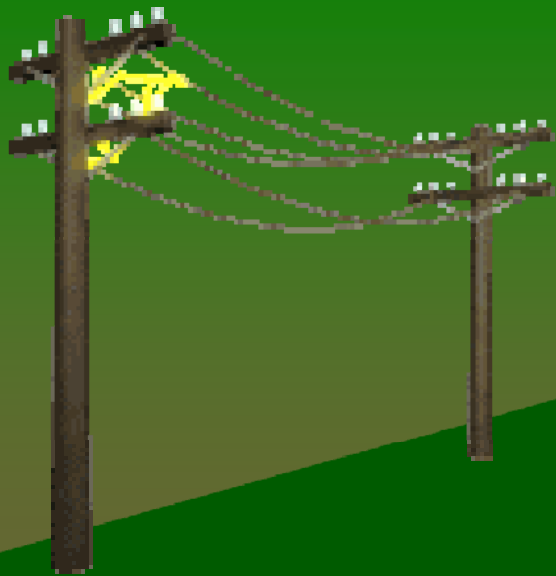


# Transmission Operation Improvements Under the Energy Policy Act of 2005: Phase III of Open Access Transmission

The Energy Policy Act of 2005:  
A Restructured World for Electric Utilities  
EXNET/Bruder, Gentile & Marcoux, L.L.P.  
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# The (First) Three Phases of Open Access Transmission Service

- Phase I: Open access transmission service under Order No. 888.
- Phase II: Regional Transmission Organizations under Order No. 2000.
- Phase III: EPCRA 2005's Operating Improvements and the NOI.

# Overview of Operating Improvements

- “FERC Lite” regulation;
- Protection of native load;
- Federal utility participation in transmission organizations;
- Notice of Inquiry on transmission reform.

## FERC Lite – Applicability

- Sections 211A and 201(f) extend limited FERC jurisdiction to “unregulated transmitting utilities”:
  - ✓ owners and operators of facilities used for transmission of energy in interstate commerce;
  - ✓ The United States, states, political subdivisions of states, and agencies, authorities and instrumentalities of the foregoing;
  - ✓ Rural electric cooperatives, regardless of whether they are RUS-financed.

## FERC Lite – Exemptions

- Entities that sell not more than 4 million MWH of electricity per year.
- Entities that do not own or operate transmission facilities necessary for operating any portion of an interconnected transmission system (e.g., “limited and discrete” facilities).
- Entities that meet other criteria the Commission determines are in the public interest.
- Facilities used in local distribution.
- However, FERC may terminate an exemption if it unreasonably impairs reliability.

## FERC Lite – Provision of Transmission Service

- FERC may by rule or order require an unregulated transmitting utility to provide service:
  - ✓ at rates that are comparable to those the utility charges itself; and
  - ✓ on non-rate terms and conditions that are comparable to those the utility provides itself and are not unduly discriminatory or preferential.
- Question: Why did Congress not apply the “not unduly discriminatory or preferential” requirement to rates?

## FERC Lite – Rate Changes

- Unregulated transmitting utilities must comply with the “rate changing” procedures of Section 205(c) and (d) of the FPA “for purposes of this section.”
  - ✓ Rates must be filed with the Commission.
  - ✓ Rates may not be changed except on 60 days notice unless otherwise ordered.
- FERC does not have “just and reasonable” authority over the rates. It may remand rates for review and revision if necessary to conform to the requirements of the Section.

## FERC Lite – Implications

- FERC is not obligated to extend jurisdiction to unregulated transmitting utilities; review of rates, terms and conditions is discretionary.
- The rate filing procedures also are not mandatory; they only implement the FERC's jurisdiction over transmission rates, terms and conditions of service.
- Unregulated transmitting utilities are not subject to FERC jurisdiction with respect to services other than transmission service.
- FERC cannot require an unregulated transmitting utility to transfer control of its facilities to an RTO/ISO/ITC.

## FERC's Notice of Inquiry on FERC Lite

- Should FERC require unregulated transmitting utilities to provide transmission service under the conditions set out in the Act?
- If so, should it proceed on a case-by-case basis or through a generally-applicable rulemaking?
- Are "comparable" rates by definition not unduly discriminatory or preferential?

## Other Questions to Address in Response to the NOI

- What standards should be employed for exemption from FERC Lite regulation?
- What is the scope of the requirement to comply with “rate changing procedures”?
  - ✓ Must rates be filed only if FERC asserts jurisdiction?
  - ✓ Must terms and conditions also be filed?
  - ✓ Must all currently-effective rates be filed or only changes to those rates?

## Other Questions to Address in Response to the NOI continued

- What is the meaning of the requirement that rates, terms and conditions be comparable to those that the utility applies to "itself"?
  - ✓ Transmission obtained by the merchant for third party sales?
  - ✓ Native load transmission?
  - ✓ Transmission for member cooperatives?
- May unregulated transmitting utilities comply by offering service that is not based on the pro forma OATT?

# Federal Utility Participation in Transmission Organizations

- Power Marketing Agencies and TVA may transfer control and use of their transmission systems to Transmission Organizations (RTOs, ISOs, ITCs, etc.).
- Provisions must be made for:
  - ✓ recovery of costs;
  - ✓ consistency with existing contracts (i.e., grandfathering);
  - ✓ monitoring and oversight by the PMA/TVA of the terms and conditions; and
  - ✓ withdrawals.
- FERC does not have jurisdiction over a Federal utility's generation assets, energy or power sales activities.

## Study on the Benefits of Economic Dispatch

- DOE must, in coordination with the States, conduct a study on:
  - ✓ the procedures used for economic dispatch;
  - ✓ possible revisions to improve the ability of non-utility generators to offer their output for sale;
  - ✓ the benefits that may result from those revisions.
- The report is due within 90 days of enactment of the Act and annually thereafter.
- The Commission must convene regional joint boards to study security constrained economic dispatch for the market regions and how such operation affects reliability and costs. A report to Congress is due within one year.

## Protection of Contracts in the Pacific Northwest

- The Act does not give the FERC the authority to convert firm transmission rights in the Pacific Northwest to tradable or financial rights.

## Sense of Congress Concerning LICAP

- Congress notes the concerns of the New England States with respect to the Locational Installed Capacity mechanism pending before FERC and declares that FERC should carefully consider them.

## The NOI on Transmission Reform

- In the two years leading up to the issuance of Order No. 888 there was a huge amount of good academic discussion on how to structure an open access transmission system.
- The FERC's approach of "let a hundred flowers bloom" was very useful in stimulating discussion.
- Since 1996, with the exception of network contract demand and locational marginal pricing there has been almost no debate or discussion on how to structure transmission service.

## The NOI on Transmission Reform *continued*

- The NOI indicates that FERC is willing to consider fundamental reforms of every aspect of OATT service, including reforms that apply to ISOs, RTOs and ITCs.
- Comments are due on November 22, 2005. Eight weeks is not even close to sufficient time to evaluate everything the FERC has included in its NOI.
- One of the issues raised is whether the reforms should apply to RTOs, ISOs and ITCs.
- Transmission owners, providers and customers owe it to themselves to become fully involved in the NOI process.

## The NOI on Transmission Reform – Pricing

- How can the Commission's transmission pricing policies be modified to increase efficient use of the grid where Locational Marginal Pricing is not in use?
- Should there be a cap on the price of reassigned transmission service?
  - ✓ Does imposing caps lead to inefficient use?
  - ✓ Does eliminating caps create incentives to exercise market power?
  - ✓ Does eliminating caps make generation and transmission interchangeable commodities?
- Can network service be resold ("headroom" as the term was used ten years ago)?

## The NOI on Transmission Reform – Products

- Should new products be offered?
  - ✓ Network contract demand;
  - ✓ Conditional firm, partial firm and seasonal firm service;
  - ✓ Will the Capacity Reservation Tariff be revived?

## The NOI on Transmission Reform – Hoarding

- FERC wants specific evidence of hoarding.
- When does speculative purchasing of transmission capacity become hoarding?
- Is speculative purchasing ever acceptable?
- Is hoarding prevented by:
  - ✓ resales at capped prices?
  - ✓ resales at uncapped prices?
  - ✓ Transmission providers' re-offer of unscheduled service?

## The NOI on Transmission Reform – Penalties

- Chairman Kelliher has shown a strong preference for using penalties to induce compliance.
  - ✓ Interlocking directorates;
  - ✓ Standards of Conduct;
  - ✓ Change to “prescriptive” standards for transmission service.
- The Federal Power Act now has teeth and a Chairman who wants to use them.

## The NOI on Transmission Reform – Penalties continued

- The challenge will be to develop an enforcement agency that will enforce the law consistently and not establish standards in individual proceedings or engage in “regulatory creep.”
- “Clear standards consistently enforced” should be the slogan for FERC and the industry alike.