

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

Competitive Transmission Development
Technical Conference

Docket No. AD16-18-000

**POST-TECHNICAL CONFERENCE COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (“ELCON”)**

The Electricity Consumers Resource Council (“ELCON”) appreciates the opportunity to provide post-technical conference comments on issues associated with competitive transmission development under Order No. 1000. ELCON also appreciated the invitation given to the organization’s president and CEO, John P. Hughes, to appear in person at the June 27-28 conference as a representative of large end-use ratepayers. ELCON’s comments in response to the Commission’s August 3, 2016 Notice Inviting Post-Technical Conference Comments are limited to the issues related to cost containment and transmission incentives.

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Many of ELCON’s members have market-based rate authority and many also cogenerate part of their electrical requirements.

GENERAL COMMENTS

Transmission development is a highly complex process and new projects always invite controversy. As a bedrock principle, ELCON strongly supports the application of competition to the utility business model and therefore we support the initiative under FERC Order No. 1000 to require competitive solicitations for new or upgraded transmission projects eligible to be selected in a regional transmission plan for purposes of cost allocation. However, the “competition” has to be demonstrably workable and not unduly manipulated by artificial regulatory incentives, administrative proxies for market forces, or other vestiges of regulation. Real competition does not allow any recourse to regulators if a developer fails to get the price or bid she wanted. Given that the industry is still in the earliest phases of implementing the Order No. 1000 mandate, the complexity of the solicitation process and the comingling of regulatory and market mechanisms – as evidenced by the twenty-six questions the Commission invites comment on – is very disturbing. This situation begs for simple and highly transparent selection processes.

ELCON is also deeply concerned that transmission is being overbuilt for the sake of public policy that has clearly failed to achieve a national consensus. This contradicts any pretense that the Commission’s policies are technology neutral. Transmission costs have become the fastest growing component of rates and it is not self-evident to ELCON members that the benefits always justify the costs. While new remotely-located generating resources are clearly driving the need for some transmission, we believe there is inadequate consideration of generation and other non-transmission solutions to identifiable transmission-only problems. This bias in favor of transmission solutions is created by the lavish promise of performance-based rates and transmission incentives that would seem to be out of place in a truly competitive solicitation.¹ The transmission

¹ We recognize that in 2005 Congress enacted section 219 of the Federal Power Act. That amendment directs FERC to develop incentive-based rate treatments for transmission of electric energy in interstate commerce.

incentives offered by FERC may be distorting the “market” for competitive projects, increasing the tension between incumbent utilities and non-incumbent developers, and biasing the selection process in favor of transmission when a generation fix might otherwise be lower cost and provide more longer-term benefits to end-use consumers. The mixture of competition, risk mitigation measures and performance incentives is mutually inconsistent.

Finally, it is not yet clear that the ISOs and RTOs in all cases are independent appraisers in the selection process or are viable surrogate regulators for providing oversight of the winning projects. These are troubling issues the Commission needs to address.

COMMENTS ON COST CONTAINMENT PROVISIONS IN COMPETITIVE
TRANSMISSION DEVELOPMENT PROCESSES

1. How do public utility transmission providers in regions compare proposals with and without cost containment provisions for transmission facilities eligible to be selected in a regional transmission plan for purposes of cost allocation? Please provide examples. What, if any, guidance or requirements should the Commission provide with respect to the comparison of proposals with and without cost containment provisions?

ELCON Response: Assuming the project attempts to solve a discrete or set of discrete transmission problems, the overarching requirement should be lowest-possible, discounted, long-run costs recovered from ratepayers recognizing that it is easier to do this for economic or market efficiency projects and less so for reliability projects. There will always be an element of judgment in the project selection process and it will be FERC’s responsibility to ensure that public utility transmission providers subject to its jurisdictional exercise their duties in a transparent, objective and professional manner.

2. What can public utility transmission providers in regions do to ensure there is sufficient transparency for transmission developers to understand: a) how a

proposal will be evaluated in advance of the proposal submission; b) developments, if any, that occur during the evaluation process; and c) the reasons the selection decision was made? Should cost containment provisions in all proposals, and not just winning proposals, be made known? What, if any, guidance or requirements should the Commission provide with respect to this issue?

ELCON Response: Cost containment provisions should be at the discretion of the developers. There should be no presumption that proposals with cost containment provisions are necessarily better than proposals without such provisions. We are not convinced any such cost containment mechanism will be forever binding for a facility that may be deemed critical infrastructure.

3. Should there be standardization of cost containment provisions or exclusions of certain costs to facilitate comparison of proposals with differing cost containment provisions? If so, what role should the Commission and/or public utility transmission providers in regions play in pursuing standardization?

ELCON Response: Standardization defeats one of the purposes of a competitive solicitation. A benefit of competition should be innovation, including the design of cost containment proposals. In competitive markets, cost containment is an expected component of a competitive bid. In regulated markets it tends to be an afterthought, which may be why it is getting so much attention post-Order No. 1000. Standardization (and other process mechanisms suggested in the questions below) is also tantamount to “grading on the curve” and does not recognize and sufficiently reward extra achievement.

4. What quantitative and qualitative methods can public utility transmission providers in regions use to evaluate proposals with different cost containment provisions, such as cost caps with different exclusions or that cap different components of the revenue requirement?

ELCON Response: See responses above to questions 1, 2 and 3.

COMMENTS ON CONSIDERATION OF RATES THAT CONTAIN COST
CONTAINMENT PROVISIONS AND RESULT FROM COMPETITIVE
TRANSMISSION DEVELOPMENT PROCESSES

1. Should the Commission have a role in evaluating the rate-related components of competing proposals for transmission facilities eligible to be selected in a regional transmission plan for purposes of cost allocation (*e.g.*, terms of cost containment provisions, rate of return, transmission incentives) before the public utility transmission providers in a region select a proposal? If so, what role? What steps could the Commission take to prevent such a role from creating undue delays in transmission planning processes?

ELCON Response: The Commission has an important statutory role in evaluating rate-related components. It should do so with a paper hearing format to expedite the process.

2. What types of performance-based rates could the Commission accept to reduce asymmetrical risk?

ELCON Response: It has been ELCON's experience that performance-based rates tends to work against the interests of ratepayers since utilities typically wield undue influence on the type of performance-based rate adopted and the metric(s) used to measure performance. Therefore, the application of such rates should be minimized.

3. The Commission has accepted proposals to allow incumbent and non-incumbent transmission developers to recover, under certain circumstances, costs associated with developing transmission projects that are proposed but not selected in a regional transmission plan for purposes of cost allocation. Should the Commission reexamine, in general, whether such costs may be recovered?

ELCON Response: We strongly oppose the application of this perk to competitive solicitations because it violates the simplest precept of competition – namely the black and white distinction between winners and losers. “Making whole” is not a function of competition. Allowing the recovery of costs associated with developing transmission projects that are proposed (in response to a competitive solicitation) but not selected is also a violation of the *used and useful* principle. This is another example of the tendency of the Commission to shift benefits of competition from consumers to the developers in a misguided attempt to “promote competition.”

4. Which entities should monitor, verify, and/or enforce compliance with cost containment provisions of selected transmission facilities? What are effective ways for them to do so and what are the advantages and disadvantages of different approaches?

ELCON Response: This is an incredibly important issue and it is not clear who should be performing this quasi-regulatory function if it is not FERC or state commissions. If FERC-jurisdictional ISOs and RTOs are given this responsibility, the Commission would in effect be turning ISOs and RTOs into branch offices of the FERC.

COMMENTS ON TRANSMISSION INCENTIVES AND COMPETITIVE TRANSMISSION DEVELOPMENT PROCESSES

1. Should the Commission pre-approve any or all of the following incentives for transmission facilities selected in a regional transmission plan for purposes of cost allocation through competitive transmission development processes: 100 percent construction work in progress in rate base; regulatory asset treatment; or recovery of 100 percent of the cost of abandoned facilities?

ELCON Response: No. Incentives in general should be minimized and granted on a case-by-case basis within the limits of FPA section 219. There should be no “incentive” or other inducement to encourage participation in a competitive solicitation.

2. If there are benefits to customers from risk mitigation measures that transmission developers use in competitive transmission development processes, should the Commission revise its incentive policy to encourage similar risk mitigation measures that may provide customer benefits for transmission projects that are not subject to a competitive transmission development process? If so, what risk mitigation measures should the Commission encourage through application of the incentive policy?

ELCON Response: There are a number of risk mitigation measures that have been tried.² The problem is the Commission's reluctance to reduce base ROEs commensurate with the risk reduction. Hence the policy is horribly skewed in favor of the developers by mixing market and regulatory mechanisms that exploit consumers by denying them the full benefits of competitive solicitations.

3. In light of the emphasis that Order No. 1000 places on regional transmission planning, do the risks and challenges of a particular transmission project remain an appropriate focal point for incentives requested pursuant to Federal Power Act section 219? If not, what are the attributes that warrant incentives?

ELCON Response: Section 219 was intended to address the tendency of vertically integrated utilities to hold out for the highest offer, *i.e.*, engage in anti-competitive behavior by establishing "bottleneck" facilities. Clearly by issuing Order No. 1000 the Commission believes that section 219 and its subsequent orders implementing the amendment failed. There is no need to apply these failed incentives policies to non-incumbent developers. Until section 219 can be reformed, FERC need only comply with the requirement on a minimalist basis.

² These include: Recovery of 100% of Construction Work in Progress (CWIP); recovery of 100% of pre-commercialization costs as an expense or regulatory asset; and recovery of 100% of prudently incurred costs of transmission facilities that are abandoned for reason beyond the developer's control.

4. What, if any, changes are needed to the framework the Commission uses to evaluate return on equity adders and other transmission incentives for transmission projects that use cost containment provisions?

ELCON Response: If the issue is cost containment of projects that win a competitive selection process, the use of incentives is irrelevant and inconsistent with the purpose of competition. The application of these regulatory mechanisms contradict the rationale for encouraging the formation of independent non-incumbent developers – namely to eliminate the conflicts of interest inherent with the planning and operation of a vertically-integrated utility system.

5. Transmission developers face at least two types of risks: risk associated with participation in the transmission planning processes and risk associated with developing a transmission project. The Commission’s current incentive policies focus on the latter. Please comment on risks associated with participation in the transmission planning processes and indicate what, if any, changes to the planning processes could mitigate the risk.

ELCON Response: This risk is a cost of doing business and needs no compensation at ratepayer expense.

6. Do public utility transmission providers in regions consider that a transmission developer may request and be awarded transmission incentives when evaluating transmission proposals and, if so, how? For example, how would public utility transmission providers in regions consider a proposal with a potential transmission incentive given that the incentive might or might not be granted? Should a competitive transmission development process clearly state whether, and, if so, how incentives should be part of a developer’s proposal and how requests and grants of such incentives will be evaluated by the public utility transmission providers in the region? Is there an optimal time for submission of incentive requests to the Commission and for Commission decisions upon them?

ELCON Response: One of the benefits of competitive mechanisms is supposed to be the requirement that project risk is borne by the developer and not consumers. The fact such incentives might be speculative is a risk that should be borne by developers.

Respectfully Submitted,

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