

Third Annual Carnegie Mellon Conference on the Electricity Industry: Ensuring that the Industry Has the Physical and Human Resources Needed for the Next 30 Years

## **Federal Energy Regulatory Commission Progress Implementing New Federal Power Act § 217(b)(4)**

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## FPA Section 217(b)(4)

"The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligation of the load serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs."

# Explicit Direction to FERC

“The Commission shall exercise the authority of the Commission under this Act in a manner that . . . .”

**Similar language in the FPA:**

# Several key concepts

- “facilitates the planning and expansion of transmission facilities”
- “to meet the reasonable needs of load serving entities”
- “firm transmission rights (or equivalent tradable or financial rights)”
- “on a long-term basis”

# Opportunities to implement new directions since EPAct:

- PUHCA'05 Implementation final rules
- PURPA Sec. 210 amendment implementation final rules
- 3 Reliability proceedings
- Market manipulation final rule
- Enforcement policy
- Merger review final rule
- Market transparency and false statements proceeding
- Encouragement of advanced transmission technologies
- Long-term transmission rights final rule and orders implementing the final rule
- Transmission siting final rule
- Transmission incentives final rule and AEP incentives rate request
- Market Based Rates NOI and NOPR
- Merger review standard proceeding
- OATT Reform NOPR and Order 890
- FERC strategic plan

# FERC Strategic Plan (+)

## STRATEGIC PLAN FOR FISCAL YEARS 2006 - 2011



*Long-Term Transmission Rights.* To facilitate the planning and expansion of transmission facilities, the Commission will provide increased certainty about the congestion cost risks of long-term transmission service in organized electricity markets and help load-serving entities and other market participants support new investments and other long-term power supply arrangements.

# FERC Strategic Plan (-)

- No cite to 217(b)(4)
- No other reference to the obligation to facilitate the planning and expansion of transmission to serve long-term needs with respect to other responsibilities under the Federal Power Act
- No other reference to LSEs



# OATT Reform (Order 890): Planning

## Compare

- ¶ 488 “transmission planning required by this Final Rule is not intended, as discussed earlier to be limited to the mere exchange of information and then review of transmission provider plans after the fact. The transmission planning required by this Final Rule is intended to provide transmission customers and other stakeholders a meaningful opportunity to engage in planning along with their transmission providers.”
- ¶¶ 494-495 “We are specifically requiring a comparability principle . . . that transmission providers continue to [sic] plan their transmission systems such that their own interests are addressed without regard to, or ahead of, the interests of their customers.”

# OATT Reform: Planning

With

- ¶ 454 “In response to the suggestion by some commenters that we require transmission providers to allow customers to collaboratively develop transmission plans with transmission providers on a co-equal basis, we clarify that . . . the ultimate responsibility for planning remains with transmission providers.”
- Fn. 289 “we reject arguments made by some commenters that comparability requires that customers have equal weight in decision making.” and
- ¶ 471 “The Commission . . . will require transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans . . . to ensure that standards are consistently applied.”

# OATT Reform Expansion

No obligation to build:

- ¶ 594 "our planning reforms do not include an obligation to construct each facility identified in the plan, whether individually or through joint ownership mechanisms."
- What happened to OATT § 15.4 (point-to-point) and § 28.2 (network)?

# OATT Reform: LSEs

- Planning not limited to LSEs
- Rule preserves existing services
  - No obligation to go to transparent dispatch
  - No obligation to go to contract demand service
- Continuing question whether all LSE load seen as “native load”
- Still concerns for level of support for network service
  - No conditional-firm network service
  - Permits conditional firm
  - Permits redispatch

# OATT Reform: Long-term

- Declined to adopt hourly firm
- Preserves existing services including long-term priorities
- Some sensitivity in development of redispatch and conditional firm obligations
  - Two year limit
  - Recognition of need for conservative assumptions

# Long-term transmission rights final rule (+)

- Required by EPA Act § 1233(b)
- Some LTTRs must be available to permit LSEs to meet long-term needs over objection of RTOs
- LTTRs must provide stability in quantity of rights and price certainty
- Requires RTOs to file planning and expansion plan to maintain feasibility of LTTRs
- Requires LTTRs to be “fully funded”

# LTTR Final Rule (-)

- Final Rule did not
  - expand beyond organized markets
  - Require “open and inclusive” planning
  - Mandate terms beyond 10 years (but possible roll-over)
  - Mandate sufficient LTTRs for all LSE needs
  - Protect LTTR holders from uplift of costs of revenue insufficiency
- Rule set up conflict between short-term and long-term LSE users of the system

# Transmission incentives final rule

Required by new FPA Sec. 219

- Offers incentive rates for new transmission that ensure reliability or reduce transmission congestion where there is a “nexus” between the incentives and the construction of the transmission.
- Available incentives include:
  - Return on equity at high end of zone of reasonableness
  - Accelerated recovery
  - CWIP
  - Immediate recovery of development costs
  - 100% cost recovery for uncompleted projects
  - single issue ratemaking



# Transmission incentives final rule (-)

- No joint planning requirement
- No cost-benefit or but-for test
- Incentives available for transmission already in the queue
- Incentives for entities that have already joined RTOs
- Does not address other reasons T not being built

# AEP Service Corp. EL06-50

- AEP granted ROE incentive, CWIP, current recovery of pre-op costs
- No joint planning required:
  - AEP still to submit plan to PJM for RTEP (¶ 28)
- No “but-for” test required
- Length of line, amount of capital, intent to submit to PJM, key issues

# Market-Based Rates NOPR: Screens

- FERC accepts entire RTO as correct market for analysis for RTO members. All RTO members pass both tests.
- Outside RTOs, FERC accepts entire control area as correct market for analysis.
- Fails to analyze all markets (temporal, locational, service)
- Fails to look at expiring contracts outside of DPT
- Not clear if failure to plan and expand has sufficient "nexus" to revoke MBR

# MBR NOPR: Mitigation

- Where applicant fails test, seeks comment whether applicant still permitted to sell at MBR outside of its own control area.
  - If so, no incentive to expand transmission at control area border.

# Transmission siting final rule (Order 689)

- Provides mechanism for federal backstop siting of transmission per new FPA Sec. 216.
- Process largely tracks process for siting gas pipelines and transmission needed for licensed hydro
- Provides significant role to and deference to states
- Does not require open and inclusive joint planning to demonstrate:
  - “consistent with public interest”
  - “protect or benefit consumers”
  - “consistent with sound national energy policy”