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FERC Invites Comment on Reforms to Regional Transmission Planning, Cost Allocation & Generator Interconnection

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On July 15, 2021, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued an Advance Notice of Proposed Rulemaking ("ANOPR") focused on potential reforms to improve regional transmission planning and cost allocation and generator interconnection processes.[1] Comments will be due 75 days after publication in the Federal Register, and reply comments will be due 105 days after publication.

Drivers for Reform

Pursuant to its authority under section 206 of the Federal Power Act ("FPA"), FERC is considering reforming or revising its existing regulations on regional transmission planning, cost allocation, and generator interconnection. The FERC initiative responds to two trends in the energy industry – (1) the shift from "[generation] resources located close to population centers towards resources, including renewable resources, that may often be located far from load centers;" and (2) the need to interconnect new technologies and resources, which present characteristics that significantly differ from the resources they are replacing and are "creating new demands on the transmission system." Additionally, FERC indicates that "there is little remaining existing interconnection capacity on the transmission system, particularly in areas with high degrees of renewable resources," thus requiring new resources to fund interconnection-related network upgrades that are more extensive and, as a result, more expensive. FERC suggests that this lack of interconnection capacity results in situations "where an interconnection customer elects not to pursue a generating facility with system-wide benefits that exceed such facility's cost," thereby resulting in net beneficial infrastructure not being developed and leaving a wide range of customers worse off as a result.

Reform Proposals

Under Order Nos. 890 and 1000, the transmission planning process today begins with an identification of transmission needs of Native Load Customers, Network Customers, and Firm Point to Point Transmission Customers, and considers transmission needs driven by reliability, economics, and public policy requirements. In the ANOPR, FERC expresses concern that the existing processes do not adequately anticipate the transmission needed to deliver energy from future generator interconnections that will be needed as a result of the changing generation mix. FERC's immediate concern is that development of new generation may be limited by the current approaches to identification of upgrades required for generator interconnection. The current focus on the specific transmission needs of a generator or cluster of generators is "unlikely to result in the economies of scale that could more efficiently or cost-effectively meet the needs of the changing resource mix." As a result, FERC suggests that this patchwork approach to supporting infrastructure for integration of new resources to the United States' electric grid results in "inefficient investment in transmission infrastructure and ultimately unjust and unreasonable or unduly discriminatory or preferential rates."

To address these concerns, the ANOPR lays out the case for having the generator interconnection process and the transmission planning process more closely aligned by including anticipated future generation into the regional transmission planning process. This would identify a "different and broader set of benefits

[1] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, FERC Docket No. RM21-17-000 (July 15, 2021) ("ANOPR")

and beneficiaries." In particular, FERC expresses the view that "a more integrated and holistic process for regional transmission planning and cost allocation" may better meet the needs of the future electric grid.

The ANOPR poses fundamental questions about who should pay for the network upgrades required to integrate the anticipated influx of new technologies and resources. The existing paradigm requires a generator to pay for direct interconnection facilities, as well as network upgrades that would not otherwise be required but for the new or modified interconnection(s). The ANOPR asks whether that approach meets basic cost causation and beneficiary pays principles—and, specifically, whether a broader approach, using transmission planning processes to support infrastructure upgrades for new resources, should be implemented, with a broader group of beneficiaries to which costs could be allocated.

The Commission also raises the potential for other reforms of the interconnection process. In particular, FERC seeks comments on the ability to establish a non-discriminatory fast-tracking proposal modeled after the Electric Reliability Council of Texas' (ERCOT) renewable energy zone program (i.e., "CREZ"), identified "readiness" criteria or commitments to interconnect to new regional transmission facilities. Other areas of interest are: (i) treatment of headroom benefits for later-in-time interconnection customers; (ii) changes to a customer's option to build; and (iii) queue management improvements including limitations on the number of interconnection requests.

The Commission also is considering enhanced oversight of the transmission planning process, and transmission providers' spending on transmission facilities, to ensure that transmission rates remain just and reasonable. For example, one enhancement contemplated in the ANOPR is the ability of stakeholders to obtain information and more fully participate in the various transmission planning processes. Further, in non-RTO/ISO regions, the Commission seeks comments on whether local transmission planning processes in these regions are sufficiently publicized and are as well understood as those in RTO/ISO regions. Another enhancement under consideration is the use of an independent transmission monitor to evaluate transmission planning and cost allocation processes, evaluate transmission provider spending for excesses and inefficiencies, and identify instances where transmission spending was not for transmission facilities selected in the regional transmission plan for cost allocation, particularly where it was not clear that the projects were the more effective or cost-effective transmission solutions. The ANOPR also discusses opportunities to enhance state "input" or state "oversight" into the transmission planning and cost allocation processes through the use of state committees. As part of expanding its oversight of excess transmission spending, the Commission seeks comment on the use of performance-based regulation and recovery of development costs associated with projects that were not built.

Opportunity to Provide Comment

In issuing an advance notice of proposed rulemaking, FERC has laid out a broad range of ideas and questions for comment. Comments received will be considered in the development of any future proposed rule. The Commission encourages comment on the multitude of questions posed in the ANOPR and invites commenters to present proposed policy reforms to address issues flagged in the ANOPR for the Commission's consideration. The changes under consideration would impact transmission, generation, and load, as well as the role of states in transmission planning.

In Order Nos. 890 and 1000, the Commission recognized the need for regional variations among planning regimes. Those existing variations—as well as the underlying conditions driving the need for such variations—will have to be addressed or accommodated by the Commission in any future reform rulemaking. Similarly, the Commission also must take into consideration how these changes in planning and interconnection procedures might affect wholesale markets—which have already changed significantly since Order No. 1000 with innovations such as the California Independent System Operator's Energy Imbalance Market, nascent efforts to create similar markets in the Southeastern United States, and the evolution of capacity markets in the Mid-Atlantic and Northeast ISO/RTOs. FERC will also need to take into consideration if and how non-jurisdictional transmission owners will participate in the reformed approaches to transmission planning, cost allocation, and generator interconnection.

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For More Information

Van Ness Feldman's nationally regarded electric practice provides counsel on regulatory and policy matters to a broad range of clients in the power sector. If you are interested in additional information regarding the ANOPR, or would like to discuss its implications, please contact Malcolm McLellan, Chris Zentz, Joe Nelson or any member of the firm's Electric Practice at (202) 298-1800 in Washington, D.C. or in Seattle at (206) 623-9372.