

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Transmission Planning and Cost Allocation )  
by Transmission Owning and Operating )      Docket No. RM10-23-000  
Public Utilities )

**Comments Of The Public Power Council On  
The Notice Of Proposed Rulemaking**

On June 17, 2010, the Federal Energy Regulatory Commission (the Commission) published in this docket a Notice of Proposed Rulemaking regarding transmission planning and cost allocation by transmission owning and operating public utilities. The Public Power Council (PPC) files these comments pursuant to the Commission's Federal Register notice and subsequent notice in this docket.<sup>1</sup>

**Interests of the Public Power Council in this Rulemaking**

PPC is a membership organization that represents the common interests of more than 100 publicly- or cooperatively-owned electric utilities that serve consumers throughout the Pacific Northwest. PPC's members are located and serve retail customers in Washington, Oregon, Idaho, Montana and Nevada. Each of PPC's members has a significant interest in access to and use of generating resources and in the interconnected transmission system in the Western Interconnection.

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<sup>1</sup> Notice of Proposed Rulemaking, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 75 Fed. Reg. 37884 (June 30, 2010); Notice Extending Comment Period, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, RM10-23-000 (Aug. 10, 2010).

PPC member utilities purchase federal and non-federal wholesale power to serve their loads and they depend on the interconnected transmission system in the Western Interconnection to deliver that power. Many of PPC's larger members own and operate transmission facilities. PPC members own and operate renewable and non-renewable generating resources and many more are expected do so over the next several years; these utilities depend on the sales of excess power from their resources to mitigate the costs that their consumers pay for load service. Several of PPC's members are members of, or participate in, Northwest regional planning processes undertaken by ColumbiaGrid or Northern Tier Transmission Group.

As a result, each of PPCs members is vitally interested in assuring that the existing and future transmission system is reliable and adequate to meet their load service and marketing needs at the lowest reasonable cost.

### **Communications**

PPC requests that service in this proceeding be made upon, and communications directed to, the following persons:

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## Comments

### A. Introduction and Executive Summary

On February 16, 2007, the Commission issued Order 890 to reform several key aspects of the *pro forma* Open Access Transmission Tariff.<sup>2</sup> As part of those reforms, the Commission adopted rules to ensure greater coordination, openness and participation in transmission planning. The transmission planning reforms have been among the most successful of the Order 890 reforms. In the three years since the issuance of Order 890, the Northwest and West have seen the continuation and expansion of regional and west-wide planning. Those planning processes have been open to the public and have been developed for significant amounts of new transmission facilities.

Overall, PPC believes that the Commission's proposed rule is premature and may result in the derailing and delay of current transmission planning processes. The proposed regime of transmission planning wedded to binding cost allocation methodologies imperil the participation in regional planning processes by governmental and consumer-owned utilities, which are integral to the transmission planning process.

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<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *orders on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31, 261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), Order 890-C, 126 FERC ¶ 61,228 (Mar. 19 2009), & Order 890-D, 129 FERC ¶ 61,126 (Nov. 19, 2009)(Order 890).

PPC is commenting on this aspect of the proposed rule as well as the following additional matters<sup>3</sup> –

- The Commission has not provided sufficient evidence to support the need for a generic rule in the Western Interconnection.
- The public policy requirements, which the Commission proposes to be required considerations in developing transmission plans, may be overly broad, and the proposed rule may not be within the Commission’s jurisdiction.
- The Commission cannot allocate costs among utilities who have no contractual relationship among them in which they have agreed to allocate costs.
- The Commission is correct that cost allocation methodologies, where adopted, must be grounded in cost causation principles but the benefits on which costs are allocated must be readily quantified and directly related to matters within the Commission’s jurisdiction.

PPC requests that the Commission not apply the proposed rule to the Western Interconnection or, alternatively, to those utilities in the West that are not participants in an RTO. Further, PPC seeks clarification from the Commission on the characteristics of benefits to be considered in planning and used in cost allocation, and requests that the Commission remove the requirement for adoption of cost allocation agreements for utilities that are not participants in an RTO.

#### **B. Transmission Planning**

In the NOPR, the Commission proposes to require that each jurisdictional transmission provider participate in a regional transmission planning process that

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<sup>3</sup> PPC has not responded to all of the Commission’s proposals and solicitations for comment. PPC’s lack of comment on a particular proposal or aspect of the Commission’s proposal should not be construed as assent to or agreement with the Commission’s proposals.

produces a transmission plan for new facilities in that region.<sup>4</sup> Under the proposal, the planning process must meet the planning principles of Order 890<sup>5</sup> and must –

- “consider and evaluate transmission facilities and other non-transmission solutions that may be proposed and develop a regional transmission plan that identifies the transmission facilities that cost-effectively meet the needs of transmission providers, their transmission customers, and other stakeholders;”<sup>6</sup>
- provide transmission customers’ stakeholders “with an opportunity to participate meaningfully in that process;”<sup>7</sup> and
- take into account “transmission needs driven by public policy requirements established by state or federal laws or regulations.”<sup>8</sup>

**1. The Northwest And The Western Interconnection Have A Record Of Success In Transmission Planning But These Plans And Future Successes are Imperiled By The Commission’s Proposals**

Overall, PPC believes that the reforms instituted by the Commission in Order 890 have been a success in the West and in the Northwest in particular. Utilities in the Western Interconnection have engaged in significant regional and sub-regional planning efforts through, among others, the Western Electric Coordinating Council (WECC), ColumbiaGrid, Northern Tier Transmission Group (NTTG) and WestConnect. Each of these organizations has planning underway for a very significant amount of new intra- and interstate transmission lines.

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<sup>4</sup> NOPR, ¶ 50.

<sup>5</sup> *Id.*

<sup>6</sup> NOPR, ¶ 51 (footnote omitted).

<sup>7</sup> NOPR, ¶ 52 (footnote omitted).

<sup>8</sup> NOPR, ¶ 63. At paragraph 64 the Commission proposes to require jurisdictional transmission providers amend their OATTs to require that their local and regional transmission planning processes consider public policy requirements established by state or federal laws or regulations that may drive transmission needs. “After consulting with stakeholders, a public utility transmission provider may include in the transmission planning process additional public policy objectives not specifically required by state or federal laws or regulations.”

Despite the fact that the reforms the Commission instituted in Order 890 are new, significant regional transmission project planning is underway. ColumbiaGrid, for example, has begun an extensive planning effort within its footprint and has completed its system assessment and biennial plan.<sup>9</sup> The Northern Tier Transmission Group (NTTG) is similarly working on its biennial plan and its economic and transmission congestion studies.<sup>10</sup> WECC, too, is contributing significant support to planning efforts throughout the West.<sup>11</sup> The amount of project planning and new construction that has been initiated in the West is an excellent indication that utilities are willing to plan and are interested in construction.<sup>12</sup>

Many of the larger of the Northwest consumer-owned utilities have joined ColumbiaGrid or NTTG and have entered into voluntary agreements for joint transmission project planning. Entry into the ColumbiaGrid planning process is voluntary and cost allocation for transmission projects in the biennial plan is made by agreement among project participants. The fact that these agreements are voluntary has encouraged more Northwest consumer-owned utilities to participate. A new rule

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<sup>9</sup> See generally [www.columbiagrid.org](http://www.columbiagrid.org).

<sup>10</sup> See generally [www.nttg.biz](http://www.nttg.biz).

<sup>11</sup> See WECC's planning webpage at <http://www.wecc.biz/Planning/Pages/default.aspx>.

<sup>12</sup> The same is true for cost allocation discussions among utilities in the West. Northern Tier Transmission Group (NTTG), for example, has engaged staff from state utility commissions and its member utilities to develop cost allocation recommendations for transmission projects in the NTTG biennial transmission plan. ColumbiaGrid has recently begun scoping on an Open Season process for projects that their member utilities might plan to construct. BPA has already completed one successful open season for construction on its network and is embarked on another. We expect these processes to produce transmission projects within the next few years that are needed for load service and generation interconnection and delays in their construction would be detrimental to the Northwest.

that changes the planning process significantly could delay transmission planning or damage collaborative, contractual relationships that are just now beginning to bear fruit.

## **2. The NOPR Does Not Provide A Record To Support Application Of The Proposed Rules In The West**

Overall, the Commission has not provided sufficient evidence of a problem requiring redress through a generic rulemaking, which it must do.<sup>13</sup> Paragraph 1 and paragraphs 32 through 41 of the NOPR provide the Commission's goals and conclusions but the NOPR does not contain evidence to support those conclusions. The Commission's conclusions, without the benefit of specific evidence of widespread discrimination, relate to activities in RTO areas and do not relate to activities in the West.<sup>14</sup> Also, the Commission's conclusions do not demonstrate that there is any evidence of the magnitude of the problems outlined where problems are asserted to exist.<sup>15</sup>

Given the success demonstrated by the planning organizations and processes in the Western Interconnection and the lack of evidence reflected in the NOPR in regard to planning failures in the West, the Commission has not stated a sufficient factual basis to support the application of a generic rule to the West. For this reason, and for the others

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<sup>13</sup> See *e.g.*, *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1985), in which the court held that the Commission's arguments applied only "to a limited portion of the industry," and did not support "an industry-wide solution for a problem that exists only in isolated pockets."

<sup>14</sup> NOPR, ¶ 34 (PJM); see also NOPR, ¶ 21 (PJM).

<sup>15</sup> See generally NOPR, ¶¶ 32-43. Overall, the NOPR does not present us with more than conclusions, supported in many cases only by the theoretical possibility that undue discrimination or preference could be exercised.

set out below, the proposed rule should not be extended to the Western Interconnection and in particular to western utilities that do not participate in an RTO.

### **3. Planning To Meet State And Federal Statutory And Regulatory Requirements**

In paragraph 66 of the NOPR, the Commission proposes “to require each public utility transmission provider to specify in its OATT the procedures and mechanisms in its local and regional transmission planning processes for evaluating transmission projects proposed to achieve public policy requirements established by state or federal laws or regulations.”

Specifically, [the Commission] propose[s] to require each public utility transmission provider to amend its OATT such that its local and regional transmission planning processes explicitly provide for consideration of public policy requirements established by state or federal laws or regulations that may drive transmission needs. After consulting with stakeholders, a public utility transmission provider may include in the transmission planning process additional public policy objectives not specifically required by state or federal laws or regulations.<sup>16</sup>

The Commission solicits comment on issues or concerns regarding the proposed requirements that jurisdictional transmission providers consider state and federal public policy requirements in their transmission plans.<sup>17</sup>

The Commission is unclear, however, regarding the nature of “public policy requirements” that might drive transmission development. If read expansively, these “requirements” could include jobs creation, air or water pollution reduction, economic or social justice or other goals that have been mentioned in legislation or regulation.

PPC requests that the Commission clarify that the public policy requirements that the

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<sup>16</sup> NOPR, ¶ 64.

<sup>17</sup> NOPR, ¶ 70.



proposed rule requires a transmission provider to evaluate would be restricted to those having to do with those considerations listed in paragraph 63 of the NOPR.<sup>18</sup> PPC further requests that the Commission clarify that the state or federal policy requirement must apply expressly to the transmission provider's customer that is seeking transmission.<sup>19</sup> The Commission is charged with protecting consumers from paying unreasonable or discriminatory power rates. Consumers must pay the load-serving entity's (LSE's) costs of compliance or non-compliance with state or federal policy requirements and thus the needs of LSEs to avoid those costs are the focal point for protecting the consumer. If the LSE does not have an obligation to act, there should be no place for consideration of the requirement in the plan.

Such a restriction is needed for two reasons. First, it would reduce the amount of prolonged debate, and potential litigation, over the requirements to be considered in a local or regional transmission planning process. Second, PPC does not believe that the Commission has the jurisdiction to mandate consideration of factors that do not materially affect the costs of or access to power or transmission in interstate commerce. The Commission does not have plenary authority to promote state and federal public policy goals and the application of comparability in an attempt to invoke its rates jurisdiction is overly broad. Without specific jurisdiction to promote these policy goals,

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<sup>18</sup> For example, a state statute that regulates emissions from point sources, including a utility's power plant within the state, would not be a regulation that "drives" transmission planning.

<sup>19</sup> In other words, the policy requirement should require some action from the customer. For example, a state statute that requires a utility to serve some fraction of its load with renewable power would be a requirement that applies to that utility for planning purposes.

we believe that the Commission lacks jurisdiction to act as it proposes.<sup>20</sup> If the Commission does not make these clarifications, PPC believes that the proposed requirement will invite litigation and that this will greatly slow the planning process and delay the construction of needed transmission facilities.

### **C. Cost Allocation**

The Commission proposes “to require that every public utility transmission provider have in place a method, or set of methods, for allocating the costs of new transmission facilities that are included in the transmission plan produced by the transmission planning process in which it participates.”<sup>21</sup> This method, or methods, must be incorporated into the jurisdictional transmission provider’s tariff.<sup>22</sup> In effect, the Commission proposes to require that each jurisdictional transmission entity agree on a method or methods for cost allocation in its regional transmission planning agreement and implement those methods through its tariff.

The Commission further proposes to require that each jurisdictional transmission provider develop one or more methods for allocating the costs of new “interregional” transmission facilities in the transmission plan.<sup>23</sup> The Commission proposes to assess

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<sup>20</sup> See for e.g., *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986); *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C.Cir.2001) (citing *American Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119-20 (D.C.Cir.1995); *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1060 (D.C.Cir.1995).

<sup>21</sup> NOPR, ¶ 159.

<sup>22</sup> *Id.*

<sup>23</sup> NOPR, ¶ 161 (“Second, we propose to require that each public utility transmission provider within a transmission planning region develop a method for allocating the costs of a new interregional transmission facility between the two neighboring transmission planning regions in which the facility is located or among the beneficiaries in the two neighboring transmission planning regions.”)

the acceptability of the cost allocation methods for these new regional and interregional transmission facilities using the principles set out in the NOPR.<sup>24</sup>

PPC suggests first, that the costs of those benefits can only be recovered through rates charged to customers or allocated among parties by voluntary agreement; and second, that the Commission should clarify that only quantifiable reliability benefits or benefits directly related to economic power supply costs may be allocated to or among customers.

### **1. Cost Causation And The Support Of Transparent Power Pricing**

In setting out its proposed requirements, the Commission acknowledges the central, controlling role of cost causation in establishing acceptable cost allocation methods. PPC agrees with the Commission's emphasis on the central role of cost-causation in allocating costs. Cost causation is, of course, indispensable when considering the rate design of transmission rates intended to recover the costs of transmission construction that has been undertaken on behalf of third parties.

Transmission planning and cost allocation must support price transparency and the access to accurate cost and price information so that the power purchasers can make informed resource purchase decisions and consumers do not end up paying more than necessary. To ensure that new generation resources are cost-effective, the price of

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<sup>24</sup> NOPR, ¶ 162 ("Third, to ensure that the cost allocation method or methods are just and reasonable and not unduly discriminatory or preferential, we propose to assess each cost allocation method based upon the cost allocation principles set out in the following sections, one set of principles for intraregional facilities and another for interregional facilities.")

energy from new generation must reflect the true cost of the generation, including the location and costs of transmission needed to deliver it to the consumer.

## **2. Binding Cost Allocation Methods Should Not Be Imposed On Transmission Providers In Non-RTO Areas**

PPC questions whether the Commission has the legal authority to assign costs incurred by a participant in a construction project to any jurisdictional utility that has not, through some contract, agreed to accept those costs. In these comments we do not speak to the issue within RTO and ISO areas, as those participating utilities have entered into contracts governing the allocation of the costs of new transmission facilities, and PPC is not familiar with the terms and conditions of those agreements. It is evident, however, that RTO and ISO participants entered into those agreements voluntarily and they can withdraw from those organizations as they choose.<sup>25</sup>

The Commission is proposing to make the development and agreement to cost allocation methods to be a mandatory part of voluntary planning agreements. The end result of the Commission's proposed rule will be to drive non-jurisdictional utilities out of the voluntary planning processes in which they now participate. Governmentally-owned utilities are governed by state statutes that limit their authorities. Contracts that require them to pay future unknown costs and that purport to bind future district commissions or city councils to payment of those costs may be unenforceable. For this reason, commitments to participating in funding where the decision to participate is made at the time the project is offered for construction will be the best option for planning processes in which non-jurisdictional entities participate.

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<sup>25</sup> *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, ¶ 17 (D.C. Cir. 2002).

PPC urges the Commission to abandon its proposal to require binding cost allocation agreements for non-RTO areas. In the alternative, PPC urges the Commission to withdraw its proposal that the sole method of cost allocation cannot be voluntary participant funding when the transmission provider is not a participant in an RTO.

**3. Benefits That Can Be Considered When Allocating The Costs Of Transmission Construction**

The Commission should clarify two of the key parameters that must be observed in determining benefits that can be used to allocate costs. First, transmission facilities are built for different purposes and their benefits dictate that costs should be allocated in different ways. Second, all benefits to be allocated must concern matters within the Commission's jurisdiction and must be readily quantified so that costs can be allocated in proportion to those benefits.

In its cost allocation principles, the Commission endorses the idea that different methods for cost allocation may be developed for different kinds of projects.<sup>26</sup> PPC supports this idea. The purposes of commercial and reliability projects are different. Reliability projects are bottom-up projects with identified load-service or reliability remediation needs and produce benefits by allowing utilities to meet their reliability requirements and avoid fines for violations of reliability standards. Commercial projects on the other hand tend to be more driven by transmission service requests and the relative economics of markets across congestion points. The parties causing the need for the project are relatively easy to identify. They are the parties requesting

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<sup>26</sup> NOPR, ¶ 160.

transmission and the loads that purchase power that is wheeled across the new path.<sup>27</sup>

Multi-purpose lines can be divided into either type based on participation.

With regard to the allocation of the costs of new transmission facilities in a regional or interregional plan that is proposed to meet a state or federal public policy requirement, the allocation should observe additional considerations. Like reliability obligations, not all entities will be subject to a mandatory standard. And if they are not, the allocation of costs to them on the basis of their compliance with that standard is unjust. Similar applicability considerations would have to be acknowledged for compliance with a new federal mandate. In regard to state public policy requirements, an additional geographic consideration is present. If a state has a public policy to promote renewables development, for example, the utilities in a neighboring state that has no such requirement should not shoulder any of the costs of transmission constructed in those utilities' state to satisfy the public policy in the first state.

Second, only quantifiable economic benefits should be eligible for allocation. This is intuitively correct because cost causation principles require the comparison of two, presumably equivalent, values. We agree that the courts have not required precise one-to-one correlation between benefits and costs to be allocated. In order to be comparable, however, the benefits must be quantifiable and attributable with some certainty to a party. Thus, not only must the benefits be reducible to an economic value, that value must be derived with a high level of certainty and must be directly

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<sup>27</sup> The costs can fairly be allocated among participating transmission providers that will sell transmission services on the new path and generators seeking markets who use the new path.

attributable to the new transmission project. PPC requests that the Commission confirm these requirements in the Final Rule.

Most importantly, only benefits that are directly related to power supply cost, adequacy and delivery should be eligible. These could include the ability to satisfy existing transmission service requests, production cost considerations, adequacy of power supply, congestion relief, compliance with mandatory reliability requirements and other related benefits. The Commission appears to have drawn that conclusion in the enumeration of the kinds of benefits that could be the basis for cost allocation.<sup>28</sup>

We support that limitation and request that the Commission make it express.

#### **4. Stranded Costs Protection**

Lastly, and assuming that costs can be allocated as the Commission proposes, there is a significant issue with regard to protection of utilities from stranded costs. Some commenters have asked the Commission to order utilities to build commercial transmission projects with capacity in excess of need in order to provide an incentive for construction of renewable generation to take advantage of the available transmission capacity. Another stranded investment risk may be created when transmission projects interconnecting new generation are built to more than one market giving the generation the choice of markets and market prices.

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<sup>28</sup> NOPR, ¶ 164(1) (“In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, 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.”)(footnote omitted).

While this may be good for generators and competition, it is not good for certainty of recovering the costs of the new transmission facilities. These concerns, however, are an issue when the ability to assess the risk of a project and the choice of investing is removed from utilities by the proposed rules. They are particularly important when cost allocation rules do not take account of the size of the utility and its ability to repay the costs that would be imposed on it.<sup>29</sup> In the NOPR the Commission has given no indication that this would be a consideration.

This uncertainty of cost recovery is one of the issues that has dampened transmission construction in the past. Due consideration should be given to the impact of a cost on a utility's transmission rate and its ratepayers before that cost is allocated. The Commission should also expressly permit cost allocations that mitigate these risks. For example, a transmission provider faced with an investment on behalf of others can mitigate the risk that the generation will not materialize at the end of the line (and that costs may not be recovered) by allocating a substantial share of the financing obligation to those generators or to the parties purchasing power from those generators.

#### **D. Conclusion**

PPC respectfully requests that the Commission provide the clarifications and make the revisions to the proposal as requested in these Comments.

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<sup>29</sup> See for example the situation faced by two small utilities in the Upper Midwest in which the application of the then-extant cost allocation for generation interconnection projects would have raised the charges to one of the utilities by 5200%. *Midwest Indep. Sys. Oper.*, FERC Docket No ER09-1431-000, submission of Midwest ISO dated July 9, 2009. This is, of course, an extreme example, but even in a situation where the cost increases are one or two orders of magnitude smaller, the cost burden could be extremely damaging to the ratepayers of a smaller utility.



Dated this 29<sup>th</sup> day of September 2010.

Respectfully submitted,

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/s/

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