UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Preventing Undue Discrimination and Preference in Transmission Service	Docket Nos.	RM05-17-000 RM05-25-000

ORDER NO. 890

FINAL RULE

(Issued February 16, 2007)

I. Introduction

1. This Final Rule addresses and remedies opportunities for undue discrimination under the pro forma Open Access Transmission Tariff (OATT) adopted in 1996 by Order No. 888.[1] This landmark rulemaking fostered greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service. In the ten

[1] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

III. Need for Reform of Order No. 888

A. Opportunities for Undue Discrimination Continue to Exist

26. Although Order No. 888 has been successful in many important respects, the need for reform of the Order No. 888 pro forma OATT has been apparent for some time. In 1999, the Commission held, in adopting Order No. 2000, that the pro forma OATT could not fully remedy undue discrimination because transmission providers retained both the incentive and the ability to discriminate against third parties, particularly in areas where the pro forma OATT left the transmission provider with significant discretion.[39] The Commission made a similar finding in Order No. 2003,[40] holding that opportunities for undue discrimination continue to exist in areas where the pro forma OATT leaves transmission providers with substantial discretion.[41] The NOPR reaffirmed these findings, preliminarily concluding that opportunities for undue discrimination continue to exist in the provision of open access transmission service. The Commission therefore

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[39] Order No. 2000 at 31,105.

[40] See Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 at P 11-12 (2003), order on reh'g, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), order on reh'g, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), order on reh'g, Order No. 2003-C, 70 FR 37,661 (Jun. 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), aff'd sub nom. National Association of Regulatory Utility Commissioners v. FERC, No. 04-1148, 2007 U.S. App. LEXIS 626 (D.C. Cir. Jan. 12, 2007).

[41] Order No. 2003 at P 11-12.

filed by transmission customers or other parties. Case-by-case application of the reforms adopted in this Final Rule would be inappropriate since the most fundamental problems addressed here arise from deficiencies in the pro forma OATT itself, not simply the implementation of the pro forma OATT by a few transmission providers. Also, we decline to establish a one-year review period for the reformed pro forma OATT, as EPSA recommends. The Commission will continue to actively monitor compliance with its orders and, as necessary, institute further proceedings to meet its statutory obligation to remedy undue discrimination.

43. The Commission will not catalog each and every basis for its reform of the pro forma OATT in this section. Rather, we identify the bases for some of the most fundamental reforms herein and, in addition, we explain in each individual section of the Final Rule the inadequacies of the existing pro forma OATT provisions being addressed there and the reasons why our reforms are necessary to remedy undue discrimination or otherwise provide for rates, terms and conditions of service under the pro forma OATT that are just and reasonable.

B. Lack of Transparency Undermines Confidence in Open Access and Impedes Enforcement of Open Access Requirements

44. Following the issuance of the NOI, the Commission received a number of comments asserting that increased transparency would aid transmission customers in their participation in the wholesale market. A common theme in the comments was that a lack of transparency could lead to claims of discrimination and could make such claims more

transparency-related reforms should be made after taking into consideration the extent and type of data and information that is already provided.

Commission Determination

51. The Commission concludes that inadequate transparency requirements, combined with inadequate compliance with existing OASIS regulations, increases the opportunities for undue discrimination under the pro forma OATT and makes instances of undue discrimination more difficult to detect. We find that the reforms we adopt in this Final Rule will improve transparency in the OATT, reduce opportunities for undue discrimination, and increase our ability to detect undue discrimination.

C. Congestion and Inadequate Infrastructure Development Impede Customers' Use of the Grid

52. The Commission noted in the NOPR that the ability and incentive to discriminate increases as the transmission system becomes more congested. The Commission observed that the pro forma OATT contained only minimal requirements regarding transmission planning, which have proven to be inadequate as the Nation faces insufficient transmission investment in many areas. The Commission preliminarily concluded that the inadequacy of the existing obligation to conduct transmission system planning, coupled with the lack of transparency surrounding system planning generally, required reform of the pro forma OATT to ensure that transmission infrastructure is constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers. The Commission therefore proposed to

require public utilities to engage in an open and transparent planning process at both the local and regional levels.

Comments

53. APPA agrees that the lack of adequate transmission infrastructure is one of the core problems facing the electric utility industry. APPA supports revisions to the pro forma OATT to enhance and improve transmission planning on both an individual system and regional basis. Several commenters go further, arguing that the proposed reforms are insufficient and urging the Commission to more strongly encourage infrastructure development. EPSA asserts that successful implementation of the Congressional policy in favor of wholesale competition and state policies in favor of competitive procurement is frustrated by the lack of sufficient open access to the transmission grid. According to EPSA, new power plant investment is highly unlikely to occur, except by the transmission provider or its affiliate on a "sole source" or "no bid" basis (despite federal and state policies to the contrary), if unaffiliated suppliers cannot effectively and efficiently obtain transmission service. EPSA argues that failure to boldly reform the Commission's open access transmission rules at this critical juncture would effectively hand an undeserved victory to the very transmission providers who, by the Commission's own findings, have the motive and the opportunity to discriminate. International Transmission argues that tariff reform is no substitute for prudent investment in the transmission infrastructure needed to increase the underlying physical capability of the transmission system.

54. On the other hand, some commenters dispute the Commission's assertion in the NOPR that vertically-integrated utilities operating in non-RTO regions have an incentive to discriminate and, therefore, are not adequately expanding the transmission grid to accommodate new entry by more efficient competitors. New Mexico Attorney General argues that vertically-integrated utilities operating under the traditional rate-base, rate-of-return model of regulation in fact have been historically criticized for having incentives to overbuild. New Mexico Attorney General asserts that most transmission projects are in reality derailed by strong "NIMBY" opposition to the actual siting of transmission lines. Another countervailing factor to the utility's incentive to overbuild, in New Mexico Attorney General's view, is the fact that state regulators attempt to limit capacity investment to reasonable levels only necessary to serve native load.

55. Southern states that the Commission's assertion in the NOPR that vertically-integrated utilities do not have an incentive to expand the grid overlooks the fact that many such utilities are under state legal duties to procure generation supplies through open, non-discriminatory requests for proposals, with the winners of those requests for proposals often being competitors of the vertically-integrated utility. Southern maintains that the winning competitive generation is then integrated into the host utility's transmission system and dispatch, and the transmission system is expanded to ensure the deliverability of this competitive generation. Furthermore, Southern states, a competitive generator can also have the output of its generator planned into the transmission provider's system if it takes long-term firm service under the OATT, with the

transmission provider then being under a legal duty to expand its transmission system accordingly. Southern notes that it alone has invested $3.2 billion in transmission over the past decade and plans to invest another $2.8 billion over the next five years (2006-2010).

56. Community Power Alliance also argues that the Commission's own June 2005 "State of the Markets Report" contradicts the Commission's assertion that vertically-integrated utilities do not have the proper incentives to expand the grid. Community Power Alliance contends that this report shows that the amount of transmission investments made in the non-RTO regions, where vertically-integrated utilities typically operate, substantially exceeds the amount of transmission investments made in RTO regions.

Commission Determination

57. The Commission concludes that reforms are needed to ensure that transmission infrastructure is evaluated, and if needed, constructed on a nondiscriminatory basis and is otherwise sufficient to support reliable and economic service to all eligible customers. As noted above, vertically-integrated utilities do not have an incentive to expand the grid to accommodate new entries or to facilitate the dispatch of more efficient competitors. Despite this, the existing pro forma OATT contains very few requirements regarding how transmission planning should be conducted to ensure that undue discrimination does not occur.

58. Our concern over this flaw is heightened by the critical need for new transmission infrastructure in this Nation. As the Commission explained in the NOPR, transmission capacity is being constructed at a much slower rate than the rate of increase in customer demand, with transmission capacity per MW of peak demand declining at an average rate of 2.1 percent per year during the period 1992 to 2002.[55] The projections suggest that this trend will continue through 2012.[56] As a result, there has been a significant decrease in transmission capacity relative to load in every NERC region.[57] In light of this trend, there is a compelling need to build new transmission and respond to increasing demand through other means. EEI estimates that capital spending must increase by 25 percent, from $4 billion annually to $5 billion annually, to ensure system reliability and to accommodate wholesale electric markets.[58] The legacy systems constructed by vertically-integrated utilities prior to the adoption of Order No. 888 support "only limited

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[55] Eric Hirst, U.S. Transmission Capacity: Present Status and Future Prospects (Aug. 2004), http://www.eei.org/industry_issues/energy_infrastructure/transmission/USTransCapacity 10-18-04.pdf (Present Status and Future Prospects).

[56] Present Status and Future Prospects at v.

[57] Brendan Kirby (Oak Ridge National Laboratory, U.S. Department of Energy), Barriers to Transmission Investment, Technical Conference Presentation, (Docket No. AD05-5-000) (April 22, 2005).

[58] Energy Policy Act of 2005: Hearings before the Subcommittee on Energy and Air Quality of the House Committee on Energy and Commerce, 109th Congress, First Sess. (2005) (Prepared statement of Thomas R. Kuhn, President of EEI).

amounts of inter-regional power flows and transactions. Thus, existing systems cannot fully support all of society's goals for a modern electric-power system."[59]

59. Expansion of the transmission system, as well as more efficient use of the grid, will alleviate the growth of congestion in most regions of the country. Transmission congestion has created fairly small local load pockets in primarily urban areas, e.g., New York City, Long Island, Boston, parts of Connecticut, and the San Francisco Bay Area. Other load pocket concerns have arisen in parts of northern Virginia, and various load centers in SPP. Still other constraints are more regional in scope: from the Midwest to the Mid-Atlantic, from the Midwest to TVA, into and within California, from TVA and Southern into Entergy, from Mid-America Interconnected Network into Wisconsin-Upper Michigan Systems, and into Florida.

60. Transmission congestion can have significant cost impacts on consumers. In 2002, DOE issued a study estimating the costs of congestion in four U.S. regions: California, PJM, New York and New England.[60] DOE found that, despite the overall

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[59] Present Status and Future Prospects at v.

[60] U.S. Department of Energy, National Transmission Grid Study at 11, 16-17 (May 2002), available at www.ferc.gov/industries/electric/indus-act/**transmission-grid**.pdf. To conduct this study, DOE estimated the benefits of interregional wholesale power markets using the Policy Office Electricity Modeling System (POEMS). POEMS is a national energy model designed specifically to examine the impacts of electricity restructuring. The model includes economic, regional, and temporal detail that is needed to analyze the economics of interregional trade. In the first step of the study, DOE used POEMS to examine the cost reductions that would occur if increased electricity transfers across congested paths were allowed in these four regions, assuming generators bid their

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savings of wholesale electricity markets that lowered consumers' electricity bills by nearly $13 billion annually, interregional transmission congestion cost consumers hundreds of millions of dollars annually. DOE concluded that relieving bottlenecks in these four regions alone could save consumers about $500 million annually.[61] In 2006, DOE released another study identifying two areas of the country with severe existing or growing congestion problems: the Atlantic coastal area from metropolitan New York southward through Northern Virginia, and Southern California.[62]

61. The decline in transmission investment and increase in transmission congestion underscore our concerns over inadequate planning provisions of the existing pro forma OATT. The existing pro forma OATT, as indicated above, contains very little specificity regarding how transmission planning should be conducted, how customers' needs are incorporated into that process, and what information is publicly available regarding the

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marginal costs. Under this assumption, consumer costs declined by $157 million per year. In the second step, DOE calculated the increase in congestion costs under the assumption that generators bid above their marginal operating costs when supplies are tight and additional electricity cannot be imported. The price spikes were assumed to occur during hours when at least one transmission link into a sub-region was congested and demand was greater than 90 percent of peak demand. When prices spike an additional $50 per MWh (above the price predicted when generators bid their marginal operating cost) during these periods, congestion costs nearly double to $300 million.

[61] Id. at xi and ii.

[62] U.S. Department of Energy, National Electric Transmission Congestion Study, Executive Summary at 2 (August 2006), available at http://www.ferc.gov/industries/electric/indus-act/doe-congestion-study-2006.pdf.

transmission providers' assumptions, criteria and data used in the planning process. These inadequacies are sufficiently severe, standing alone, to merit reform of the OATT. However, they are of even greater concern given the current state of the transmission grid. With inadequate levels of investment in the grid and increasing transmission congestion, customers' ability to access alternatives to the transmission provider's resources is limited. It is therefore imperative for the Commission to ensure that the planning process under each transmission provider's OATT is sufficient to prevent undue discrimination and transparent enough to detect any remaining instances of undue discrimination. We have done so in the reforms adopted and explained in section V.B.

D. A Consistent Method of Measuring ATC Is Needed

62. Another area in which transmission providers have significant discretion under the pro forma OATT is the calculation of ATC. While Order No. 888 obligated each public utility to calculate the amount of transfer capability on its system available for sale to third parties, the Commission did not standardize the methodology for calculating ATC, nor did it impose any specific requirements regarding the disclosure of the methodologies used by each transmission provider.[63] As a result, there are a variety of ATC calculation methodologies in use today and very few clear rules governing their use. Moreover, there is often very little transparency about the nature of these calculations, given that many

[63] Order No. 888 at 31,794 n.610.

ISO/RTO footprint and for each LSE or control area footprint within the ISO/RTO. This will not create an undue burden on ISOs and RTOs, since the load data for the entire footprint is an aggregation of load data across the LSEs or control areas in the footprint. We also agree with EEI that the peak load applies to system-wide load, including native load. We direct transmission providers to post load forecasts and actual daily peak load for both system-wide load (including native load) and native load, as this data will be useful to customers and regulators. We deny EEI's request for a guarantee that transmission providers will not be held accountable for producing a reasonable load forecast. While we do not intend to penalize transmission providers for failing to account for unforeseen circumstances, we retain our ability to investigate any allegations of manipulation of load forecasts, as this could be used as a means of inappropriately denying requested transmission service.

417. The Commission is not convinced by the views of some commenters that load data has competitive implications. The Commission notes, as PJM pointed out in its comments, that many RTOs have an established practice of posting significant amounts of load data for participants' use, and this data posting has not raised competitive concerns.

B. Coordinated, Open and Transparent Planning

1. The Need for Reform

418. Order No. 888 set forth certain minimum requirements for transmission system planning. For example, Order No. 888 and the pro forma OATT require that

transmission providers plan and upgrade their transmission systems to provide comparable open access transmission service for their transmission customers. With regard to network service, section 28.2 of the pro forma OATT provides that the transmission provider "will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System." Section 28.2 also provides that the Transmission Provider shall, consistent with Good Utility Practice, "endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers."

419. The pro forma OATT also requires that new facilities be constructed to meet the service requests of long-term firm point-to-point customers. Section 13.5 of the pro forma OATT requires the transmission provider to consider redispatch of the system to relieve any constraints that are inhibiting a transmission customer's point-to-point service if it is economical to do so; but if redispatch is not economical, the transmission provider is obligated to expand or upgrade its system. This expansion obligation on the part of the transmission provider for point-to-point service is found in section 15.4 of the pro forma OATT, which provides that, when a transmission provider cannot accommodate a request for point-to-point transmission because of insufficient capability on its system, it will "use due diligence to expand or modify its Transmission System to provide the requested

Firm Transmission Service." Section 15.4 goes on to provide that "the Transmission Provider will conform to Good Utility Practice in determining the need for new facilities and in the design and construction of such facilities." The transmission provider's obligation to upgrade or expand its system to provide point-to-point service as detailed in section 15.4 is contingent on the transmission customer agreeing to compensate the transmission provider for such costs pursuant to the terms of section 27 (providing for cost responsibility for upgrades and/or redispatch "to the extent consistent with Commission policy").

420. In Order No. 888-A, the Commission encouraged utilities to engage in joint planning with other utilities and customers and to allow affected customers to participate in facilities studies to the extent practicable. The Commission also encouraged regional planning so that the needs of all participants are represented in the planning process.[225] Order No. 888-A did not, however, require that transmission providers coordinate with either their network or point-to-point customers in transmission planning or otherwise publish the criteria, assumptions, or data underlying their transmission plans. The Commission also did not require joint planning between transmission providers and their customers or between transmission providers in a given region.[226] The only section of the existing pro forma OATT that directly speaks to joint planning is section 30.9, which

[225] See Order No. 888-A at 30,311.

[226] See id.

provides that a network customer must receive credit when facilities constructed by the customer are jointly planned and installed in coordination with the transmission provider.[227]

421. As the Commission stated in the NOPR, the Nation has witnessed a decline in transmission investment relative to load growth in the ten years since Order No. 888 was issued. Transmission capacity per MW of peak demand has declined in every NERC region. Transmission constraints plague most regions of the country, as reflected in the limited amounts of ATC posted in many regions, increased frequency of denied transmission requests, increasingly common transmission service interruptions or curtailments and rising congestion costs in organized markets.[228]

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[227] Pro forma OATT section 21.2, "Coordination of Third-Party System Additions," provides for certain rights for transmission providers to coordinate construction of facilities on their systems associated with point-to-point customer requests and related construction on a third-party transmission system, but imposes no obligation on transmission providers.

[228] The number of TLRs has increased significantly since NERC started reporting annual statistics. The total number of TLRs each year has grown from under 500 in 1998 and 1999 to around 2000 over the last four years from 2002 to 2006. The number of TLR actions at the highest levels, requiring curtailment of firm transmission flows, has also grown, from under 10 before 2001 to 70 in 2006, averaging 55 per year from 2003 to 2006. Source: NERC Website, ftp://www.nerc.com/pub/sys/all_updl/oc/scs/logs/trends.htm In addition, congestion costs continue to be a major issue in RTO markets. For example, congestion costs in PJM were $2.09 billion in calendar year 2005, which was a 179 percent increase over 2004. Although this increase resulted primarily from increases in PJM annual billings, the congestion costs in both years were approximately 9 percent of total PJM billings in both years and have ranged from 6 percent to 10 percent of total billings since 2000. Source: 2005 PJM State of the Markets Report, April 2006.

422. We do not believe that the existing pro forma OATT is sufficient in an era of increasing transmission congestion and the need for significant new transmission investment. We cannot rely on the self-interest of transmission providers to expand the grid in a nondiscriminatory manner. Although many transmission providers have an incentive to expand the grid to meet their state-imposed obligations to serve, they can have a disincentive to remedy transmission congestion when doing so reduces the value of their generation or otherwise stimulates new entry or greater competition in their area. For example, a transmission provider does not have an incentive to relieve local congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. A transmission provider also does not have an incentive to increase the import or export capacity of its transmission system if doing so would allow cheaper power to displace its higher cost generation or otherwise make new entry more profitable by facilitating exports.

423. As the Commission explained in Order No. 888, "[i]t is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves."[229] The court agreed on review of Order No. 888, noting in TAPS v. FERC that "[u]tilities that own or control transmission facilities naturally wish to maximize profit. The transmission-owning utilities thus can be expected to act in their

[229] Order No. 888 at 31,682.

own interest to maintain their monopoly and to use that position to retain or expand the market share for their own generated electricity, even if they do so at the expense of lower-cost generation companies and consumers."[230] The Supreme Court in New York v. FERC similarly explained that "public utilities retain ownership of the transmission lines that must be used by their competitors to deliver electric energy to wholesale and retail customers. The utilities' control of transmission facilities gives them the power either to refuse to deliver energy produced by competitors or to deliver competitors' power on terms and conditions less favorable than those they apply to their own transmissions."[231]

424. The existing pro forma OATT does not counteract these incentives in the planning area because there are no clear criteria regarding the transmission provider's planning obligation. Although the pro forma OATT contains a general obligation to plan for the needs of their network customers and to expand their systems to provide service to point-to-point customers, there is no requirement that the overall transmission planning process be open to customers, competitors, and state commissions.[232] Rather, transmission

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[230] 225 F.3d at 684.

[231] 535 U.S. at 8-9 (citation and footnotes omitted).

[232] As discussed in more detail in the NOPR, the need for reform was recognized by the Consumer Energy Council of America (CECA), a public interest energy policy organization with a 30-year history of bringing stakeholders together to find solutions to contentious energy policy issues. CECA launched its Transmission Infrastructure Forum in early 2004, which published its conclusions in January 2005 in a final report titled "Keeping the Power Flowing: Ensuring a Strong Transmission System to Support Consumer Needs for Cost-Effectiveness, Security and Reliability" (CECA Report).

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providers may develop transmission plans with limited or no input from customers or other stakeholders. There also is no requirement that the key assumptions and data that underlie transmission plans be made available to customers.

425. Taken together, this lack of coordination, openness, and transparency results in opportunities for undue discrimination in transmission planning. Without adequate coordination and open participation, market participants have no means to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory. This means that disputes over access and discrimination occur primarily after-the-fact because there is insufficient coordination and transparency between transmission providers and their customers for purposes of planning.[233] The Commission has a duty to prevent undue discrimination in the rates, terms, and conditions of public utility transmission service and, therefore, an obligation to remedy these transmission

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Among other things, the CECA Report concludes that regional transmission planning with consumer input early in the process is needed to ensure the development of a robust transmission system capable of meeting consumer needs reliably and at reasonable cost over time. The CECA Report stresses that regional transmission planning must address inter-regional coordination, the need for both reliability and economic upgrades to the system, and critical infrastructure to support national security and environmental concerns. See NOPR at P 207.

[233] In our discussion of enforcement issues at section V.E of this Final Rule, we note specific situations in which transmission providers have agreed to resolve staff allegations that they engaged in OATT violations involving transactions with affiliates. While these specific situations may not directly relate to discrimination in planning, they nevertheless document the continuing incentive of transmission providers to favor themselves and their affiliates in the provision of transmission service.

planning deficiencies. As we explain above, our authority to remedy undue discrimination is broad.[234] In addition, new section 217 of the FPA requires the Commission to exercise its jurisdiction in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of LSEs. A more transparent and coordinated regional planning process will further these priorities, as well as support the DOE's responsibilities under EPAct 2005 section 1221 to study transmission congestion and issue reports designating National Interest Electric Transmission Corridors and the Commission's responsibilities under EPAct 2005 section 1223.

NOPR Proposal

426. In order to provide for more comparable open access transmission service, limit the potential for undue discrimination and anticompetitive conduct, and satisfy its statutory responsibilities under section 217 of the FPA, the Commission proposed to amend the pro forma OATT to require coordinated, open, and transparent transmission planning on both a local and regional level. Each public utility transmission provider would be required to submit, as part of its compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the following eight planning principles: coordination, openness, transparency, information exchange,

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[234] See Order No. 888 at 31,669 (noting that the FPA "fairly bristles" with concern for undue discrimination (citing AGD, 824 F.2d at 998).

environmental considerations in planning, clear conditions under which a transmission owner will commit to build planned facilities, and provision for fair and efficient allocation of the costs of planned facilities. WIRES also emphasizes the importance of considering non-transmission alternatives, arguing that an appropriate grid plan must be based on an integrated view of all alternatives, including demand response and distributed generation.

Commission Determination

435. In order to limit the opportunities for undue discrimination described above and in the NOPR, and to ensure that comparable transmission service is provided by all public utility transmission providers, including RTOs and ISOs, the Commission concludes that it is necessary to amend the existing pro forma OATT to require coordinated, open, and transparent transmission planning on both a local and regional level. We disagree with commenters arguing either that we lack jurisdiction to require coordinated transmission planning or that we have not established a basis for such a requirement. The Commission has broad authority to remedy undue discrimination by ensuring that transmission providers plan for the needs of their customers on a comparable basis.[244] That fundamental requirement was adopted in Order No. 888 and the reforms adopted herein should ensure that it will be implemented properly. Further, we explained in detail above

[244] See AGD, 824 F.2d at 1008 (Commission has broad discretion to promulgate generic rules to eliminate undue discrimination without "conduct[ing] experiments in order to rely on the prediction that an unsupported stone will fall").

why undue discrimination remains a concern in the planning area and why the existing OATT is insufficient to address that concern.

436. New section 217 of the FPA further supports reform in this area, as it reflects Congress' intent that the Commission utilize its powers to facilitate the planning and expansion of the transmission system.[245] Through EPAct 2005 sec. 1223, Congress also directed the Commission to encourage the deployment of advanced transmission technologies in infrastructure improvements, including among others optimized transmission line configurations (including multiple phased transmission lines), controllable load, distributed generation (including PV, fuel cells, and microturbines), and enhanced power device monitoring.

437. Accordingly, each public utility transmission provider is required to submit, as part of a compliance filing in this proceeding, a proposal for a coordinated and regional planning process that complies with the planning principles and other requirements in this Final Rule.[246] In the alternative, a transmission provider (including an RTO or an ISO, as

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[245] FPA section 217(b)(4) provides that "[t]he Commission shall exercise the authority of the Commission under [the FPA] in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long term basis for long term power supply arrangements made, or planned, to meet such needs."

[246] The pro forma OATT, as modified by this Final Rule, reflects the proposed planning requirement in sections 15.4, 16.1, 17.2(x), 28.2, 29.2, 31.6. The planning process itself will be included as Attachment K to the pro forma OATT. We understand (continued)