of competing methods for estimating redispatch costs, the Commission must consider and provide guidance on several questions.[706] Second, so that transmission providers are not disadvantaged by this new obligation, Ameren urges the Commission to develop detailed requirements, including uniform timelines for posting, guidelines for estimating cost, and inclusion of all dispatchable generation in the relevant footprint. Ameren further argues that posting only the difference in costs would not address the potential for anticompetitive impacts. Finally, Ameren contends that the Commission may wish to consider implementing the

[706] Ameren raises several questions to this effect: Does the transmission provider estimate cost effect across all market LMPs or just the congested points? Should the analysis take into account credits and adjustments to which some participants may be entitled? For what period should the transmission provider provide this estimate? For those transmission providers within a centralized market, how should they treat market costs such as losses or RSG (Revenue Sufficiency Guarantee in MISO) in calculating the redispatch cost?

changes only on an interim basis, then to observe whether there is any market benefit or any competitive harm as a result of the new requirements.

1154. Duke believes that the posting of hourly redispatch costs would create near-constant off-OASIS communications between the transmission provider and merchant function employees, which, Duke asserts, would raise Standards of Conduct concerns.

1155. NRECA argues that allocated costs may vary significantly regardless of methodology, which devalues the posting of costs. North Carolina Commission argues that publishing indicative redispatch costs in real time would require a determination as to how such costs are determined and whether each component of such costs are appropriately charged to customers.

Commission Determination

1156. After careful consideration of the comments of the parties, we adopt a posting obligation that balances several competing considerations. First, we agree with Transparent Dispatch Advocates and supporting parties that the increased availability of information regarding redispatch costs can benefit consumers and increase the efficient use of the grid. Second, we are cognizant, however, that increased posting and reporting can impose cost burdens on transmission providers or otherwise harm market participants. For example, the reporting obligations can reveal confidential information that could harm market participants or increase the cost of serving native load customers. We also recognize that the posting or reporting obligation should be reasonably tailored

to provide useful information to consumers without, at the same time, imposing unnecessary burdens on transmission providers, either in the frequency of the posting obligation or the scope of information provided.

1157. In balancing these considerations, we will, as explained further below, adopt a requirement that transmission providers post certain redispatch cost information associated with the existing redispatch services that must be provided under the pro forma OATT. We find that providing customers with additional transparency and greater information regarding the cost of congestion, will facilitate their consideration of planning redispatch options which in turn will provide for more efficient use of the grid. We stress, however, that this posting requirement relates only to the existing redispatch services required under the pro forma OATT; it does not expand those service obligations. The primary purpose of the posting requirement is to ensure that all customers have access to this information, not only the customer receiving the redispatch service.

1158. Moreover, the costs of the dynamic posting requirement proposed by Transparent Dispatch Advocates outweigh the benefits of such a requirement. Transparent Dispatch Advocates propose that the posting requirement be limited to specified congestion locations within and at the border of each transmission provider's system. Transparent Dispatch Advocates have not proposed ex ante criteria to determine which flowgates would require posting. In fact, some members of the Transparent Dispatch Advocates

coalition would have the posting requirement apply to all transmission facilities, whether or not they were congested and whether or not customers were seeking service over those facilities. Such an open-ended obligation to post costs for all facilities on a transmission provider's system would unnecessarily impose uncertainties and unbounded administrative costs on transmission providers. Additionally, depending on the frequency of publication and the method used to calculate the estimates, the publication of these estimates could reveal sensitive confidential information about transmission providers' generation costs that would likely harm existing markets and native loads. There is no simple formula for estimating the costs that would fully mask this confidential information and at the same time provide practical information about the costs of redispatch.

1159. While we agree that transparency can benefit customers, Transparent Dispatch Advocates have not demonstrated the benefits of its posting requirement to customers seeking reliability or planning redispatch. Transparent Dispatch Advocates would have transmission providers frequently post an estimate of the cost of the next increment of redispatch. Customers seeking redispatch would not know the actual costs customers paid for redispatch. Nor would they be able to apply the estimate of cost to their transactions since most transactions would involve more than a single increment of redispatch service and there might be multiple redispatch transactions over a single transmission facility. Thus the estimate would only be of value to the marginal customer

taking a small amount of redispatch service. Transmission providers would expend time and money determining the correct formula to use to estimate costs, collecting data for the inputs to the calculation and frequently posting estimates throughout each day that could have little or no correlation to the actual costs a transmission customer would pay for the redispatch service.

1160. Third party participation in redispatch is one of the benefits Transparent Dispatch Advocates point to in support of its proposed posting requirement. Transparent Dispatch Advocates would have transmission providers act as the conduit for service from third party redispatch providers, collecting from customers and paying third party providers. As described above, we are allowing third party participation in planning redispatch without requiring transmission providers to act as bill collectors for third party redispatch providers or requiring coordination agreements among each transmission provider and all potential third party providers. This OASIS modification, described above, will provide third parties seeking to provide redispatch with the opportunity to frequently update the price of their offers as suggested by Transparent Dispatch Advocates.

1161. We do believe, however, that information regarding actual redispatch costs should be made more widely available. Currently, when a transmission provider provides reliability or planning redispatch, the associated cost information is provided only to the customer receiving the service through its invoices. This ignores the fact that information regarding the cost of redispatch can benefit all customers and increase the efficient use of

the grid. We therefore find that it is no longer just, reasonable and not unduly discriminatory to limit the provision of this information only to the individual customers receiving the service.

1162. Accordingly, to provide greater availability of redispatch information, the Commission adopts certain additional posting requirements for transmission providers. Specifically, we direct each transmission provider to post on OASIS its monthly average cost of redispatch for each internal congested transmission facility or interface over which it provides redispatch service using planning redispatch or reliability redispatch under the pro forma OATT.[707] Additionally, to demonstrate the range of redispatch costs each month, the Commission directs transmission providers to post a high and low redispatch cost for the month for each of these same transmission constraints. The transmission provider shall calculate the monthly average cost in $/MWh for each congested transmission facility by dividing monthly total redispatch costs (at the facility) by the total MWhs that would otherwise be curtailed (at the facility) in the month absent

[707] The relevant reliability redispatch costs for posting purposes are those costs the transmission provider invoices network customers based on a load ratio share pursuant to section 33.3 of the pro forma OATT. The transmission provider need not perform new calculations of out-of-merit dispatch costs; rather the reliability redispatch invoices should form the basis of information from which the transmission provider determines monthly average reliability redispatch costs.

the redispatch.[708] Transmission providers shall post internal constraint or interface data for the month if any planning redispatch or reliability redispatch is provided during the month, regardless of whether the transmission customer is required to reimburse the transmission provider for those exact costs. Thus, if the transmission customer pays for redispatch pursuant to a negotiated fixed rate, the transmission provider is required to post and calculate the monthly average redispatch costs and the high and low costs in the month even though the transmission provider will bill the customer the fixed rate. The same posting requirement applies if the customer is paying a monthly "higher of" rate.[709] The transmission provider shall post this data on OASIS as soon as practical after the end of each month, but no later than when it sends invoices to transmission customers for redispatch-related services. We direct transmission providers to work in conjunction with NAESB to develop this new OASIS functionality and any necessary business practice standards.

1163. There are several benefits to this posting requirement. First and foremost, it will give customers fairly current information regarding the cost of redispatch of the

[708] For example, if reliability redispatch is used by the transmission provider to prevent curtailment of 10 MW of transmission provider or network customer load for 5 hours during the month across flowgate A, the transmission provider would use 50 MWh as the divisor to determine the monthly average cost of redispatch for flowgate A.

[709] This is not a new calculation for the transmission provider because the transmission provider must determine the redispatch costs to know whether to charge higher of the embedded rate or the redispatch costs.

congested transmission facilities over which redispatch is provided, presumably some of the most congested facilities on transmission providers' systems. Second, it will limit posting only to those congested transmission facilities over which redispatch has actually been sought and granted and for which redispatch charges have been billed to customers. This addresses commenters' concerns about the posting of information that is valuable only hypothetically. Third, because we require the posting of average redispatch costs, not real-time redispatch costs or real-time system lambda or system incremental costs, it will not be harmful to native load or reveal otherwise competitively sensitive information.

1164. Finally, in addition to the above posting requirement, we note that, as part of the transmission planning provisions adopted in this Final Rule, we are providing customers with a right to request a study of a defined number of congested transmission facilities on an annual basis. This will provide customers an additional opportunity to evaluate redispatch costs, including costs for those congested transmission facilities for which redispatch service has not been granted.

c. Other Requested Service Modifications

NOPR Proposal

1165. In the NOPR, the Commission summarized requests for various new services made in response to the NOI. The Commission's proposed solutions evaluated solely the planning redispatch and conditional firm options.

Comments

1166. Commenters make several suggestions with regard to additional services or modifications to existing services. Most popular among the suggested new services is long-term, seasonally-shaped firm point-to-point service. Several commenters support this service for circumstances in which the transmission provider determines that the requested service is available during some, but not all, months of each year of a single or multiyear request.[710] Commenters suggest that the long-term, seasonally-shaped service would provide an option for the transmission customer in lieu of costly upgrades without the operational difficulties of conditional firm service. In its reply comments, Powerex states that this product would have less of an adverse impact on existing firm rights holders. Northwest IOUs propose that the transmission customer pay the long-term point-to-point transmission service rate pro-rated for the portion of the year for which it receives the service. Public Power Council states that the transmission customer would be free to purchase non-firm or secondary service for the periods when firm service through the seasonally-shaped service was unavailable. Northwest IOUs argue that "cream-skimming" is avoided by processing only requests for long-term service and having the transmission provider determine the availability of the service.

[710] E.g., MidAmerican, Public Power Council, Northwest IOUs, Xcel, Powerex Reply, PPL, and Seattle Reply.

1167. Powerex supports the implementation of a long-term non-firm point-to-point service. Tacoma believes priority non-firm or partial firm transmission services are alternatives to planning redispatch. Entegra proposes an additional service that would allow the customer, in the event of a constraint, to agree to either pay for redispatch or have its service curtailed. In contrast to these request for new services, TranServ states that simplified services and a reduction in the number of services would increase the transparency and fluidity of electricity trading.

1168. MidAmerican urges the Commission to allow for dynamic scheduling service between control areas on a case-by-case basis, by including and pricing the service in the service agreement. MidAmerican states that this service would be similar to point-to-point service, but would allow the transmission customer to dynamically monitor its loads in neighboring control areas and dispatch its own remote resource to meet the load fluctuations in load pockets served by other transmission providers. MidAmerican further states that this new service is necessary in the Western Interconnection because neither point-to-point nor network service meets the needs of loads that are not confined to a single geographic area served by a single transmission provider.

1169. Barrick states that the Commission should require transmission providers to confirm the availability of secondary service for network customers on a monthly or quarterly basis so that network customers can plan ahead for the use of secondary service. In its reply comments, Seattle supports the development of short-term redispatch service,

currently under discussion for provision in the Pacific Northwest. TranServ requests that the Commission clarify whether sequential reservation of 12 consecutive months of monthly firm service is long-term service. TranServ requests that the Commission direct the development of business practices by NAESB to allow customers to designate minimum term and capacity for partial interim service, similar to the practice employed by Bonneville.

Commission Determination

1170. The Commission rejects the requests to order new services or modifications to existing services suggested by commenters. We believe that the modifications to point-to-point transmission service adopted herein best address the issues raised by these requests. The planning redispatch and conditional firm options provide a means of remedying undue discrimination, and increasing transparency and access to the grid by point-to-point customers. We note that there is considerable overlap between these options and the new services suggested by commenters. However, we find that the introduction of the requested new services may create greater complexities than those present in the planning redispatch and conditional firm options. For example, several commenters propose a long-term seasonally shaped firm point-to-point service as a superior option to the conditional firm service. However, requestors have not adequately addressed concerns about the service, including the potential for hoarding transmission and the reliability issues related to evaluating the availability of the service or granting

the service over many years. A seasonally shaped service could exacerbate the lumpiness of transmission investment by preventing customers willing to pay for transmission upgrades from obtaining all twelve months of service. While we will not reduce the number of services required as suggested by TranServ, the Commission must limit the number of new services adopted and modifications to existing services to a reasonable number that transmission providers can reliably implement. For these reasons, we decline to adopt any additional proposals or modifications to firm point-to-point service beyond those directed above in this Final Rule. Of course, transmission providers remain free to voluntarily propose additional services that are consistent with or superior to the pro forma OATT, as modified by this Final Rule.

1171. The Commission rejects the request to adopt long-term non-firm service because there is no indication that customers would find such a service useful and it would be inconsistent with the policy in the pro forma OATT that values firm service over non-firm service.

1172. MidAmerican requests that the Commission allow a point-to-point service that would let a transmission customer monitor its load and dispatch its remote resources to meet load fluctuations. In Order No. 888-A, the Commission clarified that this type of dynamic scheduling was not mandated Order No. 888, but that nothing in Order No. 888

precludes a transmission provider from offering it as a separate service.[711] Thus, MidAmerican may propose such a service pursuant to an FPA section 205 filing with the Commission, and we will consider it, as we would any new service proposal, on a fact specific, case-by-case basis.

1173. Barrick requests that the Commission require the confirmation of the availability of secondary service for network customers on a monthly or quarterly basis so that network customers can plan ahead for the use of secondary service. As we stated in the NOPR, secondary network service refers to transmission service for network customers from resources other than designated network resources and is provided on an "as available" basis. Since the secondary service is provided on an as available basis, Barrick's request seeks to allow secondary network service to pre-empt firm uses of the system, such as short term firm point-to-point service, for what is a less than firm service. Barrick has not clearly articulated why this proposal is necessary to prevent the exercise of undue discrimination or why service from designated network resources would not meet its need for firmer secondary service. Thus, we reject Barrick's request.

1174. With regard to Seattle's support for redispatch being developed in the Pacific Northwest, we believe that this type of redispatch shares many of the attributes of the Transparent Dispatch Advocates proposal rejected above. Although we acknowledge

[711] Order No. 888-A at 30,235-36.

that market mechanisms that provide hour-ahead or real-time redispatch for all transmission customers can provide benefits to customers and efficient use of the transmission grid, for the reasons stated in the prior section, we will not require in this Final Rule that all transmission providers implement such market mechanisms. We note that nothing prevents the Commission from reviewing proposals for such market mechanisms on a case-by-case basis. We note that the conditional firm and planning redispatch options adopted in this Final Rule will provide some of the flexibility Entegra seeks. Customers taking service under these options will be able to choose, when executing the service agreement, between curtailment and redispatch.

1175. Also, the Commission clarifies for TransServ that twelve months of consecutive monthly firm service, where the term of any particular monthly service agreement is for less than a year, is not long-term service.[712] The Commission rejects TranServ's request that NAESB develop particular business practices regarding partial interim service as TranServ has not shown a need for such a requirement.

1176. The Commission continues to encourage transmission providers to propose other services that are consistent with or superior to the pro forma OATT that meet customers' needs and make more efficient use of the transmission system. We will not mandate that transmission providers provide any service other than the services set forth in the pro

[712] See pro forma OATT section 1.18 (defining long-term firm point-to-point transmission service as service with a term of one year or more).

forma OATT since they may not be applicable in all circumstances. However, if transmission providers seeks to provide any modifications to the required pro forma OATT services or new services, they may submit an FPA section 205 filing to propose such modifications and the Commission will evaluate such proposals on a case by case basis.

2. Hourly Firm Service

NOPR Proposal

1177. In the NOPR, the Commission proposed to add point-to-point hourly firm service to the pro forma OATT. The Commission stated its belief that adding this service would eliminate a barrier to the development of markets and thereby decrease opportunities for undue discrimination. The Commission further stated that the concerns expressed in Order No. 888 regarding the unduly discriminatory effects of hourly firm service have proven unfounded. Consistent with our precedent, the Commission proposed to use the "IES Method" to price hourly firm service and apply different pricing based on whether the service is taken during peak or off-peak hours.[713] The Commission explained that this

[713] See IES Utilities, Inc., 81 FERC ¶ 61,187 at 61,833-34 (1997), reh'g denied, 82 FERC ¶ 61,089, aff'd on other grounds sub nom. Wisconsin Public Power Inc. v. FERC, No. 98-61,089, 1999 U.S. App. LEXIS 3998 (Feb. 23, 1999) (unpublished opinion) (adopting peak and off-peak pricing to hourly non-firm transmission service); see also New York State Electric & Gas Corp., 92 FERC ¶ 61,169 at 61,593-94 (2000) (approving application of the IES Method for time-differentiated hourly non-firm rate design), order on reh'g, 100 FERC ¶ 61,021 (2002).