

Is Broader Regional Transmission Planning Needed?

2009 ended with the FERC asking the electric industry (1) whether there is a need for broad, regional transmission planning – broader than transmission planning on a utility-by-utility or regional transmission organization (RTO)-by-RTO basis and (2) whether regional cost recovery mechanisms should be adopted for transmission facility expansion. The FERC received written comments from over 100 energy industry participants addressing, among other things:

- Whether Eastern Interconnection-wide or Western Interconnection-wide transmission planning should be mandated, and if so, whether the approach should be “bottom-up” (i.e., beginning with the utility or RTO) or “top-down” (imposed from some new overarching and independent organization);
- Whether the FERC should require construction of Extra High Voltage (EHV) backbone transmission lines that span a region, and if so, what voltage cut-off should be used for the EHV determination – 345 kV, 500 kV or 765 kV;
- Who should pay for the transmission – should a “beneficiary pays” approach be adopted (but, then, how are beneficiaries identified across a region) or should costs be socialized among all load across a region;
- Whether customer load alone should pay for transmission or whether generators be required to pay for transmission as well;
- The role of merchant transmission in planning processes;
- Whether there should be differing rate treatment for reliability transmission upgrades versus economic transmission upgrades; and
- Whether new transmission should be “right sized” to accommodate future load and generation needs, and if so, who pays for the unused transmission capacity until it is needed in the future.



Federal Energy Regulatory Commission (FERC): Electric Transmission Will Be a Key Issue in 2010

Policy of the Federal Energy Regulatory Commission (FERC) will evolve in many significant areas in 2010 with an anticipated lasting impact on the electric industry. And this is without considering any of the legislation currently pending before Congress that would vest the FERC with responsibilities with regard to key issues such as cap-and-trade and administering a national renewable portfolio standard. If these issues become law, the rulemaking proceedings undertaken by the FERC promise to be lively.

In the meantime, the FERC has an opportunity to establish policy in many significant critical areas. For example, the FERC is poised to clarify when an “affiliate” relationship exists for market power purposes under section 203 or 205 of the Federal Power Act (FPA). The FERC’s decision will impact the scope of investment in generation companies. We also expect the FERC to address “demand response” in a meaningful way this year. In October 2009, the FERC issued a draft National Action Plan on Demand Response as required by Section 529 of the Energy Independence and Security Act of 2007. The draft Plan makes recommendations in regards to identifying technical assistance for states, designing communication programs and customer education and identifying tools, contracts and support material to be used by states, utilities and providers of demand response. Numerous industry comments were submitted addressing the draft Plan. The FERC’s determination will be a key feature in providing a blueprint to establish a more effective and robust demand response system in competitive energy markets the United States.

However, the most significant area where FERC electric policy likely will evolve in 2010 is in regard to transmission grid expansion and transmission cost recovery, particularly with regard to accommodating renewable generation projects.

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The comments received by the FERC at the end of 2009 regarding regional transmission planning and cost recovery are pervasive and address issues that will reshape the electric industry if the FERC decides to pursue specific reforms through a proposed rulemaking. (*See Sidebars.*) We anticipate the outcome will have business implications for all industry players, and indeed, will not be without challenge as many participants have argued that the FERC does not have the authority under the FPA to impose such reforms. The chances are high that 2010 will see the FERC initiate reform in some respect with many of these issues.

FERC treatment of merchant transmission and transmission to support renewable generation will be addressed in other areas as well.

Merchant transmission is burgeoning. New projects are being proposed all around the nation. Many of the projects are receiving FERC backing in regard to future rate recovery (whether the rates are cost-based or market-based) or proposed use and availability of transmission capacity. This year will likely see a continued flow of proposed new transmission projects being presented to the FERC, with the FERC and industry participants continuing to address how merchant transmission should be coordinated with existing RTO transmission plans and how the cost of merchant transmission should be recovered particularly if the new transmission will span multiple RTOs and states.

The FERC also will address significant jurisdictional questions in regard to merchant transmission. For example, Tres Amigas LLC is proposing to construct a three-way Alternating Current (AC)/Direct Current (DC) transmission interconnection in New Mexico that would eliminate the current market separation among the Electric Reliability Council of Texas (ERCOT), Eastern Interconnection and Western Electric Coordinating Council (WECC) regions of the United States. Tres Amigas contends that the new facility will make it possible for entities in any one of these regions to sell electric power in the other two regions. The filings pending before the FERC raise significant jurisdictional issues including (1) whether a

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Many transmission questions stem from the need to accommodate the growing movement to maximize the use of renewable generation, with industry participants addressing:

- Whether there should be a separate transmission planning process for renewable generation;
- Whether specific revisions are needed in current RTO processes to accommodate the interconnection of, and transmission of energy from, renewable generation;
- Whether renewable generation should be required to pay for ancillary services in certain RTO markets;
- Whether RTO planning and dispatch processes should be revised to accommodate the effect of renewable generation on base-load generation;
- Who should pay for transmission needed to deliver renewable generation from remote locations (where the wind is blowing, for example) to customer load centers, and whether it is just and reasonable for customer load in the northeast, for example, to pay for transmission installed in the midwest to accommodate renewable generation sited there;
- Whether the FERC should be acting at all to revise transmission policies solely to accommodate renewable energy; and
- Whether the focus on cost allocation and the beneficiary pays approach is misplaced because the issue is not deliverability of renewable energy but availability of Renewable Energy Credits.



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transmission owner that constructs transmission facilities that will interconnect the ERCOT grid to the Tres Amigas facility in New Mexico will be subject to FERC jurisdiction as a public utility under the FPA; (2) whether transmission service over AC facilities from ERCOT to the Tres Amigas facility will be subject to FERC jurisdiction; and (3) whether a new AC to DC interconnection between Tres Amigas and ERCOT will change the jurisdictional status of any ERCOT utilities or ERCOT transactions. Successful resolution of these jurisdictional issues could open up new energy markets in that section of the United States.

The past two years saw the FERC accept varying cost recovery policies for transmission supporting renewable generation. The FERC's policies have differed depending on whether the region has significant potential for renewable

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generation. For example, different policies have been authorized for the east and northeast regions of the United States compared to the midwest and southwest regions. Moreover, although the FERC adopted a renewable-favorable transmission policy for the southwest (in the Southwest Power Pool Inc. region), in the midwest, specifically the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) region, the FERC accepted an interim measure that requires new renewable generators (and, in fact, all types of generators) to bear 90 percent to 100 percent of the cost of integrated transmission system network upgrades. The cost recovery policy is intended to be temporary, with the FERC requiring the Midwest ISO to submit a revamped transmission cost recovery proposal in July 2010. We expect that proceeding to be contentious. FERC resolution of the transmission issues in the Midwest ISO proceeding could signal how the FERC plans to institute transmission cost recovery in many contexts throughout the United States, including with regard to renewable generation.

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