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FERC Launches Sweeping Effort to Gather Input on – and Potentially Overhaul – its Transmission Planning, Cost Allocation and Generator Interconnection Rules

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On July 15, 2021, the Federal Energy Regulatory Commission ("FERC" or "Commission") issued an Advance Notice of Proposed Rulemaking ("ANOPR") requesting comment on a broad set of potential reforms to the Commission's regional transmission planning, regional transmission cost allocation, and generator interconnection processes. Coming at a time of renewed focus on the need for capital investment to modernize the grid to meet the needs of a rapidly changing resource mix, the ANOPR represents a first step by the Commission to address perceived inadequacies in existing transmission planning, generator interconnection, and cost allocation processes. The ANOPR notes that these inadequacies may be creating barriers to the efficient and cost-effective integration of new generation resources.

The ANOPR is notable in that FERC is engaging in a holistic re-evaluation of its policies surrounding the transmission planning and generator interconnection processes, despite the fact that the two processes have historically been treated as separate and distinct. For instance, while existing transmission planning processes typically evaluate what transmission solutions are necessary to maintain reliability, reduce costs, and meet state public policy goals, these processes generally are not designed to expand the grid to accommodate individual requests for interconnection service. The result, as the Commission acknowledges, is that the interconnection process has become "the principal means by which infrastructure is built to accommodate new generators," despite the fact that the generator interconnection process is designed to focus on a single interconnection request or cluster of requests. The ANOPR recognizes that greater coordination between the regional transmission planning process and the generator interconnection process may present an opportunity to foster more efficient investment in transmission infrastructure and allocate transmission costs more accurately.

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The ANOPR represents the beginning of a longer process that may (or may not) culminate in substantive reforms to transmission planning and cost allocation policies. The primary focus of the ANOPR is to solicit industry input on the need for reform and on whether and how existing policies should be changed. The Commission will then use the comments submitted in response to the ANOPR as the basis for deciding whether to issue a Notice of Proposed Rulemaking ("NOPR") soliciting comments on changes proposed by the Commission. Any comments submitted in response to such a NOPR would then be taken into account by the Commission in determining whether to issue a Final Rule directing transmission providers to modify their tariffs to reflect the Commission's guidance and directives. The ANOPR process will also result in the Commission gathering useful information on these topics that it may use prospectively for other purposes.

Because the goal of the ANOPR is to build a record to support further action, the ANOPR largely offers the Commission's preliminary observations regarding the inadequacies of existing processes and raises issues and questions for interested parties to respond to in written comments. The remainder of the discussion, below, provides a high-level overview of the ANOPR as well as a summary analysis of the concurrences made by individual Commissioners in connection with the ANOPR. Given the broad scope of the ANOPR, the individual Commissioner concurrences are particularly helpful to gain further understanding of how the Commission views these issues. Comments on the ANOPR are due 75 days after its publication in the Federal Register, with reply comments due 30 days after initial comments are filed.

I. Overview of ANOPR

Referencing the Commission's previous efforts in Order No. 1000 to encourage transmission solutions to facilitate the integration of renewable resources, the ANOPR acknowledges that there may be a need to shift to a more "integrated and holistic process" for regional transmission planning, generator interconnection, and cost allocation. Among other things, the Commission acknowledges that while existing transmission planning processes take into account future generation development to some extent, these planning processes generally only evaluate the impact of generation that will come online in the short-term. The result is that facilities necessary to meet reliability needs associated with anticipated future generation additions are principally addressed through the generator interconnection process. Because the interconnection process is focused on the transmission needed to accommodate the request of a single generator interconnection customer or group of interconnection customers, the generator interconnection process does not adequately consider whether there may be a more efficient and cost-effective set of upgrades that could meet the needs of a broader group of customers or meet other system needs.

As a starting point for considering these issues, the Commission seeks comment on the following potential regional transmission planning-related reforms:

1. Adjusting the modeling of future scenarios to account for future generation mix and transmission needs;
2. Requiring transmission providers to establish a process to identify geographic zones that have the potential for the development of large amounts of renewable generation and plan transmission to facilitate the integration of these resources;
3. Expanding or improving incentives to encourage the development of regional transmission facilities that may have greater benefit-to-cost ratios than local alternatives;
4. Requiring greater interregional or state-regional coordination to ensure the proposed reforms, if adopted, are adopted in a just, reasonable, and not unduly discriminatory or preferential way;
5. Requiring transmission providers to operate their regional transmission planning, regional cost allocation, and generator interconnection processes "on concurrent, coordinated timeframes, with the same or similar assumptions and methods" to ensure better coordination across all three processes; and
6. Requiring the use of a portfolio approach to planning and cost allocation, which considers multiple transmission facilities together and evaluates the benefits of these facilities collectively, as well as requiring the consideration of a broader set of benefits.

FERC also tees up a suite of interconnection-focused reforms. Zeroing in on the issue of participant funding for interconnection-related network upgrades, the Commission notes that the transmission system has changed significantly since FERC standardized generator interconnection agreements and procedures with the issuance of Order No. 2003 in July of 2003, as there is now "little remaining existing interconnection capacity on the transmission system, particularly in areas with high degrees of renewable resources that may require new resources to fund interconnection-related network upgrades that are more extensive and, as a result, more expensive." FERC acknowledges that these extensive and costly network upgrades, which are paid for by individual interconnection customers, can provide broader benefits to other customers not financing the upgrades. The Commission expresses concern that this current approach is contrary to cost-causation principles and in some circumstances, creates an incentive for interconnection customers to submit multiple, speculative interconnection requests to "test the waters" in an attempt to position themselves better in the interconnection queue, only later to withdraw the requests, impeding the efficient administration of the queue.

For these reasons, the Commission also seeks comment on the following potential interconnection-related reforms:

1. Eliminating participant funding for interconnection-related network upgrades;
2. Revising the existing crediting policy that requires interconnection customers funding the construction of network upgrades to be reimbursed through the receipt of transmission credits;
3. Adopting a cost-sharing method for the financing of interconnection-related network upgrades;
4. Limiting interconnection requests or penalizing the withdrawal of speculative interconnection requests;
5. Creating a fast-track for the interconnection of certain generating facilities; and
6. Requiring transmission providers to consider Grid-Enhancing Technologies in interconnection studies.

FERC also seeks comment on the potential need for enhanced oversight of investment in transmission and related cost recovery to ensure that ratepayers are "not saddled with costs for transmission facilities that are unneeded or imprudent," specifically inviting comment on the Commission's authority to require an independent entity to monitor transmission spending in each transmission planning region. The Commission floats the idea of involving state commissions in such oversight and suggests that additional oversight is needed regarding the recovery of costs for abandoned projects.

Finally, the Commission seeks comment on how to transition to any newly adopted reforms, including comment on the treatment of interconnection customers in the various stages of the interconnection process and comment on when more holistic regional transmission planning and cost allocation processes would begin.

II. Commissioner Statements and Views

The issuance received bipartisan support, with Commissioners characterizing the ANOPR as a product of compromise. Commissioner Neil Chatterjee did not participate, but all other Commissioners issued concurrences.

Chairman Richard Glick and Commissioner Allison Clements issued a joint concurrence. The concurrence focuses on the importance of the Commission being more forward-looking when it comes to meeting transmission needs in the face of an increasingly diverse generation resource mix. They note that renewable resources make up the vast majority of interconnection requests currently pending in queues around the country, and argue that "[d]ramatic changes in the resource mix inevitably come with similarly dramatic changes in transmission needs." The Commission's role, they argue, "is to ensure just and reasonable rates and support reliability in light of changes in the market, not to pretend those changes are not happening." Chairman Glick and Commissioner Clements also express concern that currently, transmission costs are not being allocated in a way that is commensurate with their benefits. Finally, they argue that the Commission has a responsibility to protect consumers from excessive rates and charges that could result from changes to generation mix and Commission policy.

Commissioner James Danly concurred to address "one overarching concern" – the scope of FERC's jurisdictional authority. Commissioner Danly argues that "[m]any of the contemplated proposals would exceed or cede our jurisdictional authority, violate cost causation principles, create stifling layers of oversight and 'coordination,' trample transmission owners' rights, force neighboring states' ratepayers to shoulder the costs of other states' public policy choices, treat renewables as a new favored class of generation with line-jumping privileges, and perhaps inadvertently lead to much less transmission being built and at much greater all-in cost to ratepayers." Commissioner Danly encourages all parties with an interest to file comments, while emphasizing that "[n]o proposed policy, however worthy, can evade [FERC's] statutory duty to ensure that rates are just and reasonable."

Finally, Commissioner Mark Christie issued a cautious concurrence, clarifying that his concurrence to issue the ANOPR does not signal his endorsement for any of its particular proposals. Rather, Commissioner Christie emphasizes the importance of revisiting the more than decade-old Order No. 1000. He notes that ensuring the reliability of the transmission system is an important part of FERC's responsibilities, so long as the Commission adopts reforms and revisions that are consistent with its authority.