

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 35**

[Docket No. RM96-11-000]

Capacity Reservation Open Access Transmission Tariffs

April 24, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing a rule that specifies filing requirements to be followed by public utilities in making transmission tariff filings based on capacity reservations for all transmission users. The proposed capacity reservation open access transmission tariff, if adopted, would replace the open access transmission tariff required by the Commission in 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, FERC Stats. & Regs. ¶ 31,036 (1996). The Commission is seeking public comment on whether to require this type of tariff for all public utilities that must comply with the Commission's open access requirements, and on the specific provisions that should be contained in a capacity reservation tariff. The Commission will convene a technical conference on these issues.

DATES: Written comments must be received by the Commission by August 1, 1996. The Commission also will convene a technical conference to be held over two days in September 1996 at the Commission, 888 First Street NE., Washington, D.C. 20426. The Commission will announce the dates, time, and agenda of the technical conference at a later date.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, Telephone: (202) 208-0921; Roland W. Wentworth (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 10426, Telephone: (202) 208-1288.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, D.C. 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) is today adopting a final rule (Open Access Final Rule)¹ requiring each public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce to file an open access non-discriminatory transmission tariff (Final Rule tariff). The Open Access Final Rule also requires these utilities to take transmission service for their own wholesale sales and purchases of electric energy under this tariff. The Final Rule tariff specifies that service is to be provided on both a network basis and a flexible point-to-point basis; the network service is a load-based service, while the point-to-point service is based on transmission capacity reservations.

This Notice of Proposed Rulemaking ("NOPR") requests comment on whether there are certain disadvantages inherent in offering transmission service on both a network and a point-to-point basis. If so, the Commission requests

comment on whether comparability of transmission service can be better accomplished by requiring that transmission service be rendered using a single methodology. In particular, the Commission requests comment on the capacity reservation tariff ("CRT") approach described herein. The Commission also requests comment on whether there are other methodologies that can fulfill the policy goals served by a single capacity allocation methodology as well as, or better than, the proposed CRT approach.

The proposed CRT approach would be based on the point-to-point service in the Final Rule tariff and would allow all transmission customers to have the same degree of flexibility in reserving and using transmission service. This NOPR proposes that no later than December 31, 1997, the Open Access Final Rule's network and point-to-point tariff be replaced by a CRT that provides only reservation-based transmission service for all jurisdictional service.

The Commission will hold a technical conference on this proposal prior to adopting a final rule.

II. Public Reporting Burden

The proposed rule specifies filing requirements to be followed by public utilities in making tariff filings that reflect transmission capacity reservations for all wholesale transmission customers and any unbundled retail transmission customers and would replace the open access transmission tariffs required by the Commission in the Open Access Final Rule. The information collection requirements of the proposed rule are attributable to FERC-516 "Electric Rate Schedule Filings." The current total annual reporting burden for FERC-516 is 828,300 hours.

The proposed rule requires public utilities filing capacity reservation transmission tariffs to provide certain information to the Commission. The public reporting burden for the information collection requirements contained in the proposed rule is estimated to average 250 hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 166 of these entities own, operate, or control facilities used for the

¹ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Docket No. RM95-8-000, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996). The Open Access Final Rule is being published concurrently in the Federal Register.

transmission of electric energy in interstate commerce and will respond to the information collection. The respondents would be the same as those for the Open Access Final Rule, *i.e.*, all public utilities required to file non-discriminatory open access tariffs. Accordingly, the public reporting burden is estimated to be 41,000 hours.

Interested persons may send comments regarding the burden estimates or other aspects of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208-1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395-3087).

III. Background

In the Open Access Final Rule, the Commission has adopted a pro forma tariff containing the minimum acceptable terms and conditions of transmission service for network service and for flexible point-to-point service. This type of tariff, in conjunction with other requirements imposed in the Open Access Final Rule and in the related final rule in Open Access Same-Time Information System,² is sufficient to remedy undue discrimination in the provision of transmission services. However, in analyzing the comments in the Open Access proceeding, it became apparent that a single service open access tariff might better accommodate competitive changes occurring in the industry while ensuring that all interstate transmission service subject to the Commission's jurisdiction is provided in a fair and non-discriminatory manner.

Network transmission service, in the Open Access Final Rule, defines rights and sets prices based on *customer load*. It allows the transmission customer to use the transmission provider's entire grid to serve designated loads from designated resources without having to pay a separate charge for each pairing of resource and load. Thus, network service enables the transmission customer to use the network flexibly to integrate its resources and loads efficiently and to dispatch economically

its system, in the same way as the owner of the transmission system.

Firm flexible point-to-point service in the Open Access Final Rule, on the other hand, defines rights and sets prices based on transmission *capacity reservations*. The transmission user designates points of delivery (PODs) and points of receipt (PORs) and makes a capacity reservation for each POD and for each POR. Consistent with the comparability principle that is one of the cornerstones of the Open Access Final Rule, firm point-to-point transmission service provided to a customer must be comparable to that which the utility provides to itself. For example, the customer should be able to use any available unreserved service without an additional charge, as long as the use does not exceed its capacity reservation.

The Commission proposes to replace the network and point-to-point services in the Open Access Final Rule tariff with a CRT that would accommodate both network and point-to-point needs. The CRT would be based on the point-to-point service in the Final Rule tariff and would allow all jurisdictional transmission customers to have the same degree of flexibility in reserving and using transmission service. Under the CRT, all transmission customers would specify the amount of power to be received and delivered at multiple receipt and delivery points, and would have substantial flexibility in rearranging these receipt and delivery points. All nominations for capacity reservations would be evaluated in the same manner.³

IV. Reasons for Proposing a CRT

In adopting the Final Rule tariff in the Open Access Final Rule, our purpose was to remedy undue discrimination in the provision of interstate transmission service, not to reform traditional tariff design. We believe that the Final Rule tariff, in conjunction with the OASIS Final Rule, remedies undue discrimination in transmission service. The network section of the Final Rule tariff is based on the prevailing industry practice of traditional load-ratio pricing.

Many commenters responded to our initial proposed open access pro forma tariffs by asking us to adopt either more flexible or more innovative tariffs in the Open Access Final Rule. Some commenters suggested that the basic design of the Open Access NOPR pro forma tariffs may be too inflexible to accommodate industry innovations. The capacity reservation tariff proposed here

is an alternative that may better suit the needs of the changing electric power industry.

The Final Rule tariff offers two types of transmission service. Network service provides enough transmission capacity to satisfy a customer's consumption of electric power. Point-to-point service sets aside as much transmission capacity as the customer reserves. Thus, network service is based on use, and point-to-point service is based on reservations.

Network customers get and pay for the capacity they use, and point-to-point customers get and pay for the capacity they reserve. The fixed costs of the transmission system are allocated among network customers on the basis of use, that is, the customers' loads. The fixed costs of the transmission system are allocated among point-to-point customers on the basis of their reservations, that is, their contract demands.

Offering two types of service in one tariff may have disadvantages. At the end of this NOPR we ask questions about whether this is so. If it is, a solution may be to put all jurisdictional transmission users on the same basis: The transmission provider would serve and charge all customers (including its own jurisdictional uses of the system) on the basis of how much transmission capacity they either use or ask for. That is, it would make the entire tariff either load-based or reservation-based. If we do reform the tariff to put all transmission users on the same basis, we believe that, for the reasons set out next, putting all on a reservation basis may be more consistent with the industry's direction in its competitive restructuring. We seek comment on whether this premise concerning reservation-based service is in fact correct.

First, reservation-based service appears to be more compatible with our new OASIS and the requirement that market participants know how much transmission is available for their use. In the OASIS Final Rule, we require public utilities to post electronically their available transmission capability, or ATC. They must do this by calculating total transmission capability and subtracting transmission capacity committed to other uses. It is relatively easy to subtract point-to-point service reservations, but there is no amount of transmission capacity explicitly reserved for network customers or for the transmission provider's own network uses.

The transmission provider is committed to having available enough transmission capacity to serve its native

² Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, Docket No. RM95-9-000, Order No. 889, FERC Stats. & Regs. ¶ 31,037 (1996) (OASIS Final Rule). This rule also is being published concurrently in the Federal Register.

³ A "nomination" is a request; a "reservation" is a confirmed nomination that can be held or traded.

load and the loads of its network customers. But the transmission provider knows only the customers' historical loads, not their future loads. Although the customers (as well as the transmission provider itself) must forecast their loads, they may have no incentive to forecast accurately because the utility must meet all transmission needs for serving load regardless of the forecast. This requires the transmission provider to predict its future native load and that of each of its network customers in order to determine its ATC.

While this process can work reasonably well in a regime in which utilities make bundled generation and transmission sales to requirements customers, it may not work as well now that various kinds of power sellers and marketers are eligible for unbundled network service. The transmission provider may not have any good way to forecast the increases or decreases in the loads of customers that it has no obligation to serve. It seems appropriate to ask all transmission customers, including the transmission provider, to state explicitly how much transmission capacity they want set aside for their needs. In this way, they effectively would be making a capacity reservation. This would simplify the transmission provider's determination of ATC and make the information available on the OASIS.

Under a CRT approach, each transmission customer (including the transmission provider for its own uses) would have to state its transmission capacity needs, as in the current point-to-point tariff. The requirement that reservations be stated in order to be subtracted from total transmission capability would ensure that all customers are treated comparably without the transmission provider having to make forecasts only for some.

On the other hand, an argument can be made that the CRT approach may lead to an understatement of ATC. For example, in reserving transmission service, customers might base such reservations on an estimate of their maximum non-coincident peak ("NCP") load. This conceivably could result in an understatement of ATC, because the diversity of customer loads at the time of the system peak would no longer be a relevant factor in determining ATC. The Commission requests comment on whether in practice this would be a problem and, if so, whether it can be remedied.

Second, a reservation-based tariff would put all jurisdictional transmission customers, including the transmission provider for its own

jurisdictional uses, on the same basis. All customers would not only have to reserve transmission capacity but also would have to pay for the transmission capacity that they reserve.

It may be disadvantageous to have different bases for the pricing of two services in a tariff. For example, suppose a transmission provider has two nearly identical transmission customers. Each has a load of 50 MW, and each thinks its load next year could be as little as 40 MW or as much as 60 MW. However, one takes network service, and the other takes 60 MW of point-to-point service. Suppose these are the only customers on the system and they have coincident peak loads; if each actually uses 60 MW next year, each pays half the cost of the transmission system. But if each uses 40 MW, the point-to-point customer pays 60 percent of the cost⁴ while the network customer pays only 40 percent.

Customers also may attempt to exploit to their advantage the different terms and conditions of the two services. As commenters in the Open Access proceeding pointed out, the many differences between capacity reservation-based (point-to-point) and load-based (network) services mean that transmission customers are treated differently. Having two services in a tariff may create an incentive for a customer to switch back and forth from one service to another in a way that may allow it to avoid paying a fair share of system costs. This would not be the case if all customers are served under a reservation-based (or load-based) tariff.

Third, a reservation-based approach may be a better basis for accommodating electric industry innovations and pricing reforms. The industry is in a period of rapid change, and many ideas are being considered for independent system operators (ISOs), regional transmission groups, regional power exchanges, generation divestiture, distribution company spin-offs, unified regional transmission ownership, regional transmission tariffs, megawatt-mile transmission pricing, marginal cost pricing, and congestion pricing, among other innovations. Innovations are being considered or implemented in such places as California, the Midwest, the large eastern power pools, and other places. Most proposals assume that all jurisdictional users of the transmission system will be treated alike.

Many commenters in the Open Access proceeding raised concerns that our pro forma tariffs with two separate services,

one based on load and another based on capacity reservation, may be an obstacle to putting all transmission customers on the same basis and hence an obstacle to innovation. For example, the Commission would need to make special tariff accommodations to permit California public utilities to carry out the reforms mandated by the California Public Utilities Commission for an ISO, a regional power exchange, and congestion pricing. Although we have indicated that we are prepared to accept other tariff designs that further the goal of fostering robust competition in the bulk power market, the number of parties concerned with the traditional nature of our tariff suggests that our tariff may inhibit other parties from considering innovative industry structures and pricing policies.

This NOPR, among other things, indicates that the Commission is not committed to traditional tariff design. Further, it proposes a tariff design that supports calculation of ATC and treats all jurisdictional transmission users alike. We believe that the proposed CRT concept would provide a flexible base on which industry participants can build a variety of innovative tariff designs. We expect the CRT concept to be more compatible with various ISO and power pool pricing proposals than the traditional Open Access Final Rule tariff. We ask for comment on whether this is so. In addition, we request comment on whether there are other transmission capacity allocation methodologies (for instance, an "all network service" methodology) that, when compared to the two-service approach in the Final Rule, are more compatible with proposed and contemplated marketplace innovations.

In particular, we expect that a CRT would provide a better basis for regional flow-based transmission pricing. In the comments we received in the Open Access proceeding, a large number of industry participants stressed that the Commission should not codify contract path pricing in its Final Rule. As we explain more fully in the Open Access Final Rule, they were concerned that the proposed pro forma tariffs would codify the contract path approach to pricing. We explain in the Open Access Final Rule that this is not our intention; we continue to encourage the industry to explore solutions to regional loop flow problems through innovative regional flow-based pricing proposals.

It is unlikely that an efficient tariff for a large region would allocate some transmission costs on the basis of various subregional loads and other costs on the basis of capacity reserved over various multipath interfaces within

⁴This is based on a 60-MW reservation divided by the sum of the network loads and the capacity reservations at the time of system peak.

the region. Most regional tariff proposals would allocate costs on the latter basis alone, recognizing, of course, that the configuration of regional loads is a starting point for any load flow study. For this reason, we believe that the proposed CRT approach to tariff design may be more compatible with the intent of some in the industry to move to flow-based pricing than a tariff that combines services based on usage and reservations. We ask for comments on whether this is the case. In addition, we ask for comment on whether there are other non-CRT approaches that may be more compatible with flow-based pricing.

Fourth, as discussed in the Open Access Final Rule, load-based network service generally cannot be resold. This reduces the amount of transmission products and services that can enter the secondary market. As a result, the secondary market could be thinner and less effective as a risk management tool for market participants. In addition, independent generators and marketers could be hampered in making efficiency-enhancing transactions that do not involve a load-serving entity, such as trading power between generators in different market centers. The Commission seeks comments on whether a capacity reservation service or some other alternative to the two-service approach in the Final Rule would better allow market participants to freely make efficient deals that involve combining transmission entitlements with power products in new and creative ways.

Fifth, we believe that additional comments should be received on whether the goal of unbundling transmission and generation services can be fully achieved under load-based network service. It would appear that transmission service would be fully unbundled from generation service under a CRT because the generation and transmission products are reserved and used independently. For example, reservations for flexible grid use, including interface capacity, could be held independently of load. In addition, generation resources and load would not need to be designated as under the network service; a transmission customer would have to pay for the capacity it reserved at PODs and PORs, but it would not have to designate any resources or loads.

Sixth, a capacity reservation approach may facilitate transmission planning. Under a CRT, all wholesale transmission users and unbundled retail transmission customers would be required to specify and pay for all of their transmission needs, including

capacity needed for contingencies. The costs of contingency margins needed by only some users would not be allocated to all users of the grid. A CRT would allow each customer flexibility in managing its own risk, e.g., a customer could factor reasonable reserve margins into its reservation for contingencies. This approach may be consistent with some innovative proposals that seek to accommodate customer-driven transmission expansion, in addition to traditional utility-planned transmission expansion.

Finally, some commenters in the Open Access proceeding encouraged us to treat the retail function of a public utility transmission provider as a separate wholesale customer for purposes of the transmission tariff. While we do not require this in the Open Access Final Rule, we propose here that the transmission used on behalf of the transmission provider's bundled retail native load be *nominated and reserved* in the same way as all other transmission service.⁵ Requiring the same reservation system for all transmission capacity needs would help to assure that all uses of the transmission system are treated in a comparable, non-discriminatory manner. We seek comment on whether the retail function of a public utility transmission provider should be treated as a separate wholesale customer for purposes of the CRT tariff.

V. Capacity Reservation Service

A. Discussion

The Commission's CRT proposal is as follows. Each public utility subject to the Open Access Final Rule would be required to file a CRT no later than December 31, 1997. Under the CRT, which would replace existing transmission tariffs, all firm transmission users, including the transmission owner on behalf of its wholesale requirements and bundled retail customers, would nominate and reserve transmission capacity; they would nominate and reserve firm rights to receive specific amounts of power at specific grid PORs and to deliver specific amounts of power at specific grid PODs. PORs could include interconnections with other systems or generator bus bars. PODs could include interconnections with other systems or substations where the transmission provider's transmission and distribution systems are connected. Reservation holders could flexibly schedule power among some or all of their PORs and

PODs within their reservation limits and could reassign their reservations. Thus, capacity reservation service could be used both for point-to-point types of transactions and in a network manner (integration of a set of generating resources with a dispersed load).

The capacity reservation approach would be based on the flexible point-to-point service in the Open Access Final Rule. A customer could specify a single POR and a single POD, or it could reserve service from multiple PORs to multiple PODs. The transmission provider would set aside sufficient transmission capacity to satisfy its firm reservation needs for any potential combinations of power receipts and deliveries among the designated receipt and delivery points.

An entity with dispersed generation and load could use CRT service to dispatch its generation economically within its capacity reservation. When one generating unit is ramped down, the customer could ramp up another generating unit located at another designated receipt point. The flexibility to serve load when the transmission customer is using less than its capacity reservation would be the same as under Final Rule network service. CRT service could also be used for simple point-to-point transactions if the customer does not want or need much flexibility.

Under a CRT, a customer also could have the flexibility to rearrange, or modify, its firm reservation to deal with unforeseen circumstances. Such a rearrangement could be accomplished as long as the customer's capacity reservation is not exceeded and firm transmission capacity is available. The flexibility of the proposed CRT service would not be unlimited, however. For example, a transmission customer might have very little flexibility to modify its reservation on a firm basis to accommodate an unanticipated dispatch pattern when the grid is operating at or close to capacity. Under such conditions, modifications likely would infringe on other firm reservations. To manage this risk, the customer would have two basic options. One would be to take non-firm transmission or ancillary service on an as-available basis (and potentially pay opportunity costs) when the need to alter the planned operation arises. The other option would be to subscribe to sufficient firm capacity in advance so as to build in the desired operating flexibility. While either option would have financial risks, all jurisdictional transmission customers would have the same opportunity to manage this risk, since the transmission service would be the same for all users.

⁵ As discussed below, this is not the same as requiring bundled retail customers to *take* service under the CRT.

Under a CRT, all unbundled transmission service in interstate commerce, including unbundled retail service, would be taken under the tariff unless the Commission in an individual case determined otherwise (as discussed in the Open Access Final Rule in Section IV.I). The rates, terms, and conditions for unbundled transmission service would be in accordance with the tariff. In addition, all public utilities would nominate and reserve firm transmission service under the tariffs, including nominating and reserving transmission used for native load (*i.e.*, bundled wholesale requirements and bundled retail customers). This means that nominations and reservations would have to be made for specific receipt and delivery points for *all* firm transmission services. The purpose of this requirement would be that it may better ensure comparability. Moreover, the requirement for utilities to hold reservations on behalf of bundled wholesale and retail customers would be consistent with our responsibility under FPA section 213(b) to make information available about ATC and transmission constraints. The physical quantities of transmission service available to unbundled users cannot be measured accurately as long as the physical quantities used for bundled service are not measured in the same way.

However, we wish to emphasize that we are not proposing to set the rates, terms or conditions for the transmission component of bundled retail service. Nor would we determine the amount of capacity to be reserved for retail load. Traditional ratemaking prerogatives of state commissions would be unchanged by this nomination and reservation requirement. If the CRT is adopted, the Commission would allocate transmission costs based on the sum of all reservations for wholesale customers, unbundled retail customers, and bundled retail customers. State commissions could adopt a similar approach; however, they would remain free to use an inter-jurisdictional allocation formula of their own choosing, just as they may now. We note that in the Open Access Final Rule we have provided for procedures to facilitate jurisdictional line-drawing regarding cost allocation, and for deference to state recommendations. Therefore, we do not expect significant conflicts.

Under a CRT, a public utility would have an opportunity to recover all of its transmission fixed costs, just as it does today. While it is possible that the federal and state allocations could add up to less or more than 100 percent of

the utility's fixed transmission costs, that is a risk that a utility faces anytime it is subject to the rate jurisdiction of more than one regulatory authority. Moreover, we would work with state commissions to develop compatible cost allocation procedures and to minimize the possibility of any over- or under-recovery of transmission costs.

B. Proposed Principles

A capacity reservation tariff might have terms and conditions very much like those for point-to-point service in the Final Rule tariff. These would need to be modified to accommodate former network service customers. It is premature to specify detailed terms and conditions of capacity reservation service in advance of the comments and technical conference. However, we propose certain general capacity reservation tariff principles for comment.

1. Purpose of Reservation Service

Transmission products and services should be provided on an open access, comparable basis. In order to ensure comparability, transmission service should be nominated and reserved on a non-discriminatory basis. Transmission for wholesale sales of electric energy should be made available on an unbundled basis.

2. Basic Service Concept

All firm transmission service would be reserved, and all reserved service would be firm service. Reservations of transmission capacity should permit the customer to receive up to a specific amount of power into the grid at specified PORs, and to deliver up to a specific amount of power from the grid at specified PODs, on a firm basis. Individual PORs and PODs need not be "paired" with each other. The customer's capacity reservation would be the higher of either (1) the sum of the reservations at all PORs or (2) the sum of the reservations at all PODs. All nominations for a capacity reservation would be evaluated using the same standard; for example, the utility could apply a feasibility criterion that states that the grid must be able to accommodate the scheduled use of all capacity reservations simultaneously.

3. Use of Capacity Reservations

A customer with a capacity reservation could use the reservation to deliver or receive any type of power product (such as firm or non-firm power). That is, use of the capacity reservation should not be restricted to particular power products. Any such restriction would be inconsistent with

unbundling. This would allow the capacity reservation holder to combine transmission and power products in any way that satisfies its needs.

4. Applicability to All Customers

Capacity reservations for all firm transmission service would be made under the CRT, including reservations nominated on behalf of the transmission provider's bundled wholesale and retail customers. This would make it possible to allocate capacity and costs comparably among all transmission users. This would not require the unbundling of the transmission component of bundled retail rates or affect state authority with regard to the rates, terms, and conditions of service to bundled retail customers.

5. Application of Penalties for Overuse

Any charges for exceeding capacity reservations should be non-discriminatory. If a CRT penalizes use in excess of reserved amounts, these penalties should be applied comparably to all reservations. Any dispositions of penalties assessed against the utility for violating bundled retail capacity reservations would be under the state commission's ratemaking authority. If penalties are not authorized by the state commission's ratemaking authority, the Commission would not authorize recovery of such penalties from other transmission customers.

6. Standard for Accepting Nominations

A nomination for a capacity reservation would be accepted if the transmission provider determines that it can be reliably accommodated without infringing on other firm reservations. If transmission capacity expansion is needed and approved by state siting authorities, a nomination should be accepted if the nominating customer is willing to pay its appropriate share of the cost of the expansion.

7. Non-firm Transmission Service

In addition to reserved firm service, transmission providers would offer non-firm transmission service. Non-firm service could be provided from transmission capacity not scheduled by customers with reservations or from capacity that is not previously reserved. Non-firm service would be allocated to the highest valued use by opportunity cost pricing as described in the Open Access Final Rule or by some other pricing consistent with the Commission's Transmission Pricing Policy Statement.

8. *Open Season for New Facilities*

We would anticipate requiring a transmission provider to publicly announce its plans for capacity expansion projects to allow market participants to reserve capacity. Participants would pay an appropriate share of the costs of the project. All market participants would be treated comparably in securing additional transmission capacity reservations when the grid capacity is expanded.

9. *Cost Allocation and Pricing*

The fixed costs of the transmission network would be allocated among reservation holders on the basis of their capacity reservations. Rates would be designed to recover these costs and would be revised from time to time to reflect changes in the level of fixed costs or changes in reserved amounts. In this way, transmission providers would have an opportunity to fully recover their fixed costs. Transmission providers would be expected to propose specific mechanisms for recovering fixed costs from transmission customers.

10. *Standardized Products and Priority Protocols*

Just as the Commission has required under the Open Access Final Rule tariff, the CRT would offer standardized transmission products and services, defining reserved and non-reserved transmission service and setting reservation priorities and curtailment protocols. This would reduce uncertainty and facilitate the trading of any transmission capacity in a secondary market. Such trading can be an important tool in price discovery and risk management.

11. *Service Modifications*

Customers with a capacity reservation would be allowed to modify their capacity reservations at no additional charge if the modification can be accommodated without infringing upon any other firm capacity reservations. Modifications should not result in the customer's capacity reservation being exceeded. Modifications could include reallocation among the customer's already specified receipt and delivery points or reallocation from existing to new receipt and delivery points.

12. *Scheduling Flexibility*

Customers with capacity reservations would be given the option of scheduling (using) less than their full capacity reservation at each POR or POD. In addition, the transmission provider also could offer an "obligation" type of capacity reservation under which the

customer would be required to use all of the capacity it has reserved.

13. *Reassigning Reservations*

Customers would be allowed to reassign their reservations to other entities eligible to take service under the CRT at no additional cost, subject to certain limitations, such as those in the Open Access Final Rule point-to-point tariff provisions.

14. *Opportunity Cost Pricing*

Opportunity cost pricing would still be an option under a capacity reservation service. Under a CRT, a holder of a capacity reservation would not pay opportunity costs for use of its own capacity when the utility encounters a transmission constraint; instead, it would be eligible to receive opportunity cost payments if it did not use its full capacity reservation across the constrained interface. In contrast, a customer seeking a capacity reservation or using non-firm service might have to pay opportunity costs.

15. *Planning Obligation*

Each market participant would be responsible for planning its own transmission needs. The transmission provider would not be responsible under Federal rules for planning the CRT nominations of others, even relatively small customers. Transmission providers, of course, would be free to enter voluntary arrangements to perform this task, or they may be required to do so under state laws. The Commission would consider approving negotiated rates and conditions between a small customer and a transmission utility that reflect different risks accepted by each party when one plans for the other.

VI. Questions

In addition to the questions discussed above, the Commission also seeks comments on the following questions:

1. What are the advantages and disadvantages of having two services in one tariff?
2. What are the advantages and disadvantages of having all transmission users on a load-based network service tariff? Are there ways of overcoming the disadvantages without moving away from network service?
3. Does network service provide any transmission use that could not be provided under a CRT?
4. Is the CRT or a network approach better suited to encouraging efficiency-enhancing transactions and encouraging wholesale power markets in which the greatest number of sellers have a chance

to compete? Are they equally-suited to achieving these goals?

5. The proposed rule would require that all transmission uses, including bundled retail service, be reserved. Is this appropriate? The Commission intends that bundled wholesale and retail load would have reservation priority and seeks comments on how best to achieve this. Is it appropriate or necessary to have federal rules regarding such matters as physical scheduling and reservation priority for bundled retail load as well as for other transmission customers? How can transmission service for bundled retail load be separated from transmission service for others and how would such a separation be implemented?

6. Would a CRT requirement by the Commission facilitate or hinder any of the industry's current restructuring efforts?

7. Would a CRT facilitate or hinder any of the innovative transmission pricing approaches now being considered by the industry? Specifically, would it accommodate flow-based pricing that does not depend on a contract path?

8. Should nominations for longer-term capacity reservation receive priority over those for shorter terms? Are there other ways to allocate capacity nominations? Would an initial open season, with bundled wholesale and retail load priority, be appropriate?

9. How should points of receipt and points of delivery be defined? Is the distinction between transmission and distribution relevant in determining eligible points?

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)⁶ requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. We note, if this proposed rule is adopted, only public utilities that are subject to the Open Access Final Rule will have to file CRTs. In other words, the proposed rule would be applicable to public utilities that own, control or operate interstate transmission facilities, not to electric utilities *per se*. Almost all public utilities that own, control or operate interstate transmission facilities do not fall within the RFA definition of small entities.

⁶ 5 U.S.C. §§ 601-612.

In *Mid-Tex Electric Coop., Inc. v. FERC*,⁷ the court accepted with the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term "small entities" as defined in the RFA,⁸ the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP).⁹ The CWIP rules applied to all public utilities. The proposed rule in contrast would apply to only those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule. Further, the Commission expects that public utilities for good cause shown could seek waivers of the proposed rule's requirement, just as they are able to seek waiver of the Open Access Final Rule.

Because: (a) Virtually all of the utilities that would be subject to the proposed rule are not "small entities" as defined in the RFA; and (b) the proposed rule will make adequate provision, through allowances for waivers, for mitigation of the effects of the rule, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VIII. Environmental Statement

The Commission concludes that promulgating the proposed rule would not represent a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.¹⁰

IX. Information Collection Statement

The Office of Management and Budget's (OMB) regulations¹¹ require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed rule are

contained in FERC-516 "Electric Rate Filings." The Commission uses the data collected in this information collection requirement to carry out its regulatory responsibilities under Part II of the Federal Power Act. The Commission's Office of Electric Power Regulation uses the data to review electric rate filings.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415). Comments on the requirements of this proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

X. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than August 1, 1996.

In addition, commenters are requested to submit a copy of their comments on a 3½ inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need be submitted only in the format and version in which it was generated (i.e., MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor text to ASCII. For Macintosh and Macintosh-based users, it would be helpful to save the documents in Macintosh word processor format and then to write them to files on a diskette formatted for MS-DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM96-11-000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's public reference room at 888 First Street, N.E., Washington, DC 20426, during regular business hours.

XI. Technical Conference

The Commission intends to convene a technical conference for two days in September 1996 at the Commission's office, 888 First Street NE., Washington, DC 20426, at a date and time to be announced. The first day of the technical conference will address the issue of whether the Commission

should require CRTs. The second day will address the issue of how to implement any such requirement.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements

By direction of the Commission.

Lois D. Cashell,
Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 35.28 is revised to read as follows:

§ 35.28 Non-discriminatory open access transmission tariffs.

(a) Every public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce must have on file with the Commission a capacity reservation tariff of general applicability for transmission services, including ancillary services, over these facilities consistent with the requirements of Order No. ____ (Final Rule on Open Access Capacity Reservation Tariffs). Subject to the exception in paragraph (b) of this section, such tariff must be filed no later than the date on which the Commission accepts for filing any agreement under which such public utility would engage in a sale of electric energy at wholesale in interstate commerce, or any agreement under which such public utility would engage in the transmission of electric energy in interstate commerce.

(b) If a public utility owns, controls or operates facilities used for the transmission of electric energy in interstate commerce as of July 9, 1996, it must file a capacity reservation tariff of general applicability for transmission services, including ancillary services, over these facilities consistent with the requirements of Order No. — (Final Rule on Open Access Capacity Reservation Tariffs) no later than December 31, 1997.

(c) Any public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce, and that uses those facilities to engage in wholesale sales and/or purchases of electric energy, or

⁷ 773 F.2d 327, 340-343 (D.C. Cir. 1985) (*Mid-Tex*).

⁸ The RFA defines a "small entity" as "one which is independently owned and operated and which is not dominant in its field of operation." See 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a)(1) (definition of "small business concern").

⁹ *Mid-Tex*, 773 F.2d at 340-43.

¹⁰ See 18 CFR 380.4(a)(15) (categorically excluding electric tariff filings under sections 205 and 206 of the FPA from the obligation to prepare an environmental assessment or an environmental impact statement).

¹¹ 5 CFR 1320.12.

unbundled retail sales of electric energy, must take transmission service for such sales and/or purchases under the tariff filed pursuant to this section.

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