

Morgan Lewis

Transmission Development: Issues for Consideration

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Overview

- I. Regulatory Approvals Needed for New Transmission Facilities
- II. Rate Incentives for New Transmission Facilities
- III. Structures for Holding and Developing New High Voltage Transmission Facilities
- IV. Financing Options for Developing New Transmission

Introduction

Growth in transmission development

- Planning
 - Federal, regional, state, local levels of planning
 - Potential for conflict
 - 3 Interconnections (Eastern, Western, ERCOT)
 - Interconnection-wide initiatives vs. constraints due to separation
- Ownership structures and financing strategies
 - Traditional (investor-owned) utilities
 - Merchant transmission companies
 - Public/quasi-public ownership
- Extra-high voltage (EHV) lines: projects large in size, high in cost-per-mile, and usually interstate in scope
 - Remote renewable energy projects (location of resources)
 - Reliability

I. Regulatory Approvals Needed for New Transmission Facilities

- Federal Approvals
 - Federal Energy Regulatory Commission
 - Transmission Rates – FPA section 205
 - Rate Incentives (if requested) – FPA section 219; FERC Order No. 679
 - Backstop Siting Authority – FPA section 216
 - October 2009 Memorandum of Understanding for Federal lands
 - Department of Agriculture; Department of Commerce; Department of Defense; Department of Energy; Environmental Protection Agency; Council on Environmental Quality; Federal Energy Regulatory Commission; Department of the Interior; Advisory Council on Historic Preservation
 - NEPA Review
 - Federal action significantly affecting the quality of the human environment
 - Senate Bill ... (?)

I. Regulatory Approvals Needed for New Transmission Facilities

- State Approvals
 - Certificate Authority (Need, Necessity, Public Convenience, etc.)
 - State Commission
 - Siting and/or land rights (may be separate from Certificate)
 - State Commission or Siting Authority
 - Eminent domain / rights of way issues
 - Landowner negotiations
 - Environmental Review
 - May be incorporated into state certificate or siting process, or require separate evaluation by state environmental agency
 - State parks, forests, and cultural & historic resources
- Local land use entities
 - County/City/Town planning/zoning boards

II. Rate Incentives for New Transmission Facilities

- FPA § 219, 16 U.S.C. § 824s, *Transmission infrastructure investment*
 - Required FERC to establish rule creating incentive-based rate treatments
 - Rate incentives are for projects that:
 - Ensure reliability
 - Reduce delivery costs by reducing congestion
- FERC Order No. 679, *Promoting Investment through Pricing Reform*, 71 Fed. Reg. 43,294 (July 31, 2006)

II. Rate Incentives for New Transmission Facilities

- Incentives not intended for smaller or routine projects
- Nexus Test for Incentives
 - The nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the **demonstrable risks or challenges** faced by the applicant
- Rebuttable Presumption of Eligibility for Incentives
 1. Project results from a fair and open **regional planning process** that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or
 - RTO planning processes
 2. Project has received construction approval from an appropriate **state commission or siting authority**

II. Rate Incentives for New Transmission Facilities

- Incentives Available to all Public Utilities
 - ROE sufficient to attract new investment in transmission facilities (and for public utilities that join or continue to be a member of an ISO or RTO)
 - 100% of prudently incurred Construction Work in Progress (CWIP)
 - 100% of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors beyond the control of the public utility (Abandoned Plant)
 - Recovery of prudently incurred pre-commercial operation costs
 - Hypothetical capital structure
 - Accelerated depreciation used for rate recovery
 - Deferred cost recovery
 - Single-issue ratemaking (where proposed rates are only for new project)

II. Rate Incentives for New Transmission Facilities

- Independent Transmission Company (transco)
 - Transco = a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility
- Incentives for transcos
 - ROE that encourages formation and is sufficient to attract investment
 - Adjustment to book value of transmission assets sold to a Transco to remove the disincentive associated with the impact of accelerated depreciation on federal capital gains tax liabilities

II. Rate Incentives for New Transmission Facilities

Merchant Transmission

- FERC's 4 factor test for authorization to charge negotiated rates:
 1. Just and reasonable rates
 2. Undue discrimination
 - Open season for capacity
 - OATT commitments
 3. Undue preference and affiliate concerns
 4. Regional reliability and operational efficiency
- Use of anchor customer
 - Anchor customer to share in a portion of initial development costs
 - Pre-subscription of capacity prior to open season

III. Structures for Holding and Developing New High Voltage Transmission Facilities

- Setting the Stage
 - Reliability
 - Transmission from new renewable energy projects
 - Smart Grid
 - Cyber security
 - New stand-alone business

III. Structures for Holding and Developing New High Voltage Transmission Facilities

- Evolution of Ownership Structures
 - Increasing scope and size of projects
 - Traditional utility ownership
 - Merchant transmission
 - Joint arrangements
 - Public/Private partnerships
- Drivers:
 - Governmental transmission stimulus and/or regulatory requirements
 - Geographic area
 - Economics and financing
 - Length of lead time

III. Structures for Holding and Developing New High Voltage Transmission Facilities

- Survey of Structures – Utility System Examples
 - Vertically-integrated utility
 - Separate transmission subsidiary in utility system
 - American Transmission Systems, Inc. [FirstEnergy]
 - New sub-holding company in utility system
 - AEP structure for new in-service territory transmission
 - Separate state stand-alone transmission-only indirect subsidiaries of transmission sub-holding company
 - Allegheny Energy Transmission, LLC
 - Joint arrangements with other utilities for single projects
 - Susquehanna/Roseland Project [PPL and PSE&G]
 - Potomac-Appalachian Transmission Highline (PATH) [AEP and Allegheny Energy]

III. Structures for Holding and Developing New High Voltage Transmission Facilities

- Survey of Structures – Utility System Examples
 - Public-private joint ventures for single projects
 - CapX 2020
 - High Plains Express Project
 - New renewable energy zone projects
 - Texas competitive energy renewable zone
 - Projects outside the utility service territory
 - Indirect subsidiaries of transmission sub-holding company of AEP
 - New Exelon Transmission Company (both in and around footprint)
 - Single projects both traditional utility and merchant transmission
 - Sunzia Southwest Project
 - With foreign entities
 - Possible new Duke Energy / China MOU

III. Structures for Holding and Developing New High Voltage Transmission Facilities

- Independent multiple-project transmission companies
 - ITC Holdings Inc. (exchange-traded company)
 - American Transmission Company LLC (jointly-owned by investor-owned utilities and quasi-public entities)
- Merchant transmission
 - Stand-alone project companies
 - Chinook and Zephyr projects
 - Wyoming-Colorado Intertie project
 - Joint arrangements with public entities
 - Trans Bay Cable project
 - Montana-Alberta Tie Line

IV. Financing Options for New High Voltage Transmission

- Setting the Stage
 - Significant costs and lead time
 - Increasingly important part of significant capital requirements for utilities
 - For financing a new business
 - Drivers:
 - Economics
 - Transparency
 - Regulation
 - Availability of capital

IV. Financing Options for New High Voltage Transmission

- Survey of Financing Options – Utility System Examples
 - Using rate incentives for development and construction financing
 - Traditional financing by utility, including by lease
 - Significant portion of projects to become rate-based
 - San Diego Gas & Electric Co. option to lease a portion of the Borden-East line from subsidiary of not-for-project entity
 - Separate transmission company subsidiary
 - American Transmission Systems, Inc. [FirstEnergy]
 - Project financing
 - Allegheny Energy portion of Potomac-Appalachian Transmission Highline (PATH) joint venture
 - Intermediate transmission holding company
 - New AEP Transmission Company and subsidiaries
 - New Exelon Transmission Company

IV. Financing Options for New High Voltage Transmission

- Survey of Financing Options – Utility System Examples
 - Financing through Federal stimulus grant and/or loan guaranty
 - Partial public funding through state infrastructure authorities
 - Possible REIT or Master Limited Partnership financing
 - Sharyland FERC filing
 - Is securitization a possibility?
 - Proposed Louisiana legislation
 - Use of tax incentives

IV. Financing Options for New High Voltage Transmission

- Independent Transmission Companies
 - ITC Holdings, Inc.: Using traditional utility financing for most subsidiaries
- Merchant Transmission Companies
 - Anchor customer
 - Use of State infrastructure authorities during development
 - Single-purpose entity project financing
 - Trans Bay Cable Project
 - Federal stimulus grants and/or loan funds
 - Montana-Alberta Tie Line
 - Possible for Champlain-Hudson Power Project

Conclusion

- Evolution of structure and financing options
 - Changes in regulation
 - View of transmission as a stand-alone business
 - Governmental stimulus for transmission
 - Financial markets
 - Credit availability
 - Significant capital requirements
- Stay tuned ...

Questions / Comments

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