

thereafter at intervals not exceeding 11,700 FC of disk life, inspect the LP turbine disks stage 2 and stage 3 for corrosion using RRD Alert Service Bulletin (ASB) No. TAY-72-A1524, Revision 3, dated March 24, 2010.

(2) For engines with disk life that already exceed 11,700 FC on the effective date of this AD, perform the inspection within 90 days after the effective date of this AD.

(3) When, during any of the inspections as required by paragraphs (e)(1) and (e)(2) of this AD, corrosion is found, replace the affected parts. RRD TAY 650 Engine Manual—E-TAY-3RR, Tasks 72-52-23-200-000 and 72-52-24-200-000, and RRD TAY 651 Engine Manual—E-TAY-5RR, Tasks 72-52-23-200-000 and 72-52-24-200-000, contain guidance on performing the inspection for corrosion and rejection criteria.

#### Previous Credit

(f) Initial inspections done before the effective date of this AD on LP turbine disks stage 2 and stage 3 listed in Table 1 and Table 2 of this AD using RRD ASB No. TAY-72-A1524, Revision 1, dated September 1, 2006, or Revision 2, dated June 13, 2008, comply with the initial inspection requirements specified in this AD.

#### Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(h) Refer to EASA AD 2010-060R1, dated April 14, 2010, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlwitz, 15827 Blankenfelde-Mahlow, Germany; phone: 011 49 (0) 33-7086-1883; fax: 011 49 (0) 33-7086-3276, for a copy of the service information referenced in this AD.

(i) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [tara.chaidez@faa.gov](mailto:tara.chaidez@faa.gov); phone: (781) 238-7773; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts, on April 29, 2010.

**Peter A. White,**

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.  
[FR Doc. 2010-10739 Filed 5-5-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 37

[Docket No. RM10-22-000]

#### Promoting a Competitive Market for Capacity Reassignments

April 29, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Based on the Commission's experience to date and a two-year study, released April 15, 2010, the Federal Energy Regulatory Commission proposes in this Notice of Proposed Rulemaking to lift the price cap for all transmission customers reassigning transmission capacity beyond October 1, 2010. The reforms proposed in this order are intended to facilitate the development of a market for capacity reassignments as a competitive alternative to primary capacity.

**DATES:** Comments are due July 6, 2010.

**ADDRESSES:** You may submit comments, identified by docket number by any of the following methods:

- *Agency Web site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Laurel Hyde (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8146,

A. Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6711.

#### SUPPLEMENTARY INFORMATION:

1. Based on the Commission's experience to date and a two-year study,

released April 15, 2010,<sup>1</sup> the Federal Energy Regulatory Commission (Commission) proposes in this Notice of Proposed Rulemaking (NOPR) to lift the price cap for all transmission customers reassigning transmission capacity beyond October 1, 2010. The reforms proposed in this order are intended to facilitate the development of a market for capacity reassignments as a competitive alternative to primary capacity.

#### I. Background

2. In Order No. 888, the Commission concluded that a transmission provider's *pro forma* Open Access Transmission Tariff (OATT) must explicitly permit the voluntary reassignment of all or part of a holder's firm point-to-point capacity rights to any eligible customer.<sup>2</sup> The Commission also found that allowing holders of firm transmission capacity rights to reassign capacity would help parties manage the financial risks associated with their long-term commitment, reduce the market power of transmission providers by enabling customers to compete, and foster efficient capacity allocation.

3. With respect to the appropriate rate for capacity reassignment, the Commission concluded it could not permit reassignments at market-based rates because it was unable to determine that the market for reassigned capacity was sufficiently competitive so that assignors would not be able to exert market power. Instead, the Commission capped the rate at the highest of (1) the original transmission rate charged to the purchaser (assignor), (2) the transmission provider's maximum stated firm transmission rate in effect at the time of the reassignment, or (3) the assignor's own opportunity costs capped at the cost of expansion (price cap). The Commission further explained that opportunity cost pricing had been permitted at "the higher of embedded costs or legitimate and verifiable opportunity costs, but not the sum of the two (*i.e.*, 'or' pricing is permitted;

<sup>1</sup> FERC Staff, *Staff Findings on Capacity Reassignment* (2010), available at: <http://www.ferc.gov> (Staff Report).

<sup>2</sup> *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, at 31,696 (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 (DC Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

'and' pricing is not)."<sup>3</sup> In Order No. 888-A, the Commission explained that opportunity costs for capacity reassigned by a customer should be measured in a manner analogous to that used to measure the transmission provider's opportunity cost.<sup>4</sup>

4. To foster the development of a more robust secondary market for transmission capacity, the Commission, in Order No. 890, concluded that it was appropriate to lift the price cap for all transmission customers reassigning transmission capacity.<sup>5</sup> The Commission stated that this would allow capacity to be allocated to those entities that value it most, thereby sending more accurate price signals to identify the appropriate location for construction of new transmission facilities to reduce congestion.<sup>6</sup> The Commission also found that market forces, combined with the requirements of the *pro forma* OATT as modified in Order No. 890, would limit the ability of assignors to exert market power, including affiliates of the transmission provider.

5. To enhance oversight and monitoring activities, the Commission adopted reforms to the underlying rules governing capacity reassignments.<sup>7</sup> First, the Commission required that all sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service commences.<sup>8</sup> Second, the Commission required that assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences.<sup>9</sup> Third, in addition to existing OASIS posting requirements, the Commission required transmission providers to aggregate and summarize in an electric quarterly report the data contained in these service agreements.<sup>10</sup>

6. The Commission also directed staff to closely monitor the reassignment-related data submitted by transmission

providers in their quarterly reports to identify any problems in the development of the secondary market for transmission capacity and, in particular, the potential exercise of market power.<sup>11</sup> Thus, the Commission directed staff to prepare, within six months of receipt of two years of quarterly reports, a report summarizing its findings.<sup>12</sup> In addition, the Commission encouraged market participants to provide feedback regarding the development of the secondary capacity market and, in particular, to contact the Commission's Enforcement Hotline if concerns arise.

7. In Order No. 890-A, the Commission affirmed its decision to remove the price cap on reassignments of transmission capacity but granted rehearing to limit the period during which reassignments may occur above the cap.<sup>13</sup> The Commission concluded that it would be most appropriate to lift the price cap on reassignments of capacity only to accommodate the Commission staff study period. Accordingly, the Commission amended section 23.1 of the *pro forma* OATT to reinstate the price cap as of October 1, 2010.<sup>14</sup> The Commission stated that, upon review of the staff report and any feedback from the industry, the Commission would determine whether it would be appropriate to continue to allow reassignments of capacity above the price cap beyond that date.

8. The Commission also clarified that, as of the effective date of the reforms adopted in Order No. 890, all reassignments of capacity must take place under the terms and conditions of the transmission provider's OATT. As a result, there was no longer a need for the assigning party to have on file with the Commission a rate schedule governing reassigned capacity. To the extent that a reseller has a market-based rate tariff on file, the provisions of that tariff, including a price cap or reporting obligations, will not apply to the reassignment since such transactions no longer take place pursuant to the authorization of that tariff.

9. In Order No. 890-B, the Commission clarified that the *pro forma* OATT does not, and will not, permit the withholding of transmission capacity by the transmission provider and that it effectively establishes a price ceiling for long-term reassignments at the transmission provider's cost of

expanding its system.<sup>15</sup> The Commission further found that the fact that a transmission provider's affiliate may profit from congestion on the system does not relieve the transmission provider of its obligation to offer all available transmission capacity and expand its system as necessary to accommodate requests for service.<sup>16</sup> The Commission pointed out that customers that do not wish to participate in the secondary market may continue to take service from the transmission provider directly, just as if the price cap had not been lifted.<sup>17</sup>

10. With regard to the report to be prepared by Commission staff, the Commission clarified that staff should focus on the competitive effects of removing the price cap for reassigned capacity.<sup>18</sup> The Commission stated that staff should consider the number of reassignments occurring over the study period, the magnitude and variability of resale prices, the term of the reassignments, and any relationship between resale prices and price differentials in related energy markets. In addition, the Commission directed staff to examine the nature and scope of reassignments undertaken by the transmission provider's affiliates and include in its report any evidence of abuse in the secondary market for transmission capacity, whether by those affiliates or other customers.

11. The Commission also granted rehearing and directed transmission providers to include in their electric quarterly reports the identity of the reseller and indicate whether the reseller is affiliated with the transmission provider.<sup>19</sup> The Commission also directed each transmission provider to include in their electric quarterly reports the rate that would have been charged under its OATT had the secondary customer purchased primary service from the transmission provider for the term of the reassignment.<sup>20</sup> The Commission directed transmission providers to submit this additional data for all resales during the study period and to update, as necessary, any previously-filed electric quarterly reports on or before the date they submitted their next electric quarterly reports.

## II. Discussion

12. Based on the Commission's experience and the two-year study, the

<sup>3</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,740.

<sup>4</sup> Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,224.

<sup>5</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 808 (2007), *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>6</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 808.

<sup>7</sup> *Id.* P 815.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* P 816.

<sup>10</sup> *Id.* P 817.

<sup>11</sup> *Id.* P 820.

<sup>12</sup> *Id.*

<sup>13</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 388, 390.

<sup>14</sup> *Id.* P 390.

<sup>15</sup> Order No. 890-B, 123 FERC ¶ 61,299 at P 78.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* P 79.

<sup>18</sup> *Id.* P 83.

<sup>19</sup> *Id.* P 84.

<sup>20</sup> *Id.*

Commission proposes to permanently remove the price cap on the reassignments of capacity and revise section 23 of the *pro forma* OATT accordingly, as indicated in Appendix A. In addition, the Commission proposes to direct transmission providers to submit corresponding revisions to their OATT's within 30 days of publication of the Final Rule in the **Federal Register**.

13. The secondary market for capacity reassignments experienced strong growth during the study period. Both the number of transactions and capacity volume reassigned rose throughout the two and one half year time span. The number of reassignments increased dramatically from just over 200 in 2007 to almost 32,000 in 2009. Almost 36 TWh flowed on reassigned paths in 2009, up from 3 TWh in 2007. Moreover, the majority of resale prices, 99 percent, were at or below the price cap. While few of the reassignments were at prices above the cap, it appears from the data that reassignment prices comported with pricing differentials between markets. For instance, there were numerous reassignments between points in New England and Quebec with prices comparable to the average spread in energy prices between the regions. These data suggest that resale prices reflect market fundamentals rather than the exercise of market power.

14. During the study period, there were 32 transactions of reassigned capacity by an affiliate of a transmission provider reassigned for more than the tariff rate. However, the percentage of such over-cap reassignments (0.5 percent) was in line with that of over-cap reassignments by non-affiliates (0.4 percent), leading us to believe that affiliate abuse is not an issue. For these reasons, the Commission proposes to find that the Staff Report supports the Commission's decision to lift the price cap beyond October 1, 2010 on all capacity reassignments.

15. The Commission seeks comment on this proposal. Additionally, given that the levels of reassignment and growth of reassignment varies substantially across transmission providers, we believe that there is significant potential for further growth in the reassignment of capacity. Accordingly, the Commission also seeks comments as to whether there are any other reforms that it should undertake to create a more efficient and vibrant secondary market for transmission capacity. Are there non-price limitations or regional factors that may be

continuing to limit the utility of reassignment? To the extent any limitations exist, the Commission seeks comment on how they should be addressed. For example, are there reforms to the redirect process that would enable all firm customers to use their firm capacity more flexibly and thereby facilitate capacity reassignment by making point changes by the buyer of reassigned capacity more efficient? In the natural gas industry, the Commission has established a system of secondary firm point priorities to provide greater flexibility in the use of firm capacity.<sup>21</sup> We request comment on whether such an approach could be used effectively in the electric industry and what impact, if any such an approach would have on system operations.

16. As discussed above, we propose to find that the Commission Staff Report supports the Commission's belief that there are no significant market power concerns to justify retaining price caps for any transmission customer.<sup>22</sup> With regard to affiliate abuse, the Staff Report finds that less than one percent of transactions performed by affiliates

<sup>21</sup> Secondary firm priority means that the shipper has scheduling rights to a new point that are superior to interruptible service but inferior to primary firm service for shippers using points specified in their contract. The use of secondary firm service enables shippers obtaining reassigned capacity to establish alternate firm capacity points. See *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 57 FR 13,267 (Apr. 16, 1992), FERC Stats. & Regs. ¶ 30,939, at 30,428 (1992), *order on reh'g*, Order No. 636-A, 57 FR 36,128 (Aug. 12, 1992), FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636-B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (DC Cir. 1996), *order on remand*, Order No. 636-C, 62 FR 10,204 (Mar. 6, 1997), 78 FERC ¶ 61,186 (1997); see also *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, 65 FR 10,156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,304-31,306, *clarified*, Order No. 637-A, 65 FR 35,706 (June 5, 2000), FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 65 FR 47,284 (Aug. 2, 2000), 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F.3d 18, 350 U.S. App. DC 366 (DC Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255, 368 U.S. App. DC 176 (DC Cir. 2005).

<sup>22</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 809 (stating that based on ten years of experience regulating capacity reassignments, the Commission believes there are no significant market power concerns to justify retaining the price caps for any transmission customer).

during the study period were transacted above the tariff rate during the study period. While staff did not detect affiliate abuse associated with reassignment by affiliates of the transmission provider during the study period, the Commission seeks comment on whether market participants have experienced any such affiliate abuse that would argue for maintaining the price cap on affiliates of the transmission provider, or if other safeguards are needed for such reassignments. How should reassignment by a transmission provider's retail service function (that is not a separate affiliate) be treated?

17. Based on the Commission's experience and the two-year study, the Commission believes that the absence of a price cap for transmission capacity reassignment does not present any major market concerns. Nevertheless, the Commission is committed to ensuring just and reasonable transmission service that is not unduly discriminatory or preferential and, therefore, will continue to monitor the secondary market of capacity reassignments for evidence of abuse of market power. The Commission receives sufficient information to monitor the secondary market for capacity reassignment because pursuant to section 23 of the *pro forma* OATT: (1) All sales of capacity must be conducted through or otherwise posted on the transmission provider's OASIS on or before the date of service; and, (2) assignees of transmission capacity must execute a service agreement prior to the date on which the reassigned service commences. In addition, transmission providers must aggregate and summarize in an electric quarterly report the data contained in these service agreements.<sup>23</sup>

### III. Information Collection Statement

18. The following collection of information contained in this proposed rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.<sup>24</sup> OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>25</sup>

<sup>23</sup> 18 CFR 35.10b; see also, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 817; *Notice Providing Guidance on the Filing of Information on Transmission Capacity Reassignments in Electric Quarterly Reports*, 124 FERC ¶ 61,244 (2008).

<sup>24</sup> 44 U.S.C. § 3507(d) (2000).

<sup>25</sup> 5 CFR 1320.11 (2009).

*Burden Estimate:* The public reporting and records retention burdens for the proposed reporting requirements and the records retention requirement are as follows.<sup>26</sup>

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
Conforming tariff changes .....	176	1	10	1,760

*Cost to Comply:* \$200,640. 1,760 hours @ \$114 an hour (average cost of attorney (\$200 per hour), consultant (\$150), technical (\$80), and administrative support (\$25)).

OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this proposed rule to OMB. If the proposed requirements are adopted they will be mandatory requirements.

*Title:* FERC-516, Electric Rate Schedules and Tariff Filings; FERC-717, Standards for Business Practices and Communication Protocols for Public Utilities.

*Action:* Proposed Collections.  
*OMB Control Nos.* 1902-0096 and 1902-0173.

*Respondents:* Transmission Providers.

*Frequency of responses:* One time.

*Necessity of the Information:*

19. The Federal Energy Regulatory Commission is proposing amendments to the *pro forma* OATT to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. The purpose of this proposed rulemaking is to strengthen the *pro forma* OATT by encouraging more robust competition. We propose to achieve this goal by removing the price cap previously imposed on reassignments of transmission capacity.

20. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov)]

21. For submitting comments concerning the collections of

information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-4650, fax: (202) 395-7285. Due to security concerns, comments should be sent electronically to the following e-mail address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please reference the docket number of this proposed rulemaking in your submission.

#### IV. Environmental Analysis

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>27</sup> The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.<sup>28</sup>

#### V. Regulatory Flexibility Act Analysis

23. The Regulatory Flexibility Act of 1980 (RFA)<sup>29</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This proposed rule would

apply to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current OATTs by filing the revised *pro forma* OATT is 176.<sup>30</sup> Of these only six public utilities, or less than two percent, dispose of four million MWh or less per year.<sup>31</sup> The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.<sup>32</sup> Moreover, the criteria for waiver that would be applied under this rulemaking for small entities is unchanged from that used to evaluate requests for waiver under Order Nos. 888 and 889. Thus, small entities who have received waiver of the requirements to have on file an open access tariff or to operate an OASIS would be unaffected by the requirements of this proposed rulemaking.

#### VI. Comment Procedures

24. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 6, 2010. Comments must refer to Docket No. RM10-22-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

25. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF

<sup>26</sup> These burden estimates apply only to this NOPR and do not reflect upon all of FERC-516 or FERC-717.

<sup>27</sup> Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>28</sup> 18 CFR 380.4(a)(15) (2009).

<sup>29</sup> 5 U.S.C. 601-612.

<sup>30</sup> The sources for this figure are FERC Form No. 1 and FERC Form No. 1-F data.

<sup>31</sup> *Id.*

<sup>32</sup> The Regulatory Flexibility Act 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)(2000); 15 U.S.C. 632(a)(1) (2000). In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327, 340-343 (DC Cir. 1985), the court accepted 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 Regulatory

Flexibility Act, 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). The CWIP rules applied to all public utilities. The revised *pro forma* OATT will apply only to 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.

format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

26. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

27. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

#### VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

29. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three

digits of this document in the docket number field.

30. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### List of Subjects in 18 CFR Part 37

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**BILLING CODE 6717-01-P**

**Appendix A**

**RM05-17-001, -002 & RM05-25-001, -002  
(Issued)**

**PRO FORMA OPEN ACCESS  
TRANSMISSION TARIFF**

**23 Sale or Assignment of Transmission Service**

**23.1 Procedures for Assignment or Transfer of Service:**

(a) ~~Subject to Commission approval of any necessary filings, a~~

Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller.

~~Compensation to Resellers shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion; provided that, for service prior to October 1, 2010, c~~Compensation to Resellers shall be at rates established by agreement between the Reseller and the Assignee.

(b) The Assignee must execute a service agreement with the Transmission Provider governing reassignments of transmission service prior to the date on

which the reassigned service commences. The Transmission Provider shall charge the Reseller, as appropriate, at the rate stated in the Reseller's Service Agreement with the Transmission Provider or the associated OASIS schedule and credit the Reseller with the price reflected in the Assignee's Service Agreement with the Transmission Provider or the associated OASIS schedule; provided that, such credit shall be reversed in the event of non-payment by the Assignee. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. The Assignee will be subject to all terms and conditions of this Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

**23.2 Limitations on Assignment or Transfer of Service:**

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the

Transmission Provider for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Transmission Provider and the Reseller through an amendment to the Service Agreement.

### 23.3 Information on Assignment or Transfer of Service:

In accordance with Section 4, all sales or assignments of capacity must be conducted through or otherwise posted on the Transmission Provider's OASIS on or before the date the reassigned service commences and are subject to Section 23.1. Resellers may also use the Transmission Provider's OASIS to post transmission capacity available for resale.

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BILLING CODE 6717-01-C

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket No. OSHA-2010-0003]

RIN No. 1218-AC46

#### Infectious Diseases

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Request for information.

**SUMMARY:** OSHA requests information and comment on occupational exposure to infectious agents in settings where healthcare is provided, (e.g., hospitals, outpatient clinics, clinics in schools and correctional facilities), and healthcare-related settings (e.g., laboratories that handle potentially infectious biological materials, medical examiner offices and mortuaries). OSHA is interested in strategies that are being used in such healthcare and other healthcare-related work settings to mitigate the risk of

occupationally-acquired infectious diseases. As such, OSHA would like to collect information and data on the facilities and the tasks potentially exposing workers to this risk; successful employee infection control programs; control methodologies being utilized (including engineering, work practice, and administrative controls and personal protective equipment); medical surveillance programs; and training. OSHA will use the information received in response to this request to determine what action, if any, the Agency may take to further limit the spread of occupationally-acquired infectious diseases in these types of settings.

**DATES:** Comments must be submitted by the following date:

*Hard copy:* Your comments must be submitted (postmarked or sent) by August 4, 2010.

*Facsimile and electronic transmission:* Your comments must be sent by August 4, 2010.

**ADDRESSES:** You may submit comments and additional materials by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the

instructions online for making electronic submissions:

*Fax:* If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648; or

*Mail, hand delivery, express mail, messenger or courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2010-0003, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., EST.

*Instructions:* All submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. OSHA-2010-0003). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>.

*Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the