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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 42

(Docket No. RM06-8-001; Order No. 681-A)

Long-Term Firm Transmission Rights in Organized Electricity Markets

(Issued November 16, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Rehearing and Clarification

SUMMARY: The Federal Energy Regulatory Commission is issuing an order on rehearing and clarification of Long-Term Firm Transmission Rights in Organized Electricity Markets, Order No. 681, 71 Fed. Reg. 43,564 (Aug. 1, 2006). The order on rehearing denies rehearing and upholds Order No. 681 in all respects, and grants certain limited clarifications.

EFFECTIVE DATE: Order No. 681 became effective on August 31, 2006.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Long-Term Firm Transmission Rights in Organized Electricity Markets — Docket No. RM06-8-001

ORDER NO. 681-A

ORDER ON REHEARING AND CLARIFICATION

(Issued November 16, 2006)

1. On July 20, 2006, the Commission issued a Final Rule in this proceeding.[1] In the Final Rule, the Commission amended its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the guidelines established by the Commission in this Final Rule. We took this action pursuant to section 1233 of the Energy Policy Act of 2005 (EPAct 2005), which added new section 217 to the Federal Power Act (FPA).[2] The Final Rule required each transmission organization subject to its requirements to file with the Commission, no later than January 29, 2007, either (1) tariff

[1] Long-Term Firm Transmission Rights in Organized Electricity Markets, Order No. 681, 71 FR 43564 (Aug. 1, 2006), FERC Stats. & Regs. ¶ 31,226 (2006) (Final Rule).

[2] Pub. L. No. 109-58, § 1233, 119 Stat. 594, 957 (2005) (to be codified at 16 U.S.C. § 824q).

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sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the guidelines set forth in the final regulations, or (2) an explanation of how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines. A transmission organization approved by the Commission for operation after January 29, 2007 will be required to satisfy the requirements of the Final Rule.

2. The guidelines adopted in the Final Rule give transmission organizations the flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate their regional market designs, while also ensuring that the objectives of Congress expressed in new section 217(b)(4) of the FPA are met. The Commission allowed regional flexibility in setting the terms of the rights, but required that long-term firm transmission rights be made available with terms (and/or rights to renewal) that are sufficient to meet the reasonable needs of load serving entities to support long-term power supply arrangements used to satisfy their service obligations.

3. In this order, the Commission denies rehearing and upholds its determinations in the Final Rule. We also offer certain clarifications.

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I. Background

A. The Development of ISOs and RTOs

4. In both our Notice of Proposed Rulemaking (NOPR)[3] and the Final Rule, we discussed the development of Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs). In Order No. 888, the Commission found that undue discrimination and anticompetitive practices existed in the provision of electric transmission service in interstate commerce.[4] Accordingly, the Commission required all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to file open access transmission tariffs (OATTs) containing certain non-price terms and conditions and to "functionally unbundle" wholesale power services from transmission services.[5] In addition, the Commission found in Order No. 888 that

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[3] Long-Term Firm Transmission Rights in Organized Electricity Markets, Notice of Proposed Rulemaking, 71 FR 6693 (Feb. 9, 2006), FERC Stats. & Regs. ¶ 32,598 (2006) (NOPR).

[4] 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 31,682 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (March 14, 1997), FERC Stats & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

[5] Under functional unbundling, the public utility is required to: (1) take wholesale transmission services under the same tariff of general applicability as it offers its customers; (2) state separate rates for wholesale generation, transmission and ancillary services; and (3) rely on the same electronic information network that its transmission customers rely on to obtain information about the utility's transmission system. Id. at 31,654.

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ISOs had the potential to aid in remedying undue discrimination and accomplishing comparable access.[6]

5. In light of the creation of ISOs and other changes in the electric industry, the Commission issued Order No. 2000.[7] In that order, the Commission concluded that traditional management of the transmission grid by vertically integrated electric utilities was inadequate to support the efficient and reliable operation of transmission facilities necessary for continued development of competitive electricity markets,[8] and opportunities for undue discrimination continued to exist.[9] As a result, the Commission adopted rules to facilitate the voluntary development of RTOs. The Commission concluded that RTOs would provide several benefits, including regional transmission pricing, improved congestion management, and more effective management of parallel path flows.[10]

6. Most of the RTOs and ISOs now operate organized markets for energy and/or ancillary services in addition to providing transmission service under a single transmission tariff. Under the definitions adopted in the Final Rule, these RTOs and ISOs are

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[6] Order No. 888 at 31,655; Order No. 888-A at 30,184.

[7] Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[8] Order No. 2000 at 30,992-93 and 31,014-15.

[9] Id. at 31,015-17.

[10] Id. at 31,024.

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transmission organizations with organized electricity markets subject to the regulations adopted in this proceeding.

7. Most of the organized electricity markets operated by transmission organizations utilize a congestion management system based on Locational Marginal Pricing (LMP). Congestion is defined as the inability to inject and withdraw additional energy at particular locations in the network due to the fact that the injections and withdrawals would cause power flows over a specific transmission facility to violate the reliability limits for that facility. The market operator manages congestion by scheduling and dispatching generators that can meet load in the presence of congestion. Financially, in LMP markets the price of congestion is measured as the difference in the cost of energy at two different locations in the network. When such price differences occur, a congestion charge is assessed to transmission users based on their injections and withdrawals at particular locations. These price differences can be variable and difficult to predict. In order to manage the risk associated with the variability in prices due to transmission congestion, these markets use various forms of financial transmission rights (FTRs),[11] which enable market participants who hold the rights to protect against such price risks. In most cases,

[11] While "FTR" is sometimes used to refer to "firm transmission rights," in this Final Rule we use this acronym to refer to the various forms of financial transmission rights that exist in organized electricity markets. In some markets, these are referred to as congestion revenue rights or transmission congestion contracts.

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these FTRs have terms of one year or less.[12] In general, load serving entities receive FTRs through either direct allocation or through a two-step process in which the load serving entity is first allocated auction revenue rights (ARRs) and then either uses those rights to purchase FTRs, or has the ability under the transmission organization tariff to convert them to FTRs.[13]

B. Interest in Long-Term Firm Transmission Rights

8. We noted in the Final Rule that in recent years, interest in long-term firm transmission rights in organized electricity markets has increased, stemming in large part from a desire of some market participants to obtain rights that replicate the transmission service that was available to them prior to the formation of the organized electricity markets and remains available today in regions without organized electricity markets. The principal concern of these market participants is the inability to obtain a fixed, long-term

[12] In May 2005, the Commission released a Staff Paper that provided background and solicited comments on whether long-term transmission rights were needed in the ISO and RTO markets, and if so, how to implement them. Notice Inviting Comments On Establishing Long-Term Transmission Rights in Markets With Locational Pricing and Staff Paper, Long-Term Transmission Rights Assessment, Docket No. AD05-7-000 (May 11, 2005) (Staff Paper). There, the current FTR situation was discussed. *See id.* at 1 (stating that, as of the date of issuance "the longest term FTR offered in any of the RTO or ISO markets is one year").

[13] For a more detailed discussion, see NOPR at P 27. As we noted in the NOPR, ARRs confer the right to collect revenues from the subsequent FTR auction.

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level of service under pricing arrangements that hedge the congestion cost risk that they face in the organized electricity markets.[14]

9. There are several important differences between transmission service under the Order No. 888 pro forma OATT and transmission rights in organized electricity markets that use LMP and FTRs.[15] However, the differences that are most relevant for purposes of the Final Rule concern the management of congestion, the recovery of congestion costs, and the availability of long-term service arrangements. These differences are discussed in the Final Rule.[16]

C. Energy Policy Act of 2005

10. On August 8, 2005, EPAct 2005[17] became law. As noted above, section 1233 of EPAct 2005 added a new section 217 to the FPA, which provides:

> The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[18]

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[14] See Staff Paper at 1-2.

[15] A detailed discussion of transmission rights in traditional and organized markets was presented in the NOPR at P 15-33.

[16] Final Rule at P 7-10.

[17] Pub. L. No. 109-58, 119 Stat. 594.

[18] Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958.

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Section 1233(b) of EPAct 2005 requires:

> Within 1 year after the date of enactment of this section and after notice and an opportunity for comment, the Commission shall by rule or order, implement section 217(b)(4) of the Federal Power Act in Transmission Organizations, as defined by that Act with organized electricity markets.[19]

D. Notice of Proposed Rulemaking

11. On February 2, 2006, the Commission issued a NOPR that proposed to amend its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy guidelines established by the Commission.[20] The NOPR proposed eight guidelines, and sought comments on various issues raised by the introduction of long-term firm transmission rights in the organized electricity markets.

E. Final Rule: Order No. 681

12. As noted above, in the Final Rule the Commission adopted regulations requiring public utilities that are transmission organizations with organized electricity markets (as defined in the Final Rule) to make available long-term firm transmission rights that satisfy each of the seven guidelines established by the Commission, which are set forth in the regulations. By adopting guidelines for the development of long-term firm transmission

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[19] Id. at 960. Transmission organization is defined in EPAct 2005 as "a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities." Pub. L. No. 109-58, § 1291, 119 Stat. 594, 985. In the Final Rule, we adopted this definition with slight modifications for the purposes of the Final Rule.

[20] See supra note 3.

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rights, the Commission gave transmission organizations the flexibility to propose designs for long-term firm transmission rights that reflect regional preferences and accommodate regional market designs, while ensuring that the objectives of Congress expressed in new section 217(b)(4) of the FPA are met.[21]

13. In adopting the Final Rule, the Commission explained that it sought to provide increased certainty regarding the congestion cost risks of long-term firm transmission service in organized electricity markets that will help load serving entities and other market participants make new investments and other long-term power supply arrangements. The Commission also stated that the guidelines adopted in the Final Rule are designed and intended primarily to ensure that the long-term firm transmission rights that are made available by transmission organizations that are subject to the rule have characteristics that will support long-term power supply arrangements.[22]

14. Additionally, the Final Rule made clear that, while it unequivocally requires transmission organizations to offer long-term firm transmission rights with characteristics that will support long-term power supply arrangements, in most cases, offering such rights

[21] The Commission discussed the possibility that the flexible regional approach adopted in the Final Rule could create seams issues, and directed each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues. Final Rule at P 107.

[22] Final Rule at P 16.

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should not require major changes in allocations or allocation procedures.[23] We noted that our intent with regard to the existing transmission system is that load serving entities be able to request and obtain transmission rights up to a reasonable amount on a long-term firm basis, instead of being limited to obtaining exclusively annual rights.[24] Moreover, we emphasized that offering such rights should not force transmission organizations to provide rights to the existing system that are infeasible, and that the Final Rule does not necessarily guarantee that a load serving entity will be able to obtain long-term firm transmission rights to hedge its entire resource portfolio or be able to obtain all the long-term firm transmission rights it requests.

15. The specific guidelines adopted by the Commission in the Final Rule, which the long-term firm transmission rights offered by transmission organizations must satisfy, are:

> (1) The long-term firm transmission right should specify a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).
>
> (2) The long-term firm transmission right must provide a hedge against day-ahead locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term right should not be modified during its term (the "full funding" requirement) except in the case of extraordinary

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[23] As we discuss in more detail below, while we do not believe major changes to existing allocation procedures will be necessary, Congress did not intend to protect existing or future allocation methodologies from the implementation of section 217(b)(4) of the FPA. See new section 217(c) of the FPA, Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958-959.

[24] Capacity available would be limited to that which is generally available and excludes capacity that is the exclusive right of a participant, e.g., a participant that paid for such capacity and obtained FTRs for that payment.

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circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

(3) Long-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

(4) Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a 10 year period.

(5) Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity. The transmission organization may propose reasonable limits on the amount of existing capacity used to support long-term firm transmission rights.

(6) A long-term transmission right held by a load serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.

(7) The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.

In the preamble to the Final Rule, the Commission discussed each guideline in detail.

16. The Final Rule also required transmission organizations with organized electricity markets to explain how their transmission system planning and expansion policies will ensure that long-term firm transmission rights, once allocated, remain feasible over their entire term. Additionally, it required each transmission organization subject to the rule to make its planning and expansion practices and procedures publicly available, including both the actual plans and any underlying information used to develop the plans.

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II. Discussion

A. Procedural Matters

17. Timely requests for rehearing and/or clarification were filed by the following entities: American Public Power Association (APPA), BP Energy Company (BP), Public Utilities Commission of the State of California (CPUC), California Department of Water Resources – State Water Project (DWR), Midwest ISO Transmission Owners (Midwest TOs), Modesto Irrigation District (Modesto), New York Independent System Operator, Inc. (NYISO), City of Santa Clara (Santa Clara), Sacramento Municipal Utility District (SMUD), and Transmission Access Policy Study Group (TAPS).

18. On September 13, 2006, Electric Power Supply Association (EPSA) filed supplemental comments, and PJM Interconnection, L.L.C. (PJM) filed a motion for leave to answer, as well an answer. SMUD and Modesto both moved to strike PJM's answer, while APPA and TAPS submitted a joint reply to PJM's answer.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[25] prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept PJM's answer, EPSA's supplemental comments (which are in the form of an answer), or the responses to those answers, and will, therefore, reject them.

[25] 18 CFR 385.213(a)(2) (2006).

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B. Requests for Rehearing and Clarification and Commission Conclusions

1. Definition of Load Serving Entity and Service Obligation

20. In the Final Rule, as proposed in the NOPR, the Commission adopted the definitions of load serving entity and service obligation exactly as Congress defined those terms in new section 217 of the FPA. Specifically, the Final Rule defines load serving entity as "a distribution utility or electric utility that has a service obligation."[26] The term "service obligation" is defined as "a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility."[27] The Commission reasoned that using the definitions provided by Congress would most closely effectuate the intent of Congress in enacting section 217(b)(4) of the FPA. The Commission did, however, offer several clarifications. For example, the Commission clarified that non-public utilities are within the definition of load serving entity, provided they have a service obligation.[28] The Commission also clarified that industrial customers who self-supply their own load are construed to be load serving entities under the Final Rule, even though some of these entities may not technically "sell . . . electric energy." The Commission stated that this would ensure that Congress' objectives under the FPA are fulfilled.

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[26] Final Rule at P 44; 18 CFR 42.1(b)(2); section 217(a)(2) of EPAct.

[27] Final Rule at P 44; 18 CFR 42.1(b)(3); section 217(a)(3) of EPAct.

[28] Final Rule at P 45.

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Rehearing Requests

21. DWR states that the Commission erred in assuming that a water pumping entity under section 217(g) of the FPA necessarily has an electric service obligation as defined in section 217(a)(3) of the FPA and under 18 CFR 42.1. DWR asserts that the Final Rule misapprehends the nature of water pumping entities, who, unlike load serving entities, have no "service obligation" as defined in section 217(a)(3) of the FPA and the Final Rule. DWR asserts that new regulatory language in 18 CFR 42.1 is necessary to ensure compliance with section 217(g) of the FPA. Specifically, DWR argues that section 217(g) of the FPA expressly distinguishes water pumping entities from load serving entities, stating:

> Water Pumping Facilities- The Commission shall ensure that any entity described in section 201(f) that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section.

Id. (emphasis added). DWR argues that, while the Final Rule clearly intends to implement section 217(g), it does so in an erroneous fashion, by conflating water pumping facilities – which have no electric service obligation – with load serving entities. DWR asserts that the Final Rule erroneously states that water pumping facilities, which are non-public utilities, already appear to be captured by the definition of load serving entity, "provided of course, that they have a service obligation."[29] DWR points out that "service obligation"

[29] Request for Rehearing/Clarification of DWR at 5 (quoting Final Rule at P 48).

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in the Final Rule is defined as "a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.[30] DWR argues that this regulatory language makes no mention of the water pumping facilities as described by Congress in section 217(g) of the FPA.

22. DWR explains that it has put into place long-term transmission entitlements used "to support its own water pumping facilities" as provided in section 217(g). DWR states that, while it self-provides power to its own water pumping facilities, it does not provide electric service to end-users or to a distribution utility, as it must to qualify as a load serving entity under 18 CFR 42.1(b)(3). Rather, DWR is a water agency whose pumping facilities provide flood management, water deliveries, and other *water* related services to California. Therefore, DWR asks the Commission to revise section 42.1 of the regulations to ensure compliance with section 217(g) of the FPA.

23. BP also requests clarification of the scope of the Final Rule's definition of a load serving entity. BP states that it is concerned that the Final Rule does not consistently apply its definition of a load serving entity eligible for long-term firm transmission rights allocation priority. BP argues that the Final Rule discriminates against certain entities with binding contractual obligations to provide power to load serving entities, by denying them load serving entity status, while granting load serving entity status to other similarly-

[30] Id. at 6 (citing 18 CFR 42.1(b)(3); section 217(a)(3) of EPAct).

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situated entities. BP points out that Manitoba Hydro had argued that the priority allocation of long-term firm transmission rights should extend to entities that, through agreement with a load serving entity, have "provided the transmission required by the load-serving entity to satisfy its service obligation and agreed to assume congestion risk."[31] BP states that Manitoba Hydro cited the Commission's assertion that it sought to help "other market participants" as well as load serving entities make new investments and other long-term power supply arrangements. BP reiterates Manitoba Hydro's example of a load serving entity unable to obtain transmission that utilizes another party's transmission rights in exchange for assumption of the congestion risk.[32] BP states that Manitoba Hydro requested the Commission to ensure that if a market participant other than a load serving entity has a contractual obligation to a load serving entity to provide transmission rights and to assume associated congestion risk, it too should have priority access to long term firm transmission rights in the same manner as a load serving entity.[33] In the same vein, BP similarly requests the Commission to clarify that, like those entities that self supply, entities that enter into long-term obligations to sell electric energy to load serving entities that have the option to self supply, be similarly construed as load serving entities for purposes of the Final Rule.[34]

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[31] Request for Rehearing of BP at 7 (citing Manitoba Hydro Comments at 1).

[32] Id. (citing Manitoba Hydro Comments at 3).

[33] Id. at 8 (citing Manitoba Hydro Comments at 3-4).

[34] Id.

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Commission Conclusion

24. With respect to the issue raised by DWR concerning whether water pumping entities fall under the definition of load serving entities, we grant clarification. While water pumping entities do not come under the definition of load serving entities, we clarify that, to effectuate Congressional intent, water pumping entities as described in section 217(g) of the FPA should be treated as load serving entities. As DWR points out, section 217(g) of the FPA provides that the "Commission shall ensure that any entity described in section 201(f) [of the FPA] that owns transmission facilities used predominately to support its own water pumping facilities shall have, with respect to the facilities, protections for transmission service comparable to those provided to load-serving entities pursuant to this section."[35] From this provision, it is evident that Congress intended water pumping entities, such as DWR, to be on par with load serving entities with respect to protections for transmission services. Consequently, we clarify that water pumping entities and their obligation to provide water related services, as described in section 217(g), should be construed as meeting the definition of "service obligation" in 18 CFR 42.1(b)(3), and should be treated as load serving entities with service obligations for purposes of the Final Rule. This should effectuate Congressional intent that water pumping entities receive protections for transmission service comparable to those provided to load-serving entities.

[35] EPAct 2005, Pub. L. No. 109-58, § 1233, 119 Stat. at 959.

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25. Next, we deny BP's request to construe entities that enter into long-term obligations to sell electric energy to load serving entities that have the option to self supply as load serving entities. As we stated in the Final Rule (in the discussion of guideline (5)), we cannot allow certain entities that do not meet the strict definition of load serving entity to come under the definition of load serving entity and, consequently, receive priority in allocation of long-term firm transmission rights.[36] Extending the definition as BP requests would likely defeat the purpose of the preference, which is to ensure that load serving entities have sufficient protection for transmission service. If, as BP requests, we were to construe a supplier of a load serving entity, such as a generator, to be a load serving entity, this could lead to a situation where multiple load serving entities are counting the same load as part of their load serving obligation.

26. Furthermore, we disagree with BP's contention that the Final Rule does not consistently apply the definition of load serving entity. In the Final Rule, we construed large industrial customers who self-supply their own load to be load serving entities for purposes of the Final Rule, in order to ensure fulfillment of Congress's objectives in section 217 of the FPA.[37] While a large industrial customer is not technically a "distribution utility" or an "electric utility," like a traditional load serving entity it provides electricity to serve its "load," i.e., its industrial facilities, on an ongoing basis from either

[36] See Final Rule at P 326.

[37] See id.

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its own generation or through a direct purchase from another generator. Contrary to BP's assertion, large industrial customers who self-supply their own load are not similarly situated to entities, such as generators, with contractual obligations to serve load serving entities. Entities that enter into long-term obligations to supply load serving entities are at least one step removed from load serving entities, insofar as they have a contractual obligation to serve an entity (the load serving entity) that subsequently has the service obligation. Consequently, we deny BP's request to construe as load serving entities those entities that enter into long-term obligations to supply load serving entities.

27. While we reject BP's requested clarification, we nevertheless emphasize that, even though suppliers of load serving entities are not treated as load serving entities under the statute, this does not mean that they will be deprived of long-term firm transmission rights. On the contrary, consistent with section 217 of the FPA, once load serving entities have received their allocated long-term firm transmission rights, those rights and any additional long-term firm transmission rights available from existing system capacity can be offered to such non-load serving entities (as well as other load serving entities) through a secondary auction, bilateral trades or another method of allocation.[38] The load serving entity could sell or otherwise transfer its long-term firm transmission rights to its supplier. As noted in the Final Rule, a generator or any other entity that has a contract with a load

[38] See id.

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serving entity can structure its contract with the load serving entity as necessary to attain the desired congestion cost risk sharing.[39]

2. Commission Interpretation of EPAct 2005

28. In several places in the Final Rule, the Commission offered interpretations of new section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. In particular, the Commission interpreted these provisions as containing two separate directives: (1) to exercise its authority to facilitate planning and expansion of transmission facilities; and (2) to enable load serving entities with long-term power supply arrangements used to meet their load serving obligations to obtain long-term firm transmission rights. We also interpreted these statutes to require, when existing capacity is limited, giving a preference to load serving entities vis-à-vis non-load serving entities to obtain long-term firm transmission rights from existing capacity. Further, we disagreed with interpretations of section 217(c) of the FPA suggesting that it immunizes existing market designs and transmission rights allocations from the effect of section 217(b)(4) of the FPA. Also, we disagreed with contentions that transmission organizations already provide long-term firm transmission rights consistent with section 217(b)(4), or that this section contained no requirement to offer transmission rights with longer terms than those that already exist.

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[39] Id.

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Rehearing Requests

29. NYISO argues that the Commission misinterpreted section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. First, it contends that the Commission read section 217(b)(4) too broadly to establish that the existing financial transmission rights offered by ISO/RTOs do not provide load serving entities with sufficient price certainty and stability over a long enough term. NYISO asserts that nothing in section 217(b)(4) or section 1233(b) states that the rules for existing financial transmission rights are not sufficient or explicitly requires changes to those rules, and notes section 217(b)(4) in fact explicitly recognizes that "tradable" or "financial" rights can be equivalent to firm transmission rights. NYISO argues that the statute's express references to financial transmission rights (particularly in section 217(c)), and the fact that Congress was presumably aware of Commission orders finding such rights equivalent to firm transmission rights under Order No. 888, imply that Congress viewed these existing financial rights as acceptable in their current form. NYISO also suggests that since section 217(b)(4) does not define "long-term," it is reasonable to assume that Congress was aware of the Commission's pre-existing definition of one-year or longer. NYISO also claims that no legislative history exists to support the Commission's interpretations. Further, NYISO describes as "unreasonable" the Commission's "sweeping" inference that section 1233(b)'s direction to implement section 217(b)(4) within one year amounts to a statement by Congress that existing transmission organizations do not meet the requirements.

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30. NYISO contends that "[a] more natural reading" of section 217(b)(4) is that it only requires the Commission to ensure that the financial transmission rights offered by transmission organizations provide load serving entities with a reasonable opportunity to meet their long-term service obligations, and that the Commission ensure that transmission organization planning procedures adequately enable load serving entities to meet their reasonable needs. In short, NYISO argues, section 217(b)(4) leaves open the possibility that transmission organizations already satisfy its requirements. It contends that this reading is more in line with the entirety of section 217 than the Commission's reading.

31. Further, NYISO asserts that the Commission's interpretation of section 217(b)(4) of the FPA as requiring changes in existing transmission organization market design is erroneous because it nullifies section 217(c) of that statute. Section 217(c) provides, in pertinent part:

> Allocation of Transmission Rights- Nothing in subsections (b)(1), (b)(2), and (b)(3) of this section shall affect any existing or future methodology employed by a Transmission Organization for allocating or auctioning transmission rights if such Transmission Organization was authorized by the Commission to allocate or auction financial transmission rights on its system as of January 1, 2005, and the Commission determines that any future allocation is just, reasonable, and not unduly discriminatory or preferential . . . .

32. NYISO contends that the Commission's interpretation of section 217(b)(4) effectively reads section 217(c) out of the FPA because it nullifies the protections that the latter provision provides for previously-approved transmission organization rules concerning the auction and allocation of transmission rights. As a result of this conflict,

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NYISO posits, the Commission must abandon its premise that section 217(b)(4) requires modifications to existing transmission organization auction and allocation rules.[40]

33. Given what NYISO views as the Commission's incorrect interpretation of section 217(b)(4), NYISO argues that the Commission should revise the Final Rule to eliminate certain features, including: (1) the requirement that existing transmission capacity be set aside to create new long-term firm transmission rights different from existing transmission rights; (2) the preference to existing capacity for load-serving entities with service obligations; (3) the prohibition on allocation of long-term firm transmission rights by auction; (4) the requirement that long-term firm transmission rights "follow load" and that tradable rights be "recallable;" and (5) any future requirement under the Final Rule that conflicts with section 217(c). Finally, NYISO argues that because the Commission lacked a statutory mandate to modify existing transmission organization rules for financial transmission rights, it could only require such modifications on the basis of substantial evidence under section 206 of the FPA. The Commission neither built a record to support its requirements nor invoked section 206, NYISO concludes.

[40] NYISO notes that abandoning this interpretation would not nullify section 217(b)(4), as some have claimed, because that section would still require the Commission to assess whether transmission organizations were fulfilling their planning obligations and adequately supporting long-term power supply arrangements.

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Commission Conclusion

34. We deny NYISO's rehearing request regarding our interpretation of section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005. NYISO argues first that nothing in section 217(b)(4) or section 1233 states that existing transmission organizations' financial transmission rights are deficient. While NYISO is correct that these sections do not explicitly declare that existing transmission rights are insufficient, Congress did direct explicitly that the Commission implement section 217(b)(4) within one year in transmission organizations with organized electricity markets. As we reasoned in the Final Rule, this explicit direction to a specific segment of the industry strongly suggests that Congress believed the existing transmission rights offered by transmission organizations with organized electricity markets may not be of a sufficient length to be "long-term" and support long-term power supply arrangements. Under this direction, we concluded that the current one-year financial rights offered by transmission organizations, which are subject to financial proration during their term, did not meet the requirement of section 217(b)(4) that the Commission enable load-serving entities to secure long-term firm transmission rights to support long-term power supply arrangements. As a result, we acted in the Final Rule as directed by Congress in section 1233(b) of EPAct 2005, and issued regulations requiring transmission organizations with organized electricity markets to make available long-term firm transmission rights.

35. The references to "equivalent tradable or financial rights" in section 217(b)(4) and the references to financial transmission rights in other parts of section 217 do not lead to

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the conclusion that the existing financial transmission rights offered by transmission organizations are sufficient. These references only suggest that financial transmission rights can satisfy the requirements of the statute if, in this instance, they are sufficiently long-term and sufficiently firm to support long-term power supply arrangements. This is particularly true under section 217(b)(4), where Congress referred to financial rights in comparison to "firm transmission rights." Moreover, we again reiterate that if Congress believed the existing financial rights offered by transmission organizations were sufficient, it is unclear why Congress would have made such an explicit direction to the Commission to act within one year in transmission organizations with organized electricity markets. Likewise, with regard to NYISO's argument that Congress was surely aware of the Commission's existing definition of "long-term," we are unclear why Congress would have acted in the manner it did and with specific direction to the Commission if it believed all the current transmission organizations offered sufficient transmission rights to meet the requirements of section 217(b)(4).

36. NYISO posits that a better reading of the statute at issue here is that it "requires the Commission to ensure that the rules governing financial rights in [transmission organization] markets provide [load serving entities] with a reasonable opportunity to meet their 'long-term' service obligation," and that it leaves open the possibility that transmission organizations already comply.[41] We disagree with NYISO's reading that

[41] Request for Rehearing of NYISO at 7-8.

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section 217(b)(4) only requires that we ensure that the current financial transmission rights give load serving entities a reasonable opportunity to meet their long-term service obligations; the statute says directly that the Commission must exercise its authority in a manner that "enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned" to meet service obligations.[42] This language in the statute does not comport with NYISO's reading. We agree with NYISO, however, that section 217(b)(4) leaves open the possibility that the transmission rights offered by an existing transmission organization already comply. The regulations adopted in the Final Rule recognize this, in fact, and provide that a transmission organization may submit a compliance filing explaining "how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines" set forth.[43] As we have noted elsewhere, the guidelines we adopted in the Final Rule are intended to ensure that long-term firm transmission rights will support long-term power supply arrangements used to satisfy native load service obligations, as Congress directed. The guidelines and the discussion of them in the Final Rule focus on the current short-term transmission rights predominately offered by transmission organizations, but do not rule out the possibility

[42] Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958.

[43] 18 CFR 42.1(c)(1)(ii) (2006).

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that an existing transmission organization might currently offer rights that already satisfy the guidelines.

37. NYISO also asserts that our reading of section 217(b)(4) nullifies section 217(c). We disagree. First, we must reiterate that section 217(c) expressly, and quite starkly, omits reference to section 217(b)(4), while referencing all other provisions of section 217(b). This express omission strongly suggests that Congress did not intend for the protections of section 217(c) to trump implementation of section 217(b)(4). Further, the Final Rule does not require that transmission organizations ignore the protections of section 217(c) or any other part of section 217 when implementing section 217(b)(4), and repeatedly states the Commission's belief that section 217(b)(4) can be implemented within existing allocation and auction mechanisms. The Final Rule appropriately recognizes, however, Congress's decision, in enacting section 217, to omit reference to section 217(b)(4) when providing the protections of section 217(c). As a result, we explained in the Final Rule that if implementing long-term firm transmission rights cannot be accomplished without changes to existing allocation or auction methodologies, section 217(c) does not bar such changes.

38. For all of these reasons, we believe our interpretation of section 217(b)(4) of the FPA is reasonable and comports with Congress's intent. Accordingly, we will not modify or eliminate the features identified by NYISO as conflicting with its interpretation of the statute. Moreover, we reject NYISO's claim that we have not acted in accordance with the FPA in requiring transmission organizations to comply with the Final Rule. Contrary to

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NYISO's claim, the Commission is not overturning its existing precedents accepting transmission organization allocation and auction rules. Instead, we are requiring, consistent with the dictates of section 217(b)(4) of the FPA and section 1233(b) of EPAct 2005, that transmission organizations offer long-term firm transmission rights. The Final Rule explains why certain existing transmission organization rules for allocating transmission rights may not be compatible with long-term rights, but does not find those rules (or the short-term rights that are currently available) unjust and unreasonable. It simply explains what it will take to comply with section 217(b)(4), now included in the FPA (which it was not when the current rules were approved), and establishes guidelines to ensure that long-term firm transmission rights have properties that will allow them to support long-term power supply arrangements used to satisfy service obligations, as section 217(b)(4) requires. Finally, we reiterate, as noted above, that under the regulations adopted in the Final Rule, a transmission organization may seek to support its current allocation and auction rules as satisfying each of the guidelines in the Final Rule. The regulations specifically allow a transmission organization to explain "how its current tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines" set forth.[44]

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[44] Id.

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3. Seams Issues

39. In the Final Rule, the Commission addressed comments on the NOPR that noted the potential for the flexible approach proposed by the Commission to create seams issues both between transmission organizations, as well as between transmission organization regions and non-transmission organization regions. The Commission agreed with commenters that transmission organizations should consider these issues when complying with the Final Rule, and directed each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues, particularly with regard to the term of the long-term rights offered and the procedures and timelines for obtaining such rights.[45] Concerning potential seams between transmission organizations, the Commission directed each transmission organization to explain why it has or has not elected to revise any seams agreement it has with another transmission organization.[46]

Request for Rehearing

40. APPA notes that the Commission, in requiring transmission organizations to address potential seams issues in their compliance filings, primarily discusses seams between transmission organizations, within the context of existing seams agreements between transmission organizations. It states that the Commission, in an apparent unintended oversight, makes no mention of seams issues arising between transmission

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[45] Final Rule at P 107.

[46] Id.

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organizations and non-transmission organizations. It asks the Commission to explicitly require transmission organizations, in their compliance filings, to address seams issues between transmission organizations and non-transmission organizations on their borders, in addition to addressing seams between neighboring transmission organizations.

Commission Conclusion

41. In response to APPA's seams concerns, we clarify that each transmission organization should explain in its compliance filing how its proposal addresses potential seams issues between itself and neighboring non-transmission organization transmission providers, as well as between itself and neighboring transmission organizations. While our discussion in the Final Rule focused in particular on existing seams agreements between transmission organizations, it was our intent, consistent with the comments received, that transmission organizations would consider both types of potential seams. As we stated in the Final Rule, in both cases, transmission organizations should, in particular, explain how their proposals address seams issues with regard to the term of the long-term rights offered and the procedures and timelines for obtaining such rights.[47]

4. Full Funding of Long-Term Firm Transmission Rights

42. As adopted in the Final Rule, guideline (2) provides in part that "once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the full funding requirement) except in the case of extraordinary

[47] Id.

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circumstances or through voluntary agreement of both the holder of the right and the transmission organization."[48] We determined that the full funding requirement was necessary to satisfy Congress' directive in section 217(b)(4) that load serving entities with service obligations be able to obtain "firm" transmission rights or their equivalent on a long-term basis.[49] We explained that full funding provided one aspect of such firmness, increased certainty in the revenue stream from the rights over time. The Final Rule did not require a particular method to provide for full funding, thus allowing transmission organizations and their stakeholders discretion to determine methods appropriate to regional circumstances.[50] However, we did note that certain approaches could lead to unreasonable outcomes, and we discussed those approaches.[51]

Requests for Rehearing and/or Clarification

43. Midwest TOs argue that the Commission erred first by interpreting section 217(b)(4) to require that long-term firm transmission rights be fully funded, and second by then suggesting that allocation of uplift to support full funding could be done in ways that, in their view, violate cost causation principles. On the first issue, Midwest TOs make several arguments. First, Midwest TOs assert that the Commission has not justified its interpretation of section 217(b)(4) as requiring full funding. Midwest TOs argue that the

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[48] Id. at P 169.

[49] Id. at P 170.

[50] Id. at P 175.

[51] See id. at P 171, 176-77.

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statutory language does not provide "absolute guarantees" for long-term firm transmission rights, but provides instead for "reasonable needs," which suggests no guarantee of full funding.[52] Second, the Commission concluded in the Final Rule that full funding would assist in financing of generation investments,[53] but Midwest TOs argue that there are other means of assisting in financing, such as consumers hedging risks. Also, Midwest TOs posit, the Final Rule provides no evidence that full funding is necessary to obtain financing. Third, Midwest TOs insist that the Final Rule does not adequately address the potential negative incentives from full funding. Nor, in their opinion, does the Final Rule adequately reflect the difficulties in planning for full funding of the rights over the long-term. Fourth, Midwest TOs argue that the full funding requirement runs contrary to principles of hedging energy costs, which are reflected in LMP-based congestion prices, and which require parties to pay for a hedge. Midwest TOs state that the Final Rule did not explain why holders of long-term rights should not, therefore, be required to pay a premium for the rights.

44. The Midwest TOs' second general argument is that the Final Rule violates principles of cost causation because it does not also require full funding of short-term rights, and because it appears to endorse the prospect that holders of long-term rights would not always be fully responsible for all uplift charges associated with full funding.

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[52] Request for Rehearing of Midwest TOs at 7.

[53] See Final Rule at P 171.

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Hence, holders of short-term rights could be required to pay uplift to support full funding of long-term rights that they do not benefit from. This creates a substantial potential future exposure, as it is difficult to accurately project events over the long term.

45. BP supports full funding of long-term firm transmission rights and suggests that the methodology for such funding should be set by stakeholder groups. It also supports extension of full funding to short-term transmission rights. However, it seeks clarification that the Commission's findings in the Final Rule – that full funding of both durations of firm transmission rights is permissible under the law, and that any shortfall should be uplifted to all firm transmission rights holders – set a baseline for what is fair, equitable, and nondiscriminatory, and that anything less is impermissible and will be rejected by the Commission. BP is particularly concerned that, due to biases in the stakeholder processes, any uplift rules for full funding not result in outcomes that create subsidies, preferences or competitive advantages. As a result, BP argues that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decision-making by failing to mandate explicitly that stakeholders follow the Commission's methodologies for full funding of firm transmission rights. BP asserts that, in the event that the Commission fails to grant its requested clarifications, the Commission erred in its Final Rule.

Commission Conclusion

46. We disagree with Midwest TOs' assertion that the Commission incorrectly interpreted section 217(b)(4) to require full funding. As we noted in the Final Rule, while section 217(b)(4) does not explicitly use the term "full funding," it does state that the long-

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term transmission rights must be firm.[54] We considered what the equivalent of the term "firm" (in a physical rights context) would mean in the context of the financial transmission rights found in organized electricity markets, and found that it corresponded to (a) the expectation that once allocated, the quantity of rights allocated would remain constant for the term of the right, and (b) the expectation that, once assigned or acquired, transmission rights do not experience volatility in the actual financial coverage that they provide relative to congestion charges associated with the same points of injection and withdrawal (although there might be some volatility experienced in the uplift charges that support full funding).[55] Midwest TOs have not offered an alternative interpretation of section 217(b)(4)'s requirement that the rights be firm. Instead, they focus on section 217(b)(4)'s requirement of "reasonable needs." We have interpreted that requirement in the Final Rule as pertaining to the quantity of long-term rights that a load-serving entity is entitled to receive, rather than relating to their firmness.[56] Hence, Midwest TOs have not provided an alternative interpretation of section 217(b)(4) that considers both statutory requirements – firmness and reasonable needs – and we do not find their argument sufficiently persuasive to merit granting rehearing and eliminating the full funding requirement.

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[54] Id. at P 170.

[55] Id.

[56] See id. at P 323 (discussing guideline (5)); see also id.at P 273 and 318.

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47. Next, we disagree with Midwest TOs' assertion that we did not consider the prospect of having parties that are allocated long-term rights pay more for such rights. Indeed, we expressly noted that such rights may command a premium.[57] Midwest TOs argue that we did not explain why we did not require additional payment for long-term rights, since, according to them, requiring such a premium would be consistent with cost causation. We conclude, however, that requiring a premium may or may not be consistent with cost causation, depending on the source and scope of the revenue insufficiency. For example, it would not be consistent with cost causation principles to require load serving entities that hold long-term rights to pay a premium to cover revenue insufficiency caused by another utility, such as by a transmission owner that does not adequately maintain its transmission system. For this reason, we chose not to simply impose a blanket premium payment requirement, but rather pointed out that there could be justification for imposing such a premium, based on stakeholder agreement and consistency with regional preferences for transmission pricing.[58]

48. Finally, with regard to Midwest TOs' concern that parties holding short-term rights could be unfairly exposed to uplift charges that support full funding for long-term rights if both types of rights are not put on equal footing with regard to full funding, we agree that, under some conditions, such concerns may be justified. This is one reason why in the

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[57] See id. at P 172.

[58] Id.

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Final Rule we encourage extension of full funding to both types of rights, even though section 217(b)(4) does not require it.[59] Because section 217(b)(4) and this rulemaking concern long-term transmission rights, however, we believe this issue falls outside the scope of this proceeding. Moreover, Midwest TOs have failed to capture in their argument the fact that the Final Rule explicitly recognizes that the question of fair allocation of full funding uplift is a matter of degree, and hence must be evaluated by the Commission on a case-by-case basis.[60] While we did state that if only a small group of load serving entities holds long-term rights, assigning the full funding uplift directly to them would largely undercut the requirement of full funding,[61] we also stated that "if most load serving entities in a region opted for long-term rights (up to their eligibility), then the distribution of uplift charges over the set of rights holders would have a lesser impact and could be reasonable from all parties' perspective."[62] Therefore, to know whether the full funding requirement would lead to unreasonable cost-shifts unrelated to cost causation, we would need to know, among other factors, whether the organized market has opted to cover both short- and long-term rights with full funding, and whether the size of the set of load serving entities expected to request long-term rights is sufficient to restrict full funding uplift to that set. For that reason, we reject Midwest TOs argument that the provisions of the Final

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[59] Id. at P 179.

[60] See id. at P 171-173.

[61] See Final Rule at P 177.

[62] Id.

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Rule inherently violate cost causation principles and deny rehearing of our determination that we must evaluate each compliance filing on a case-by-case basis.

49. With respect to BP's request, we disagree with its suggestion that the Final Rule did not state that the allocation of uplift to support full funding should be just and reasonable and nondiscriminatory. First, transmission organizations are required to make compliance filings to implement the guidelines set forth in the Final Rule, and there are legal criteria – including, importantly the just and reasonable standard – for approving any compliance filing that comes before the Commission. Moreover, in the Final Rule, we mentioned these requirements several times. For example, we noted that for the allocation of uplift costs to support full funding, "certain options proposed by commenters could result in unreasonable outcomes" and then proceeded to evaluate some alternatives in light of those concerns.[63] We also stated that applying the full funding requirement to short-term rights as well as long-term rights would be a "potentially reasonable approach," with the implication that such a proposal could be approved by the Commission as just and reasonable.[64] Further, we concluded that, with respect to allocation of such uplift to transmission owners, "the Commission will allow regional discretion on these options and will examine the reasonableness of such proposals on a case-by-case basis."[65] Hence, we believe that we provided sufficiently explicit criteria short of enumerating every possible

[63] See Final Rule at P 175.

[64] Id. at P 177.

[65] Id. at P 178.

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uplift allocation method and considering how they might be adapted to the existing market designs in the organized markets. Also, we believe that it is sufficiently clear that a reasonableness standard is incorporated into our criteria for evaluating possible uplift allocation methods. Furthermore, our discussion of various options for allocating any uplift necessary to support full funding was not intended to set a baseline for what the Commission will find just and reasonable, as BP suggests in its clarification request; our discussion was only intended to be illustrative of some of the options and the issues associated with those options.

50. Regarding concerns about biases in the stakeholder processes, as we stated in the Final Rule, addressing any such alleged flaws in these processes is outside the scope of this rule.[66]

5. Allocation Priority for Load Serving Entities with Long-Term Power Supply Arrangements

51. Guideline (5), as proposed in the NOPR, stated that load serving entities with long-term power supply arrangements to meet a service obligation must have priority over existing transmission capacity that supports long-term firm transmission rights requested to hedge such arrangements. However, in the Final Rule, we revised this guideline to eliminate the preference for load serving entities with long-term power supply arrangements and replaced it with a general preference for load serving entities vis-à-vis non-load serving entities. We also revised the guideline to allow the transmission

[66] Id. at P 106.

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organization to place reasonable limits on the amount of existing transmission capacity that it will make available for long-term firm transmission rights.

52. In the Final Rule, we concluded that, although section 217(b)(4) of the FPA would support a preference for load serving entities with long-term power supply arrangements, it should not be construed to require that a preference be given to this class of load serving entities at the expense of load serving entities that prefer short-term power supply arrangements, or are precluded from entering into long-term arrangements. We stated that a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and better meets the needs of today's organized electricity markets. Indeed, we stated that we did not believe that Congress intended to disadvantage entities that prefer short-term power supply arrangements when it enacted section 217 of the FPA, particularly given the statute's overall focus on protecting the transmission rights of load serving entities with service obligations.

53. We noted that, as adopted, guideline (5) neither requires nor prohibits the consideration of power supply arrangements in determining the allocation priority for long-term firm transmission rights; it only requires that load serving entities have priority over non-load serving entities. In this regard, we noted that the transmission organizations must make long-term firm transmission rights available to all market participants; the priority established by guideline (5) serves only as a "tiebreaker" between load serving entities and non-load serving entities when existing transmission capacity is limited. We also noted that eliminating the priority for load serving entities with long-term power

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supply arrangements makes it possible for the transmission organization to propose an allocation method that requires neither the transmission organization nor the load serving entity to verify that the load serving entity holds a qualifying long-term power supply arrangement.

54. We noted that, because of uncertainty regarding load growth, changes in power flows and other factors, the transmission organization may be reluctant to commit all of its existing capacity to long-term firm transmission rights. Also, commenters suggested that the principal need for long-term firm transmission rights is to support long-term power supply arrangements for base load generation, not peaking or intermediate generation. Therefore, we concluded that the transmission organization and its stakeholders should have flexibility to determine the level at which a load serving entity may nominate long-term firm transmission rights, as long as that level does not fall below the "reasonable needs" of the load serving entity.

Rehearing Requests

55. The CPUC, TAPS and APPA state that the Commission erred in revising guideline (5) to eliminate the preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights and to replace it with a general preference for load serving entities vis-à-vis non-load serving entities. TAPS and APPA also state that the Commission erred in finding that although section 217(b)(4) supports a preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights, "a broader preference for load

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serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and indeed better meets the needs of today's organized electricity markets."[67]

56. The CPUC requests rehearing of the Final Rule's elimination of priority for load serving entities with long-term power supply arrangements because, in the CPUC's view, it is contrary to EPAct 2005 and violates the FPA. The CPUC claims that, by allowing load serving entities that do not have any obligation or contract to serve load to be allocated long-term firm transmission rights, the Final Rule prevents load serving entities with contracts or statutory obligations to serve load from being allocated those transmission rights. In the CPUC's view, such a result directly contradicts the Commission's duties under section 217(b)(4) of the FPA.

57. TAPS asserts that guideline (5) and/or guideline (1) should be modified to restore the connection between long-term firm transmission rights allocated under the Final Rule and the specific resources and loads of load serving entities that seek such rights. TAPS argues that, if the Commission were correct that the change in priority will not significantly affect load serving entities with long-term power supply arrangements, then there would be no need for the Commission to eliminate the NOPR's proposed priority. Instead, that priority could simply be supplemented with a second-tier priority for load serving entities that prefer to rely on short-term transactions vis-à-vis non-load serving entities.

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[67] Final Rule at P 319.

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58. TAPS adds that, in broadening the language of guideline (5), the Commission has decoupled the guideline's priority from any specific power supply arrangement, long- or short-term, and from the load serving entity's obligation to serve load. TAPS states that, as adopted, guideline (5) would allow load serving entities to nominate long-term firm transmission rights completely unrelated to their loads and power supply arrangements and to use a generic load serving entity priority to obtain first preference to those long-term firm transmission rights. TAPS claims that a load serving entity that is located in a load pocket and needs long-term firm transmission rights to hedge the long-term power supply arrangements it uses to meet its service obligation could be crowded out by speculators attracted to the financial value of long-term firm transmission rights over the constrained interface.

59. TAPS states that there are several ways to remedy this problem. First, TAPS' preferred solution is to modify the first sentence of guideline (5) to give priority to load serving entities for long-term firm transmission rights with sources and sinks related to the resources and loads that are part of the load serving entity's long-term power supply arrangements. As an alternative, TAPS states that the same result could be achieved by modifying guideline (1) to clarify that the sources and sinks of any long-term firm transmission rights allocated under the Final Rule must be related to the resources and loads of the long-term power supply arrangements of the requesting load serving entity, whether in the transmission organization awarding the long-term firm transmission right or its neighbor.

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60. Second, TAPS states that guideline (5) and/or guideline (1) could be modified to restore the connection between long-term firm transmission rights under the Final Rule and the specific resources and loads of the load serving entity, but without requiring a long-term power supply arrangement to qualify for a long-term firm transmission right. At a minimum, TAPS states that guideline (5) must be modified to limit the priority to load serving entities with load located at the long-term firm transmission right sink (or, if the sink is a transmission organization border, on the opposite side of the border). TAPS argues that, although this solution does not satisfy the full mandate of section 217(b)(4), it does tie long-term firm transmission rights to the load serving entity service obligations that the statute was designed to protect.

61. APPA states that, with regard to requiring a preference for load serving entities with long-term power supply arrangements, the statute could not be clearer: the Commission is to exercise its authority to enable load serving entities to secure long-term firm transmission rights "for long-term power supply arrangements." APPA argues that the first two rationales that the Commission cites for its decision to expand the class to all load serving entities (i.e., avoiding the disruption of current firm transmission right allocation mechanisms and obviating the need for transmission organizations to verify the long-term power supply arrangements of load serving entities) both are arguments of administrative convenience. However, APPA asserts that administrative convenience must give way to implementation of Congressional intent. According to APPA, this leaves the Commission with only its third rationale for revising guideline (5):

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that granting a preference only to load serving entities with long-term power supply arrangements would discriminate unduly against other load serving entities that "prefer short-term power supply arrangements, or are precluded from entering into long-term arrangements."[68] However, APPA concludes that given the express language of FPA section 217(b)(4), it is difficult to argue, as a legal matter, that any such discrimination is undue.

62. APPA argues that, if load serving entities that wish to enter into new long-term power supply arrangements cannot fully hedge with long-term firm transmission rights the substantial risks of transmission congestion costs associated with their new long-term base load and renewable generation resources, many of them will not be able to obtain the financing and bond ratings required to support such projects. APPA adds that, if the Commission is concerned about the ability of load serving entities to obtain long-term firm transmission rights vis-à-vis non-load serving entities, it could specify on rehearing that if there are insufficient long-term firm transmission rights to meet all requests, transmission organizations could distribute long-term firm transmission rights first to load serving entities that show such long-term firm transmission rights would be used to support existing and new long-term power supply obligations needed to meet their service obligations, then to other load serving entities, and finally to non-load serving entities.

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[68] Final Rule at P 322.

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63. APPA also states that, because the Commission has expanded the universe of load serving entities eligible for long-term firm transmission rights on a preferred basis, its corollary decision to allow a transmission organization and its stakeholders to place "reasonable limits on the amount of existing transmission capacity that it will make available" for long-term firm transmission rights could unduly discriminate against load serving entities with long-term power supply arrangements, and endanger their ability to obtain sufficient long-term firm transmission right allocations to support those arrangements. In addition, APPA is concerned that, given the strategic nomination and gaming activity that it claims now occurs in the current distributions of firm transmission rights, the same problems will appear in the distributions of long-term firm transmission rights.

64. APPA concludes that the Commission must reinstate in guideline (5) the preference for load serving entities with long-term power supply arrangements needed to support their service obligations, or at least take concrete steps to assure that load serving entities with such arrangements get the long-term firm transmission rights they need. According to APPA, among the possible ways the Commission could do this would be to require load serving entities seeking long-term firm transmission rights to demonstrate that they: (1) will indeed serve load at the delivery points covered by their long-term firm transmission rights and have power supplies committed to them at the requested receipt points; and (2) have an obligation to pay the embedded costs of their transmission

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provider's system, thus signaling their commitment to pay their allocated share of the transmission system's fixed costs.

Commission Conclusion

65. We deny the rehearing requests of the CPUC, TAPS and APPA to reinstate in guideline (5) a preference for load serving entities with long-term power supply arrangements in the allocation of long-term firm transmission rights. We retain the preference for load serving entities vis-à-vis non-load serving entities as adopted in the Final Rule. We reiterate that, in our view, a broader preference for load serving entities in general vis-à-vis non-load serving entities is fully supported by the statute and will achieve the statute's purposes. This feature of guideline (5), taken together with the other guidelines in the Final Rule, will enable load serving entities to obtain long-term firm transmission rights for long-term power supply arrangements to meet their service obligations, as section 217(b)(4) requires. However, as explained below, we clarify that, in cases where the transmission organization must limit the amount of existing capacity available for long-term firm transmission rights to a level that cannot support the "reasonable needs" of all load serving entities, guideline (5) allows the transmission organization to give priority to load serving entities with long-term power supply arrangements in allocating the scarce capacity.

66. First, in response to TAPS' and APPA's argument that the Final Rule does not satisfy the mandate of section 217(b)(4) of the FPA, as we stated in the Final Rule, while this section can be read to support a preference for load serving entities with long-term

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power supply arrangements, it does not require that a preference be given to this class of load serving entities at the expense of those that prefer short-term power supply arrangements. New section 217(b)(4) of the FPA requires the Commission to exercise its authority under the FPA "in a manner that . . . enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet" service obligations.[69] This language requires the Commission to enable load serving entities to secure a reasonable amount of long-term firm transmission rights that will support long-term power supply arrangements to meet their service obligations. We satisfied this directive by adopting guidelines in the Final Rule that require each transmission organization with an organized electricity market to design and offer to customers long-term firm transmission rights with basic properties that will support specific long-term power supply arrangements. These basic properties include, but are not limited to, the specification of source, sink and MW quantity (guideline 1), full funding (guideline 2), and sufficient term length (guideline 4). Guideline (5) is a measure to ensure that where existing transmission capacity is scarce, load serving entities will have priority over non-load serving entities to secure long-term firm transmission rights to satisfy their service obligations, as Congress

[69] Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958.

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intended. The language in new section 217(b)(4)[70] is sufficiently broad that it does not require, and does not prohibit, a narrower preference (like that proposed in the NOPR) for load serving entities with specific long-term power supply arrangements, either made or planned.

67. We believe that, as compared to the narrower preference proposed in the NOPR, the broader preference will equally enable load serving entities to obtain long-term firm transmission rights to support long-term power supply arrangements, while also taking into account the countervailing considerations discussed in the Final Rule. These considerations include the burden on transmission providers to verify long-term power supply arrangements, the potential for discrimination against load serving entities that are prohibited from entering into long-term power supply arrangements, and the need to accommodate load serving entities in retail access jurisdictions. Consequently, given new section 217(b)(4)'s relatively flexible statutory language, the countervailing considerations noted above, and the broader mandate of the FPA (under which we are required to implement section 217(b)(4)) to ensure that jurisdictional rates and services are just, reasonable and not unduly discriminatory,[71] the Commission chose in the Final Rule to

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[70] E.g., *id.* (". . . *and enables* load-serving entities to secure firm transmission rights . . . on a long-term basis for long-term power supply *arrangements* made, *or planned*, to meet such needs) (emphasis added).

[71] 16 U.S.C. 824d and 824e (2000).

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adopt a broader preference in guideline (5). We conclude that this approach will ensure just and reasonable outcomes for all users of the grid.

68. Second, we note that, historically, the cost of constructing and maintaining the grid has largely been borne by load serving entities on an equitable basis without regard to the term of their power supply arrangements. It is primarily for this reason that we believe each load serving entity is entitled to an equitable allocation of the firm transmission rights, whether short-term or long-term, that are supported by existing capacity.

69. We agree with APPA that the issue of priority takes on greater significance if the transmission organization determines that, because of load growth uncertainty and other factors, it must limit the amount of existing transmission capacity that is committed to long-term firm transmission rights, as guideline (5) permits it to do. However, the fact that a transmission organization must limit the availability of long-term firm transmission rights in this manner does not undermine our decision to provide a broader preference for load serving entities vis-à-vis non-load serving entities. Indeed, as long as each load serving entity receives a "reasonable" allocation of long-term firm transmission rights (for example, a quantity sufficient to hedge the load serving entity's needs at its base load level), it arguably is receiving its fair share of long-term firm transmission rights, based on its historical cost responsibility.

70. While the Commission expects that, in general, the transmission organization will be able to allocate sufficient long-term firm transmission rights to hedge power supply arrangements used to meet base load, a transmission system may temporarily not have

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enough capacity to provide simultaneously feasible, long-term firm transmission rights to all load serving entities at this level. In such instances, a procedure is needed to allocate the scarce long-term firm transmission rights among load serving entities. We clarify that, in these circumstances, guideline (5) allows the transmission organization to propose an allocation rule that gives priority to load serving entities with longer-term power supply arrangements to meet a service obligation.[72] In this regard, we note the methods currently used by some transmission organizations for the initial allocation of short-term firm transmission rights take explicit account of a load serving entity's current or historical loads and power supply arrangements. We believe that such methods offer a reasonable and appropriate solution to the problem of allocating scarce long-term firm transmission rights when the base load needs of all load serving entities cannot otherwise be met. Indeed, although we are providing flexibility to each transmission organization to propose allocation rules that are appropriate for its region, we expect that such rules will include adequate protections for load serving entities with long-term power supply arrangements.

71. In response to APPA's argument that guideline (5) would permit the same gaming activity that allegedly occurs in the distribution of firm transmission rights, the Commission noted in the Final Rule that tying the allocation of long-term firm transmission rights to long-term power supply arrangements could itself influence market behavior inappropriately. In particular, such a priority may induce load serving entities to

[72] See Final Rule at P 321.

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bias their supply portfolio unduly in favor of long-term power supply contracts (or, perhaps, enter into sham contracts) simply because they are advantageous in the FTR allocation.

72. In response to TAPS' argument that guideline (5) would allow load serving entities to nominate long-term firm transmission rights unrelated to their loads and that speculators will crowd out others over constrained paths, we note that most transmission organizations now limit the flexibility that a load serving entity has to nominate firm transmission rights on valuable transmission paths when those paths do not include historical resources and loads of the load serving entity. We expect that similar rules will be developed for long-term firm transmission rights. Also, the Commission expects that the entities that are most likely to be speculators will be those that do not have a service obligation and, therefore, will not be entitled to a preference under guideline (5). If it becomes apparent that load serving entities with long-term power supply arrangements are being crowded out of the allocation of long-term firm transmission rights, or if a compliance filing reveals the potential for such an outcome, the Commission will take appropriate steps to address the issue.

6. Allocation Priority for Load Serving Entities with Loads Outside the Transmission Organization's Boundaries

73. In the Final Rule, we stated that long-term firm transmission rights should be made available first to those entities that have an obligation to serve load within the transmission organization's service territory and are required to contribute to the embedded cost of the

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transmission organization's transmission system. We concluded that any entity that has neither an obligation to serve load on the transmission organization's transmission system, nor an obligation to pay the embedded costs of that system, should not be given a preference to acquire long-term firm transmission rights supported by the system's existing capacity.

Rehearing Requests

74. APPA and TAPS state that the Commission erred in holding that load serving entities with long-term power supply arrangements, but with loads that sink outside a transmission organization's boundaries, should not be given any preference in the allocation of long-term firm transmission rights supported by the transmission organization's existing transmission capacity. In APPA's view, it would be unduly discriminatory to favor, in the distribution of long-term firm transmission rights, load serving entities with loads sinking on the transmission organization's transmission system over load serving entities serving loads elsewhere. APPA asserts that FPA section 217(b)(4) says nothing about where the loads of a particular load serving entity must be located, so long as the load serving entity has long-term power supply arrangements to meet a service obligation to those loads. APPA states that if a load serving entity is obligated to pay the embedded transmission system fixed costs of the transmission organization from which it obtains a long-term firm transmission right under that transmission organization's Commission-approved rate design, and uses that long-term firm transmission right to support a long-term power supply agreement needed to meet its

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service obligation to its own loads, then that should be sufficient to qualify for the preference.

75. TAPS asserts that priority should not be limited to load serving entities within the transmission organization's footprint. In TAPS' view, transmission dependent utilities, many of whom have loads and resources split between transmission organizations and between transmission organization and non-transmission organization regions, are especially at risk from this decision. TAPS argues that restricting priority access to long-term firm transmission rights based on the transmission organization's footprint is unfair, given that it is the host transmission organization, not the transmission dependent utility, that makes decisions about whether to join a transmission organization or whether to withdraw. TAPS states that it will also exacerbate problems created by present and future transmission organization seams, undermining, for example, the Commission's efforts to foster a joint and common market between PJM and MISO. TAPS concludes that the Commission's decision to exclude load serving entities located outside the transmission organization from the priority of guideline (5) should be reversed, and that an exception to the obligation to support the fixed cost of the transmission organization issuing the long-term firm transmission right should be made where the Commission has authorized elimination of pancaked rates between transmission organizations (or transmission organizations and adjacent utility control areas), as in the case of PJM and MISO.

76. Modesto also requests that the Commission clarify that load-serving entities will receive priority over long-term firm transmission rights if such entities contribute to the

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embedded cost of the transmission organization's transmission rates or have an obligation to serve load within the control area of the transmission organization. Modesto argues that the language of the EPAct 2005 does not limit allocation of long-term firm transmission rights to load-serving entities located within the control area of a transmission organization. In Modesto's view, the extension of the logic in the language of EPAct 2005 would not support distinctions among load-serving entities along the lines indicated in the Final Rule.

77. SMUD asserts that the Final Rule properly concluded that transmission organizations must offer long-term service to "*all* load serving entities that support the embedded costs of the transmission system."[73] SMUD asks the Commission to clarify that long-term firm transmission service must be made available whether or not the customer agrees to turn control of its transmission facilities over to the transmission organization.

Commission Conclusion

78. The Commission denies rehearing on this issue. A load serving entity is entitled to a preference in the allocation of long-term firm transmission rights within a transmission organization's region only to the extent that the transmission organization plans and constructs its transmission system to support the load of the load serving entity, and the load serving entity contributes to the cost that the transmission organization incurs for that purpose. It would be unreasonable to require a transmission organization to provide a load

[73] SMUD Rehearing Request at 2 (citing Final Rule at P 321) (emphasis added by SMUD).

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serving entity with a preference in the allocation of firm transmission rights for specific loads, either long-term or short-term, when the transmission organization has not planned and constructed its system to accommodate those loads, and when the loads have not contributed to the system's embedded costs.

79. We clarify, however, that in cases where a load serving entity has an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region, that load serving entity should be given a preference in the allocation of long-term firm transmission rights for the external load equal to the preference given to load serving entities with loads that lie within the transmission organization's region. Furthermore, in response to TAPS, the preference should apply in cases where pancaked rates between the transmission organization and the other transmission provider have been eliminated, as long as the agreement with the load serving entity provides for cost sharing in accordance with the non-pancaked rates currently in effect.

80. We further clarify that, in cases where no such agreement exists, a load serving entity with load that sinks outside the transmission organization's region is entitled to receive long-term firm transmission rights from existing system capacity to support that load to the extent that capacity is available after the needs of the load serving entities whose loads are within the region have been met. However, in such cases, we expect that the load serving entity would be required to contribute, on a long-term basis, toward the

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embedded cost of the transmission system, by paying either pancaked or non-pancaked rates, as applicable.

81. We deny SMUD's requested clarification to prohibit a transmission organization from allocating long-term firm transmission rights based on whether a customer is located in the transmission organization's control area or has agreed to cede control of its transmission facilities to that organization. Indeed, we have found in prior orders that, in allocating firm transmission rights, it is not discriminatory for a transmission organization to impose additional requirements on customers external to the transmission organization's control area (external load) as a precondition to receiving such rights.[74] We decline, in this rulemaking of general applicability, to draw a broad conclusion that it may never be reasonable to treat external load differently from internal load for purposes of allocation of long-term firm transmission rights.

7. Miscellaneous Issues Regarding the Allocation of Long-Term Firm Transmission Rights

82. In the Final Rule, we noted that specifying and allocating long-term firm transmission rights supported by existing transfer capability will likely raise difficult issues that must be addressed by transmission organizations and their stakeholders. However, rather than attempting to resolve in the Final Rule all of these potential issues,

[74] See, e.g., New England Power Pool, 100 FERC ¶ 61,287, at P 85 (2002) (requiring external load to pre-pay its transmission access charge in order to receive FTRs); see also California Independent System Operator Corporation, 116 FERC ¶ 61,274 at P 766 (2006) (stating that external load and internal load are not similarly situated with respect to their reliance on the transmission organization's grid) (MRTU Order).

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we adopted a non-prescriptive approach that gives each transmission organization and its stakeholders flexibility to design long-term firm transmission rights that fit the prevailing market design while also ensuring that the rights have certain fundamental properties necessary to achieve Congress's objectives in section 217(b)(4) of the FPA.

Rehearing Requests

83. First, NYISO states that the Commission should clarify that load serving entities' entitlement to receive new long-term firm transmission rights should be reduced to the extent that they already hold grandfathered transmission rights. NYISO explains that, under its system, load serving entities that have grandfathered rights already receive transmission service that confers the same level of price certainty and stability, and in many cases do so for a longer time, than the Final Rule requires. NYISO argues that, to the extent that a load serving entity's needs are already satisfied by these grandfathered rights, giving it preferential access to additional long-term firm transmission rights would give it a windfall without serving any useful policy purpose. NYISO states that, if the Commission denies the requested clarification, it should grant rehearing because granting additional long-term firm transmission right preferences would go beyond the Final Rule's stated goals.

84. Second, NYISO states that the Commission should clarify that transmission organizations may consider both the need to support state retail access programs and market participants' desire for access to shorter-term transmission rights when deciding what constitutes a "reasonable" amount of existing transmission capacity to set aside for

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long-term firm transmission rights. In the alternative, NYISO asks the Commission to grant rehearing because it has not offered a reasoned explanation of its reasons for prohibiting the consideration of these factors, and because such a prohibition would be inconsistent with other statements in the Final Rule. NYISO states that the Final Rule is not clear on the question of whether transmission organizations may account for the needs of state retail access programs when determining how much capacity to set aside for long-term firm transmission rights. NYISO believes that, as a general matter, many load serving entities in retail access states should be expected to prefer shorter-term rights since the amount of load that they serve may be subject to frequent change. NYISO asserts that reserving too much capacity for long-term firm transmission rights could become a serious barrier to market entry if it prevented new load serving entities from securing reasonable transmission rights.

85. Third, NYISO states that the Commission should clarify that the transmission organization need not allocate, or allow as many opportunities to reconfigure, long-term firm transmission rights as it does for shorter-term transmission rights. In the alternative, NYISO asks the Commission to grant rehearing because it has not offered a reasoned explanation why long-term firm transmission rights and shorter-term rights must be treated the same in this regard. NYISO states that it currently auctions transmission congestion contracts twice a year and holds monthly reconfiguration auctions. To avoid uncertainty and facilitate stakeholder compliance discussions, NYISO requests clarification that long-term and short-term rights may be allocated, and adjusted, on different timetables.

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86. Finally, NYISO states that the Commission should clarify that load serving entities that obtain long-term firm transmission rights must pay a fair share of transmission system costs. If this was not the Commission's intent, NYISO asks that the Commission reverse its position on rehearing. NYISO argues that making long-term firm transmission rights available for free would be arbitrary and capricious because it would be inconsistent with relevant precedent and the Final Rule's stated goals. NYISO explains that granting this clarification will facilitate the NYISO stakeholder process by cutting off the possibility of a distracting debate over an issue that the Commission appears to view as unambiguously settled.

Commission Conclusion

87. With regard to NYISO's question concerning the treatment of grandfathered transmission rights, we note that, if such rights satisfy the requirements of section 217(b)(4) of the FPA and satisfy each of the guidelines in the Final Rule, they can be treated as the equivalent of the long-term firm transmission rights that the transmission organization must make available under this rule, and may substitute for such rights in the transmission organization's allocation process. That is, they must qualify as long-term firm transmission rights (or equivalent tradable or financial rights) that, for the load serving entities that hold them, meet their reasonable needs to satisfy their service obligations. However, we do not decide here whether the grandfathered rights held by NYISO's load serving entities satisfy these requirements. Should a transmission organization believe that its grandfathered rights satisfy each of the guidelines in the Final

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Rule, it should provide an explanation in its compliance filing, pursuant to 18 CFR 42.1(c)(1)(ii).

88. NYISO asks the Commission to clarify that transmission organizations may consider the needs of state retail access programs and market participants' preference for shorter-term transmission rights in determining how much existing transmission capacity to set aside for long-term firm transmission rights. As stated above, we expect the transmission organization to make available from existing transmission system capacity sufficient long-term firm transmission rights to meet the "reasonable" needs of all of its load serving entities. In most cases, we believe that the reasonable needs of load serving entities will be met if each load serving entity is able to request and obtain, at its option, a quantity of long-term firm transmission rights sufficient to hedge its long-term power supply arrangements at a base load level. We emphasize that a load serving entity is under no obligation to request its full entitlement to long-term firm transmission rights. If the transmission capacity that is set aside for long-term firm transmission rights remains unsubscribed at the conclusion of the long-term firm transmission rights allocation process, the extra capacity must be made available to support the requests of load serving entities that prefer to hold short-term rights. The Commission is confident that setting aside capacity for long-term rights in this manner will achieve the result that NYISO seeks; that is, it will meet the requirements of EPAct 2005 to make available long-term firm transmission rights to meet the reasonable needs of load serving entities that prefer

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such rights, while effectively reserving a large portion of existing capacity for those entities that prefer shorter-term rights.

89. NYISO asks the Commission to clarify that the transmission organization need not provide as many opportunities to allocate or reconfigure long-term firm transmission rights as it does for shorter-term transmission rights. We clarify that the transmission organization need not allow for the allocation or reconfiguration of long-term firm transmission rights more frequently than once per year. Because most transmission organizations can now readily accommodate annual allocations of short-term rights, the Commission believes that a process that provides for the annual allocation and reconfiguration of long-term firm transmission rights would be reasonable and appropriate. However, if the transmission organization proposes to allow allocations or reconfigurations less frequently than once per year, we clarify that it must fully support such a request in its compliance filing.

90. Finally, NYISO asks the Commission to clarify that load serving entities that obtain long-term firm transmission rights must pay a fair share of transmission system costs. We clarify that, although the Final Rule does not permit the use of an allocation process that requires load serving entities to purchase long-term firm transmission rights by bidding in an auction (see discussion below), we believe that load serving entities that are awarded such rights incur an obligation to contribute, directly or indirectly, to the embedded costs of the transmission system that supports those rights. Each transmission organization has in place a process for allocating short-term firm transmission rights and for recovering the

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embedded costs of the transmission system from those entities that receive, or are eligible to receive, the rights. We expect that, in most cases, the transmission organization will revise its current process as necessary to accommodate the introduction of long-term firm transmission rights.

8. Use of an Auction to Allocate Long-Term Firm Transmission Rights

91. As adopted in the Final Rule, guideline (7) states that the initial allocation of the long-term firm transmission rights shall not require recipients of such rights to participate (i.e., bid or offer) in an auction to obtain the rights. We further explained that guideline (7) does not preclude a transmission organization from using an auction subsequently to re-allocate long-term firm transmission rights.

Rehearing Requests

92. TAPS states that the language of guideline (7) is limited to the initial allocation of the long-term firm transmission rights. TAPS therefore requests clarification, or in the alternative rehearing, that the same restrictions on the use of mandatory auctions for initial allocations will apply when long-term firm transmission rights are renewed.

Commission Conclusion

93. In response to TAPS' request, we clarify that the word "initial" is meant to distinguish the award of long-term firm transmission rights by the transmission organization to a load serving entity from any subsequent resale of those rights by the load serving entity. Thus, guideline (7) precludes a transmission organization from requiring a

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load serving entity to submit a winning bid in an auction in order to: (a) acquire long-term firm transmission rights in the first instance; or (b) renew those rights at a later date. However, guideline (7) does not preclude a holder of long-term firm transmission rights from reselling those rights in an auction process that may require the buyer, which may be another load serving entity, to submit a winning bid to acquire them.

9. Transmission Planning and Expansion

94. In the Final Rule, we required that each transmission organization with an organized electricity market implement a transmission system planning process that will accommodate the long-term transmission rights that are awarded by ensuring that they remain feasible over their entire term. We noted that FPA section 217(b)(4) requires the Commission to exercise its authority under the FPA in a manner that facilitates the planning and expansion of transmission facilities, and to enable load serving entities to obtain long-term firm transmission rights. To implement that section in a transmission organization with an organized electricity market, as required by section 1233(b) of EPAct 2005, we concluded that the transmission organization must plan its system to ensure that allocated or awarded long-term firm transmission rights are feasible. We stated that FPA section 217(b)(4) itself, by including both the requirement to facilitate planning and expansion and the requirement to provide long-term transmission rights, supports the Commission's authority to impose this requirement.

95. The Commission stated that FPA section 217(b)(4) does not merely require the provision of long-term firm transmission rights; it requires the Commission to facilitate the

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planning and expansion of transmission facilities. However, we noted that we were not requiring in the Final Rule any "obligation to build" or other obligation that does not already exist under Order No. 888. We noted that we are considering issues concerning our broader mandate to exercise our FPA authority to facilitate planning and expansion (which applies to all regions) in Docket No. RM05-25-000, the Order No. 888 OATT reform rulemaking.

Rehearing Requests

96. APPA asks the Commission to clarify that, while the Final Rule imposes no "obligation to build" transmission facilities that does not already exist in Order No. 888, this does not mean there is no obligation for transmission organizations to ensure that the transmission facilities necessary to support long-term firm transmission rights are constructed. In this regard, APPA notes that the OATT imposes an equivalent obligation on individual transmission providers, and transmission organization transmission providers must meet the "consistent with or superior to" requirement for their own OATTs. APPA states that it presumes this requirement will include a showing that transmission organizations under their OATTs will have obligations "consistent with or superior to" the obligations set out in the OATT (as revised in Docket No. RM05-25) to ensure the construction of new transmission facilities needed to support ongoing firm transmission service (including, in the transmission organization context, long-term firm transmission rights). APPA asks the Commission to clarify this point.

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Commission Conclusion

97. The Commission stated in the Final Rule that it was not, through the long-term firm transmission rights regulations, imposing a new "obligation to build" that does not already exist under Order No. 888.[75] The Commission also noted that it was considering issues concerning its broader mandate to exercise its FPA authority to facilitate planning and expansion in both transmission organization and non-transmission organization regions in Docket No. RM05-25-000, the Order No. 888 reform rulemaking.[76] The nature of the general planning obligation in the OATT referred to by APPA here is under consideration in that docket. As a result, APPA's request for clarification is outside of the scope of this rulemaking proceeding, which concerns only the obligation to plan and expand the system as it relates to the provision of long-term firm transmission rights.

10. Properties of Physical Versus Financial Rights

98. In the Final Rule, we interpreted section 217(b)(4) of the FPA to require that load serving entities be able to obtain long-term firm transmission rights, whether as physical rights or financial rights. While we left the choice of specifying long-term rights as physical or financial rights to transmission organizations and their stakeholders, we did not require that transmission organizations with existing or approved designs for financial transmission rights create a new long-term physical right, such as an Order No. 888

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[75] See Final Rule at P 21, n. 22 and P 453, n. 138.

[76] Id. at P 457.

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network service right, upon request of a load serving entity.[77] In addition, in our discussion of guideline (2), we explained our interpretation of the firmness requirement in a financial rights context as the right to hold a fixed (MW) quantity of long-term firm transmission rights over the life of the rights and stability in the revenue stream from the right through full funding.[78] We observed that this interpretation roughly parallels the features of quantity and financial stability of long-term physical transmission contracts.[79] We further noted that organized markets with locational marginal pricing generally improve the firmness of physical transmission scheduling, by reducing the incidence of transmission loading relief, or TLRs.[80]

Rehearing Requests

99. Santa Clara seeks clarification or, in the alternative, rehearing on the "physical attributes" of long-term firm transmission rights. Santa Clara asserts this is necessary so that transmission organizations can meet what Santa Clara interprets to be section 217(b)(4)'s mandate "that financial rights be 'equivalent to' physical rights."[81] Santa Clara recognizes that the Final Rule proposes several measures to support the financial "firmness" of the long-term firm transmission rights, including full funding of the rights

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[77] See Final Rule at P 120 and 474.

[78] See id. at P 170 and 473-74.

[79] Id. at P 473.

[80] Id.

[81] Request for Clarification/Rehearing of Santa Clara at 3.

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and fixing the quantity of the rights over time. However, Santa Clara argues that additional attributes are needed, including "physical scheduling attributes that enable LSEs to deliver energy to native load."[82] Santa Clara states that "financial rights do nothing for situations where service is denied to a transmission-dependent user," including, in Santa Clara's view, physical curtailment of transmission service.[83] Hence, Santa Clara requests that holders of long-term firm transmission rights receive scheduling priority over other transmission users in the event of curtailment. In addition, Santa Clara argues that financial rights do not support building new transmission capacity.

Commission Conclusion

100. We reject Santa Clara's request for clarification or, in the alternative, rehearing. First, we do not agree with Santa Clara that existing physical transmission rights have physical scheduling attributes that are superior to the scheduling rights that are available in organized electricity markets with financial transmission rights. Currently, in organized markets with LMP, all physical transmission schedules are honored subject to congestion charges and physical feasibility. In general, physical feasibility has not been a problem in such markets, as reflected in the very infrequent need to undertake physical curtailment of transmission through transmission loading relief. Outside the organized markets, the frequency of transmission loading relief can be much higher.

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[82] Id. at 6.

[83] Id. at 7.

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101. Moreover, we do not agree that long-term firm transmission rights warrant any additional physical scheduling priority in the event of transmission curtailment. Under guideline (5), we have already accorded load serving entities priority in the allocation of long-term firm transmission rights. Granting physical scheduling priority to holders of long-term rights would provide load serving entities that hold such rights with greater claim over physical scheduling than load serving entities that do not hold such rights. We are concerned that distinguishing between long-term and short-term transmission rights holders in this manner may not be just and reasonable and could be unduly discriminatory. In fact, in our conclusion on guideline (5) in the Final Rule, we determined that EPAct 2005 should not be construed to require transmission organizations to give a preference to load serving entities with long-term rights at the expense of load serving entities that prefer short-term power supply arrangements.[84] Santa Clara has failed to persuade us that changing this determination would yield a just and reasonable and non-discriminatory outcome.

102. Second, we disagree with Santa Clara's assertion that we have provided insufficient support for transmission expansion to support long-term firm transmission rights. The Final Rule requires that transmission organizations with organized electricity markets establish a transmission system planning process that will accommodate the long-term transmission rights that are awarded by ensuring that they remain feasible over their entire

[84] Final Rule at P 319.

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term.[85] Santa Clara has not specifically addressed that requirement or explained why it is insufficient.

11. Exemption from Marginal Loss Charges

103. We stated in the Final Rule that we do not interpret section 217(b)(4) as addressing marginal loss charges.[86] In addition, we noted that the transmission organizations with organized electricity markets currently refund any marginal loss surplus that they collect, and that those refund methods have been approved by the Commission on a case-by-case basis, reflecting regional preferences. Accordingly, we concluded that we would not overturn those decisions in the Final Rule.[87]

Requests for Rehearing and/or Clarification

104. SMUD argues that the Commission properly concluded that under section 217(b)(4), a financial rights-based long-term firm transmission service should provide a hedge to customers that allows them "equivalent" protection to physical rights service, one that is "sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements."[88] But, according to SMUD, the Commission arbitrarily and illogically failed to require transmission organizations employing marginal loss charges to

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[85] See id. at P 453.

[86] Id. at P 478.

[87] Id.

[88] SMUD Rehearing Request at 2 (citing Final Rule at P 495).

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either: (1) offer long-term firm service customers a hedge against those charges; or (2) exempt such customers from those charges.

Commission Conclusion

105. We stated in the Final Rule that we do not interpret section 217(b)(4) as addressing marginal loss charges.[89] The issue of hedging long-term marginal loss charges is distinct from that of hedging marginal congestion charges. Congestion charges arise in part due to transmission grid constraints (or bottlenecks). For congestion charges, transmission organizations allocate transmission rights to provide a hedge. Marginal losses are similar to congestion costs in that they are a function of locational energy prices and line loadings. However, the development of a financial instrument or other means for hedging of marginal losses has not been accomplished to date in any of the organized electricity markets.

106. Section 217(b)(4) of the FPA requires the Commission to act in a manner that ". . . enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis. The terms "firm transmission rights," and "equivalent tradable or financial rights" are consistent with terminology traditionally used to discuss hedging of congestion, rather than marginal losses. Furthermore, we do not interpret EPAct 2005 as requiring transmission organizations to provide long-term firm transmission rights with properties that are fundamentally different from those of the

[89] Id. at P 478.

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short-term rights that they now offer. Consequently, we do not interpret the statute as requiring hedging of marginal losses.[90] In addition, we note that, while we do not interpret EPAct as requiring hedging of marginal losses, this does not preclude future market design changes that allow hedging of losses. Indeed, we encourage transmission organizations to explore methods by which they can assist load serving entities and others to obtain a hedge for marginal losses.

12. Compliance Procedures

107. In the Final Rule, the Commission required transmission organizations subject to its requirements to file compliance proposals within 180 days of the publication of the Final Rule in the Federal Register.[91] The Commission specified that transmission organizations must file proposed tariff sheets and rate schedules that would make available long-term firm transmission rights that satisfy each of the guidelines in the Final Rule. We noted that while the implementation of long-term transmission rights would present difficult issues and require significant effort to prepare proposals within 180 days, Congress had directed in section 1233(b) of EPAct 2005 that the Commission act within one year of the legislation's passage, evidencing its intent that long-term transmission rights be made available as soon as possible.

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[90] Transmission rights holders are nevertheless free, of course, to contract with generators to hedge losses.

[91] The Final Rule was published in the Federal Register on August 1, 2006, making compliance proposals due on January 29, 2007.

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Rehearing Requests

108. NYISO objects to the 180-day compliance deadline set forth in the Final Rule, arguing that this amount of time is insufficient for transmission organizations to collaborate with their stakeholders and prepare tariff revisions addressing the issues raised by the Final Rule. According to NYISO, unlike other transmission organizations, it must make major changes to its existing systems for allocating and auctioning transmission rights, making its compliance burden more significant than the Commission anticipates. NYISO argues that the Commission based its 180-day compliance deadline on an expectation that "most" transmission organizations would not require major changes in their financial transmission rights systems.[92] NYISO is different from the transmission organizations the Commission apparently had in mind, it asserts, for several reasons, including the fact that it does not have an ARR allocation system, does not currently have rules awarding incremental long-term firm transmission rights for upgrades paid for by a market participant, does not have rules for mandatory re-assignments of transmission rights, and has substantial grandfathered transmission rights in place. NYISO also argues that it must take care to ensure that its long-term firm transmission rights design does not harm New York's successful retail access program.

109. NYISO further contends that nothing in section 217 of the FPA requires the Commission to impose such an aggressive compliance timeline. If anything, NYISO

[92] Request for Rehearing of NYISO at 16 (citing Final Rule at P 18).

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asserts, section 217's references to financial transmission rights and explicit protection of existing transmission organization auction rules suggests that Congress did not believe there was a pressing need for change. Moreover, NYISO compares the Commission's interpretation of the necessary compliance requirements here with new section 215 of the FPA (concerning bulk electric system reliability and certification of an Electric Reliability Organization (ERO)); it argues that the Commission did not interpret that statute's requirement that an ERO be certified within 180 days as imposing deadlines on the ERO's compliance with future Commission regulations.

110. Accordingly, NYISO states that the Commission is under no legal obligation to set a uniform compliance deadline, and should allow each transmission organization to propose an individual compliance deadline that reflects what it must do to comply with the Final Rule.[93] This approach better comports with the Commission's flexible approach, NYISO contends. If nothing else, it argues that the Commission should delay the start of the 180-day period for compliance filings until after it issues its order on rehearing. There is likely to be a large number of rehearing requests, some of which may seek significant revisions to the Final Rule. As a result, NYISO states, the order on rehearing may not issue until halfway through the compliance period (if not later), which would waste the effort of stakeholders if changes are required. Granting this request would not

[93] Specifically, NYISO states that each transmission organization should be required to submit a detailed compliance plan within 90 days (after consultation with stakeholders), including timetables for developing and filing tariff revisions.

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substantially affect the actual effective date of the tariff revisions filed in compliance with the Final Rule and would not delay technical implementation work, NYISO argues.

Commission Conclusion

111. We deny this rehearing request, and maintain the requirement in the Final Rule that transmission organizations file compliance proposals by January 29, 2007 (180 days from the date of publication in the Federal Register). While we appreciate that NYISO will need to work through many issues during this time period, perhaps even more than some other transmission organizations, we believe that it is necessary to implement Congress's mandate regarding provision of long-term transmission rights in an expeditious manner. The implementation of section 217(b)(4) and the availability of long-term firm transmission rights in transmission organizations with organized electricity markets is a directive from Congress in EPAct 2005. As we stated in the Final Rule, if implementing the rule requires NYISO or another transmission organization to reorder its market design initiatives, it should do so, seeking approval from the Commission to reset deadlines as necessary.[94]

112. Despite NYISO's observation that an expeditious implementation schedule is not explicitly required by section 217 of the FPA and section 1233(b) of EPAct 2005, we believe that Congress would not have specifically directed in section 1233(b) that the Commission act within one year to implement section 217(b)(4) within transmission

[94] Final Rule at P 491.

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organizations with organized electricity markets unless Congress believed that this directive would ensure presence of long-term firm transmission rights shortly thereafter. The references to financial transmission rights in section 217 only suggest that such rights, if offered on a long-term basis to support long-term power supply arrangements, can satisfy the requirements of that section, not that no change is required. NYISO's reference to the Commission's implementation of section 215 of the FPA (concerning mandatory reliability standards and certification of the ERO) is not relevant to our implementation of section 217(b)(4) of the FPA. Section 1233(b) of EPAct 2005 expressly directed that long-term firm transmission rights be implemented within one year of its passage. The Commission has already granted as much flexibility as we believe the statute allows in providing a six month period after the one-year deadline to file tariff sheets making long-term firm transmission rights available to market participants.

113. Accordingly, we decline to modify the Final Rule to allow transmission organizations to propose individual implementation schedules. We remind NYISO and the other transmission organizations, however, that they must file compliance proposals within 180 days, and may propose an individual effective date in that filing that takes into account existing allocation schedules for transmission rights or the need to make software or procedural changes to implement long-term rights.[95] The Commission will consider effective date proposals in light of Congress's intent that long-term firm transmission

[95] Id. at P 493.

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rights be implemented as soon as possible and demonstrated constraints faced by the transmission organization in implementing long-term rights.[96]

114. We also decline to begin the 180-day compliance period from the date of this order on rehearing. We are not changing the Final Rule, so the work transmission organizations and their stakeholders have accomplished to date will not be wasted.

13. Implementation Date

115. In the Final Rule, the Commission declined to prescribe effective dates for the tariff sheets to be filed 180-days after issuance of the Final Rule. We recognized that transmission organizations may need to synchronize the availability of long-term firm transmission rights with their existing allocation schedules, and take additional steps, such as making necessary software or procedural changes, to implement their long-term firm transmission rights proposals. Consequently, we concluded that we would evaluate effective dates on a case-by-case basis, and in light of Congress's intent that long-term firm transmission rights be implemented as soon as possible.

116. In addition, we explicitly required CAISO, along with all existing transmission organizations, to make proposals to comply with the Final Rule according to the 180-day timetable. While we were sympathetic to CAISO's concerns regarding its pending market redesign, we determined that we could not address in a rulemaking of general applicability any possible plans for phase-in or delayed implementation of long-term firm transmission

[96] Id.

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rights. We further noted in the Final Rule that CAISO had not provided any timetable in its comments for implementing long-term firm transmission rights as required by EPAct 2005. Accordingly, we directed CAISO to work with its stakeholders to develop and submit a compliance filing within the timetable prescribed in the Final Rule. We also concluded that we would consider any issues specific to CAISO in its compliance filing for implementing long-term firm transmission rights in CAISO.[97]

Rehearing Requests

117. SMUD states that the Commission properly concluded that Congress intended transmission organizations to implement long-term firm service offerings "as soon as possible."[98] Nevertheless, SMUD asserts that, given CAISO's prior unwillingness to offer a timetable for implementation, the Commission erred in two ways. First, according to SMUD, the Commission reached a conclusion inconsistent with its factual findings in concluding that the details of CAISO's implementation plans could be addressed when CAISO made a compliance filing.[99] SMUD asks the Commission to clarify that: (1) compliance filings must propose a timetable for implementation and include a timely implementation date; and (2) the implementation of long-term firm transmission rights must take priority over the implementation of new market designs, if implementation of

[97] Final Rule at P 495.

[98] SMUD Rehearing Request at 2 (citing Final Rule at P 495).

[99] Id. at 2 (citing Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)).

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new market designs would delay availability of long-term service include a timely implementation date.

118. Second, SMUD asserts that the Commission acted arbitrarily in failing to address SMUD's comment that transmission providers/organizations unable to develop financial rights-based long-term firm service within a short time after the date for the compliance filing should be required to offer interim plans, such as the use of physical rights service, until a financial rights service can be implemented.[100]

119. SMUD explains that CAISO's market redesign and technological upgrade (MRTU) will not be implemented until at least November 2007, so that even if CAISO's proposed "priority renewal provisions" for congestion revenue rights (CRRs)[101] offered a reasonable interim bridge, delaying implementation to coincide with implementation of a new market design will not meet the Congressional and Commission directives that long-term service be available "as soon as possible."[102] SMUD expresses concern, based on its contact with CAISO and CAISO's track record on this issue, that CAISO may not implement long-term firm transmission rights before its MRTU implementation date or even by that date should its MRTU implementation schedule slip. SMUD asserts that CAISO's promise to make a timely compliance filing, without a corresponding commitment to propose any

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[100] Id. at 2 (citing Noram Gas Transmission Co v. FERC, 148 F.3d 1158, 1165 (D.C. Cir. 1990)); see also id. at 6-7.

[101] "FTRs" are called "CRRs" under California's new market design, MRTU.

[102] SMUD Rehearing Request at 8 (citing Final Rule at P 495).

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implementation date, much less a date "as soon as possible" after the filing, could lead to further disputes.

120. Santa Clara also requests clarification, or, in the alternative, rehearing concerning CAISO's obligation to comply with the Final Rule. Citing the NOPR and the Final Rule, Santa Clara argues that the Commission has found CAISO to be an organized electricity market that is required to submit a compliance filing within the 180-day time frame.[103] Santa Clara asks the Commission to clarify or grant rehearing and find that CAISO is a transmission organization with organized electricity markets, and is currently subject to the requirements of the Final Rule. Santa Clara states that the Final Rule makes clear that it applies to organized electricity markets that include "auction-based day ahead and real time wholesale market[s]," that do not offer financial transmission instruments with terms longer than one year.[104] Asserting that CAISO "clearly operates an auction based single price day-ahead and real-time market" and does not offer long-term rights with longer than annual terms, Santa Clara asks the Commission to confirm its prior ruling that CAISO must comply with the Final Rule. Santa Clara explains that confusion has arisen, ostensibly based on the Commission's statement that organized electricity markets do not include "Day 1" markets.[105]

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[103] Request for Clarification/Rehearing of Santa Clara at 5.

[104] See id. (quoting Final Rule at P 30).

[105] Id. (citing Final Rule at P 31).

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Commission Conclusion

121. First, we grant SMUD's requested clarification that compliance filings must include implementation timetables. As we emphasized in the Final Rule, Congress intended the swift introduction of long-term firm transmission rights. In the Final Rule, we declined to prescribe an effective date for tariff sheets implementing long-term firm transmission rights, so as to provide flexibility to the various transmission organizations to effectuate the Final Rule. Nevertheless, we find it reasonable to require all transmission organizations, including CAISO, to include and justify in their compliance proposals a timetable for implementation of long-term firm transmission rights.

122. Next, we deny SMUD's request for a blanket clarification that the implementation of long-term firm transmission rights must take priority over the implementation of new market designs, if implementation of new market designs would delay availability of long-term service. Instead, we find it reasonable to evaluate market design priorities, including implementation of long-term firm rights, on a case-by-case basis. As in the Final Rule, and as discussed above, see supra P 107, we urge transmission organizations to find ways to reorder their priorities to ensure timely implementation of long-term firm transmission rights.

123. With respect to CAISO in particular, SMUD's requested clarification assumes CAISO cannot concomitantly accomplish its market redesign on schedule and devise and timely implement long-term firm transmission rights. We decline to make that assumption. As we recently concluded, California's market redesign and technology

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upgrade (MRTU) is needed to prevent recurrence of the California and Western power crisis of 2000-2001. As the Commission explained in its acceptance of the tariff CAISO filed to implement MRTU, MRTU will fix a flawed market design, enhance reliability of the CAISO-controlled grid, and improve market power mitigation.[106] These improvements over the current market design will help protect California, and the rest of the West, from a repeat of that crisis.[107] Long-term firm transmission rights are also a critical feature of MRTU's improved congestion management system, in part because these rights will help shield load serving entities from exposure to potentially volatile congestion costs.[108] The Final Rule directed CAISO to work with its stakeholders to develop and submit a compliance filing within the timetable prescribed in the Final Rule.[109] The MRTU Order similarly required CAISO to comply with the Final Rule concerning timely implementation of long-term firm transmission rights.[110] We understand SMUD's concerns, given CAISO's lackluster history of delay with respect to providing long-term firm transmission rights.[111] However, now that Congress has weighed in on the issue, we remain optimistic that CAISO will develop a plan, tariff sheets and

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[106] MRTU Order at P 3.

[107] Id.

[108] Id. at P 9.

[109] Final Rule at P 493.

[110] MRTU Order at P 890 and 892.

[111] See id. at P 891 (recounting CAISO's history of procrastination concerning long-term rights development).

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implementation timetable to allow provision of long-term transmission rights at the inception of MRTU, without delaying MRTU's target November 2007 implementation date.

124. We also deny SMUD's request that, if implementation of financial long-term firm transmission rights cannot be accomplished within a short time after the date for the compliance filing, the affected transmission organizations should develop interim plans, such as the use of physical rights service, until a financial rights service can be implemented. We expect that, apprised of the importance of this matter to Congress, transmission organizations will make compliance proposals that fully comply with the Final Rule in a timely manner. It is premature and inappropriate to consider in this generic proceeding whether interim plans, such as the provision of physical rights, are needed. Similarly, we will not address in this rehearing of a rulemaking of general applicability SMUD's assertion that the CAISO's proposed priority nomination process, or PNP, is discriminatory. As we explained in the Final Rule, we will address the specifics of individual transmission organizations' implementation of the Final Rule in our orders on compliance proposals.[112] The compliance proposal process provides transmission organizations with the opportunity to offer for comment the proposals they have created after vetting issues through their stakeholder process, and the comment process ensures the opportunity for thorough and fair discussion of the proposals.

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[112] Id. at P 495.

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125. Finally, with respect to Santa Clara's requested clarification/rehearing concerning CAISO's obligation to comply with the Final Rule, section 1233(b) of EPAct 2005 requires the Commission to implement the FPA's new statutory provision, section 217, concerning long-term firm transmission rights in transmission organizations with organized electricity markets. Significantly, as we pointed out in the NOPR, neither EPAct 2005 nor section 217 of the FPA defines "organized electricity market."[113] In the NOPR, we proposed to define "organized electricity market" as "an auction-based market where a single entity receives offers to sell and bids to buy electric energy and/or ancillary services from multiple sellers and buyers and determines which sales and purchases are completed and at what prices, based on formal rules contained in Commission-approved tariffs, and where the prices are used by a transmission organization for establishing transmission usage charges."[114] In the Final Rule, however, we modified the first clause of the definition to state that organized electricity market "means an auction based day ahead and real time wholesale market . . . ."[115] We explained that the purpose of this modification was:

> to clarify the application of the Final Rule and ensure that the definition captures the transmission organizations with organized electricity markets using LMP and FTRs to which Congress directed the Commission to apply this Final Rule in section 1233(b) of EPAct 2005.[116]

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[113] See NOPR at P 8.

[114] See id.

[115] See Final Rule at P 30 (emphasis added).

[116] Id.

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126. CAISO does not currently operate a day-ahead wholesale energy market, although it will upon the inception of MRTU, scheduled to take place in November 2007. While CAISO currently has FTRs, their characteristics will change dramatically upon implementation of MRTU – e.g., they will be point-to-point and available to load serving entities without participation in an auction, two features of long-term firm transmission rights required by our guidelines. Given that the nature of FTRs in CAISO is in transition, implementing long-term FTRs under the current market design would be problematic. Nevertheless, we clarify that CAISO must submit a compliance filing on January 29, 2007. This will enable the Commission (and its staff) to monitor CAISO's progress and ensure availability of long-term firm transmission rights when MRTU goes into effect.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.