

## E-ALERT | Clean Energy and Climate

June 28, 2010

### FERC PROPOSES NEW ELECTRIC TRANSMISSION POLICIES AND RELEASES PLAN FOR DEMAND RESPONSE

At its June 17, 2010 public meeting, FERC acted to spur electric transmission development, especially as needed for renewable resources, and improve resource use efficiency. First, the Commission proposed new requirements to establish a closer link between transmission planning and allocating the cost of new facilities, and require transmission planning to consider needs driven by public policy requirements, such as state-mandated renewable portfolio standards. And second, FERC released its staff's proposal for a national action to increase demand response.

#### TRANSMISSION PLANNING AND COST ALLOCATION

FERC approved a Notice of Proposed Rulemaking (NOPR) to address deficiencies in planning and cost allocation of new transmission facilities (Docket No. RM10-23). FERC noted that planning processes generally do not account for public policy requirements established by state or federal laws or regulations, such as increased reliance on renewable energy resources, energy efficiency and demand response, and that a relative lack of coordination between transmission planning regions means that the most efficient and cost-effective solutions may not be identified.

With regard to cost allocation, FERC observed that the further expansion of regional power markets and the increasing adoption of state resource policies, such as renewable portfolio standards, have led to a growing need for new transmission facilities that cross several utility, RTO, ISO or other regions and to a broader diffusion of benefits associated with new facilities.

#### Planning proposals

First, each transmission provider would be required to participate in a regional transmission planning process that produces a regional transmission plan. The regional plan must identify transmission facilities and non-transmission solutions that cost-effectively meet the needs of transmission providers, their customers and other stakeholders.

Second, each transmission provider's open access transmission tariff (OATT) must be amended to specify procedures in local and regional transmission planning processes for evaluating transmission projects proposed to achieve public policy requirements established by state or federal laws or regulations. Public policy requirements would be considered when planning facilities, as well as reliability and reducing costs. FERC observed that this requirement may eventually increase the proportion of transmission investment that is constructed pursuant to proactive planning processes and decrease the proportion of network upgrades that would otherwise be triggered by individual generator interconnection requests.

FERC did not identify the specific public policy requirements that must be considered in planning processes but instead leaves it to transmission providers, coordinating with customers and other stakeholders, to propose them. However, the NOPR mentions that some areas are struggling with

addressing transmission needed to integrate renewable generation resources into the transmission system and to meet state resource requirements, such as renewable portfolio standards.

Third, FERC would adopt the following policies to address what it sees as undue preferences that favor incumbent utilities over non-incumbent transmission developers in the planning process:

- Provisions that establish a federal right of first refusal for an incumbent transmission provider to construct any transmission facility in its service territory must be removed from the OATT and agreements subject to FERC jurisdiction.
- Non-incumbent transmission developers must enjoy the same eligibility to recover the cost of a transmission facility through a regional cost allocation method as do incumbent transmission developers.
- Each regional planning process must have FERC-approved qualification criteria for eligibility to propose a project in the regional transmission planning process. Criteria should demonstrate that a potential transmission owner has the financial and technical expertise to develop, construct, own, operate, and maintain transmission facilities.

These proposed reforms would affect only a right of first refusal established in a transmission provider's OATT or agreements subject to the Commission's jurisdiction, and do not address, propose to change, or seek to preempt any state or local laws or regulations

Finally, FERC would promote interregional planning by requiring each transmission provider to coordinate, through its regional planning process, with transmission providers in neighboring transmission planning regions within its interconnection to address transmission planning issues. This coordination between planning regions must be reflected in interregional transmission planning agreements that are filed with FERC and meet certain criteria.

### Cost allocation proposals

FERC notes that the risks associated with cost recovery are among the most significant obstacles to the construction of a new transmission facility, especially if customers that are allocated costs do not perceive that they will benefit from the facility. In this NOPR, FERC proposes that such difficult issues as identifying the types of benefits relevant for cost allocation, the entities receiving those benefits, and the relative benefits that accrue to beneficiaries, are addressed upfront in the planning process. According to FERC, addressing these issues through the planning process would increase the likelihood that facilities included in transmission plans are actually constructed, rather than being included in a plan only to later encounter cost allocation disputes that prevent their construction.

FERC proposes the following new requirements:

First, each transmission provider must have in place a method for allocating the costs of new transmission facilities included in the transmission plan produced by the planning process in which it participates.

Second, each transmission provider must have a method for allocating the costs of a new interregional transmission facility between the two neighboring planning regions in which the facility is located or among the beneficiaries in the two neighboring transmission planning regions.

Transmission providers will be given an opportunity to develop regional and interregional cost allocation methods in consultation with customers and other stakeholders. But if agreement cannot be reached, FERC will develop a cost allocation method.

Third, FERC will evaluate each cost allocation method against certain principles. For an intraregional facility, defined as located entirely within the geographic boundaries of one transmission planning region, FERC proposes the following cost allocation principles:

- Costs must be allocated to those within the transmission planning region that benefit from those facilities “in a manner that is at least roughly commensurate with estimated benefits.”<sup>1</sup> Benefits may include, but are not limited to, the extent to which transmission facilities provide for maintaining reliability, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.
- Those that receive no benefit, either at present or in a likely future scenario, must not be involuntarily allocated costs.
- Facilities with benefits that exceed costs by more than 25% must be included in the regional transmission plan for the purpose of cost allocation, unless approved by FERC. This principle allows regions to adopt a cost-benefit ratio threshold of 1.25 for excluding projects from cost allocation consideration to account for uncertainty.
- Different cost allocation methods may be used for different types of transmission facilities, such as those needed for reliability, congestion relief, or to achieve public policy requirements established by state or federal laws or regulations.

FERC proposed substantially similar cost allocation principles for an interregional transmission facility, defined as one that is located within two or more transmission planning regions.

The NOPR notes that the proposed principles do not foreclose a transmission developer or customer from voluntarily assuming costs. In other words, the proposed principles would not prohibit voluntary participant funding.

Comments on the NOPR are due 60 days after publication in the Federal Register. The NOPR may be found [here](#).

## DEMAND RESPONSE PLAN

FERC released a *National Action Plan on Demand Response*. This document is a proposed outline for achieving greater demand response. The Energy Independence and Security Act of 2007 (EISA) directed FERC to develop a National Action Plan to:

- Identify the requirements for technical assistance to states so they can maximize the amount of demand response that can be developed and deployed
- Design and identify requirements for a national communications program that includes broad-based customer education and support

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<sup>1</sup> This principle is supported by the following passage from a recent court decision: “We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.” *Illinois Commerce Commission v. FERC*, 576 F.3d at 476-77.

- Develop or identify analytical tools, information, model regulations and contracts and other materials for use by customers, states, utilities and demand response providers

The proposed plan, developed by FERC staff and its consultants through broad outreach programs over the last two years, identifies strategies and activities to accomplish the objectives set out in EISA. The plan calls for a coalition to coordinate implementation comprised of volunteers from Federal, state and local governments, utilities and demand response providers, RTOs and ISOs, commercial and industrial customers, consumer advocates and other stakeholders.

### Technical assistance to the states

Technical assistance activities include national and regional educational forums, developing a panel of demand response experts that would be available to states, and sponsoring and conducting research targeted to the practical aspects of demand response implementation.

### National communication program

The communication plan has three elements. First, a Communications Umbrella would serve as a national platform to create a consistent, research-based message framework. This platform would provide tools and support that could be adapted for use by local demand response providers as well as communicate directly with large customers to inform them of opportunities to participate in demand response programs and the benefits of doing so. Second, a local implementation strategy, based on the platform, would communicate with residential and smaller customers. Finally, direct outreach to states, policymakers and national partners would attempt to secure needed support for demand response implementation.

### Tools and materials

There are two general categories of tools and materials to be provided. One is a web-based clearinghouse to provide stakeholders with the most current information and analyses on demand response. This clearinghouse would serve as a centralized location for collecting information on demand response. The second category is tools and materials for assessing the impacts, costs, benefits, and operation of demand response programs.

One tool now being developed is the Demand Response Impact and Value Estimation (DRIVE) model. The DRIVE model estimates the impact of a portfolio of demand response and smart grid programs on a utility's operations. Those with an interest in assessing demand response benefits may use this model to perform their own analyses using their own data and assumptions. The DRIVE model is being developed by the Brattle Group at the request of FERC staff. An initial version of the model is posted for download on the FERC website [here](#).

The *National Action Plan on Demand Response* document contains two appendices: one identifies social science and technical research gaps that could be filled by further research, and the other presents examples of demand response programs.

During a presentation to the Commission, FERC staff said that it will now turn its attention to preparing an implementation proposal together with DOE to deliver to Congress in December 2010.

The *National Action Plan on Demand Response* may be found [here](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our clean energy and climate industry group:

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