

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Integration of Variable Energy Resources

Docket No. RM10-11-000

**Comments of the
Electricity Consumers Resource Council
(ELCON)**

The Electricity Consumers Resource Council (ELCON) appreciates the opportunity to comment on the Commission's November 18, 2010 Notice of Proposed Rulemaking (NOPR) in this docket on Integration of Variable Energy Resources.¹ ELCON recognizes that Variable Energy Resources (VER) present special challenges for grid operators, but any changes to rate structures mandated by a Final Rule resulting from the NOPR must strictly adhere to cost causation principles. The unique challenges posed by VERs are no justification for lessening the longstanding requirement that all costs and benefits are to be allocated and recovered based on substantial evidence. As drafted, the NOPR may violate this principle if rate-payers are forced to bear any of the incremental costs of VER integration without identifying any corresponding benefits. Further, the NOPR does not properly reflect the essential role for demand response; ELCON urges FERC to require grid operators to adopt tariff provisions allowing dispatchable demand response resources (DRR) to provide Schedule 10 services. More generally, the NOPR represents a missed opportunity to promote policies of source neutrality – singling out VERs for

¹ *Integration of Variable Energy Resources*, 133 FERC ¶ 61,149 (2010).

special treatment, if anything, increases the magnitude of the undue discrimination faced by other resources such as demand response and combined heat and power (CHP).

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. As operators of hundreds of major facilities, major consumers of electricity, and demand response providers, ELCON members are significantly impacted by the proposed rule.

COMMENTS OF ELCON

ELCON strongly urges that FERC revise the NOPR to bring its proposed reforms into conformity with cost causation principles. While the goal of facilitating integration of VERs is laudable, all resources have unique characteristics, which transmission providers and grid operators must work to accommodate. No one class of resources should be favored over others; rather, FERC should aim to provide a level playing field for all resources. In this respect the NOPR errs by requiring transmission providers to offer VERs special treatment that amounts to an implicit subsidy.

The NOPR includes three principle reforms that are intended to address the challenges of integrating VERs into the transmission grid: (1) 15-minute transmission scheduling intervals, (2) amendment of transmission providers' pro forma Large Generation Interconnection Agreements (LGIA) to require VERs to provide certain meteorological and operational data to transmission providers, who are to develop and deploy VER power production forecasting tools, and (3) the addition of a generic ancillary service rate schedule to the pro forma OATT that would require transmission providers to offer VERs generator regulation services. The Commission believes these reforms "will help to level the playing field for all types of resources, provide much-needed clarification as to the roles and responsibilities of public utility

transmission providers and transmission customers, and bring greater transparency and efficiency to existing system operations.”²

The principle flaw in the NOPR is its reliance on the supposition that operating practices favoring the dispatchability of resources are a form of “preferential treatment,” and therefore that non-dispatchable resources such as VERs are being discriminated against. The NOPR’s proposals are costly measures that would preferentially apply to just one class of generation – VERs – seeking to address discrimination that does not actually exist.

In particular, the NOPR’s proposal that Schedule 10 service must be offered on a generic basis is simply a mechanism for the socialization of costs that should be directly assigned to VER generators or their customers.³ Likewise the move to intra-hour scheduling is likely to impose additional costs and administrative burdens on transmission providers – including hardware and software upgrades and added personnel – whose systems are currently designed to process hourly scheduling.⁴ Traditional generation resources do not require intra-hour scheduling; therefore these costs should be borne by VER generators or their customers who are the cost causers. All generators (including VERs) should be responsible for providing accurate schedules. The risk and responsibility for forecasting a generator’s availability should always be the generator’s responsibility and should not be shifted to the transmission provider, system operator or ISO or RTO.

² NOPR at ¶ 23.

³ The manner of cost recovery under Schedule 10 would duplicate that for Schedule 3, a single per-unit rate for regulation reserve capacity equal to the Commission-approved per-unit rate under Schedule 3, as well as a volumetric component to allocate the total regulation reserve capacity among load and generation. The NOPR would not allow a transmission provider to assess a different volumetric component for VERs unless it: (1) has implemented 15-minute scheduling intervals; (2) has adopted power production forecasting practices in order to efficiently operate system resources; and (3) can show that such higher volumetric component is justified based on a full year of scheduling and performance data collected subsequent to the implementation of 15-minute scheduling intervals and power production forecasting practices.

⁴ NOPR at ¶¶ 33, 44.

Similarly, VER generators and customers should bear the costs incurred by transmission providers to implement the meteorological forecasting requirement. Meteorological forecasting is simply a cost of doing business for wind energy, just as a nuclear power plant must pay for storage of spent fuel. These costs should not be recovered in uplift charges (in regions served by ISOs or RTOs) or allocated to non-customers of VER transactions. The NOPR would simply hide these additional costs of VER integration by forcing transmission to make costly changes that are necessary only for one small subset of resources.

I. Cost-Causation Analysis Is Required for FERC-Approved Rate Schemes.

ELCON urges the Commission to reiterate that the costs of resource integration, regardless of resource type, must be evaluated according to a fair assessment of the costs and benefits based on substantial evidence. The NOPR short circuits that process by carving out special treatment for a favored class of resources. The principle of cost causation is well established by case law and Commission adjudications and rulemaking. Cost causation requires that there be a direct linkage between the benefits to the consumer associated with any costs assessed. Although the Commission need not allocate costs with exacting precision, it may depart from the principle of cost causation only in extraordinary circumstances and for a limited purpose. A rate design that results in some ratepayers subsidizing the service of others is *prima facie* inconsistent with cost-causation.⁵ For a rate or charge to be valid there must be some related tangible, non-trivial benefit supported by substantial evidence in the record.

In this case, the Commission has failed to identify any specific benefit to consumers connected to the integration of VERs. As evidenced by the expensive and complicated efforts

⁵ See cases cited in footnotes 7 and 8, *infra*, regarding fair and proportional cost-sharing and avoiding subsidization.

that are necessary to accommodate VERs, the NOPR will only result in greater costs for consumers. The NOPR attempts to obscure this fact by characterizing its proposals as an attempt to eliminate preferential treatment. But the treatment is only preferential if the purpose of the grid is to serve generators regardless of the value of the generation to rate payers. This approach is completely contrary to the Federal Power Act's focus on consumer interests.

All rates and tariffs must be based on a reasonable consideration of benefits, and must compare the costs assessed against a party to the burdens imposed or benefits drawn by that party, based on substantial evidence in the record. If the benefits cannot be reasonably quantified, then there must be "articulable and plausible" reasons to believe that the benefits are at least roughly commensurate with the costs imposed.⁶

The principle of cost causation is well established by both court cases and Commission adjudications.⁷ The cost causation principle is the "touchstone in any legal analysis of FERC-approved rate schemes," and it requires "that all approved rates reflect to some degree the costs

⁶ *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) ("We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars If it cannot quantify the benefits to the Midwestern utilities from new 500 kV lines in the East . . . , but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; the Commission can approve PJM's proposed pricing scheme on that basis.")

⁷ The cost causation cases trace their origin to *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 588 (1945), which held that "[t]he problem [to be addressed by a rate case] is to allocate to each class of the business its fair share of the costs." The cost causation principle has been reaffirmed in numerous cases, *see, e.g., Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305 (D.C. Cir. 1991), *Complex Consolidated Edison Co. of New York v. FERC*, 165 F.3d 992 (D.C. Cir. 1999), and *Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916 (D.C. Cir. 2008). In these cases, the court required FERC to, "outline[] with reasonable particularity the system-wide benefits which each new facility produces." *Algonquin*, 948 F.3d at 1313, 1315 (this is not a theoretical exercise, but a question of fact dependent on "the impact the order would actually have on ultimate consumers"). *See also Complex Consolidated, supra*, 165 F.3d at 998, 1006 (affirming FERC's holding that rolled-in rates were not just and reasonable based on FERC's conclusion that "the alleged system benefits postulated by JMC Power [were] insubstantial"); *Transcontinental, supra*, 518 F.3d at 920 (affirming FERC's order adopting incremental rates where "FERC . . . correctly concluded that existing customers would have . . . subsidized the Cherokee shippers if [the gas company] had been allowed to roll in rates").

actually caused by the customer who must pay them.”⁸ The D.C. Circuit has stated that compliance with the cost causation principle must be evaluated “by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”⁹ Thus there must be substantial and specific benefits to the system as a whole for FERC to approve a rule that would result in system-wide costs, such as the costs of integrating VERs.¹⁰ The Commission has also, in case after case, affirmed its support of the cost causation principle.¹¹

The cost causation model of cost allocation results in greater economic efficiency by retaining a direct tie between the costs and the benefits of a given project, enabling the potential beneficiaries to appropriately determine whether the costs are worthwhile.¹² In this case, there is no tie at all to the costs customers will be forced to bear. Ratepayers are simply being required to pay for the integration of VERs because FERC wishes to encourage increased generation by VERs as a matter of public policy. Under the FPA, however, costs cannot be assessed to customers unless there is a specific and substantial showing of commensurate benefits. FERC’s

⁸ *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *see also Village of Bethany v. FERC*, 276 F.3d 934, 937 (7th Cir. 2002) (“The overriding policy concern in a ratemaking proceeding is to establish rates that require each customer to bear a fair and proportional share of . . . costs.”).

⁹ *Midwest ISO Transmission Owners*, 373 F.3d 1361, 1368-69 (D.C. Cir. 2004).

¹⁰ *See, e.g., Transcontinental, supra*, 518 F.3d at 921 (“Rolling in the power costs of the Cherokee compressors forced existing Transco customers to subsidize the power costs of compressors they had no need for”), *Algonquin*, 948 F.2d at 1313 (“What we do require, however, is that the Commission, before ordering a roll-in . . . offer more than a conclusionary statement that the existence of system-wide benefits renders it unjust to allocate facilities costs incrementally.”); *Complex Consolidated, supra*, 165 F.3d at 997 (“[T]he weight of the evidence favored the conclusion that the [new] facilities provided neither operational benefits nor additional reliability to Tennessee’s system customers.”).

¹¹ *New Dominion Energy Coop.*, 122 FERC ¶ 61,174, P 41 (2008), *citing Alabama Electric Coop., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982). *See also, California Power Exchange Corp.*, 106 FERC ¶ 61,196, P 17 (2004), (the “well-established principle of cost causation requires that costs should be allocated, where possible, to customers based on customer benefits and cost incurrence”). *See also Cal. Indep. System Operator Corp.*, 103 FERC ¶ 61,114, P 26 (2003) (“[w]hile this fundamental idea of matching costs to customers is often referred to in terms of cost causation, it has also often been described in terms of the costs which ‘should be borne by those who benefit from them’” (*quoting Gulf Power Co. v. FERC*, 983 F.2d 1095, 1100 (D.C. Cir. 1993))).

¹² *See Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128, at 61,391-93 (2000) (Clarified Policy Statement) (recognizing that subsidies send the wrong price signals to the market, leading to inefficient investment decisions).

policy agenda does not pass that test.

II. Dispatchable Demand Response Resources Should Be a Mandatory Component of Schedule 10.

The Schedule 10 provisions of the NOPR, as currently drafted, are missing a critical element. The NOPR should clearly and unambiguously specify that transmission providers must consider dispatchable demand response resources (DRRs) for Schedule 10 Generator Regulation and Frequency Response Service, and not limit the role of dispatchable DRRs to the option of the transmission customer to self-supply.¹³ As the Commission observed in its March 18, 2010 NOPR issued in Docket No. RM10-17, demand response can play an essential role as a resource in wholesale markets to balance supply and demand, and for synchronized reserves and regulation service.¹⁴ The NOPR describes in extensive detail the benefits of demand response and the importance of enhancing demand response participation.¹⁵

FERC should also direct each transmission provider to document its efforts to incorporate dispatchable DRRs into their tariffs as part of their Schedule 10 compliance filings. FERC has announced on numerous occasions it supports the increased use of demand response as a means to avoid costly construction of additional generation. The NOPR presents the perfect forum for FERC to remove additional barriers to wider incorporation of DRRs.

¹³ In Order No. 890, FERC modified Schedules 2, 3, 4, 5, 6, and 9 of the pro forma OATT to indicate that Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalance, Spinning Reserves, Supplemental Reserves and Generator Imbalance Services, respectively, may be provided by generating units as well as other non-generation resources such as demand resources where appropriate.

¹⁴ Notice of Proposed Rulemaking on Demand Response Compensation in Organized Wholesale Energy Markets, Docket No. RM10-17, at ¶¶ 3-10 (Mar. 18, 2010).

¹⁵ *Id.*

III. The NOPR Should Not Detract from Efforts to Achieve Source Neutrality

The NOPR is a missed opportunity. FERC should not attempt to only give special treatment to VERs; rather, it should apply the principle of “source neutrality,” which creates a level playing field for all alternative resources, including demand response and CHP. Without the adoption of a resource planning paradigm based on source neutrality, almost any non-traditional resource may fall prey to undue discrimination with respect to transmission of electric energy and sales of electric energy for resale in interstate markets. Traditional utility resource planning is designed to accommodate traditional supply-side resources – and little else. Many non-traditional resources – such as CHP, waste-to-energy technologies, demand response, and distributed generation – have encountered various regulatory barriers that interfere with cost-effective adoption of the technologies. Efforts by states (in the form of integrated resource planning or IRP) or by FERC (creation of ISOs and RTOs) have not satisfactorily removed these barriers.

In particular, due to their operational dependence to the steam host, owners and operators of behind-the-meter CHP facilities (such as industrial cogeneration units) are in much the same situation as VERs with regard to their siting and dispatchability limitations, but they do have value to bring to the market. As such, they have fought utility interests for decades to gain entry into those markets on a fair and non-discriminatory basis, only to face the same barriers being investigated in this proceeding.

ELCON notes that the Commission has begun some movement toward source neutrality, including Commissioner Spitzer’s March 2010 testimony before the House Energy and Environment Committee (“the Commission’s role should be to establish rules and policies that ensure all types of resources, whether they are natural gas, oil, hydro, nuclear, wind, solar or demand resources, have a full and fair opportunity to compete”) and the Commission’s pending

NOPRs that would provide comparable compensation to demand response providers (Docket No. RM10-17) and uniform compensation for faster response frequency regulation services (Docket No. RM11-7). However, improved market and operational efficiencies are not realized if grid operators' expectations are limited to piecemeal change focused on particular resources and services. This is inefficient. Resource planning, business practices and OATT terms and conditions, and reliability standards need to be rewritten to ensure source neutrality and not favor any particular type or class of technologies. Impediments to open access transmission service for all resources need to be eliminated to facilitate the efficient, least-cost development of infrastructure and ensure that the reliability of the grid is adequately maintained. This is the only long-term solution for preventing rates that are unjust and unreasonable and/or terms of service that unduly discriminate against certain types of resources.

NOTICES AND COMMUNICATIONS

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Dated: March 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: March 2, 2011

/s/ MARK W. WALKER
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