

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Competitive Transmission Development

Docket No. AD16-18-000

**Opening Statement of  
John P. Hughes  
President & CEO  
Electricity Consumers Resource Council (ELCON)**

I appreciate the opportunity to participate in the Commission's Technical Conference on Competitive Transmission Development. I am speaking on behalf of the Electricity Consumers Resource Council (ELCON), of which I am the President and CEO. I am also speaking on behalf of eight regional and state industrial consumer groups (collectively the "Joint Consumers") who joined ELCON is opposing a Petition for Declaratory Order filed by ITC Grid Development LLC last year.<sup>1</sup> The Joint Consumers are the Association of Business Advocating Tariff Equity (ABATE - Michigan), Coalition of MISO Transmission Customers (CMTC), PJM Industrial Customer Coalition (PJMICC), Illinois Industrial Energy Consumers (IIEC), Louisiana Energy Users Group (LEUG), Minnesota Large Industrial Group (MLIG), Texas Industrial Energy Consumers (TIEC), and Wisconsin Industrial Energy Group (WIEG).

Rate-setting based on competitive and efficient electricity markets is extremely important to the economic viability of the US manufacturing community. As the sole representative of consumer interests presenting testimony on this panel, my objective is to explain how cost containment constructs, when not properly implemented, can distort the competitive markets and increase costs to ratepayers.

The main point I want to make is that using competitive practices such as auctions is the expected business behavior of any regulated entity, not the exception

---

<sup>1</sup> Protest and Comments of the Electricity Consumers Resource Council ("ELCON") and Joint Consumers, Docket No. EL15-86-000 ("ITC Grid Development LLC"), August 27, 2015

that needs to be subsidized or promoted with incentives that ultimately distort the competitive markets. Nor should there be a rebuttable presumption that any competitively bid investment or expense be free from on-going regulatory scrutiny. Cost containment is the same and begs the question: Is the lack of cost containment the expected norm under the Federal Power Act? I think not.

The Commission is perhaps unwittingly complicit in creating an investment environment in which nothing gets done without some form of "incentives" - but which, in reality, are subsidies that only create the illusion of success. Subsidies to promote responses by independent transmission companies to the competitive solicitations mandated under Order No. 1000 do not achieve competitive markets. And easy money does not promote innovation. At best, they negate the cost savings (if any) that might be achieved by auctions for soliciting transmission projects. At worst, they simply impose added costs that have to be recovered from retail consumers.

The primary purpose of the Federal Power Act is to protect consumers, not to protect transmission project developers from risk associated with their voluntary choices to submit binding revenue requirement bids. Transmission project developers should not be allowed to shift risk to ratepayers by severely limiting ratepayers' substantive and procedural rights and abilities to protest transmission rates in the false name of "cost containment." There is no way Section 219 can be read to encourage this.

In particular, Joint Consumers strenuously oppose any binding cost containment construct such as was proposed by ITC Grid Development that would have granted the transmission project developer the extraordinary incentive of *Mobile Sierra* protection. It is a huge leap from an annual competitive auction with numerous market participants to the results of a bid for transmission services where the timeframe is 40 years for the life of the project. Locking in rates for such an extended period, precluding future claims that the rates are no longer "just and reasonable," would be detrimental to consumers.

Transmission project developers can and do condition their bid on conditions that would trigger rate increases. This includes changes to the route, interest rates, laws

or regulations, taxes, and force majeure. Even if a bid is selected as the most competitive one and is determined to establish rates that are just and reasonable, ratepayers should still have the benefit of the lower of the bid price or, should conditions change in the future, cost of service plus a reasonable rate of return.

Transmission bidding processes have successfully occurred for years, both before and after Order 1000, without giving transmission project developers extraordinarily incentivizing carrots. It was a common theme of Order 1000 compliance filings by the ISOs/RTOs that their procedures for selecting transmission developers had been functioning effectively and required little modification.

Order 1000 required the development of regional transmission planning processes and expressly recognized that factors other than cost could be crucial to the selection of more efficient and cost-effective transmission solutions. Moreover, the Commission declined to make binding bids and cost-containment a requirement of Order 1000. Allowing transmission project developers to electively submit a bid with yet-to-be-defined exemptions, and have cost recovery of that bid (or more) assured for the life of the project, is neither a necessary nor a desirable feature of those processes. We are not aware of any showings that the number or quality of bids submitted in Order 1000 processes is insufficient or that Order 1000 processes force sponsors to commit to binding cost estimates in order to compete.

Offering generic incentive treatment would also be contrary to a long-standing Commission rule and policy requiring incentive rates to be proposed and reviewed on a case-by-case basis and subject to a demonstration as to the prudence of the costs actually incurred. As noted in Order 679, "Section 219(a) states that transmission incentives should be *'benefitting consumers* by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.'" The Commission began Order 679, which implements Section 219, by stating that "the Rule does not grant incentives to any public utility but instead permits an applicant to tailor its proposed incentives to the type of transmission investments being made and to demonstrate that its proposal meets the requirements of section 219." It continued that it "will permit

incentives only if the incentive package as a whole results in a just and reasonable rate.” The Commission reaffirmed this aspect of its policy on incentives in 2012, stating in a Policy Statement that “the Commission will continue to require applicants seeking incentives to demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges.”

When it comes to incentive returns on equity, the Commission has imposed specific additional requirements: “an applicant must be within a range of reasonable returns and the rate proposal as a whole must be within the zone of reasonableness before it will be approved.” It reaffirmed that quite recently, in Opinion No. 531-B, noting that it is longstanding policy that, because the zone of reasonableness shifts over time, a transmission owner may not, at any given point in time, “be able to implement in full its awarded incentive ROE adder because the resulting total ROE would exceed the high end of the transmission owner’s zone of reasonableness.” And in its 2012 Policy Statement, the Commission clarified that it “expects incentives applicants to seek to reduce the risk of transmission investment not otherwise accounted for in its base ROE by using risk-reducing incentives before seeking an incentive ROE based on a project’s risks and challenges.” It must also “demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development.”

The Commission should reaffirm these principles in any action in this proceeding. Cost containment requirements should not be imposed with asymmetrical treatment that would benefit transmission project developers and harm consumers. Finally, case-by-case evaluation of the need for any incentives continues to be the appropriate regulatory treatment of successful projects.

Thank you again for the opportunity to share the views of ELCON and Joint Consumers on cost containment issues. I look forward to your questions and the panel discussion. ✎

Dated: June 23, 2016