

## FERC Proposes to Permanently Lift Price Caps on Reassignment of Transmission Capacity, Seeks Comments on Further Reforms

On April 29, 2010, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (NOPR) to permanently lift price caps on the reassignment of transmission capacity. FERC initially capped the price transmission customers could charge for reassignments of transmission capacity in 1996. Price caps were lifted in 2007, but only for a study period set to expire in October 2010. Based upon the study data, FERC is proposing to permanently remove price caps and allow the market to set prices for reassignments of transmission capacity. FERC also seeks comments on whether further reforms are necessary to create a more efficient and vibrant secondary market for transmission capacity. Comments are due 60 days after the NOPR is published in the Federal Register.

### BACKGROUND

In Order No. 888, FERC required transmission providers to allow reassignment of transmission capacity by their customers. Due to concerns about the competitiveness of the market for transmission capacity reassignment, FERC capped the rate for reassignment at the highest of: (1) the original transmission rate charged to the customer; (2) the transmission provider's maximum firm transmission rate; or (3) the customer's own opportunity costs capped at the cost of expansion. In Order No. 890, FERC decided to temporarily lift price caps for transmission capacity reassignments and directed FERC staff to study the impact of market-based rate sales. Price caps were scheduled to be reinstated on October 1, 2010.

In an [April 15, 2010 report](#), FERC staff reviewed 30 months of data regarding uncapped sales and found that: (1) more than 99% of sales occurred at levels below the suspended price caps; and (2) there was no evidence of market power abuse by resellers.

### THE PROPOSAL

In the [NOPR](#), FERC proposes to permanently lift the price caps on reassignments of transmission capacity by wholesale transmission customers. FERC noted that the number of transactions and capacity volume rose dramatically during the study period. In the less than 1% of cases in which prices exceeded the suspended price caps, prices were consistent with the energy pricing differentials between markets. FERC also found that affiliate abuse was not an issue, because of the low number of above-the-cap transactions by affiliates (32 over 30 months) and because a similar number of above-the-cap transactions were conducted by non-affiliates.

FERC states that it will continue to monitor the secondary market for capacity reassignment by requiring that: (1) sales of capacity be conducted through, or otherwise posted on, a transmission provider's OASIS on or before the date of service; (2) assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences; and (3) transmission providers aggregate and summarize, in their electric quarterly reports, the data contained in these service agreements.



FERC also seeks comments on further reforms that would create a more efficient and vibrant secondary market for transmission capacity, including whether non-price limitations or regional factors limit reassignment and whether the system of secondary point priorities adopted in the natural gas industry would provide greater flexibility.

### FOR ADDITIONAL INFORMATION

For further information, or assistance in filing comments on the NOPR, please contact Vincenzo Franco, Jay Ryan, Patrick Daugherty, or any member of the firm's Electricity Practice at (202) 298-1800.

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