

AAI Annual Energy Round Table: Transmission Issues

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Why Is Transmission (TX) Such an Ongoing and Thorny Issue?

- It is expensive, time-consuming and difficult to build—a very long-lived asset
- Access to it (or lack thereof) can make or break both generators and load—it is the vital link that enables competition by generators for load (but transmission access alone is not sufficient to ensure competition, as APPA has learned...)

Transmission Planning and Cost Allocation

- FERC Issued Order No. 1000 (Docket No. RM10-23) in July 2011 to ensure that:
 - Regional (and interregional) TX planning processes consider and evaluate transmission alternatives to produce “efficient and cost-effective” plans
 - The costs of TX solutions chosen to meet regional (and interregional) needs “are allocated fairly to those who receive benefits from them”

APPA's RM10-23 Comments

- APPA (among other things):
 - Supported regional planning of major TX lines based on a “bottom up” approach that looks to the resource plans of Load Serving Entities (LSEs) in the region; argued FERC must implement FPA Section 217(b)(4)
 - Opposed exempting merchant TX projects from full participation in regional transmission planning processes

FPA Section 217(b)(4)

Why Is It Important?

- It *requires* FERC to support load-serving entities' (LSEs) transmission needs:
 - *“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 obligations of the load-serving entities...”*

But FERC said it was just another “public policy requirement” to be considered

Treatment of Merchant TX Developers in Order No. 1000

- “Merchant TX developers” need not participate in regional TX planning processes if they “assume the risk” of their projects (i.e., they are not seeking regional TX cost allocation)
- But they must “provide adequate information and data” to allow public utility TPs to “assess potential reliability and operational impacts” of the proposed facilities on other systems in the region (well short of actual integrated planning!)

APPA's "World View" on Transmission Planning/Siting

- “. . .[S]iting transmission facilities, especially higher voltage facilities covering long distances, is not an easy task under the best of circumstances. . . Once a “first-in-time” transmission project is sited through a region or corridor, it is highly unlikely that there will be much public appetite for additional lines.
Therefore, it will be very important to build the optimal set of regional transmission facilities that will best serve the needs of ultimate consumers at the lowest reasonable cost consistent with good environmental stewardship, rather than the set of facilities that might best serve the business plans of particular transmission developers or generation providers. In many cases, there will be only one opportunity to get the job done. It needs to be done right. (APPA 3/29/12 Comments in AD12-9)

Court Appeals of Order No. 1000

- Appeals consolidated in D.C. Circuit and briefing schedule now set; issues include:
 - Scope/legality of the requirement to consider “public policy requirements” in planning
 - FERC’s failure to implement FPA Section 217(b)(4)
 - Elimination of Federal Rights of First Refusal (ROFR)
 - Allocation of TX costs in absence of a contract
 - Scope of reciprocity requirement

Compliance Deadlines

- TX Provider (TP) compliance filings to revise their Open Access Transmission Tariffs (OATTs) to add regional TX planning/cost allocation provisions have now been made
- Deadline for compliance filings re the interregional transmission planning coordination and cost allocation requirements has been extended to 7/10/13 due to multiple requests for extensions

Order No. 1000 Compliance Will Be Job 1 At FERC This Year....

- Commissioner Moeller speaking at FERC's 2/21/13 Open Meeting:
 - “I'll quickly note, also, today, even though we're not going to discuss it, we are commencing our Order No. 1000 compliance filings, or orders on those compliance filings. And this will probably be a multi-year undertaking that this agency endures. It is probably the biggest human resources project that the agency has ever done, and I trust and hope that the public and the people we regulate will follow it very closely.”

Merchant Transmission Issues

- FERC in July 2012 issued “proposed policy statement” re rules for allocating capacity on merchant TX projects in Docket No. AD12-9; issues included:
 - Role of open seasons (should there be any?)
 - Preference to be given to “anchor customers”
 - Should it be permissible to discriminate among individual bidders based on credit risk, term of service, price bid?
 - Is it OK to award 100% of capacity (to affiliates)?

APPA Merchant TX Comments

- APPA filed comments on 9/24/12:
 - Replacement of an open season requirement with “open solicitation” and *post hoc* reporting requirement unlikely to work in practice
 - Detailed reporting of negotiations with prospective customers would likely raise confidentiality concerns
 - Desire to support merchant TX should not come at expense of basic FPA protections

Excerpts from Other Comments on the Confidentiality Issue

- “. . . [W]hile AEP understands the need for transparency through the reporting process, the Commission should recognize that some of the information to be submitted through an open solicitation report may be commercially sensitive or may contain critical energy infrastructure information. Accordingly, the Commission should allow portions of the open solicitation reports to be submitted on a confidential basis, where appropriate.”

More Comments on Reporting Requirement...

- “Duke Energy does have some concern that the reporting of the ‘explanation of decisions used to select and reject specific customers’ following the open solicitation process could require the reporting of commercially sensitive information. Duke Energy respectfully requests that the Commission require no more reporting than what it has previously required for the open season process in regard to the customer selection process.”

Still More Comments on the Reporting Requirement

- “[T]he Commission proposes to require merchant and nonincumbent, cost-based, participant-funded project developers to provide in a report an ‘explanation of decisions used to select *and reject* specific customers’ following the open solicitation process. While EEI recognizes the need to ensure a transparent and fair process, EEI is concerned that this condition may require commercially sensitive information to be shared. . . . [S]pecific to customer selection and rejection, EEI recommends that the Commission either require no more reporting than what it has previously required for open-season arrangements or, in the alternative, include a process through which parties may provide commercially sensitive information under seal or pursuant to a protective order.”

1/17/13 Policy Statement on Merchant TX

- Commission will allow developers of merchant TX to select a subset of customers, based on “not unduly discriminatory or preferential criteria”
- Can negotiate directly with customers the key rates, terms, and conditions for **up to the full amount of transmission capacity (including affiliates)**
- Developers must (1) broadly solicit interest in the project, and (2) demonstrate that the developer has satisfied the relevant customer solicitation, selection and negotiation process criteria (after it is done)

Policy Statement (P 28)

- “In these negotiations, the Commission will allow for distinctions among prospective customers based on transparent and not unduly discriminatory or preferential criteria -- so long as the differences in negotiated terms recognize material differences and do not result in undue discrimination or preference – *with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of capacity.* For instance, developers might offer “first mover” customers more favorable rates, terms, and conditions than later customers. This represents a change from prior policy, under which the Commission required that a developer offer their “anchor customer deal” in the open season to any other customer willing to make the same commitment as the anchor customer, such that all customers had access to the same rates, terms, and conditions.”

Policy Statement, P 33

- “In response to commenters that request that we recognize the commercially sensitive nature of the business arrangements associated with capacity allocation, we clarify that we will address whether to allow for protection of such information on a case-by-case basis. We believe transparency is essential to our allowing capacity to be allocated through bilateral negotiations rather than a more formally structured open season process. Thus, we do not agree that certain types of commercial information should be generically protected. To the extent developers believe they cannot file certain information publicly, they may make their case for confidential treatment to the Commission when they file their post-selection demonstrations.”

Policy Statement, P 34

- “With respect to potential affiliate participation in the capacity allocation process, the Commission will continue to expect an affirmative showing that the affiliate is not afforded an undue preference. The developer will bear a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly preferential or discriminatory. While the Commission will not require non-affiliates to receive the same rates, terms and conditions as affiliates as suggested by some commenters, the Commission will carefully scrutinize any differences in rates, terms and conditions for affiliates versus non-affiliates to ensure those differences are appropriately based on objective criteria.”

APPA's Concerns with Merchant TX Policies

- Desire to inject “competition” into transmission infrastructure could result in stripping of basic FPA protections
- Reliance on behavioral safeguards (e.g., after-the-fact reporting requirements) sends up big red flags
- FERC is elevating interests of developers over interests of consumers

Open Access Requirements for Generator Interconnection TX

- On 4/19/12 FERC issued Notice of Inquiry (NOI) in AD12-14 re open access policies on generator interconnection facilities
- FERC asked whether open access should apply or whether it should modify its policies to provide a “safe harbor” that would allow the constructing generator priority access to the “gen-tie” facility

APPA Comments

- APPA attempted in its 6/26/12 comments to balance the interests of “first movers” and “later comers”
 - Open access should apply to TX facilities
 - Streamlined Open Access Transmission Tariff (OATT) would be appropriate
 - No OATT filing required until later coming customer shows it is serious (deposit)

Established TX Access Policies Are Under the Microscope

- FERC is questioning long-established open access policies intended to prevent discrimination, such as open access requirements, open seasons, standard rate schedules/rates
- Do these requirements really stand in the way of needed transmission facilities? (By whom? For what purpose?)