UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REPLY COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to the Notice issued by the Federal Energy Regulatory Commission ("Commission") on September 29, 2010, setting the date for reply comments as November 12, 2010, the Organization of MISO States ("OMS") files these reply comments in the above-captioned docket.

I. BACKGROUND

On June 17, 2010, the Commission issued a notice of proposed rulemaking ("NOPR") on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities. The OMS submitted initial comments on September 29, 2010. The OMS appreciates the opportunity to respond to initial comments filed by other parties in this proceeding.

In its initial comments filed on September 29, 2010,[1] the OMS comments:

1. Concurred with the Commission's inclusion of public policy driven projects in transmission planning[2];

[1] The OMS Comments were conditionally supported by nine of its members. The Pennsylvania Public Utility Commission abstained from the vote on those comments. The Manitoba Public Utilities Board did not participate in the pleading. The Illinois Commerce and the Public Utilities Commission of Ohio did not support the comments.
[2] OMS Comments, at 2

2. Urged the Commission to order transmission planners to start with defined criteria but then to look further into more flexible options that could provide an optimal solution to a number of perceived needs[3];

3. Supported the Commission's efforts to induce more interregional transmission planning coordination through the proposed establishment of interregional transmission planning agreements between adjacent regions[4];

4. Made several recommendations intended to promote consistent interregional transmission planning efforts[5];

5. Urged the Commission to remain mindful of the roles that states play with regards to transmission expansion and defer to state preferences regarding rights of first refusal and obligations to build transmission[6]; and

6. Urged the Commission to review the filings made by the OMS and the individual OMS states in Docket No. ER10-1791, regarding transmission cost allocation.[7]

II. TRANSMISSION RATE INCENTIVE POLICY

A. The Commission's Transmission Rate Incentive Policy Must Be Re-Evaluated In Conjunction With Its Review of Transmission Cost Allocation Issues In This Proceeding.

On September 29, 2010, Comments were filed in this proceeding by a coalition of state public utility commissions, state consumer advocates, public power systems, rural electric cooperatives and end users referring to themselves as "Joint Commenters."[8] It is notable that Joint

[3] OMS Comments, at 3
[4] OMS Comments, at 4
[5] OMS Comments, at 5-11
[6] OMS Comments, at 11-16
[7] OMS Comments, at 17
[8] "Joint Commenters" are comprised of the American Chemistry Council, the American Forest & Paper Association, the American Public Power Association, the California Municipal Utilities Association, the California Public Utilities Commission, Electricity Consumers Resource Council, the Indiana Utility Regulatory Commission, the Modesto Irrigation District, the Montana Public Service Commission, the National Association of State Utility Consumer Advocates, the New England Conference of Public Utilities Commissioners, the New Hampshire Office of Consumer Advocate, the New Jersey Division of Rate Counsel, the New York State Public Service Commission, the Office of the Nevada Attorney General, Bureau of Consumer Protection, the Old Dominion Electric Cooperative, the Sacramento Municipal Utility District, the South Dakota Public Utilities Commission, the State of Maine, the Office of the Public Advocate, the Transmission Agency of Northern California, the Utility Reform Network, the Vermont Department of Public Service, and the Vermont Public Service Board.

Commenters include three OMS members: Indiana Utility Regulatory Commission, Montana Public Service Commission, and South Dakota Public Utilities Commission. The OMS wishes to reply in general support for some of the comments made by the Joint Commenters.

Joint Commenters address the interrelationship between the Commission's proposals in the NOPR and the Commission's implementation of its transmission rate incentive policy first adopted in Order No. 679.[9] Joint Commenters call on the Commission to reevaluate its transmission rate incentive policy in tandem with its review of transmission cost allocation issues in this proceeding.[10] Joint Commenters state that failure to revisit the transmission rate incentive policy issue in this docket will greatly complicate the Commission's efforts to develop a workable transmission cost allocation regime.[11] Joint Commenters state that the prospect of paying for undue incentives can cause resistance by transmission customers and consumer representatives to otherwise critical transmission projects and lead to protracted litigation, particularly where cost allocation debates turn to the total dollars involved in these projects and how, and from whom, these costs will be recovered.[12]

Joint Commenters state that, given such incentive rate awards, it is no surprise that the Commission has observed that "challenges associated with allocating the cost of transmission appear to have become more acute as the need for transmission infrastructure has grown."[13] Joint Commenters state that the Commission's failure to keep the costs of that additional infrastructure

[9] *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).
[10] Joint Commenters at 13-14
[11] Joint Commenters at 5
[12] Joint Commenters at 20
[13] Joint Commenters at 20-21 citing NOPR at P 152.

within reasonable bounds is contributing to a groundswell of opposition to the allocation of the resulting costs of such projects.[14] Joint Commenters state that exacerbating the problem is that incentives such as return on equity ("ROE") adders have been allowed to apply to the ultimate costs of the projects, not the project sponsors' estimated cost of the projects which gives transmission project developers the perverse incentive to bring their projects in over-budget, since they will earn a bonus return for doing so.[15]

Joint Commeters conclude that if the Commission wishes to solve the transmission cost allocation conundrum, it must also address the issue of transmission rate incentive packages that unreasonably inflate transmission revenue requirements and operate only in favor of project applicants.[16] Joint Commenters state that failure to do so will result in continued contentious litigation over the allocation of transmission costs, in part because those being asked to pay such costs will not concede that the overall costs they are being asked to pay are indeed just and reasonable, as the Federal Power Act requires.[17]

The OMS in general agrees with these statements of the Joint Commenters. Like the Joint Commenters, the OMS urges the Commission to undertake in this docket a full review of its transmission rate incentives policy, and after such review, to adopt a revised policy that limits the granting of incentives only to: (1) extraordinary transmission projects that are found to be needed and that would not be constructed but for the granting of such incentives; and (2) a reasonable package of incentive measures that, taken together, reduce the risk of the project to acceptable

[14] Joint Commenters at 21
[15] Joint Commenters at 16-17
[16] Joint Commenters at 23
[17] Joint Commenters at 23

levels for both project applicants and end use consumers, without resulting in unjust and unreasonable rates.

B. The Problems with the Commission's Incentive Transmission Rate Policy Are Exacerbated Where There is Transmission Cost Sharing Across States.

There is a critical connection between incentive rates and regional transmission cost allocation arising where the costs of new transmission facilities are shared between and among States.

In the traditional regulatory model, the costs of a new transmission facility were borne by the ratepayers in the State in which the facility was to be physically located, with that State usually having decisional authority over the project in the form of required siting and certification approvals. If the State found that the costs of the facilities to its ratepayers (including any incentive rate costs) would exceed the expected benefits of the project, the State could decline to issue a certificate of convenience and necessity. If incentive rates of return raised costs above levels the State deemed reasonable, the State could avoid paying those costs by not granting the certificate. Therefore, the State in which the facilities were to be located and paid for had leverage over what projects would be approved for siting and construction.

When a regional planning process assesses new transmission facilities under a process that shares costs across multiple states, however, this useful check breaks down. In this case, as a State in which proposed facilities are to be physically located exercises its siting and certification authority, it would be reasonable to take into account only the facilities costs that will be allocated to ratepayers in its State. The State would reasonably grant the certificate if the expected benefits for the ratepayers in its State exceed the costs that will be allocated to the State and ignore the costs that will be allocated to other States. The other States in which the facilities will not be physically located, but to which costs will be allocated, may have no say in this matter. The ratepayers in these other States will be required to pay an allocated share of facilities costs (including a share of the incentives cost) without the opportunity to evaluate the planning equation with expected benefits. The sharing of costs across States invites over-investment in transmission facilities and invites even more excessive transmission rate incentives requests. The other States' only currently available avenue for remedy would be to file a Section 206 complaint case.

Therefore, regional cost sharing of transmission project costs creates a new problem and concern with FERC's incentive rate policy (and with the pass-through into retail rates of these costs). The remedy for this problem lies in a stronger role for States in the regional planning process that would regionalize the decision-making responsibility for projects where project costs are allocated among States. The OMS is eager to work with the Commission in developing and defining an appropriate process to address this concern.

III. CONCLUSION

The OMS appreciates this opportunity to provide reply comments. Like the Joint Commenters, the OMS urges the Commission to re-evaluate its incentive transmission rate policy in conjunction with its examination of transmission cost allocation policy in this proceeding. In addition, because of the relationship between the Commission's incentive rate policy and transmission cost sharing across states, the OMS believes States must have a stronger role in the transmission project planning and approval process in situations where there is transmission cost sharing across states. The OMS is eager to work with the Commission to address this process issue.

The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments. The following members generally support those comments:

Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
Montana Public Service Commission
North Dakota Public Service Commission
Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in this pleading. The Kentucky Public Service Commission abstained from the vote on these comments.

The Indiana Office of Utility Consumer Counselor, as an associate member of the OMS, participated in these comments and generally supports these comments.

Respectfully submitted,

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