

TRANSMISSION CONSTRUCTION RIGHTS

FERC's Proposed Regional Planning Rule:
Small Step, Giant Leap, or Both?
National Regulatory Research Institute
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BUSINESS DYNAMIC

- Profit motive drives transmission construction
- Expanding transmission and increasing investment increases profits and corporate viability
- Expand or wither away; transmission a depleting asset through depreciation; incumbent transmission owner (“ITO”) that does not expand faces evaporating profits

CONSTRUCTION RIGHTS

- NOPR eliminates ITO first refusal construction rights from FERC jurisdictional tariffs
- Applies to all ITOs within or outside of RTOs
- Applies to all facilities “evaluated” in an Order 890 regional planning process
- Gives independent transmission developer (“ITD”) affirmative right, subject to conditions, to build in ITO service area

LEVELING THE PLAYING FIELD

- Beyond rejecting ITO first refusal rights, additional rules adopted to guarantee ITO/ ITD parity.
- Equally applicable qualification criteria required to show ITO/ ITD financial and technical expertise to undertake construction
- Open and transparent process for selecting:
 - Desirable projects and best project among competing projects,
 - Projects to be included in regional plan;
 - Which of competing projects most similar to planning process endorsed-project
- Same ITO/ ITD cost recovery rules must apply

AND THE WINNER IS!

- Analogy to FCC licensing of radio and TV stations;
 - who best serves the public interest;
 - first in time; best facility; cheapest price
- Who picks the winner
 - RTO within RTO service area
 - Regional planning entity in non-RTO area, but would it have resources and expertise to make the best choice?
 - Will FERC adjudicate construction disputes?

COMPETITION VERSUS REGULATION

- In the NOPR paradigm, is transmission still a regulated business
- Do both ITOs and ITDs have same obligations to build new facilities and act as builders of last resort.
- A broken regulatory compact? Does the NOPR pull the rug out from ITOs who:
 - Sacrificed independence in joining RTOs, and/or
 - Divested generation
- In the NOPR paradigm, should cost of service be abandoned and new transmission priced at merchant rates established at outset of service

UNANSWERED QUESTIONS

- Why did FERC see a need to include construction rights in the NOPR?
- Is there evidence of ITO foot dragging on new construction?
- Is this a solution in search of a problem?
- Did Congress give FERC right to certificate electric transmission construction?
- Does first refusal elimination abridge ITO *Mobile-Sierra* rights?
- Will robust competition to build resolve the transmission construction backlog?

FERC OBJECTIVES

- Encourage transmission construction:
 - Infuse new dynamic into transmission construction
 - Proactive scramble to search for new construction projects
 - Be the first on the block to propose new projects; keep prices down
 - Aggressive ITOs versus passive ITOs
- Ultimate objective
 - Construction of long-distance projects to move renewables west to east
 - "On the path" ITOs have incentive to cooperate.
 - ITD need not wait for ITO.

FERC OBJECTIVES CONTINUED

➤ Local projects

- NOPR intended for high profile projects, but low profile projects could be swept along in the tide;
- “evaluated” in regional plan may require clarification since all facilities, including interconnections, touching the transmission system may be in the regional plan for reliability purposes

LOCAL LAW EXCEPTIONS

- NOPR merely eliminates first refusal right in FERC tariffs
 - Elimination of first refusal right does not override state law;
 - ITO may continue as exclusive transmission builder if local law creates that right

IS FERC ROLLING THE DICE?

- NOPR paradigm not the same as the gas pipeline industry
- Is notion of a few national transmission companies dead and buried
- NOPR may promote substantial new construction, but could NOPR also:
 - weaken ITOs who have been mainstays of the industry, and
 - fragment reliability responsibility