

Group, SCANA Corporation, Southern Company, and United Illuminating Company. Many of the Coalition's members will be filing individual Reply Comments and we urge the Commission to carefully consider those comments as well.

As noted in the initial comments of the Coalition, we generally support the major principles described in the NOPR regarding both transmission planning and cost allocation. With regard to planning, we applaud the Commission for adopting a "bottom-up" approach, which relies on open and collaborative regional transmission planning processes. The Coalition also agrees with the Commission that public policy requirements can and should be considered in regional planning processes. And with respect to cost allocation, the Coalition fully supports the principle that entities receiving little or no benefit from transmission projects should not be required to pay for those projects and that cost allocation should be commensurate with benefits. However, as pointed out in the Coalition's initial comments, several improvements to the proposed rule are needed:

- 1. The Commission should ensure that state regulatory prerogatives are not pre-empted. Local needs should be satisfied based on state legislative and state regulatory policy choices, not those made on their behalf during regional planning processes.*

The Coalition is especially concerned that the final rule might place regional planning processes in the role of deciding how states and load-serving entities with the responsibility to meet public policy mandates will meet those mandates. Some of the initial comments filed in response to the NOPR advocate placing regional planning processes in the position of conducting some type of integrated resource planning on

behalf of load-serving entities and state regulators.¹ This is certainly contrary to the position taken by many parties who commented on the NOPR, most notably the National Association of Regulatory Utility Commissioners (NARUC) and a number of state regulatory agencies.² NARUC on page 4 of its filing states: “The rule must not infringe on State Commission authority over integrated resource plans and generation decisions.” The Coalition believes that the Commission should reiterate in the final rule, as was identified in paragraph 69 of the NOPR³ that the Commission does not intend to infringe upon state authority with respect to integrated resource planning, nor does it intend to institute some type of integrated resource planning in RTO/ISO regions. 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 specific needs identified to

¹ See, for example, Pioneer Transmission, at Page 6 “Regional and inter-regional planning need to move back to the paradigm under which transmission and generation are planned in a coordinated and cohesive fashion”; Pattern Transmission LP at Pages 6-8 advocating for the adoption of a public policy requirement as to achieve “upgrades needed to increase access to renewable resources...”.

² Alabama Public Service Commission, Page 3: “Accordingly, the APSC reaffirms its prior positions and calls upon FERC to refrain from actions that would disrupt the current integrated planning process in Alabama or preempt the APSC’s existing jurisdiction.”; The Joint Comments of the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission, Pages 6-7: “Requiring regional processes to decide how to meet state and federal policy requirements, which is one possible interpretation of the NOPR, would be equivalent to involving these planning processes in integrated resource planning... The FPA gives no authority to the 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.... Decisions on how load-serving entities (or others with such responsibilities should meet State or federal public policy requirements are and should continue to be made by those with the responsibility to meet the requirements subject to the authority of State regulatory agencies.”; California Public Utilities Commission and the Energy Resources Conservation and Development Commission of the State of California, Page 26: “Also essential is giving states and state policies an important role in development of any agreements or plans, as well as respecting state jurisdiction in such matters as demand-side programs, integrated resource planning and transmission permitting.”

³ NOPR, Paragraph 69: “This proposed requirement is not intended in any way to infringe upon state authority with respect to integrated resource planning. [Footnote 78 - citing to Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 479, n.274.]”

planning entities by state governments themselves or 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 other agencies with responsibilities to provide reliable service and to meet public policy requirements.

2. *The Commission should not require nor allow regional planning processes to consider non-mandated public policy goals.*

A few of the initial comments filed in this proceeding supported the concept identified in paragraph 64 of the NOPR that regional planning processes be allowed to go beyond public policy mandates and consider other objectives supported by regional stakeholders.⁴ The Coalition believes that neither FERC nor the regional planning processes are in the position of deciding what public policies may be socially beneficial and which may not, what the social benefits are of one policy over another, what those social benefits are worth, or how to resolve conflicts between goals – otherwise there could be no end to such considerations by regional planning processes. In our initial comments, the Coalition pointed to several examples of some of the problems and conflicts that could arise if the Commission goes down this path. If Congress or states conclude that social objectives or 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 determine

⁴ See, for example, Comments of AWEA, Wind on the Wires, Renewable Northwest Project, *et. al.*, Page 19, item iv. “The Commission should encourage consideration of public policy objectives that are part of “a likely future scenario.”” And Page 38, item xiii. “The Commission should encourage consideration of public policy objectives beyond those in existing laws and regulations.”

what social objectives should be realized. A number of parties filing comments on the NOPR supported the Coalition's position on this issue, with the state regulatory authorities raising concerns in these areas.⁵

3. *Only economic and reliability benefits that can reasonably be projected in planning and other modeling studies should be considered in determining cost allocation. Generalized "social" benefits or speculative benefits are not rational or sufficient for cost allocation.*

The Coalition filed comments supporting the principle that cost allocation should be proportionate to the actual benefits provided, which as acknowledged by the Commission, is what the law requires. Several parties recommend that FERC require benefits to be defined very broadly, to include benefits that may be speculative, far in the future (and thus not currently foreseeable), or based on societal benefits that parties believe should be achieved, regardless of whether they are incorporated in current state or federal law or regulation.⁶ However, a number of other filing parties hold views in line with the Coalition's comments in this area.⁷ As pointed out in the Coalition's initial comments,

⁵ NARUC, Page 4: "The States will not turn over their policy authority to planning entities for inclusion in a FERC tariff." And Page 5: "The Proposed Rule improperly allows the planning authority to speculate on what public policy will or should be.... Secondly, the rule should explicitly recognize the governmental role, particularly at the State level, in providing policy input into the planning process, rather than directing the planners to consult with all stakeholders to speculate on possible policy."; Comments of Alabama Public Service Commission, Pages 5 – 7; Joint Comments of the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission, Page 7: "Neither the FERC nor the regional planning processes should be in the position of deciding which public policies are socially beneficial and which are not, what the benefits are of one policy over another, or the value of such putative social benefits."

⁶ See, for example, Comments of AEP, AWEA, *et. al.*, Pages 22 – 24, further encouraging the Commission to not rely only on "measurable" economic or reliability benefits in allocation of the costs of transmission.

⁷ See, for example, Comments of the Illinois Commerce Commission, at Page 12: "...speculation about the distribution of benefits years in the future and allocating cost to customers in the present based on speculative predictions of the future is not a sound basis for cost allocation and is beyond the scope of Commission jurisdiction under the Federal Power Act."; Joint Comments of the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission at Page 9 "The

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 Coalition is particularly concerned with a proposal made by a group of filing parties (AEP, AWEA *et. al.*) in their initial comments that there be a rebuttable presumption that transmission projects at or above 345 kV have broad regional benefits and therefore the costs of such projects should be allocated broadly (on a postage stamp basis) within regions or even beyond regions. Their comments on page 14 state “The Commission should approve plans that allocate the costs of a project to the beneficiaries of that project, without limitations arising from service territory, RTO or other boundaries. If the benefits are not confined to a specific service territory or region, then the allocation of costs, similarly, should not be so confined. Broad allocation of the costs of new EHV transmission is in keeping with the increasingly regional nature of electricity markets, and also is necessary to avoid allowing transmission costs to create market distortions.”

consideration of benefits should be limited to quantifiable economic and reliability impacts of proposed facilities. Both the FPA and the Commission’s own precedent require the allocation of costs in proportion to the real reliability and economic benefits resulting from a transmission investment that can be measured to projected within the planning horizon. Generalized ‘social’ benefits that are not embodied in state or federal law or regulation and speculative benefits do not provide rational, sufficient, or legal basis for cost allocation.” *See also KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C.Cir.1992) (“ [A]ll approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them.”); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C.Cir.2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C.Cir.2004); *Transcontinental Gas Pipe Line Corp.*, 112 F.E.R.C. ¶ 61,170, 61,924-61,925, 2005 WL 1848553 (2005) (“a claim of generalized system benefits is not enough to justify requiring the existing shippers to subsidize the uncontested increase in electric costs caused by the Cherokee project.....”).

However, the NOPR and FERC precedent make clear that costs must be allocated in a manner that clearly aligns cost responsibility with cost causation and such attempts to allocate costs involuntarily to non-customers in other regions are, thus, not appropriate⁸.

The NOPR appropriately states that the only regions that can be required to pay for a transmission facility are those regions where the facility is physically located.

A similar proposal was made by NextEra Energy (also with a threshold of 345 kV and above)⁹, and MidAmerican Energy Holdings (with a threshold of 500kV projects).¹⁰

Others made similar proposals¹¹. We believe these proposals are unlawful, ignore the fact that EHV lines can have broad impacts that are both positive and negative, and could skew economic decision making by transmission owners and developers.

The Coalition has stated that projects needed to meet NERC reliability standards can be specifically identified and cost allocation to everyone within a planning area where the investments are required is appropriate. But with respect to projects not needed for reliability, there is no way to determine *a priori* whether particular transmission projects have broad or limited benefits, or whether some within a region benefit much more than others, or even whether some within a region see no benefit. For any new transmission project or sets of projects, such information can only be gained by planning and transmission studies that examine power flows after construction of transmission projects

⁸ See for example, *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) holding that the allocation of costs “must reflect to some degree the costs actually caused by the **customer** who must pay them.” (emphasis added).

⁹ NextEra at pages 26 – 27.

¹⁰ Mid American at page 40.

¹¹ See for example, Comments of WIRES, Baltimore Gas & Electric Company, and The Wind Coalition.

compared with the counterfactual – *i.e.*, what flows would have occurred absent the project or projects.

These studies are necessary to determine not only who benefits, but whether there are overall benefits to a project. Moreover, in many cases the customer(s) that requested the service that causes the need for the upgrade, or the entities that are required to meet public policy requirements that necessitated the need for the upgrade, are the principal beneficiaries of such upgrades. Accordingly, it should not be the responsibility of opponents to a particular project or the entities impacted by the “rebuttably presumed” cost allocation of that project to demonstrate that they do not benefit from its construction or that their cost impacts are not commensurate with their benefits. Such studies need to be filed by the party or parties proposing a particular cost allocation to demonstrate that such allocation is just and reasonable, as required by the Federal Power Act.

The NOPR itself proposes requiring cost allocation to be “roughly commensurate” with benefits¹² and points to the Seventh Circuit Court of Appeals decision as providing the legal rationale for such requirement, which the Coalition’s initial comments support. Providing a rebuttable presumption for all projects above a certain voltage would provide no certainty that this legal requirement would be satisfied. It is certainly likely that extra high voltage (EHV) lines could be built to serve a single load serving entity/customer, or that a lower voltage line has broad system benefits. AEP, AWEA *et. al.* point to a CRA International study attached to their comments, which attempts to make the case that EHV lines have broad benefits. But such broad conclusions certainly cannot be reached with

¹² NOPR at paragraph 147.

respect to individual projects or sets of projects built for specific purposes within or between regions without analyses of the underlying facts.

The CRA International study is also deficient in that it neglects to mention that while there may be broad benefits to certain EHV projects, such projects may also impose negative benefits (*i.e.*, costs) on some parts of the region as well, which again, can only be ascertained by examining the impact of specific projects. As the NOPR specifies, entities that receive little or no benefit from transmission projects should not be allocated costs of those projects. For example, if a region is already being provided reliable and economical service, the addition of an EHV line, as a practical matter, might result in little more than causing extensive and expensive upgrades to the lower voltage system so as to be able to accommodate the additional energy flows of the EHV line. Or, an EHV upgrade might create contingency concerns on the local system or harmful loop flows on other systems. The CRA study has not been subject to rigorous review, and cannot form the basis as to broad conclusions about who benefits from EHV projects.

Finally, setting an arbitrary voltage level for a rebuttable presumption of broad benefits could have unintended economic consequences, resulting in higher rates to consumers. If transmission costs are allocated to customers that do not receive commensurate benefits, those non-benefiting customers will be providing a subsidy to other customers who as a result will not face the true costs that their resource and transmission usage decisions impose on the transmission system. If an arbitrary voltage level is set beyond which costs are socialized, then decisions might be made to build projects above a certain voltage (whatever the threshold) to take advantage of this subsidy, regardless of whether or not it is the most cost effective alternative. As explained fully in the Coalition's initial comments,

it is critical that costs are allocated commensurate with benefits to ensure that the most cost-effective resource and transmission development decisions are made on behalf of consumers.

Thus, the Commission should reject suggestions that all transmission projects above certain voltages should be presumed to have broad benefits and thus the costs should be socialized within regions, unless sufficient support is provided, on a project specific basis, demonstrating that the benefits are broad and evenly distributed within or between regions.

Respectfully submitted,

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