

**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)**

**REQUEST FOR REHEARING OF
ENERGY FUTURE COALITION, AMERICAN WIND ENERGY ASSOCIATION,
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES,
CENTER FOR RURAL AFFAIRS, CLIMATE AND ENERGY PROJECT,
DENALI ENERGY, INC., FRESH ENERGY, GRADIENT RESOURCES, INC.,
IBERDROLA RENEWABLES, INTERWEST ENERGY ALLIANCE, NATURAL
RESOURCES DEFENSE COUNCIL, PROJECT FOR SUSTAINABLE FERC
ENERGY POLICY, SOLAR ENERGY INDUSTRIES ASSOCIATION, THE
STELLA GROUP, LTD., UNION OF CONCERNED SCIENTISTS, WESTERN
GRID GROUP, WIND ON THE WIRES, AND WIRES**

Pursuant to Section 313(a) of the Federal Power Act¹ and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. § 385.713 (2010), the Energy Future Coalition (EFC), American Wind Energy Association, Center for Energy Efficiency and Renewable Technologies, Center for Rural Affairs, Climate and Energy Project, Denali Energy Inc., Fresh Energy, Gradient Resources, Inc., Iberdrola Renewables, Interwest Energy Alliance, Natural Resources Defense Council, Project for Sustainable FERC Energy Policy, Solar Energy Industries Association, The Stella Group, Ltd., Union of Concerned Scientists, Western Grid Group, Wind on the Wires, and WIRES (collectively, the EFC Group) hereby submit this Request for Rehearing of Order No. 1000, the Commission’s July 21, 2011

¹ 16 U.S.C. § 825l(a)(2006).

Final Rule on Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities issued in the above-captioned rulemaking proceeding.²

I. EXECUTIVE SUMMARY

The EFC Group is composed of a diverse set of stakeholders that includes the Energy Future Coalition (EFC), American Wind Energy Association, Center for Energy Efficiency and Renewable Technologies, Center for Rural Affairs, Climate and Energy Project, Denali Energy, Inc., Fresh Energy, Gradient Resources, Inc., Iberdrola Renewables, Interwest Energy Alliance, Natural Resources Defense Council, Project for Sustainable FERC Energy Policy, Solar Energy Industries Association, The Stella Group, Ltd., Union of Concerned Scientists, Western Grid Group, Wind on the Wires and WIRES.

The EFC Group supports progressive transmission regulatory reforms because a robust, modern transmission infrastructure is essential to transform our power generation fleet, both to incorporate clean and renewable energy resources and to enable the effective integration of demand-side options. Developing the infrastructure needed to move the U.S. power system to clean and renewable energy resources is critical to the objectives of strengthening the U.S. economy, enhancing national security, and reducing carbon pollution and other harmful emissions.

Order No. 1000 represents a very important step toward meeting these goals. Specifically, the EFC Group supports those elements of Order No. 1000 that require: 1) consideration of public policy requirements (such as renewable portfolio standards) in transmission planning; 2) development of regional transmission plans; 3) structures for

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Final Rule, 76 Fed. Reg. 49,842 (August 11, 2011), FERC Stats. & Regs. ¶ 31,323 (Order No. 1000).

planning interregional transmission infrastructure; and 4) development of cost allocation mechanisms that adhere to basic beneficiary-pays principles. The EFC Group also supports the integration of transmission planning and cost allocation decisions, to ensure that the process really leads to well-considered and well-reasoned expansion of the grid infrastructure to support clean energy goals. Order No. 1000 represents a very substantial improvement over the status quo ante and will assist in developing needed transmission infrastructure in the United States.

The EFC Group seeks rehearing on two issues, which if not addressed, could undermine the timely achievement of the Commission's larger, laudable purposes. First, the EFC Group believes that the Commission has provided insufficient guidance on what constitutes an appropriate planning region, and that without guidance, utilities and other stakeholders will waste valuable time working in regional configurations that do not support sensible transmission planning and cost allocation, and thus ultimately hinder rational transmission development. Second, the Commission appropriately applies the "beneficiary pays" principle to most new transmission projects, but arbitrarily fails to apply this principle to projects located in one region that have significant benefits in an adjoining region. Correcting both of these shortcomings is critical to making timely progress on the transmission infrastructure challenges facing the Nation.

II. REQUEST FOR REHEARING

A. Statement of Issues

In accordance with Section 385.713(c)(2) of the Commission's regulations, the EFC Group seeks rehearing on the following issues:

- 1) Whether the Commission’s failure to adopt reasonable criteria for defining regions for transmission planning and cost allocation purposes is arbitrary and capricious and not the result of reasoned decisionmaking. *See* Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (E); *Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 967 (D.C. Cir. 2000).
- 2) Whether the Commission’s decision not to permit costs associated with a new transmission facility located in one region that provides benefits in another region to be allocated to the other region absent a voluntary agreement by beneficiaries to pay such costs is arbitrary and capricious and not the result of reasoned decisionmaking. *See* Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (E); *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476-477 (7th Cir. 2009); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5 (D.C. Cir. 2002).

B. Specification of Error

In accordance with Section 385.713(c)(1) of the Commission’s regulations, the EFC Group identifies the following reversible errors in Order No. 1000:

- 1) The Commission erred by not adopting reasonable criteria for defining regions for transmission planning and cost allocation purposes.
- 2) The Commission erred by not permitting the costs associated with a new transmission facility located in one region that provides benefits in another region to be allocated, roughly commensurate with benefits, to the other region in the absence of a voluntary agreement by such beneficiaries to pay the costs.

C. Argument

The Administrative Procedure Act precludes the Commission from issuing orders that are “arbitrary, capricious, an abuse of its discretion, or otherwise not in accordance with law.”³ Decisions issued by the Commission must be “supported by ‘substantial evidence’ in the record and reached by ‘reasoned decisionmaking,’ including an

³ 5 U.S.C. § 706(2)(A).

examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made.”⁴

1. The Commission erred in failing to adopt reasonable criteria for defining regions for transmission planning and cost allocation purposes.

The Commission undertook this rulemaking proceeding because of the perceived deficiencies in the development of truly regional solutions to transmission needs. The Commission summarized its concern that individual transmission providers “may not adequately assess the potential benefits of alternative transmission solutions at the regional level that may meet the needs of a transmission planning region more efficiently or cost-effectively than solutions identified by individual public utility transmission providers in their local transmission planning process.”⁵ The Commission, therefore, required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan.⁶

Choosing an appropriate geographic scope for the transmission planning regions is critical to successful implementation of the Commission’s efforts in Order No. 1000. Indeed, “the Commission...acknowledges the importance of identifying the appropriate size and scope of the regions over which regional transmission planning will be performed.”⁷ Yet the Commission inexplicably omits any actionable definition or guidance on what is acceptable as a “region” for this purpose. Despite requests by numerous commenters, the Commission offers only the following limited direction: (1)

⁴ *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1511, 1513 (D.C. Cir. 1984) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962); *Memphis Light, Gas and Water Division v. FPC*, 504 F.2d 225, 230 (D.C. Cir. 1974); 16 U.S.C. § 8251 (1982)).

⁵ Order No. 1000 at P 81.

⁶ *Id.* at P 146.

⁷ *Id.* at P 160.

the region should be voluntarily defined; (2) the scope of the region should be “governed by the integrated nature of the regional power grid and [its] particular reliability and resource issues”; and (3) that “an individual public utility transmission provider cannot, by itself, satisfy the regional transmission planning requirements” of Order No. 1000.⁸

EFC recognizes that there is merit to offering flexibility to transmission providers in determining how to identify themselves with other transmission providers as an appropriate region. Such flexibility is necessary to ensure planning for further transmission development is undertaken in a manner that achieves the most cost-effective result for their respective customers as well as that planning region as a whole. But the Commission has endorsed a procedure that provides transmission providers with little useful guidance. Consequently, planning regions may be defined in a way that is irrational and unworkable, thereby hindering the development of transmission that Order No. 1000 is meant to promote.

The Commission explicitly bars individual transmission providers from declaring themselves a planning region. But would it be acceptable under the final rule for a regulated public utility transmission owner and a municipal utility or cooperative located within the public utility’s footprint to form a planning region? Would it be acceptable for two or more public utilities in a single holding company system to form a planning region? Could any two transmission providers agree to participate together in a planning region, even if they were not contiguous and shared nothing more than vaguely similar reliability or resource issues? On what basis would the Commission reject a compliance filing from a transmission provider in one area that declared itself a “region” together with a second transmission provider many miles distant? The Commission provides no

⁸ *Id.* at PP 160-161.

guidance on the appropriate size and scope of a region, or what the Commission will consider relevant in terms of evaluating proposed regions. Nothing in the final rule provides a basis for the Commission to reject such inappropriate and counterproductive regional definitions.

Again, the Commission “acknowledges the importance of identifying the appropriate size and scope of the regions over which regional transmission planning will be performed.”⁹ The EFC Group submits that the Commission must, in order to have a final rule that establishes a practical and appropriate transmission planning regime, set minimum standards or principles for the definition of transmission planning regions. Providing such guidance will advance the efforts of the Commission and will not preclude transmission providers from exercising appropriate flexibility in forming regions. Specifically, the EFC Group proposes that the Commission include the following standards for the definition of transmission planning regions:

- (1) All transmission providers in the region must be within the same interconnection;
- (2) The participants in a planning region must be electrically contiguous¹⁰;
- (3) As a region, there must be sufficient existing internal electricity generation and consumption to justify the planning of high voltage transmission facilities within the region; and
- (4) The proposed region must constitute an integrated electric system for which transmission planning within the region can be accomplished consistent with engineering principles and common sense.

⁹ *Id.* at P 160.

¹⁰ A planning region should not have isolated electrical “islands.” Thus, each transmission provider in a planning region should be directly interconnected to at least one other transmission provider in the region, and each transmission provider should be directly interconnected or indirectly interconnected through other transmission providers in the region to each other transmission provider in the region.

Without guidance such as this, there is significant risk that relying on regional self-definition will hinder accomplishment of the regulatory purposes of Order No. 1000. In order to address possible uncertainty of transmission providers about the permissibility of particular regional configurations, the Commission could specify that use of the regions approved for purposes of Attachment K coordination of transmission plans would be presumptively acceptable.

The Commission fails to provide any reasonable explanation as to why it failed to address comments submitted in this proceeding that requested the Commission to establish guidance on the appropriate configuration of the regions required to be established by Order No. 1000. The Commission must “engage the arguments raised before it – [it must] conduct a process of *reasoned* decisionmaking.”¹¹ The Commission’s decision not to include such guidance in the final rule is arbitrary and capricious and the Commission should grant rehearing and provide criteria for the definition of appropriate transmission planning regions consistent with the comments above.

2. The Commission erred by not permitting costs associated with a transmission facility located in one region that provides benefits in another region to be allocated to the second region consistent with the beneficiary pays principle.

A fundamental principle that is relied upon throughout Order No. 1000 is a time-honored precept of public utility regulation: that the costs of a utility investment should be allocated to those who benefit from that investment. As stated by the Commission, “the principles-based approach requires that all regional and interregional cost allocation

¹¹ *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992) (emphasis in original).

methods allocate costs for new transmission facilities in a manner that is at least roughly commensurate with the benefits received by those who will pay those costs.”¹²

The Commission largely abides by and incorporates this principle in Order No. 1000. However, the Commission has disregarded this principle in one critical circumstance: where a transmission facility located in one region provides benefits in another region. In this instance, the Commission has provided that costs would not be allocated to the beneficiaries except to the extent that the beneficiaries volunteer to pay those costs.¹³

This decision not only violates the Commission’s beneficiary-pays principle, it also fails to address the Commission’s underlying concern about permitting free-riders. Under the final rule, consumers in one region could be “free riders” by receiving demonstrable and tangible benefits from the development of transmission facilities in another region, and yet have no obligation to make any contribution whatsoever to the costs of those facilities. This both creates an equity problem, and discourages the development of needed transmission infrastructure.¹⁴

It is clear that unjust and unreasonable rates may result where beneficiaries of a given project inside the region where the project is built are allocated all the costs to pay for it, while beneficiaries of that project outside that region can avoid any allocation of its costs. There is nothing about the regional boundaries established by transmission service providers that should make these boundaries the demarcation line for cost responsibility when the flow of benefits of a transmission project is not constrained by such

¹² Order No. 1000 at P 10.

¹³ *Id.* at P 582.

¹⁴ *Id.* at P 534.

boundaries.¹⁵ The EFC Group submits that the Commission has erred to the extent it allows the definition of geographic regions by transmission providers to supersede the application of its fundamental cost-allocation principle based on benefits actually received.

The Commission has outlined at length a mandatory interregional planning process requiring a multi-regional assessment of projects that are proposed for construction in more than one region and their benefits.¹⁶ The Commission however declines to require such coordination when a project is constructed wholly within one region, even if there are clearly benefits outside that region.¹⁷

The Commission holds that, within a given region, costs of a new project built wholly within the service territory of one transmission provider can be allocated to beneficiaries throughout the region if there is a clear regional benefit.¹⁸ This is directly analogous to the potential for extraregional benefits from a regional transmission project, yet the Commission unaccountably reaches the opposite conclusion as to the possibility of broader interregional cost allocation for a regional project with broader benefits.

The Commission's stated concern is that to require multi-regional assessments of benefits in such instances might lead to interconnection-wide assessments.¹⁹ The EFC Group submits that this is not a realistic concern. The Commission can ensure that the attenuated assessments of benefits of concern to FERC are avoided. For example, the

¹⁵ As discussed above, the Commission provides no guidance whatsoever in the final rule on the proper configuration of the regions. Irrationally configured regions will add to the problem if beneficiaries in an adjoining region can escape any cost responsibility for projects that it would otherwise be required to contribute to if the region had been rationally defined in the first instance.

¹⁶ See generally Order No. 1000 at PP 374-421.

¹⁷ *Id.* at P 416.

¹⁸ *Id.* at PP 552, 564.

¹⁹ *Id.* at P 660.

Commission could provide that interregional planning and potential cost allocation are only required for a project located wholly within one region when:

- The extraregional benefits are directly related to the proposed transmission project, not to assumed electricity market reactions or influences;
- The identified extraregional benefits are enjoyed in an adjacent planning region; and
- The extraregional benefits are similar in nature to the benefits on the basis of which costs are proposed to be allocated within the region where the facility is proposed.

Any extraregional cost allocation for facilities that satisfy these requirements would, of course, be consistent with the Commission’s overarching policy of allocating costs “roughly commensurate” with benefits.

Because there is no likelihood that these tests would be satisfied on an interconnection-wide basis in either of the two major interconnections, there is no concern that this policy would somehow lead to interconnection-wide planning. There is thus no reason that the Commission should not require such interregional assessment and planning when a project in one region is believed likely to have extraregional benefits that might justify interregional cost allocation.

If such consideration of extraregional benefits is not made, there is a likelihood that intraregional transmission projects that are in the public interest, and would benefit customers in multiple regions, will nonetheless fail.²⁰ The EFC Group notes that

²⁰ The Commission acknowledges that failure to analyze benefits and allocate costs to beneficiaries impairs optimal transmission development. *See id.* at P 499 (“We agree with many commenters that the lack of clear *ex ante* cost allocation methods that identify beneficiaries of proposed regional and interregional transmission facilities may be impairing the ability of public utility transmission providers to implement more efficient or cost-effective transmission solutions identified during the transmission planning process. . . . Failing to address the allocation of costs for [] transmission facilities in a way that aligns with the evaluation of benefits through the transmission planning process could lead to needed transmission facilities not being built, adversely impacting ratepayers.”).

interconnection-wide transmission planning is being done through the U.S. Department of Energy-funded Eastern Interconnection Planning Collaborative (EIPC) process. Phase II of the EIPC process has the potential to identify new transmission infrastructure that is beneficial to the collective energy goals of the stakeholders in the Eastern Interconnection with benefits spanning multiple planning authorities. Without a mechanism to allow costs to be allocated across borders to additional beneficiaries, EIPC-identified facilities may not come to fruition.

The Commission provides a comprehensive legal justification for its determination that costs can be allocated to beneficiaries beyond those who have entered voluntary agreements for service.²¹ The EFC Group believes the Commission is correct on the law and its authority. Nothing in the Commission's analysis, however, explains why such broad authority to assign costs to beneficiaries can or should stop at regional boundaries when the actual benefits do not stop at those arbitrary boundaries. If the lack of a voluntary contractual agreement to pay for benefits is not sufficient to prevent costs from being assigned to the beneficiary, it is inexplicable that an arbitrary and informal regional boundary *is* a sufficient barrier to such cost allocation. The perverse incentive to create regional boundaries for the purpose of evading cost responsibility for nearby transmission facilities, notwithstanding benefits they may provide, will be immense if the final rule is not corrected in this regard.

Requiring interregional consideration of benefits and cost allocation for projects located wholly in one region does not, of course, mean that those benefits will be found and that costs will be allocated on an interregional basis. Participants from the region assertedly receiving benefits would certainly have the right to participate in the planning

²¹ See generally Order No. 1000 at PP 530-549.

process and contest and oppose any determination that they were beneficiaries or that they should be assigned any costs. But at least such a dispute would be conducted on a factual basis of common information and analysis, one that would be likely to expose clearly any “free riding.” And in the event that there clearly were extraregional benefits from an intraregional project, there would be the ability to assign the costs appropriately and avoid a “free rider” problem with its unjust and unreasonable rates.

In sum, it is not reasonable or appropriate that the Commission should preclude any interregional cost allocation from regional projects with extraregional benefits except where benefiting regions have volunteered to bear a share of those costs. The Commission has the necessary legal authority to provide for such an allocation, as it has itself articulated in Order No. 1000.²² The application of the beneficiary pays to all circumstances except intraregional projects with extraregional benefits is arbitrary and capricious. The Commission should therefore grant rehearing and require beneficiaries in adjoining regions to contribute to the costs of new transmission facilities consistent with the argument above.

²² *Id.* at P 535.

III. CONCLUSION

The Commission should grant rehearing as requested herein for the reasons discussed above.

Respectfully submitted,

/s/ John Jimison

John Jimison
Managing Director
Energy Future Coalition
1615 M Street, NW
Suite 700
Washington, DC 20036
202- 778-3541
jjimison@energyfuturecoalition.org

Gene Grace
Senior Counsel
American Wind Energy Association
1501 M Street, NW
Suite 1000
Washington, DC 20005
202-383-2529
ggrace@awea.org

V. John White
Executive Director
Center for Energy Efficiency and
Renewable Technologies
1100 Eleventh Street
Suite 311
Sacramento, CA 95814
916-442-7785
vjw@ceert.org

Johnathan Hladik
Energy Policy Analyst
Center for Rural Affairs
145 Main Street
Lyons, NE 68038
402-687-2103 x 1022
johnathanh@cfra.org

Dorothy Barnett
Director
Climate and Energy Project
PO Box 442217
Lawrence, KS 66044
785-424-0444
barnett@climateandenergy.org

Craig R. Fink
President
Denali Energy, Inc.
31941 County Road 112
PO Box 149
Pequot Lakes, MN 56472
218-568-6500
craigf@denalicompanies.com

Erin Stojan Ruccolo
Clean Energy Senior Policy Associate
Fresh Energy
408 St. Peter Street
Suite 200
St. Paul, MN 55102
651-726-7567
ruccolo@fresh-energy.org

David Lloyd
Senior Vice President and General
Counsel
Gradient Resources Inc.
9670 Gateway Drive
#200
Reno, NV 89521
775-284-2457
david.lloyd@gradient.com

Richard Glick
Vice President, Government Affairs
Iberdrola Renewables
607 14th Street, NW
Suite 225
Washington, DC 20005
202-783-0036
Richard.Glick@iberdrolaren.com

Craig Cox
Interwest Energy Alliance
PO Box 261311
Denver, CO 80226
303-679-9331
cox@interwest.org

Carl Zichella
Director of Western Transmission
Natural Resources Defense Council
111 Sutter Street
20th Floor
San Francisco, CA 94104
415-875-6119
czichella@nrdc.org

Terry R. Black
Director
Project for Sustainable FERC Energy
Policy
5400 Eagles Point Circle
#406
Sarasota, FL 34231
941-926-1350
tblack@igc.org

Daniel M. Adamson
Vice President Regulatory Affairs and
Counsel
Solar Energy Industries Association
575 7th Street, NW
Suite 400
Washington, DC 20004
202- 682-0556
dadamson@seia.org

Scott Sklar
President
The Stella Group, Ltd.
706 North Ivy Street
Arlington, VA 22201
703-522-1195
solarsklar@aol.com

Ellen Vancko
Union of Concerned Scientists
1825 K Street, NW
#800
Washington, DC 20006
202-331-5425
Evancko@ucsusa.org

David Olsen
Managing Director
Western Grid Group
3017 SW Webster
Seattle, WA 98126
530-550-8307
Dave@westerngrid.net

Beth Soholt
Executive Director
Wind on the Wires
1619 Dayton Avenue
Suite 203
St. Paul, MN 55104
651-644-3400
[bsoholt@windonthewires.org](mailto:bsoholt>windonthewires.org)

J. Jolly Hayden
President
WIRES
c/o Husch Blackwell
750 17th Street, NW
Washington DC 20006
202-378-2300