

## Pre-Existing Contracts and Obligations Strawman: Duration of Rights

### Background

The RTO Congestion Management Workgroup has agreed upon a principle that underlies the workgroup's strawman proposal for treatment of pre-existing contracts and load service obligations. That principle is that:

Rights to use RTO transmission facilities are associated with Pre-existing Contracts (PECs) and Load Service Obligations (LSOs) with service commencement dates prior to the RTO Grandfathering date. **Such rights will be honored for the duration of the contract or obligation.** (Emphasis added).

The above stated principle does not define the phrase "the duration of the contract". The workgroup has not arrived at a common definition of the duration of rights arising from pre-existing contracts, for the purpose of honoring a given pre-existing contract. Two alternative points of view are queued up for the Regional Representative Group's (RRG's) consideration.

The two alternatives presented for the RRG are as follows:

1. Strawman Proposal:
  - a. Explicit roll-over rights will be honored;
  - b. PTOs *may* deny roll-over rights if the transmission contract provides the PTO with the option to do so; and
  - c. Pre-Order 888 contracts and Order 888 Open Access contracts associated with firm power service to statutory requirements loads (including third party transmission contracts necessary to meet load service obligations) are deemed to include transmission rollover rights that shall be honored so long as such rollover rights are exercised.
  
1. Alternative Proposal
  - a. Explicit roll-over rights will be honored; and
  - b. PTOs *shall* deny roll-over rights if the transmission contract provides the PTO with the option to do so.

The principal point of contention within the workgroup is item 1.c in the strawman proposal -- whether transmission contracts for firm power service to statutory requirements load obligations are deemed to include rollover rights where rollover rights are necessary to serve requirements loads obligations.

### Statement of Position Favoring Strawman Proposal

1. **FERC Requires Right of First Refusal for Firm Transmission Service.**

In Order No. 888, the Commission provided that firm transmission customers, upon the expiration of their contracts, or at the time their contracts become subject to renewal or rollover, should have the right to continue to take transmission service from

their existing transmission provider<sup>1</sup>. In Order No. 888-A, the Commission explained that the rationale for giving a firm transmission customer a reservation priority when its agreement expires is to provide a mechanism for allocation of transmission capacity when there is insufficient capacity to accommodate all requestors. The right of first refusal provides a tie-breaking mechanism that gives priority to existing customers so that they may continue to receive transmission service. F.E.R.C. Stats. & Regs. 31,408 at 30,196-97.

The Commission affirmed this direction in Order No. 638, where it held that native load, network, and long-term firm transmission reservations are allocated on a first-come-first-served-basis. Once reserved, these services cannot be preempted by subsequent requests for service<sup>2</sup>. The Order details the priorities for competing reservation requests and the conditions under which requests for service may bump reservations with lower priorities.

Finally, the Commission is clear that its instruction on reservation priority be uniformly applied. To wit: "All transmission providers must implement preemption and the right-of-first-refusal in the same manner. **This is not an area where transmission providers are free to devise their own unique procedures.**" (Emphasis added)<sup>3</sup>.

## 2. **Transmission Used to Serve Statutory Requirements Load Should be Deemed to Continue Serving Such Loads.**

Honoring only those existing transmission rights that are spelled out in contracts seems predicated on the assumption that all requirements load serving entities possess such express contracts and are thereby able to meet native load service obligations. This is not the case for all requirements load in the RTO-West region. Two examples come readily to mind:

First, transmission service is being purchased by load serving entities for the purpose of serving native load, under contracts that are not "pro forma". These non-pro forma contracts do not contain the rollover rights provided in section 2.2 of the OATT. Nevertheless, these existing long term firm transmission contracts for service to native load should be treated as if they contained rollover rights. To do otherwise would deny a right of first refusal to these long term firm transmission contracts.

Second, transmission service is being provided to load serving entities for the purpose of serving native load, through agreements whereby the load serving entity is not a party to the transmission contract. These "general transfer agreements" between Bonneville Power Administration and third party transmission owners are not pro forma. Nevertheless, these are existing long term firm transmission contracts for service to

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<sup>1</sup>F.E.R.C. Stats. & Regs. 31,036 at 31,665. However, in order for the existing customer to exercise the right of first refusal, the underlying contract must have been for a term of one year or more and the existing customer must agree to match the rate offered by another potential customer, up to the transmission provider's maximum filed transmission rate at that time, and to accept a contract term at least as long as that offered by the potential customer. Id.

<sup>2</sup> Order No. 638, "Open Access Same Time Information System and Standards of Conduct", 90 F.E.R.C. ¶ 61,202 (Standard 4.16 at p. 75) (2000).

<sup>3</sup> Order 638 at 81.

native load. As such, they should be treated as if they contained rollover rights for to do otherwise would deny a right of first refusal.

**1. Participating Transmission Owners Should Not Be Forced to Forego a Pre-Existing Contract Option to Rollover.**

The two alternatives presented to the RRG each address pre-existing contracts with an option wherein the transmission owner may choose to rollover the contract; see paragraph b of Strawman and Alternative Proposals, at page 1 above. In the Strawman Proposal, the owner retains its right to rollover the pre-existing contract. In the Alternative Proposal, the owner must refuse to rollover the contract.

The Alternative Proposal requires the owner to forgo a right it negotiated for itself -- namely, an exclusive right to rollover the pre-existing contract. One assumes that such an option has value to the owner. Therefore, under the Alternative Proposal the transmission owner is not only forced to give up its contractual option to rollover the contract, but it is deprived of the benefit of the bargain it negotiated in the pre-existing contract.

In contrast, the Strawman Proposal permits the transmission owner to retain the benefits of the contract it negotiated. And while paragraph b of the Strawman Proposal does not guarantee the transmission customer's right of first refusal, at least the customer retains the deal the customer negotiated when it entered into the option contract in the first place. The Alternative Proposal deprives the transmission customer the service it might otherwise enjoy if the owner exercised the option to rollover the contract.

**Conclusion**

Pre-Order 888 contracts and Order 888 Open Access contracts associated with firm power service to statutory requirements loads (including third party transmission contracts necessary to meet load service obligations) should be deemed to include transmission rollover rights. Such rights should be honored so long as such rollover rights are exercised. Any other outcome will be contrary to FERC practice, and would deny load serving entities in the RTO area the necessary rights to fulfill statutory load serving obligations.

**Statement Favoring Alternative Proposal**

See "Discussion Paper: Honoring Pre-Existing Rights in the RTO Environment," by Carl Imperato

