

uncertainty. Industrial Customers also argues that any delay should not be used as an excuse to stall the construction of any facility for which the need has been established. SRP suggests that, if a delay in implementation is permitted, the RTO should be required to identify the entity responsible for financing and building transmission expansion prior to the RTO assuming such responsibility.

Commission Conclusion

We reaffirm the NOPR proposal that the RTO must have ultimate responsibility for both transmission planning and expansion within its region that will enable it to provide efficient, reliable and non-discriminatory service and coordinate such efforts with the appropriate state authorities. In carrying out this overall responsibility, the Commission has concluded that the NOPR's three separate requirements for RTO planning and expansion must also be satisfied or, in the alternative, the RTO must demonstrate that an alternative proposal is consistent with or superior to these three requirements. Specifically, an RTO must satisfy the requirement to: (1) encourage market-motivated operating and investment actions for preventing and relieving congestion; (2) accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities, coordinated with programs of existing Regional Transmission Groups (RTGs) where necessary; and (3) file a plan with the Commission with specified milestones that will ensure that it meets the overall

planning and expansion requirement no later than three years after initial operation, if the RTO is unable to satisfy this requirement when it commences operation.

As noted above, the RTO should have ultimate responsibility for both transmission planning and expansion within its region. The rationale for this requirement is that a single entity must coordinate these actions to ensure a least cost outcome that maintains or improves existing reliability levels. In the absence of a single entity performing these functions, there is a danger that separate transmission investments will work at cross-purposes and possibly even hurt reliability. We also recognize that the RTO's implementation of this general standard requires addressing many specific design questions, including who decides which projects should be built and how the costs and benefits of the project should be allocated.⁵⁹² As with other requirements of the Final Rule, we propose to give RTOs considerable flexibility in designing a planning and expansion process that works best for its region. It is both inevitable and desirable that the specific features of this process "should take account of and accommodate existing institutions and physical characteristics of the region."⁵⁹³ We emphasize that, as the transmission provider in the region, the RTO is required to provide service under a tariff that is consistent with or superior to the Commission's pro forma tariff, and that tariff obligates the transmission provider to expand and modify its system to provide the

⁵⁹²FERC Stats. & Regs. ¶ 32,541 at 33,751-52.

⁵⁹³Id. at 33,752.

services requested under the pro forma tariff.⁵⁹⁴ Because an RTO may not own all of the facilities it operates, we clarify that nothing in this Rule relieves any public utility of its existing obligation under the pro forma transmission tariff to expand or upgrade its transmission system upon request. Accordingly, we shall evaluate each RTO proposal to ensure that the RTO can direct or arrange for the construction of expansion projects that are needed to ensure reliable transmission services.⁵⁹⁵ However, the Commission reiterates, as discussed below, its strong preference for market-motivated operating and investment actions.

We further note that the pricing mechanisms and actions used by the RTO as part of its transmission planning and expansion program should be compatible with the pricing signals for shorter-term solutions to transmission constraints (i.e., congestion management) so that market participants can choose the least-cost response. Otherwise, their choices may reflect less efficient outcomes for the marketplace. For example, if the

⁵⁹⁴See, e.g., Section 15.4 of the pro forma tariff which requires the transmission provider to use due diligence to expand or modify its transmission system to provide requested services. Also, Section 28.2 of the pro forma tariff requires the transmission provider to plan, construct, operate and maintain its transmission system in order to provide network service, and to endeavor to construct and place into service sufficient transmission capacity to deliver network resources to network customers on a basis comparable to its own use of the transmission system.

⁵⁹⁵We note that existing ISOs have addressed similar issues successfully. For example, the PJM ISO is responsible for expansion planning, but the transmission owners remain obligated to undertake upgrades necessitated by the plan, 81 FERC ¶ 61,257 at 62,275 (1997).

price of expansion overstates its cost (or the price of congestion management understates actual congestion cost), market participants likely will continue congestion management solutions to a transmission constraint when expanding the system to relieve congestion is more efficient.

Market-Motivated Actions

Planning new generation or new transmission requires a coordinated approach to ensure reliability and efficient congestion management. However, this does not necessarily imply that all transmission expansions must be centrally planned by the RTO. Where feasible, an RTO should encourage market approaches to relieving congestion. A market approach will require providing all transmission customers with access to well-defined transmission rights and efficient price signals that show the consequences of their transmission usage decision. If the RTO's market approach is successful, the decisions of where, when and how to relieve congestion will be driven by economic considerations.

Most commenters agree with the NOPR proposal that RTOs should rely upon market signals and market solutions in assessing all feasible options (e.g., construction of new generation, redispatch of existing generation, as well as expansion of the transmission grid) to assure that the least costly option is pursued. If an RTO can facilitate market-motivated decisions, several commenters point out that its planning role may largely be limited to extreme circumstances where continuing congestion in an area threatens reliability. However, we also recognize that different market approaches to

relieving congestion are still in the early stages of development. Similarly, while market approaches to expansion are the subject of much discussion, they are also in the early stages of development.⁵⁹⁶ It is not the intent of the Commission either to mandate a market approach to the exclusion of an executive decision by the RTO or to mandate any particular market approach.

Nevertheless, if any market-driven approach is to be successful, there must be accurate price signals that reflect the costs of congestion and expansion costs. As we stated in the NOPR, accurate price signals are the link between current usage and future expansion. Therefore, as discussed in more detail in Section III.E.2 Congestion Management, every RTO must establish a system of congestion management that establishes clear rights to transmission facilities and provides market participants with price signals that reflect congestion and expansion costs. In implementing its planning and expansion responsibility, an RTO must ensure that its decisions are not unduly discriminatory and produce efficient outcomes.

⁵⁹⁶For example, TDU Systems and other commenters suggest that, by promoting competition for new construction, the RTO can minimize construction cost and also reduce its own risk profile. For example, an ISO in Victoria, Australia (VPX), which operates, but does not own transmission assets, uses competitive bidding for new transmission facilities. At the Regional ISO Conference in Richmond, Virginia on June 8, 1998, Raymond Coxe described how VPX's strategy resulted in a number of bidders competing for the right to build, own and operate new facilities. He concluded that the "result of this competition was a lower price to the consumers of Victoria than would have resulted from regulated transmission service by the largest incumbent provider." Transcript at 86, Docket PL98-5-006.

The Commission reaffirms its statement in the NOPR that independent governance of the RTO is a necessary condition for nondiscriminatory and efficient planning and expansion. While accurate price signals can signal the need for expansion, such expansion may not be achieved if an RTO operates under a faulty governance system (e.g., a governance system that allows market participants to block expansions that will harm their commercial interests).

Multi-State Agreements and RTGs.

The final rule fully recognizes the statutory authority of the states to regulate siting of transmission facilities. Currently, state and local governments and regulatory agencies have exclusive authority over the siting process. Therefore, an RTO's planning and expansion process must be designed to be consistent with these state and local responsibilities.

RTOs must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The Commission encourages the development of multi-state agreements or compacts to review and approve new transmission facilities. This would expedite transmission construction and eliminate duplicative (and possibly conflicting) reviews by multiple states. To facilitate any voluntary actions taken by our state colleagues, we will require that the RTO planning and coordination system must be able to accommodate the possible emergence of new regional regulatory systems.

Existing RTGs have clear and prominent roles in transmission expansion decisions in which planning for transmission improvements are coordinated through collaborative processes. To avoid duplicative efforts, the RTO process must build on existing RTG planning processes. Over time, since the RTO will have ultimate responsibility for planning the entire transmission system within its region, we expect that the functions of an RTG will be assumed by an RTO to avoid unnecessary duplication of effort.

Three-Year Implementation.

If the RTO is unable to satisfy the planning and expansion function when it commences operation, it must file a plan with the Commission with specified milestones that will ensure that it meets this requirement no later than three years after initial operation. Recognizing that the planning and expansion function may require coordination among multiple parties and regulatory jurisdictions, we do not require this function to be in place at the initial operation of the RTO. We continue to believe that three years is a reasonable deadline for creating an operational planning and expansion system. Therefore, we will not extend this deadline or the requirement to file a plan with the Commission with an implementation timetable. This time period could be affected by the RTO's scope, the number of states and market participants, and implementation costs; however, the urgent needs of the electricity markets make us disinclined to extend these deadlines.

However, the delay should not stall the construction of new or enhanced facilities for which needs have been established, unless the RTO makes a positive decision that the facility is not in the best interests of the region. Delaying transmission expansion could result in significant market inefficiencies as well as unacceptable risks to reliability given the long regulatory and construction lead times required to build new facilities.

8. Interregional Coordination (Function 8)

In Order No. 888, the Commission identified eleven principles it would use to assess Independent System Operator (ISO) proposals submitted to the Commission.⁵⁹⁷ One of these principles required that the ISO develop mechanisms to coordinate with neighboring control areas to ensure reliability and the provision of transmission services that cross system boundaries. The RTO NOPR encouraged transmission entities to consider ways to reduce impediments to transactions among themselves,⁵⁹⁸ but a coordination requirement was not included explicitly in the RTO NOPR. Several commenters pointed out that there was no explicit coordination requirement proposed in the RTO NOPR and recommended including a function for RTOs similar to the coordination principle in Order No. 888.

Comments

⁵⁹⁷Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,730-32.

⁵⁹⁸FERC Stats. & Regs. ¶ 32,541 at 33,758.