UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost	**)**	
Allocation By Transmission Owning	**)**	**Docket No. RM10-23-000**
and Operating Public Utilities	**)**	

COMMENTS OF THE COALITION FOR FAIR TRANSMISSION POLICY

Introduction

The Coalition for Fair Transmission Policy hereby submits comments in response to the June 17, 2010 Notice of Proposed Rulemaking (NOPR) issued by the Federal Energy Regulatory Commission (FERC) proposing to amend the transmission planning and cost allocation requirements that were earlier established in FERC Order No. 890. The Coalition for Fair Transmission Policy (hereafter, the "Coalition") is a group of 10 geographically and structurally diverse investor-owned electric utilities that has been formed to support legislative and regulatory policies that will lead to customer-focused development of the nation's electric transmission systems and clean generation resources. To reach this objective, the Coalition believes that cost-effective transmission investments will be made only when costs are borne by customers in proportion to the economic and reliability benefits they receive. And the Coalition seeks to ensure that any effort to improve transmission planning must build on existing successful, coordinated, open, and transparent regional processes, and be inclusive of all stakeholders. The Coalition believes that voluntary interregional coordination should be a complement to, and not a substitute for, local and regional processes

The Coalition's members are CMS Energy Corporation, Consolidated Edison, DTE Energy Company, Northeast Utilities, PPL Corporation, Progress Energy, Inc., Public Service Enterprise Group, SCANA Corporation, Southern Company, and United Illuminating Company. More than 28 percent of U.S. electric customers, representing 26 states, are served by utilities and companies which are either formal Coalition members or are on record supporting the group's goals. The Coalition's members will be filing their own comments in this Docket, and we urge the Commission to carefully consider those individual comments which represent the views of utilities in different regions of the country with differing challenges and opportunities.

In the remainder of these comments, the Coalition focuses on the two areas of the NOPR of major concern to the Coalition – (1) Regional and Interregional Planning; and, (2) Regional and Interregional Cost Allocation.

Background

The Coalition believes that the current bottom-up collaborative planning processes established through FERC Order 890 and the current cost allocation processes are generally working well. The most significant indicator of how the current regulatory, planning and cost allocation processes are working is whether new transmission is getting built, and there is a substantial amount of transmission being built today in the United States, and quite a bit is focused particularly on renewables.[1] EEI estimates there will be $9.7 billion in new transmission investment in 2010 and over $11 billion in new transmission investment in 2011, almost doubling

[1] While transmission built in certain areas can help the deliverability of renewable projects, it must be remembered that electrons follow the path of least resistance and, accordingly, there is no such thing as a "renewable" transmission line.

annual investment since 2004.[2] EEI also has determined that there are approximately 10,000 circuit miles of transmission of large interstate transmission projects currently planned or under construction representing a $39 billion investment.[3] EEI also reports that additional projects primarily addressing the integration of renewable resources represent the addition or upgrade of 12,900 circuit miles of transmission with an accompanying transmission investment of approximately $37 billion.[4] Continuing claims that transmission is not being built to support clean energy and other public policy requirements are not borne out by the facts.

While bottom-up planning is working successfully to identify new cost-effective transmission projects, as indicated by the significantly increased levels of investment, the Coalition agrees with the Commission that there may be instances where there are economic opportunities for multiple regions to take advantage of resources that may require interregional transmission and that are not identified by individual participants in the planning processes. Interregional planning efforts are underway in all three interconnections with funding from the American Recovery and Reinvestment Act of 2009, which seek to allow for the identification of transmission projects that may have multi-state or multi-region benefits. It is appropriate that efforts such as the Eastern Interconnection Planning Collaborative (EIPC) (and similar efforts in WECC and ERCOT) examine multi-regional options through studies and scenarios and if there are such opportunities, work with regional planning processes and the states within the affected regions to consider such options.

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[2] Edison Electric Institute. "Actual and Planned Transmission Investment 2004-2013," at http://www.eei.org/whatwedo/DataAnalysis/IndusFinanAnalysis/finreview/PublishingImages/BSbar_plntrans.jpg".

[3] Edison Electric Institute, with assistance from Navigant Consulting, Inc. Transmission Projects at a Glance, February 2010, p. iv.

[4] Ibid.

Another indicator of the success of current transmission planning and cost allocation processes is the ability of entities charged with meeting state and federal public policy requirements to meet those requirements. Again, we see that utilities and states are making progress in meeting their energy efficiency and renewable resource goals and requirements, and they are doing so in many different ways. FERC has helped states meet individual state requirements by approving innovative participant-funded financing approaches (for example, the Tehachapi and Zephyr projects, among others). The states and their regulatory commissions - in conjunction with load-serving entities (LSEs) that have renewable energy obligations within those states - are best situated to make decisions as to how to meet their own public policy requirements. Some states emphasize local economic development and require at least some resources to be purchased within the state; some have specific technology set-asides; and some wish to take advantage of local resources such as off-shore wind. States or load-serving entities that need transmission to be constructed to help meet their public policy requirements today have the ability to propose new projects in the existing Order 890 processes, and FERC can require that best efforts be made (subject to necessary state approvals) to build transmission if transmission service is requested under the rules of Order 888. There are also several examples of states getting together to propose transmission projects that will serve to meet the needs of multiple states, and many regions have proposed processes and tariffs specifically to facilitate the integration of renewable resources to the grid.

As we move forward, it is most critical to build upon what is working and retain those parts of the existing regulatory framework that are not broken. Recognizing that there are some advocating for radical changes that would require interconnection-wide, top-down planning imposed on transmission providers and state regulators, and broad inter-regional cost socialization

based on vague notions of possible "benefits" from new transmission, the Coalition adopted a set of principles as being necessary to facilitate the construction of needed new transmission in a manner that would ensure that public policy requirements are satisfied at the lowest reasonable cost to consumers:

Transmission Planning Principles

- Any effort to improve transmission planning must build on existing successful, coordinated, open, and transparent regional processes, and be inclusive of all stakeholders.
- Transmission planning must be initiated at the local and regional level based on the needs of the customers who bear the burden and benefits of the decisions driven by the planning processes.
- Transmission must be planned to ensure cost-effective compliance with NERC reliability standards.
- Voluntary interregional coordination should be a complement to, and not a substitute for, local and regional processes.
- Alternative transmission solutions must be considered as part of the planning process.

Transmission Cost Allocation Principles

- Costs for new transmission investments required to meet NERC reliability standards must be allocated to the planning area(s) where the investments are required to meet the standards.
- Costs for new transmission investments not otherwise required to meet NERC reliability standards must be allocated to the parties (generation and/or load) in a manner that clearly aligns cost responsibility with cost causation.
- Deference should be provided to consensus regional cost allocation solutions developed through open and collaborative processes.

The Coalition is pleased that the Commission has recognized the continuing value of existing planning processes established under Order 890 and has generally adhered to the Coalition's planning principles in its' proposed Rule. The Coalition also strongly supports the Commission's endorsement in the NOPR of "bottom-up planning" that begins at the local and regional levels.

The Commission also has adopted the principle that cost allocation should be commensurate with benefits received, which is consistent with the statutory requirements of the Federal Power Act and also aligned with our principles. And the Commission has rightly given deference in the proposed rules to regional planning and cost allocation processes developed by the regions themselves. Because the regions have very different transmission infrastructures, different market structures, and different available resources, regional deference and flexibility should be maintained in the final rule.

The Coalition wants to ensure that the proposed rules meet their intended objectives so that transmission needed for reliability, economic savings, and satisfying public policy requirements is developed in a manner that is cost-effective to consumers and consistent with wholesale market competition. Thus, in addition to being consistent with the above Principles, we believe it is important that any final rules do not usurp state prerogatives to protect retail consumers, do not permit an overly broad definition of benefits, and are consistent with the requirements of the Federal Power Act. The Coalition's specific concerns are discussed in detail in the following sections.

Regional and Interregional Planning

In its proposed rulemaking, the Commission states its belief that the current regulatory scheme for transmission planning and cost allocation may no longer be just and reasonable and may be unduly discriminatory under the Federal Power Act. With respect to planning, the Commission states:

> *Since the issuance of Order 890, it has become apparent to the Commission that Order 890's regional participation principle may not be sufficient, in and of itself, to ensure an*

> *open, transparent, inclusive and comprehensive regional transmission planning process. Without such a process, each transmission provider will not have information needed to assess proposed projects and determine which project or groups of projects could satisfy local and regional needs more efficiently and cost-effectively*.[5]

The Commission also expresses its' belief that the public policy requirements of participants in the existing regional planning processes under FERC Order 890 may not be receiving adequate (or any) consideration in developing transmission plans, particularly pointing to state Renewable Portfolio Standards.[6] The Commission concludes:

> *To 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, the Commission preliminarily finds that transmission needs driven by public policy requirements established by state or federal laws or regulations should be taken into account in the transmission planning process*.[7]

The Commission thus proposes to implement new rules requiring the regional transmission planning processes identified or established under FERC Order 890 to take into account state and federal policy requirements. The Commission also proposes to require that interregional transmission planning agreements be developed between neighboring transmission planning regions.

The Coalition agrees with the Commission that transmission planning processes should have the ability to reflect both federal and state public policy requirements, and we believe they have the capability to do so (and have always had such capability). Transmission providers, utilities and load-serving entities in general have always faced public policy requirements (for example,

[5] NOPR ¶49.

[6] NOPR ¶59.

[7] NOPR ¶63

Clean Air Act requirements and Fuel Use Act requirements of the 1980's) which have always influenced resource choices, which in turn have ultimately affected transmission plans and development. Renewable energy standards might be new, but they are really just another factor in the development of LSE resource choices, and that transmission planners must take into account in their planning.

The manner in which regional planning processes address federal and state public policy requirements is critical to ensuring that state regulatory prerogatives are not pre-empted and that local needs are satisfied based on the policy choices of state legislatures and regulators. The Coalition believes that local, regional and interregional transmission planning processes should be based first on meeting NERC reliability requirements and then on identifying cost-effective transmission solutions so that states, load-serving entities and other retail suppliers can access power from their identified (designated) resources, including those resources needed to meet any public policy requirements. Specifically, with respect to consideration of public policy requirements, regional transmission plans should be developed through a bottom-up process within the appropriate geographic area relying on information provided by those entities with the responsibility to meet such public policy requirements. The manner in which this information flow occurs will differ from region to region, but it is important that regional plans reflect local needs, and interregional plans reflect regional and local needs. The regional planning processes should review the information provided and coordinate individual plans to ensure that reliability meets NERC standards and that local and regional plans do not conflict with one another. The regional and interregional planning processes may also identify opportunities for cost savings through projects that meet the needs of multiple entities within the region.

While we do not believe it is the Commission's intent, we are somewhat concerned that the Commission's proposal to require regional planning processes to consider public policy requirements might be interpreted as requiring those processes to make decisions as to how best to meet applicable public policy requirements on behalf of those entities on whom the requirements are placed. Our concern that the proposed rules might contemplate such a role for regional planning processes stems from several statements in the NOPR. For example, the NOPR states:

> *When conducting planning to serve native load customers, a prudent transmission provider will not only plan to maintain reliability and consider whether transmission upgrades or other investments can reduce the overall costs of serving native load, but also consider how to enable compliance with relevant public policy requirements established by state or federal laws or regulations in a cost-effective manner. Therefore, we propose to find that, to avoid acting in an unduly discriminatory manner, a public utility transmission provider must consider these same needs on behalf of all of its customers.*[8]
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> *Specifically, we propose to require each public utility transmission provider to amend its OATT such that its local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by state or federal laws or regulations that may drive transmission needs.*[9]

If the proposed rule were interpreted to require regional processes to decide how to meet state and federal policy requirements, then the regional planning processes would need to conduct integrated resource planning on behalf of its participants. This would clearly usurp state regulatory prerogatives. These regional planning processes will have no direct responsibility or accountability to the state legislatures and regulatory authorities that have responsibility for implementing energy and environmental policy within their states. And the Federal Power Act gives no authority to FERC to determine what resources should be used by load-serving entities, regardless of whether or not those resources are needed to meet public policy requirements.

[8] NOPR ¶63. Note that while the paragraph refers to public utility transmission providers, it appears to impose the requirement not only on RTOs and ISOs, but on regional transmission planning processes (such as those established under Order 890 for non-RTO/ISO areas) that are not transmission providers.

[9] NOPR ¶64.

A regional planning process should also not be required to make decisions as to how to satisfy the public policy requirements of its participants because conflicts are certain to arise. For example, many state renewable resource portfolio standards designate set-asides for specific resources. Often, there is a statutory or regulatory policy to encourage development of local resources for economic development purposes. Some states may favor particular technologies. Coastal states may have a legitimate desire to develop offshore wind. These legitimate preferences - often embodied in state law or regulation - would result in potential conflicts if a regional process is charged with developing a single plan for a region. All of these are considerations that can only be made at a more local level and then included in the regional planning process as the preferred resource choices of the load-serving entities and states within the region. The regional transmission planning process cannot, on its own, make these resource choices and it should not attempt to anticipate what those choices may be.

Thus, the Coalition believes that decisions on how load-serving entities (or others with such responsibilities) within regions should meet state or federal public policy requirements are and should continue to be made by those with responsibilities to meet the requirements, based on federal and state law and applicable regulations. These decisions should then be transmitted in appropriate ways to the regional planning process which should then incorporate them into any regional plans that are developed. It can and should then be the responsibility of the regional planning process to look for ways in which the individual needs of those with resource requirements – including those resource requirements emanating from public policy requirements – can be most efficiently met. We are likewise concerned that the proposed rules could be interpreted by some to suggest that regional planning processes could be required to plan for speculative transmission needs that some participants in the planning process might believe could

help meet future public policy goals. Our concerns in this regard are heightened by a provision in the NOPR that suggests that the planning requirements of the proposed Rule are not limited to state and federal laws and regulations. The Commission states:

> *After consulting with stakeholders, a public utility transmission provider may include in the transmission planning process additional public policy objectives not specifically required by state or federal laws or regulations.*[10]

This suggests that if some or possibly a majority of stakeholders think that a public policy objective - not legally required - is a good idea, then the regional planning process could be required to include it in its planning. For example, stakeholders in multiple regions could assume that long-distance transmission from wind-rich resource areas or even an interstate EHV grid overlay might be needed to meet future environmental or renewable resource requirements in a general sense and thus proceed with plans to develop such facilities. Regional planning processes should not be required to plan transmission for public policy requirements <u>not</u> identified or desired by states, generators, or those with load-serving responsibilities. It makes no sense to plan transmission based entirely on speculative needs or to have a rule in place that could engender unlimited debate over how to define a public policy objective.[11]

What if the "additional public policy objectives not specifically required by state or federal laws or regulations" conflict with legislative or regulatory powers of the states (e.g., they impose requirements on regulated utilities or other load-serving entities that a state or the federal government has not yet acted upon)? For example, could a regional planning process decide that a

[10] NOPR ¶64.

[11] If a need for new transmission facilities is identified by those who will ultimately bear cost responsibilities (including costs that might be incurred by associated changes to the existing transmission system), or if someone steps forward to fund transmission improvements, such projects should be considered in regional planning processes – regardless of whether or not they are needed to meet public policy requirements.

regional RPS standard was a desired public policy objective and plan the transmission system to meet a standard that doesn't otherwise exist in state or federal law? What if such objectives are consistent with the laws of some states but conflict with the laws of other states within the region? What if such objectives impose unequal burdens within the region? Regional planning processes are not governmental bodies and do not have any authority to regulate or legislate. This provision should be deleted from the final rule.

In summary, we agree with the Commission that regional planning processes should consider public policy requirements in their planning, but they should do so in a bottom-up manner based on needs identified by participants in the planning process and consideration of other factors as described herein. The final rule should provide that regional planning processes should consider state and federal public policy requirements, but such consideration should be based only on needs identified by those entities upon whom the public policy requirement is placed. While we do not believe it was the Commission's intent, it should be clarified that the planning processes do not and should not have the authority to either determine how public policy requirements should be satisfied, or to modify or reject the plans of those load-serving entities and others with responsibilities to provide reliable service and to meet public policy requirements. Regional planning processes should not be involved in making those critical resource decisions on behalf of entities over which it has no regulatory responsibility or accountability. Rather, the regional planning processes should be responsible for incorporating those needs into the regional plan, ensuring that those plans don't degrade reliability or conflict with one another, and identifying opportunity for cost savings by coordinating resource and transmission needs.

Regional and Interregional Cost Allocation

With respect to cost allocation, the Commission finds that current practices may no longer be just and reasonable and may be unduly discriminatory. Here the Commission focuses on the rapidly changing needs of the industry, particularly the increased level of investment and needs for multi-state and multi-region transmission projects, driven in large part by changing public policy requirements and state (and potential national) RPS requirements in particular.[12] The Commission also points to a current lack of rate structures that provide for the analysis of the beneficiaries of a transmission facility that is proposed to be located within a transmission planning region outside an RTO or in multiple planning regions, and from corresponding cost recovery.[13] The Commission thus concludes that:

> *In light of these challenges and recent developments affecting the industry, the Commission is concerned that existing cost allocation methods may not appropriately account for benefits associated with new transmission facilities, and thus may result in rates that are not just and reasonable or unduly discriminatory or preferential.*[14]

The Coalition does not agree with the Commission that existing methods for cost allocation may not be just and reasonable and may be unduly discriminatory. We believe existing methods properly account for benefits associated with new transmission facilities in the manner suggested by the NOPR, and provide for changing industry circumstances. We believe both the Federal Power Act and FERC precedent requires FERC to allocate costs based on cost causation principles and that allocating costs to entities that receive little or no benefit from new transmission facilities is not only inconsistent with legal requirements, but will lead to uneconomic and inequitable

[12] NOPR ¶150, 151.

[13] NOPR ¶152.

[14] NOPR ¶154

results. While resource choices may change with the times as public policy requirements change, this does not provide a rationale to depart from traditional cost allocation methods. Utilities and transmission providers have always had to account for public policy requirements in deciding their resource needs and requirements, which in turn influences transmission planning and ultimately cost allocation decisions.

The Commission proposes "to require that every public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plans produced by the transmission planning process in which it participates."[15] While the Coalition understands the Commission's objective to provide some advance certainty to potential transmission project developers and customers, it raises some concerns. To the extent such "set in place" methods limit flexibility, some economic projects that might otherwise move forward may not even be considered in the planning process because they don't fit the established method(s). Flexibility is desirable to allow some projects to move forward under tailored cost allocation plans, and the Commission should not lose sight of that fact.

Nonetheless, we support the general principle established by FERC in the NOPR - that beneficiaries of transmission projects should bear the costs - and that those who receive little or no benefits should not have to pay. If costs and benefits are not aligned, then uneconomic decisions will be made by those either building generation or those planning to purchase from those facilities, because the generator or customer will not face the true costs of their resource decisions. They may, for example, decide to buy from remote renewable resources that require long-distance transmission simply because they don't have to pay the full transmission costs, even if the

[15] NOPR ¶163.

delivered cost of local renewable resources would be much more economical if all costs are considered. Competitive wholesale markets using locational-marginal pricing will begin to see price signals break down and will become inefficient, again as customers no longer face the true marginal price of purchases at their location. And siting of new transmission lines may become more, rather than less difficult, as those required to pay for lines from which they don't benefit litigate both the cost and siting-approval processes. Thus, we fully support the Commission's decision that those who benefit from new transmission should bear the costs.

The Commission is also correct in suggesting that different types of projects may warrant different treatment. Clearly, as set forth in the Coalition's Principles, lines that are needed to meet NERC reliability requirements should have costs allocated to the planning region where a violation might otherwise occur, while lines built for economic reasons should have costs allocated in proportion to economic benefits.

But the Coalition believes some caution is necessary to ensure that any final rule meets both the legal requirements of the Federal Power Act and the desired objectives of overall economic efficiency and effective competitive wholesale markets. In particular, the characterization of what constitutes a "benefit" for which costs may be allocated is critical to getting transmission policy right. The Coalition's concern relates to how the proposed rules might be interpreted with respect to how benefits may be defined and measured, and the negative impacts of allowing an overly broad definition of what benefits can be considered in cost allocation plans.

Specifically, the Commission, in several places suggests that it will defer to judgments made by the regional planning processes as to what constitutes a benefit and that those benefits are not limited to economic and reliability benefits. For example:

Transmission 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.[16]

For example, cost allocation methods may distinguish among facilities that are driven by needs associated with maintaining reliability, relieving congestion, and achieving public policy requirements established by state or federal laws or regulations, all of which would be required to be considered in the regional transmission planning process….[17]

In determining the beneficiaries of transmission facilities, individually or in aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.[18]

While cost allocation should consider whether a particular transmission project is needed to meet state or federal public policy requirements, meeting those requirements by itself is not a "benefit" to anyone other than those required to meet the policy requirement. In such cases, the determination of "benefits" from meeting the public policy requirement has already been made (on behalf of the customer) by Congress or state legislatures or regulatory agencies, and it is up to FERC to ensure that the compliance costs associated with policy requirements are allocated to those entities (and their customers) on whom the requirements are imposed in proportion to their cost responsibility. As described in the planning section earlier, under proper regional planning procedures, entities that wish to access resources that help them meet public policy requirements will be readily identifiable, and cost-sharing arrangements can be worked out if projects are proposed by multiple entities to meet their respective policy requirements.

Furthermore, outside of the context of projects considered in the planning process to meet public policy requirements - where cost allocation can most often readily be determined - the Coalition believes that only economic and reliability benefits that can reasonably be projected in

[16] NOPR ¶151.

[17] NOPR ¶160.

[18] NOPR ¶164.

planning and other modeling studies, and that are within the planning horizon of the transmission provider should be considered in determining cost allocation. Simple determinations that all transmission improvements have reliability benefits to all customers, or that some transmission improvements may be beneficial - to some customers somewhere and at some time in the future that currently are impossible to correctly analyze - as justifications for the broad socialization of costs should not and cannot form the basis of the Commission's regulatory policy.

While we do not believe it is the Commission's intent, allowing an overly broad definition of "benefits" in our view would make cost allocation become an even more difficult and contentious exercise and lead to substantial litigation. Furthermore, precluding an overly broad definition of benefits is critical to ensuring that customers are not required to pay for uneconomic transmission lines, that price signals in competitive wholesale markets continue to provide economically efficient results, and that the Commission complies with requirements of the Federal Power Act. The NOPR appears to give considerable leeway to regions when they develop cost allocation plans, and to FERC if the regions can't reach consensus, as to what benefits may be considered in allocating costs. The Coalition's concern here relates to the possible inclusion of "social" benefits that are not incorporated into state or federal law or regulation, speculative benefits, or notions that there will be future benefits somewhere or sometime that don't appear in models that regions use to plan the system and measure the costs and benefits of proposed projects.

In a similar regard, the Coalition is concerned that neither FERC nor the regional planning processes should be in the position of deciding what public policies are socially beneficial and which are not, what the benefits are of one policy over another, or what those social benefits are worth – otherwise there could be no end to such considerations by regional planning processes. For example, if state policy is to increase use of coal, should increased coal use be considered a

benefit in assessing a particular proposed project (the NOPR allows for consideration of public policy objectives that are not legal requirements at ¶64)? Or if a project helps one state meet its renewable energy standard but reduces coal use in another state in contradiction to that state's policy requirements, should both the benefits to one state and the costs to the other state be considered? Should transmission enabling nuclear power also get the same "credit" for environmental benefit as a line to encourage renewables? And who makes these decisions? These limited examples suggest that including consideration of overly broad social benefits or non-mandated public policy goal in the transmission planning process is an extremely slippery slope that FERC needs to avoid. If the federal government or states has concluded that these social benefits must be realized through passage of laws or regulations, then they become economic decisions on the part of those who are burdened by satisfying the law or regulation. But it is not the job of the regional planning process, or of FERC, to make these determinations.

Furthermore, if the proposed rule requires consideration of "broad" public policy benefits that can't be measured or projected within a transmission providers' planning horizon, we believe the proposal is beyond the scope of FERC's authority. In proposing its new rules governing the planning and allocation of costs of new transmission facilities the Commission is invoking its jurisdiction and authorities over the transmission of electric energy in interstate commerce, and the facilities used for that purpose. This jurisdiction and these authorities are contained in the Federal Power Act, as amended at various times through the years. And therefore the purposes and objectives of all legitimate exercises of that jurisdiction and those authorities must be contained within the FPA.

The main purpose of the Federal Power Act (the Act) is to ensure that rates and charges for the transmission of electric energy "shall be just and reasonable…not grant any undue preference or

advantage to any person, or subject any person to any unreasonable difference in rates…"[19] In addition, the Act bars the Commission from granting "any undue preference or advantage to any person" or maintaining "any undue prejudice or disadvantage…"[20]

In the Energy Policy Act of 2005 Congress entrusted the Commission with the first and thus far only, significant new purpose and authorities within the confines of the FPA: maintaining the reliability of the bulk power supply system.

Given these mandates, the Act has always required the Commission to make difficult decisions with respect to allocating costs related to transmission facilities. Protection of the electricity customer from unreasonable rates and charges, and from undue preference or advantage is at the heart of its purposes, and FERC's central responsibility.

Of course, ensuring rate protection for electric consumers is not the only important public policy question in the field of electricity regulation. In separate statutes, Congress has addressed a multitude of other questions such as the optimal combination of generating sources (the Fuel Use Act), the protection of utility investors (the Public Utility Holding Company Act of 1935), conservation of energy supplied by electric utilities (the Public Utility Regulatory Policies Act of 1978), and environmental concerns (the Clean Air Act .) In each of these cases, Congress has pursued public policy goals that bore directly on our nation's electricity system but only indirectly on FERC's mission. Congress recognized distinct roles for various agencies within the Executive Branch of the federal government, and enacted separate statutory schemes assigning

[19] Sec. 205/16 U.S.C. ¶824(d)

[20] Id.

responsibilities to different agencies with specific expertise to arrive at complementary policies for the country's electric systems.

However, the proposed rule could be interpreted as attempting to blur the distinctions between the Commission's historic role as protector of the consumer and its newer role of maintainer of the reliability of the bulk power system by extrapolating its responsibility to properly allocate transmission costs in a manner that would include costs not required to maintain reliability, relieve congestion, or to meet mandated public policy requirements. Such activity is far afield from the Commission's core mission. For example, the proposed rule asserts that the circumstances against which the Commission must fulfill its statutory responsibilities change with developments in the electric industry, including changes with respect to demands placed on the transmission grid. While this general principle makes sense, the proposed rule may take the principle several steps beyond its existing statutory authority.

In particular, the proposed rule's observation about the impacts of certain "state resources policies, such as renewable portfolio standard measures", its assertion that "challenges associated with allocating the cost of transmission appear to have become more acute", and its stated concerns about the shortcomings of "existing rate structures" are noteworthy but do not in and of themselves empower the Commission to tackle every policy problem arising from such developments.[21]

The Commission also emphasizes potential "risks for transmission developers" and observes that in certain circumstances the task of allocating transmission costs "is often contentious and prone to litigation". These concerns are not unusual; they are standard fare for the Commission

[21] NOPR ¶151.

and seem misplaced in comparison to its central responsibility under the Act to ensure electricity consumers do not bear costs unrelated to service they receive. Risk for the private sector, the burdens of litigation, and the need for regulatory policies to evolve are normal features of our system of government. Nonetheless, however difficult to manage, the existence of novel policy concerns does not give rise to new authority enabling FERC to unilaterally expand its authority to address every "new" problem. Moreover, if FERC tried to propagate new authority in the final rule, this might indeed lead to even more litigation.

Finally, the Coalition wishes to point out to the Commission an apparent ambiguity in the proposed rule. In the NOPR, the Commission states a principle with which we fully agree:

> *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 a portion of those costs.*[22]
>
> *Costs allocated for an interregional facility must be assigned only to transmission planning regions in which the facility is located. Costs cannot be assigned involuntarily under this rule to a transmission planning region in which that facility is not located.*[23]

At the same time, however, elsewhere in the NOPR the Commission states that costs may be allocated to a beneficiary "even if a beneficiary has not entered into a voluntary arrangement (e.g., as a customer of the public utility that is seeking to recover the costs of that facility)."[24] The NOPR also states that "courts have affirmed that the cost causation principle allows the Commission to allocate at least some types of costs to beneficiaries that are not customers of the public utility that is seeking to recover the costs in question."[25] This seems to suggest – contrary

[22] NOPR ¶164.

[23] NOPR ¶174.

[24] NOPR ¶ 142.

[25] NOPR ¶ 146.

to the NOPR sections cited above - that if the Commission finds that there are benefits of a proposed line across an entire inter-connection or portion of an inter-connection, including areas outside of where a line is to be built, then costs could be allocated to all LSEs within the inter-connection or parts of the interconnection – even where transmission customers are not taking service from transmission providers in regions where the line is located. We believe the Commission got it right by concluding that in the absence of a voluntary agreement, costs cannot be allocated by a region to an entity not taking transmission service from that region that is either (1) outside the geographic boundaries of the planning region, or (2) outside the region where the facility is being constructed and should make that clear in any final rule.

In summary, the Coalition believes that the "beneficiaries pay" approach adopted in the NOPR is the correct principle for ensuring transmission development at the lowest reasonable cost to consumers and with the greatest economic efficiency. While it is unclear to the Coalition that changes to traditional cost allocation policies are necessary to meet the Commission's objective of keeping up with changing times, if the Commission decides to proceed with new cost allocation rules, we believe the Commission needs to avoid overly broad definitions of what constitutes benefits for which costs may be allocated. And outside of the context of projects considered in the planning process to meet public policy requirements, for which beneficiaries will most often be easily identifiable, the consideration of benefits must be limited to economic and reliability benefits that can be measured or projected within the transmission provider's planning horizon. Generalized "social benefits", not incorporated into state or federal law or regulation, or speculative "we believe they will happen" benefits are not a rational, sufficient, or legal basis for cost allocation.

Finally, the Coalition urges the Commission to consider whether it is prudent in all cases to require the filing of cost allocation plans by transmission providers in advance of projects being proposed. At a minimum, the Commission should provide flexibility within and between regions for cost allocation proposals and filings that do not meet the exact requirements of advance cost allocation plans or compliance filings. Not every project will fit into a particular model, and adherence to strict rules may deter rather than encourage the construction of needed new transmission facilities.

Conclusion

The Coalition agrees with the Commission that public policy requirements should be taken into account in regional planning processes, but that FERC's final rule should recognize the only appropriate manner in which this should be done is through the bottom-up planning process that allows the entities on whom the public policy requirements are imposed (and their state regulators) to determine how best to meet the requirements, and identify the subsequent resource needs and any necessary transmission infrastructure in the regional planning process. Regional planning processes should not be involved in integrated resource planning or in making decisions on how the public policy requirements of regional entities should be satisfied.

Cost allocation should be based on a beneficiary pays approach as FERC acknowledges, but any final rule must be clarified to limit consideration of benefits to non-speculative, measurable or predictable economic and reliability benefits within the planning horizon of the regional planning process or transmission provider.

Respectfully submitted,

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