

Morgan Lewis

FERC's Proposed Rulemaking Transmission Planning and Cost Allocation

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Overview

- FERC's Notice of Proposed Rulemaking
 - Background / Need for Reform
 - Transmission Planning
 - Participation in a Regional Planning Process that meets requirements
 - Public Policy (State and Federal)
 - Interregional Coordination
 - Reforms to Transmission Planning Processes
 - Cost Allocation
 - Intraregional Cost Allocation
 - Interregional Cost Allocation
- Issues to Consider

FERC Notice of Proposed Rulemaking

- *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*
Docket No. RM10-23-000, 131 FERC ¶ 61,253 (2010)
75 Fed. Reg. 37,884 (June 30, 2010)
- **Comments Due: Monday, August 30, 2010**
- **No date set for Reply Comments**
 - Some entities/organizations may ask for a Reply Comment date
 - FERC Staff: Reply Comments not currently contemplated in the rulemaking schedule
 - FERC trying to issue Final Rule in January/February 2011

NOPR: Background

- Order No. 888
 - Minimum requirements for transmission planning
 - *E.g.*, account for network customers in transmission planning
 - *E.g.*, construct new facilities for requests of long-term firm point-to-point transmission customers
- Order No. 890
 - FERC: lack of criteria in the OATT for transmission provider planning obligation
 - FERC: absence of requirement for planning process be open to customers, competitors, and state commissions
 - FERC: absence of requirement that key assumptions and data be available to customers
 - Attachment K
- Nine Planning Principles from Order No. 890
 - Coordination
 - Openness
 - Transparency
 - Information exchange
 - Comparability
 - Dispute resolution
 - **Regional participation**
 - Economic planning studies
 - **Cost allocation for new projects**

NOPR: The Need for Reform

- FERC proposes to address remaining deficiencies in transmission planning and cost allocation processes:
 - Lack of requirement for a regional transmission plan
 - Transmission needs driven by public policy requirements
 - Renewable energy resources
 - Energy efficiency / demand response
 - State economic development policies
 - Obstacles to non-incumbent transmission projects developers' participation in regional transmission planning processes
 - Lack of coordination between transmission planning regions
- FERC *preliminarily* concludes that existing methods for allocating 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 (P 40)

NOPR: Transmission Planning

- **Participation in Regional Planning Processes**
 - Order No. 890 included a regional participation principle
 - Sharing of system plans
 - Identification of system enhancements that could relieve congestion of integrate new resources
 - FERC proposes to require regional transmission planning processes that meet seven transmission planning principles: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) economic planning studies.
 - Regional planning processes should identify transmission facilities that cost-effectively meet the needs of transmission providers, customers, and other stakeholders

NOPR: Transmission Planning

- **Public Policy Driven Projects**
 - Transmission needs driven by state or federal policies
 - Renewable energy
 - Demand response
 - FERC proposes to require transmission providers to include in their OATTs provisions that explicitly provide for consideration of public policy requirements established by state or federal laws or regulations
 - OATTs to specify procedures/mechanisms for evaluating projects proposed to achieve public policy requirements

NOPR: Transmission Planning

- **Interregional Coordination**
 - FERC proposes to require regional transmission planning processes to coordinate with neighboring planning regions
 - Coordination between planning regions must be reflected in interregional planning agreements to be filed with FERC
 - FERC encourages interconnection-wide planning
 - FERC proposes four elements in each agreement
 - Coordination commitment
 - Agreement to exchange information (at least annually)
 - Formal procedure to evaluate multi-regional projects
 - Website/e-mail list for communication of information

NOPR: Transmission Planning

- **Non-incumbent Transmission Developer Participation in Transmission Planning Processes**
 - Incumbent utilities may possess a right of first refusal to construct transmission facilities in its service territory
 - FERC concerns:
 - Undue discrimination to deny a non-incumbent transmission provider that sponsors a project the same rights as an incumbent utility
 - Non-incumbent transmission developers may be less likely to participate in regional transmission planning processes
 - Planning processes that deter non-incumbent transmission developers may not result in cost-effective transmission solutions

NOPR: Transmission Planning

- **Non-incumbent Transmission Developer Participation in Transmission Planning Processes**
 - FERC proposal (1 of 2):
 - Regional transmission planning processes must have appropriate qualification criteria for determining an entity's eligibility to propose a project in the regional transmission planning process
 - Transmission Providers must have a form by which project sponsors provide information to allow a proposed project to be evaluated in the regional planning process
 - Proposals must be submitted by a single, specified date
 - Participation in a regional planning process that evaluates proposals through a transparent and not unduly discriminatory process

NOPR: Transmission Planning

- **Non-incumbent Transmission Developer Participation in Transmission Planning Processes**
 - FERC proposal (2 of 2):
 - Transmission providers must remove from OATTs (or other agreements) any federal right of first refusal for an incumbent transmission provider to construct facilities included in a regional transmission plan
 - Must describe sponsors' right to construct facilities
 - For projects not included in regional transmission plan, resubmission give the sponsor “squatter’s rights” to build the project for a defined period of time
 - If an incumbent transmission project developer may recover the cost of a transmission facility through a regional cost allocation method, a non-incumbent must be able to do so as well

NOPR: Transmission Planning

- **Non-incumbent Transmission Developer Participation in Transmission Planning Processes**

- **Limitations:**

- Reforms only apply to facilities evaluated in a regional transmission planning process and selected for the regional plan
- No modification of existing obligations for incumbent utilities to build unsponsored projects identified as necessary
- Right of incumbent utility to build, own, and recover costs for upgrades to its own facilities are not affected
- Proposed reforms only affect rights of first refusal established in OATTs or FERC-jurisdictional agreements
- Non-incumbent developers not required to use regional cost allocation process / regional transmission planning process

NOPR: Cost Allocation

- **Cost Allocation Methods**

- FERC's concern: Existing cost allocation methods may not be just and reasonable or may be unduly discriminatory or preferential because they do not appropriately account for benefits.
 - FERC views this deficiency as creating a free rider problem that deters investment.
- FERC proposal: Public Utility Transmission Providers would be required to develop both intraregional and interregional cost allocation methods.
 - The *Intraregional* Cost Allocation Method would address the allocation of costs of new transmission facilities that are included in a plan and that will be located solely within the region where the provider is located.
 - The *Interregional* Cost Allocation Method(s) would address the allocation of costs between two regions for new transmission facilities that are included in a plan and that will be located in both regions.

NOPR: Cost Allocation

- **Process for Developing the Cost Allocation Methods:**
 - FERC would require public utility transmission providers to develop intraregional and interregional cost allocation methods that meet certain principles (discussed further below).
 - Due date of intraregional cost allocation method: six months of the final rule.
 - Due date of interregional cost allocation method: one year of the final rule.
 - For transmission providers in an RTO or ISO, the methods would be set forth in the RTO or ISO tariff; for other transmission providers, the methods would be set forth in their tariffs.
 - The public utility transmission provider must coordinate with others in developing the methods: customers, stakeholders, other public utility transmission providers in its region and in neighboring regions (for the interregional cost allocation method).
 - If no agreement can be reached on a method, FERC will decide the appropriate method.

NOPR: Cost Allocation

- **The Intraregional Cost Allocation Method Must Meet Six Principles:**
 - First: Costs must be allocated to those within the transmission planning region that benefit from those facilities.
 - The method must allocate costs to beneficiaries in a manner that is at least “roughly commensurate” with their estimated benefits.
 - In order to identify “beneficiaries” of a facility, the planning process could consider the extent to which transmission facilities:
 - Provide for maintaining reliability and sharing reserves;
 - Production cost savings and congestion relief; and/or
 - Meet public policy requirements established by state or federal laws or regulations that may drive transmission needs.
 - Second: Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated the costs of those facilities.

NOPR: Intraregional Cost Allocation

- Third: If a benefit to cost threshold is used to determine which facilities have sufficient net benefits to be included in a regional transmission plan for the purpose of cost allocation, it must not be so high that facilities with significant positive net benefits are excluded from cost allocation.
 - If the planning process uses a ratio of benefits-to-costs as a threshold for including projects in a plan, FERC proposes that the ratio may not exceed 1.25 unless the region can justify a higher ratio.
- Fourth: The allocation method for the cost of an intraregional facility must allocate costs solely within that transmission planning region unless another entity outside the region or another transmission planning region voluntarily agrees to assume some of the costs.
 - FERC is not proposing mandatory cost allocation between regions for facilities that are only located in one region. However, the region where the facility is located must identify any consequences to other regions that would result from the facility.

NOPR: Intraregional Cost Allocation

- Fifth: The cost allocation method and data requirements for determining benefits and identifying beneficiaries for a transmission facility must be transparent with adequate documentation to allow a stakeholder to determine how they were applied to a proposed transmission facility.
- Sixth: Different cost allocation processes may be used for different types of transmission facilities in a regional plan.
 - For example, there may be separate cost allocation methods for transmission facilities needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations.

NOPR: Intraregional Cost Allocation

- **Additional FERC guidance on intraregional cost allocation:**
 - FERC does not intend to prescribe a uniform approach to cost allocation for new intraregional transmission facilities.
 - Public utility transmission providers in each transmission planning region can develop a transmission cost allocation method that best suits the needs of that transmission planning region.
 - FERC's principles for intraregional cost allocation do not prohibit voluntary participant funding. However, a cost allocation method that relies exclusively on a participant funding approach, without respect to other beneficiaries of a transmission facility, would not satisfy the proposed principles.
 - If a new transmission facility is located within only one transmission provider's service territory, that provider could not invoke the intraregional cost allocation method to allocate the costs to other entities in the region; however, if the regional planning process determines there would be benefits to others in the region, cost allocation would be permitted.

NOPR: Interregional Cost Allocation

- **The Interregional Cost Allocation Method Must Meet Six Principles:**
 - The principles are similar to those for intraregional cost allocation methods:
 - Costs must be allocated to each transmission planning region in which the facility is located in a manner roughly commensurate with the estimated benefits.
 - Costs cannot be allocated to regions that do not benefit.
 - If a cost-benefit ratio is used as a threshold for allocating costs of an interregional transmission facility, it must not be so high that facilities with significant positive net benefits are excluded.
 - A ratio that exceeds 1.25 would not be permitted, unless justified.
 - Costs of an interregional facility must be assigned only to regions in which the facility is located, but consequences to other regions must be identified.
 - The cost allocation method and data requirements must be transparent.
 - Public utility transmission providers located in neighboring transmission regions may choose to use different cost allocation methods for different types of interregional facilities.

NOPR: Interregional Cost Allocation

- **Additional FERC guidance on interregional cost allocation:**
 - FERC would not require a uniform method of cost allocation for new interregional transmission facilities.
 - Methods for allocating the costs of new interregional facilities can differ among pairs of transmission planning regions.
 - The method used for allocating interregional transmission facility costs between any two transmission planning regions may be different from the method used by the public utility transmission providers located in either of those transmission planning regions to allocate the costs of new intraregional facilities.
 - The cost allocation method used by the public utility transmission providers located in a transmission planning region to allocate the costs of new intraregional facilities could be different from the cost allocation method by which the public utility transmission providers in the same transmission planning region further allocate costs to be borne by that transmission planning region pursuant to an agreed-upon method for allocating the costs of interregional facilities.

Issues for Consideration

- FERC's Statutory Authority
 - Federal Power Act
 - § 206, 16 U.S.C. § 824e
 - § 206 in light of other sections of the FPA
 - FERC's authority:
 - Over transmission planning
 - To direct regional planning and inter-regional planning
 - And to require filing of inter-regional agreements
 - To require consideration of public policy initiatives
 - To eliminate rights of first refusal
- Comity with States
 - Federal / State jurisdictional divide
 - Utility obligations under state law

Questions / Comments

FERC Proposed Rulemaking: Transmission Planning and Cost Allocation

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