

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost : Docket No. RM10-23-000
Allocation by Transmission Owning and :
Operating Public Utilities :

**COMMENTS
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

September 29, 2010

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INTRODUCTION AND BACKGROUND

On June 17, 2010, the Federal Energy Regulatory Commission (“FERC”) issued a Notice of Proposed Rulemaking (“NOPR”), Docket No. RM10-23-000, proposing to amend the transmission planning and cost allocation requirements established in FERC Order No. 890.¹ Under Order No. 890, FERC reformed the Open Access Transmission Tariff (“OATT”) to require each public utility transmission provider to have a coordinated, open, and transparent regional transmission planning process.

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

The proposed rule seeks to reform transmission planning and cost allocation requirements by focusing on three things. First, the rule would provide that local and regional transmission planning processes include transmission needs driven by public policy requirements established by state or federal laws or regulations. Second, the proposed rule would improve coordination between neighboring transmission planning regions with respect to interregional facilities. Third, the rule would remove from FERC-approved tariffs or agreements a right of first refusal for an incumbent transmission provider for the development of new facilities.

Comments initially were due sixty days after the NOPR's publication in the Federal Register. Upon a motion by the Administrative Committee of the Consolidated Transmission Owners Agreement of PJM Interconnection, L.L.C., FERC extended the filing deadline for comments to September 29, 2010. The Public Utilities Commission of Ohio ("Ohio Commission") hereby provides its comments responding to FERC's June 17, 2010 NOPR.

DISCUSSION

I. Transmission Planning Driven by Public Policy Objectives and Cost Recovery

FERC states that it "is proposing to require public utility transmission providers to establish a closer link between cost allocation and regional transmission planning processes in which the beneficiaries of new transmission facilities are identified, as well

as to establish principles that cost allocation methods must satisfy.”² Among other things, FERC observes that a deficiency has arisen since the issuance of Order No. 890 involving transmission needs driven by public policy requirements established by state or federal laws or regulations including state policies to promote increased reliance on renewable energy resources.³

FERC “preliminarily conclude[s] that existing methods for allocating the costs of new transmission may not be just and reasonable because they may inhibit the development of efficient, cost-effective transmission facilities necessary to produce just and reasonable rates.”⁴ FERC maintains that “the expansion of regional power markets and the increasing adoption of state policies to promote increased reliance on renewable energy resources have led to a growing need for regional or interregional transmission facilities.”⁵ Therefore, “[t]o ensure that each public utility transmission provider’s transmission planning process supports rates, terms, and conditions of transmission service in interstate commerce that are just and reasonable and not unduly discriminatory or preferential, [FERC] preliminarily finds that transmission needs driven by public policy

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Docket No. RM10-23-000, Notice of Proposed Rulemaking (“NOPR”), 131 FERC ¶ 61,253, at P 5 (2010).

³ NOPR at P 36.

⁴ *Id.* at P 40.

⁵ *Id.*

requirements established by state or federal laws or regulations should be taken into account in the transmission planning process.”⁶

FERC “propose[s] to require each public utility transmission provider to coordinate with its customers and other stakeholders to identify public policy requirements established by state or federal laws or regulations that are appropriate to include in its local and regional transmission planning processes.”⁷ Consequently, FERC invites input “as to whether public policy requirements established by state or federal laws or regulations should be considered in the transmission planning process.”⁸

FERC’s NOPR states that “the increasing adoption of state resource policies, such as renewable portfolio standard measures, has contributed to rapid growth of location-constrained renewable energy resources that are frequently remote from load centers, as well as a growing need for new transmission facilities that cross several utility and/or RTO or ISO regions.”⁹ Further, “[t]ransmission facilities that are needed to comply with state renewable portfolio standard measures illustrate the increasing potential for benefits associated with meeting public policy-driven transmission needs.”¹⁰ FERC states it “is concerned that existing cost allocation methods may not appropriately account for bene-

⁶ NOPR at P 63.

⁷ *Id.* at P 65.

⁸ *Id.* at P 70.

⁹ *Id.* at P 151.

¹⁰ *Id.*

fits associated with new transmission facilities and, thus, may result in rates that are not just and reasonable or are unduly discriminatory or preferential.”¹¹

The Ohio Commission maintains that it is reasonable to include in transmission policy and planning requirements state mandates including, among other things, renewable portfolio standard measures to determine the appropriate cost recovery. As stated in numerous comments in various proceedings before FERC, the Ohio Commission also agrees with FERC’s proposal in this proceeding to adopt a beneficiary pays approach to transmission expansion cost recovery. The Ohio Commission maintains that FERC must make certain that the proper state-by-state cost causation analysis occurs to arrive at each individual state’s obligation to fund any transmission expansion needed to meet that state’s policies. If this detailed analysis were not to occur, it could result in inadvertent cost socialization contrary to FERC’s intended outcome in this proceeding.

Consequently, it is imperative that FERC require the public utility transmission provider to conduct ongoing studies to arrive at the effect each individual state’s policies will have on interstate transmission expansion. Adopting any other approach to rate-making would also be inconsistent with the Seventh Circuit Court of Appeals decision¹² remanding to FERC the determination of the appropriate cost allocation method to be

¹¹ NOPR at P 154.

¹² *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009).

used by PJM Interconnection, L.L.C. (“PJM”) for new transmission facilities operating at or above 500 kV.

The Ohio Commission maintains that the addition of the new criterion to include consideration of state and federal public policy requirements will necessitate public utility transmission providers to establish state-by-state evaluations to ensure that each state is not over compensating (or under compensating) the system for its appropriate cost assignment for any interstate transmission upgrade needed to meet a state’s intrastate renewable energy resource requirements. Specifically, the inclusion of the new public policy criterion will call for public utility transmission providers to include in their calculations for cost recovery each state’s ability (or inability) to meet its own renewable energy resource policies. RTO calculations based on the new public policy criterion must hold harmless from additional charges not related to benefits any state that has not adopted a renewable energy resource standard or a state that can or is likely to cost-effectively meet its standard with existing transmission. If a state can demonstrate that it has excess renewable generation that can be served by existing transmission to cost-effectively meet its intrastate needs and/or state mandated requirements, the application of FERC’s public policy criterion regarding intra- or interregional transmission cost recovery should be rendered academic for that particular state. Likewise, the new public policy criterion should not apply to any state that has not adopted a renewable energy resource standard.

The State of Ohio has enacted comprehensive energy legislation that requires twenty-five percent of generation to local distribution company load to be furnished from renewable energy resources by 2025.¹³ Twelve and one-half percent must be furnished from within the state's boundaries. In less than two and a half years since the passage of this legislation, the State of Ohio has made significant advances in deploying these resources on an intrastate basis. For example, since the passage of S.B. 221, the Ohio Power Siting Board has certified 882.2 MW of wind turbine generation and 168.8 MW of wind turbine approvals are pending.¹⁴ In addition, on August 11, 2010, the Ohio Commission approved FirstEnergy's plans to convert a coal-fired power plant to a wood burning biomass plant with 300 MW of generation capacity. A 12 MW solar facility also was recently made operational in the State of Ohio. To promote further the proliferation of intrastate renewable energy resources, the State of Ohio has recently enacted legislation that provides significant tax incentives for the construction of renewable generation resources within the State of Ohio.¹⁵ Dayton Power and Light also recently constructed a

¹³ On May 1, 2008, Governor Ted Strickland signed Amended Substitute Senate Bill 221, establishing a renewable portfolio standard ("RPS"). Twelve and a half percent of Ohio's electricity must be generated from renewable energy resources by 2025. Ohio Rev. Code Ann. § 4928.64(B)(2) (West 2010). Fifty percent of the renewable energy resources must generate within Ohio's territorial boundaries. Ohio Rev. Code Ann. § 4928.64(B)(3) (West 2010). Ohio utilities may use renewable energy credits within five years of their purchase or acquisition to satisfy the RPS. Ohio Rev. Code Ann. § 4928.65 (West 2010).

¹⁴ Ohio Power Siting Board, <http://www.opsb.ohio.gov/opsb/topics/>.

¹⁵ Am. Sub. S.B. No. 232, 128th General Assembly, signed by Governor Ted Strickland on June 17, 2010.

1.1 MW solar facility in southwest Ohio. These additions have been made without additional significant transmission capacity investment. If FERC is to include in its transmission expansion criteria state energy policies and mandates, factors including the individual state's ability to meet its renewable mandates without significant transmission expansion must be taken into consideration upon determining any state cost recovery for interstate transmission expansion. That is, the RTOs must include in their models and calculations the ability of the individual state to cost-effectively realize its energy policy mandates without significant transmission expansion when determining the appropriate state responsibility and corresponding cost allocation.

The State of Ohio's comprehensive energy legislation also includes provisions promoting demand resources and energy efficiency. Any FERC-approved RTO cost calculation must account for these provisions as offset to any cost allocation imposed as a result of state renewable energy resource policies.

On an interregional basis, FERC must ensure that those who benefit from the purchase of renewable energy resources from a different region pay their fair share of the transmission investment needed to deliver these services. If a state located on the eastern seaboard requires renewable energy resources located in the west to realize its state-imposed mandate, FERC must ensure that that state pays accordingly its fair share of the expansion costs on an interregional basis. To do otherwise would promote uneconomic decision making if these states do not pay their fair share of the transmission costs for the delivery of these services. Once a state has had an opportunity to consider and weigh the

magnitude of the costs to deliver renewable energy resources from remote transmission constrained resources, it may elect to site and deploy renewable generation closer to its load, thereby resulting in more economic and cost-effective decisions. To realize its obligation to ensure that rates are just, reasonable, and not unduly discriminatory, FERC must strive to ensure that all benefits and costs are paired on a proportionate basis. While acknowledging that cost assignment is not an exact science, the Ohio Commission believes that the application of any other goal or benchmark would be unreasonable and outside FERC's charge.

If FERC is to base transmission cost recovery on state energy public policy mandates, each individual state must be vested with the authority to review and approve as accurate assumptions made regarding that state's energy policies. This proposed process will help to ensure that cost inputs used for rate recovery based on a state's policies are accurate. It also will help to ensure that each state's policies are interpreted and portrayed appropriately.

Taking into consideration that the electric grid is not static and evolves over time as generation is deployed, load shifts, state policies are amended, and the ability to realize those mandates changes, the Ohio Commission maintains public utility transmission providers should be required to periodically reevaluate cost allocations, taking into account any significant changes in load, the location of generation, and state energy policies. Among other things, if FERC's proposed public policy criterion is adopted, public utility transmission providers must reevaluate periodically the individual states' ability to meet

their respective public policy mandates without significant transmission expansion and adjust cost recovery accordingly.

The Ohio Commission agrees with FERC that a beneficiary pays approach to transmission cost recovery is the appropriate course of action. The beneficiary pays approach ensures that FERC will realize its obligation to ensure just and reasonable rates by making certain that those causing costs are being rendered the appropriate charges. Cost socialization methodologies do not accurately reflect cost causation and, consequently, conflict with the mandate of the Federal Power Act (“FPA”) to ensure just and reasonable rates that are not unduly discriminatory. Cost socialization has no basis in cost causation and therefore is not just and reasonable.

The beneficiary pays approach is particularly relevant and necessary for economic transmission upgrades, which effectuate the reduction of energy prices for certain customers in specific regions by eliminating (or reducing) congestion and thereby increasing customers’ access to lower cost generation. These projects are undertaken for the purpose of reducing congestion at a certain location in an attempt to ensure lower generation rates in that location where the constraint occurred. Socializing costs for these projects is the same as asking one group of customers (the customers for whom the project is not being constructed) to subsidize a significant portion of the transmission constructed for those customers who are to benefit from lower rates.

Cost socialization requires certain customers not adversely affected by the constraint to pay twice: first, for the constructed facilities associated with the constraint

relief and, second, through higher locational marginal prices once the facilities are built.

It is inconsistent with the FPA's "just and reasonable" directive to require customers not benefiting from economic transmission projects to share in the cost. Once the additional facilities intended to relieve congestion are constructed, cost socialization does not take into consideration the higher locational marginal prices that will be realized in certain areas that have already (responsibly) constructed the necessary transmission facilities. FERC's current cost socialization policies penalize those who had the wherewithal and foresight to plan for the future by previously constructing the necessary transmission facilities. The companies that have constructed the requisite facilities are now being required by FERC to pay for those who have not. FERC must consider the rate impact a cost socialization rate design has on all consumers, not just those who benefit from the construction of new transmission facilities. It is inequitable for responsible states and their consumers to be rendered cost allocations for those who may have neglected their systems and are now playing catch-up.

Because economic upgrades open up new markets for the electricity produced by lower cost energy plants, these upgrades result in increased energy prices for the traditional consumers of low cost energy as a result of increased access to generation facilities. For highly industrialized states like Ohio, which ranks fourth among all states in

industrial consumption of electricity,¹⁶ the increase in the cost of delivering electricity to its industrial customers has the potential to put the state's economy at additional risk. It is unreasonable to ask consumers to both subsidize the construction of transmission facilities and to pay higher energy prices once the facilities are built. FERC must endeavor to ensure that costs are recovered from those customers who will benefit from lower rates and not those who will experience higher rates. This responsibility and obligation to ensure just and reasonable rates based on the premise of cost causation should be a deep-seated and essential mission for FERC.

Consistent with its previous comments to FERC regarding transmission cost recovery matters, the Ohio Commission maintains that FERC should also take into consideration the following principles when considering any long-term transmission rate design. In particular, transmission rate schedules should:

- Provide the utility the opportunity to recover an authorized revenue amount.
- Be equitable (cost-causation based and benefits based).
- Provide for customer understanding and rate continuity.
- Minimize customer impact and undue cost shifts.
- Recognize the use and benefits of the transmission system.

¹⁶ U.S. Department of Energy, Energy Information Administration, Energy Consumption by End-use Sector, Ranked by State, 2008, at Table R1, http://www.eia.doe.gov/emeu/states/sep_sum/plain_html/rank_use.html.

Adopting these provisions will help to ensure that the most efficient and cost-effective facilities are constructed. In addition to these criteria, any cost allocation mechanism must take into consideration all of those who materially benefit from the existence of and access to the electric grid. The Ohio Commission recommends that the definition of beneficiary should also include those who gain from the ability to place electricity onto the grid. Load should not be solely burdened with the costs of the transmission grid; generation should also be responsible for its fair share of the costs. This bifurcated approach to cost recovery would incent more economic decision making by generation providers.

II. The Right of First Refusal

This proposed rule, among other things, seeks to eliminate the right of first refusal for incumbent transmission providers during the transmission planning process. FERC's NOPR asserts that the current transmission planning processes may allow discrimination against non-incumbent, or merchant, transmission providers, where incumbent transmission providers have a right of first refusal to construct a new transmission facility in their service territories.¹⁷ As a result of this practice, many merchant transmission developers have chosen to plan transmission facilities outside of the regular transmission planning process.

¹⁷

NOPR at P 87.

FERC has proposed approximately six remedies to this problem, including eliminating an incumbent's federal right of first refusal. This would require revisions to each public utility's OATT or agreements subject to FERC's jurisdiction concerning transmission planning processes, and affording a cost recovery mechanism to non-incumbent transmission developers.

The Ohio Commission believes that FERC's proposal to eliminate the right of first refusal of incumbent transmission providers has merit to the extent that parameters are established to ensure that ratepayers see cost savings and enhanced reliability. However, FERC must establish policies to ensure that these merchant providers have access to adequate capital to both build and maintain transmission facilities in a manner that provides similar services at a lower cost. These facilities require not only significant financing, but tremendous expertise to build and maintain; thus, the Ohio Commission believes that FERC should establish criteria within the transmission planning processes to determine whether proposed merchant transmission providers have the capability and wherewithal to construct the facilities without negatively affecting reliability and/or unreasonably causing market power issues. The Ohio Commission believes that in addition to the financial and operational regulations concerning merchant transmission providers, FERC must require each merchant transmission provider to adhere to applicable state requirements concerning facility siting and renewable energy resource standards. FERC must also impose appropriate sanctions if a merchant fails to fulfill its obligation to construct and maintain the facilities.

CONCLUSION

The Ohio Commission concurs with FERC's proposal to adopt the beneficiary-pays approach to cost recovery for interstate transmission expansion. The Ohio Commission maintains, however, that FERC should ensure that the proper analysis takes place to ensure against cost socialization contrary to FERC's objective in this proceeding. Cost socialization will penalize those who have had the foresight to plan for future transmission demands and will further result in uneconomic decision making. If FERC is to adopt the public policy criterion for cost assignment, it must also determine each individual state's ability to realize its public policy energy mandates without significant transmission expansion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R.
§385.2010 upon each person designated on the official service list compiled by the
Secretary in this proceeding.

/s/ Thomas G. Lindgren
Thomas G. Lindgren

Dated at Columbus, Ohio this September 29, 2010.

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