

Because we believe market monitoring is essential, we decline to set any sunset date for monitoring at this time. However, as bulk power markets evolve and become more competitive, we may revisit the need for the type of monitoring the Rule requires.

7. Planning and Expansion (Function 7)

In the NOPR, the Commission proposed that the RTO planning and expansion process must satisfy certain standards. Specifically, RTOs would be required to: (1) encourage market-motivated operating and investment actions for preventing and relieving congestion; and (2) accommodate efforts by state regulatory commission to create multi-state agreements to review and approve new transmission facilities, coordinated with programs of existing Regional Transmission Groups (RTGs) where necessary. We suggested that RTOs be designed to promote efficient use, which requires efficient price signals such as congestion pricing, and efficient expansion of their regional grid, which requires control over planning and expansion. We specifically proposed that the RTO have ultimate responsibility for both transmission planning and expansion within its region. If the RTO is unable to satisfy the planning and expansion requirement when it commences operation, we proposed that the RTO must file a plan with specified milestones that will ensure that it meets this requirement no later than three years after

initial operation. In addition, the Commission sought comment on whether three years is an appropriate amount of time for implementation of this function.⁵⁸⁰

Comments

Encourage Market-Motivated Operating and Investment Actions for Preventing and Relieving Congestion

Many commenters support the Commission's proposal to require that an RTO must ensure the development and operation of market mechanisms to plan and refinance transmission system expansion. As part of this an RTO should provide all transmission customers with efficient price signals that show the consequences for their transmission use decisions.⁵⁸¹

Some commenters, such as JEA and Williams believe that this role is best performed by for-profit entities because system expansion decisions must be driven by economic considerations. Entergy also contends that a transco will not create any bias in the method of grid expansion.

Los Angeles agrees that an RTO should rely upon market signals and market solutions in assessing all feasible options (e.g., construction of new generation, redispatch of existing generation, grid expansion) to assure the least-cost option is pursued.

NASUCA also argues that the Commission should mandate that RTOs use least-cost

⁵⁸⁰FERC Stats. & Regs. ¶ 32,541 at 33,751-53.

⁵⁸¹See, e.g., United Illuminating, Wyoming Commission, Industrial Consumers, Champion, NSP, PG&E, Williams, LG&E, FTC and APX.

planning on a region-wide basis for transmission system expansions and upgrades. It notes that the larger the region over which least-cost planning is conducted, the more economically efficient the outcome is likely to be. If market solutions do not develop or are not timely, Los Angeles believes that the RTO must have the power to resolve the transmission problem. LG&E proposes that RTOs be permitted to use competitive bidding as a means to meet new transmission investment needs.

EPA believes that RTOs should adopt a resource planning process with sufficient flexibility to consider non-traditional resources and to assign appropriate values to their unique benefits. EPA further believes that RTOs should be encouraged to take into account environmental costs and benefits that are not reflected in resource prices.

Puget suggest that the Commission should recognize that the concept of RTOs may contain some elements that do not enhance the reliable operation of the transmission grid. Puget requests that the Commission should address more fully how it will mitigate the effects of the severance of generation and transmission planning and operation and how it plans to ensure maximum reliability at the lowest integrated costs.

NASUCA recommends that the Commission require RTOs to develop a baseline regional transmission expansion plan that would identify the regional system's ability to meet essential NERC reliability criteria and isolate potential constraint areas of the existing system where upgrades may be necessary or additional generation desirable. Such a baseline plan could provide a valuable tool to market participants in signaling the

best locations for new generation projects. Entergy proposes the use of a regional transmission plan that includes a regional transmission planning summit process involving all stakeholders.

TAPS, however, questions whether market-based mechanisms to expand the transmission grid will emerge readily from an efficient short-term transmission pricing regime that accounts properly for the costs of congestion. TAPS asserts that, while efficient congestion pricing is an important component of a well-designed transmission regime, it is not the answer to the concerns that have been raised regarding the lack of economic and regulatory incentives to expand the transmission grid.

Many commenters agree that RTOs should be responsible for conducting the studies necessary to assess the need for new transmission system enhancement.⁵⁸² However, some commenters argue that the role of the RTO should be to facilitate market investment by others in new transmission and generation, not to lead the market by making its own plans for new facilities. For example, Seattle suggests that the RTO should generate information on the locations, frequencies and costs of congested paths to guide capital investment. It believes that the RTO need not make capital investments directly; rather it should seek market mechanisms, such as requesting bids for needed capacity, to encourage investments. EME states that performance of this role requires

⁵⁸²See, e.g., EME and Seattle.

accurate accounting for the impact of congestion and new generation, and proper allocation of costs to those that require such costs to be incurred.

To ensure that transmission expansion decisions are not biased, ComEd proposes that RTO functions be performed by two linked organizations that together make up a "Binary RTO." ComEd envisions that the Binary RTO would consist of for-profit independent transmission companies (ITCs), each operating a large aggregation of existing transmission systems, under the oversight of an independent, not-for-profit Regional Transmission Board (RTB). The ITCs will identify transmission additions, upgrade opportunities, and prepare long-range plans which would be reviewed by the RTB and subsequently integrated in an RTB-wide planning system.

Powerex believes that it is better to eliminate congestion at its source through facilities upgrades, if economically and environmentally feasible, than to attempt to manage congestion on a long-term basis through congestion pricing schemes.

Many commenters support the concept that RTOs must be responsible for transmission planning and that single-system planning should be the objective of the RTO planning process.⁵⁸³ Commenters differ, however, on the extent of the RTO's role in the planning process. Some commenters, such as Powerex, argue that the RTO must have control over transmission service, planning, system impact studies and facilities studies,

⁵⁸³ See, e.g., PNGC, Wisconsin Commission, EAL, Entergy, PJM, Minnesota Power and Montana-Dakota.

and the authority to determine the need for, and require the implementation of, transmission upgrades by member utilities. Other commenters, such as LIPA and H.Q. Energy Services, propose that, in the absence of transmission expansion proposals from current or proposed market participants, the RTO should have the responsibility for assessing whether transmission improvements are needed and, if a need is found, the RTO should have the authority to order such expansion.

Some commenters such as NY ISO, on the other hand, express concern that exclusive authority by the RTO over transmission planning is overly restrictive. NY ISO claims that entities which are responsible for coordinating transmission expansion, but which lack authority to make enforceable planning decisions, can nevertheless achieve the Commission's primary transmission expansion-related goal, i.e., ensuring that investments in new transmission facilities are coordinated to ensure a least-cost outcome that maintains or improves existing reliability levels.

H.Q. Energy Services objects to NY ISO's arguments as being merely concerned with preserving its so-called "two-tier" governance system which provides NY ISO transmission owners with significant authority, or veto power, over interconnections with generating facilities and over decisions related to transmission system planning and expansion. H.Q. Energy Services does not believe that the two-tier approach is appropriate unless the RTO has ultimate decision-making authority.

Many commenters agree with the proposal that an RTO must be ultimately responsible for all transmission expansions and upgrades.⁵⁸⁴ These commenters claim that transmission operations must be conducted on an independent and fair basis and must be undertaken by an impartial entity if transmission services are to be offered on a truly non-discriminatory basis. They argue that vesting the RTO with the ultimate responsibility for expanding transmission systems eliminates the conflict that is inherent in vesting these responsibilities with an entity that also has commercial interests that are competing with users of the system.

Although SMUD supports having the RTO be responsible for transmission planning and expansion, it cautions that, in such a paradigm, people that have no responsibility to the ratepayers will be deciding planning and expansion issues. Therefore, SMUD argues that the Commission needs to scrutinize the recovery of the costs of such expansion to ensure that such expansion decisions and costs are prudent, just and reasonable.

Several commenters agree that the RTOs can and should play a significant role in the transmission planning and expansion process.⁵⁸⁵ Some of these commenters, such as NYPP and Mass Companies, however, do not believe that the Commission should require

⁵⁸⁴ See, e.g., San Francisco, SoCal Cities and CMUA.

⁵⁸⁵ See, e.g., NYPP, Industrial Customers, Mass Companies and Nevada Commission.

that RTOs have authority to order a transmission owner to modify or expand its transmission system. Nevada Commission believes that transmission owners should be allowed to assist an RTO in the development of grid planning criteria and could take the lead in such grid planning with RTOs performing more of an overview role. Professor Joskow states that the transmission owners, operating through a sound RTO/ISO transmission planning process should be expected to be the primary, but not necessarily the exclusive, source of network enhancement initiatives. WEPCO argues that transmission owners should be integrated into the RTO regional transmission plans where they can be improved and expanded to meet regional needs most efficiently. Turlock contends that the RTO's authority over the transmission system it operates must be limited to that system. Turlock argues that the RTO should not have the ability to force expansion of lower voltage or tangentially related facilities which are beyond the area of its responsibility, even if those other facilities might have a small but theoretically possible impact on the RTO's facilities.

CP&L supports a coordinated planning approach which would be similar to the planning approaches identified in the Midwest ISO and the Alliance RTO filings, where the RTO would have responsibility for review of the transmission plan, but the individual transmission-owning entities would provide the necessary input to facilitate the development of the comprehensive RTO transmission plan. East Kentucky argues,

however, that an individual transmission owner should be able either to require or to veto the building of a particular RTO facility.

MidAmerican disagrees with the proposal that the RTO have the ultimate responsibility for both transmission planning and expansion in the region. MidAmerican claims that existing regional transmission groups (RTGs) have clear and prominent roles in transmission expansion decisions in which planning for transmission improvements are coordinated through collaborative processes that already involve many interested stakeholders in the widest fashion possible. MidAmerican states that throughout the MAPP region there is broad support for continuing transmission planning and expansion decisionmaking as a collaborative function and that the existing collaborative processes adequately accommodate RTO participation.

Central Maine believes that RTOs/ISOs can and should play a significant role in the transmission planning and expansion process, but disagrees with the Commission's proposal to give ISOs ultimate responsibility for transmission planning and expansion. Central Maine does not object to ISOs having oversight responsibility in these area, but Central Maine believes that the planning and engineering functions should be a shared responsibility between utilities and RTO, *i.e.*, the Commission should consider utility planners as a satellite to the ISO/RTO similar to satellite function served by utility control centers in monitoring, switching and dispatching. Central Maine states that the

Commission should grant individual transmission owning utilities an equal voice in determining the technical aspects of transmission planning and expansion.

Although Big Rivers believes that, as proposed in the NOPR, the RTO should be the default provider of transmission planning and expansion, it agrees with NRECA that incumbent transmission owners should have the first opportunity to build required transmission system expansion with RTO ability to facilitate needed construction by others.

Some commenters suggest specific tasks and functions that the RTO should perform or have the ability to require as part of the transmission planning and expansion function.⁵⁸⁶ For example, SRP proposes that at a minimum, each RTO should have the authority to: (1) direct transmission owners to study and evaluate system performance and to develop plans to solve known reliability or adequacy problems; (2) revise or combine elements of transmission owners' plans to achieve the most efficient and reliable transmission expansion plan; (3) approve or reject any component of the RTO transmission plan developed by a transmission owner; and (4) approve facility additions by third parties.

⁵⁸⁶See, e.g., Project Groups, LIPA and SRP.

Accommodate Efforts by State Regulatory Commission to Create Multi-State Agreements to Review and Approve New Transmission Facilities

Many comments concur that multi-state agreements are to be encouraged and that the RTO should be designed to work within that structure.⁵⁸⁷ Commenters, including NSP and Nevada Commission, encourage the Commission to provide an active role for RTOs to participate with state and local government in the siting and licensing of new facilities. PJM states that a cooperative relationship between RTOs and the states is essential to effective transmission expansion planning. In PJM's view, states are more likely to trust the planning decisions of RTOs that have no commercial interest in transmission and generation expansion than decisions made by transmission-owning entities, which have commercial interests.

Cinergy recommends that the final rule include a Commission commitment to proceed aggressively to establish a forum to encourage coordination of RTO planning and expansion among states through multi-state certification agreements and multi-state regional planning boards. Cinergy notes, however, that the creation of a forum or agency to review grid planning and expansion that would consider the public interest beyond the constraints of state boundaries may require federal legislation. If so, the Commission should be aggressive in its dialogue with Congress to obtain the requisite legislative relief.

⁵⁸⁷ See, e.g., Illinois Commission, DOE and New Smyrna Beach.

The Kentucky Commission suggests creating a voluntary "Joint Board on Regional Transmission Siting" to develop and review standards for transmission expansion. The Joint Board would include participation from the Commission, state commissions, RTOs, and other interested parties. The Joint Board would also convene ad hoc committees to review specific transmission expansion proposals. Pennsylvania Commission also prefers a joint Federal-state approach towards regulating RTO site approvals, expansion, innovation and customer service. It notes that a joint Federal-state approach has been used with success in other areas, such as the Susquehanna River Basin Commission, the Delaware River Basin Commission and the Joint Pipeline Office which regulates the Trans-Alaska Pipeline System.

Illinois Commission recommends that accommodation of multi-state efforts be expanded to include the possibility of multi-state regional regulatory oversight organizations. Such organizations could be instrumental in coordinating regional solutions to regulatory and policy issues.

Otter Tail expresses concern that multi-state agreements may not actually add to the efficient use and expansion of the interstate transmission system due to a danger that these types of agreements could be mired in state-versus-state political conflict and become unworkable, to the detriment of transmission owners, generators, and ultimately customers. Industrial Consumers also does not believe that requiring an accommodation with "multi-state agreements" is necessarily productive. It states that nothing now

prevents such coordination among states, yet there is no obvious evidence that this will work. Industrial Customers believes that states will always reserve the right to veto a project that may be partially situated within their jurisdiction, regardless of the benefits elsewhere.

East Texas Cooperatives believes that retention of state public utility commission authority over siting (and other necessary approvals) is necessary to control the risk of overbuilding because RTOs will have no real incentive to limit facility construction.

Commenters generally express support for the proposal that the RTO build on existing RTG processes.⁵⁸⁸ For example, Industrial Consumers urges that the Commission require existing RTGs to merge their functions with the RTOs because RTGs should not be allowed to develop an institutional culture that diverges from the goals and objectives of RTOs.

New Smyrna Beach and Oneok claim that market participants will undoubtedly benefit from a multi-state siting process for transmission because it may make siting of new generation easier if there is more certainty that related transmission siting decisions will be made on a timely basis with one-stop shopping.

Several commenters address the role of the Commission in the RTO planning and expansion process. Detroit Edison and Wolverine Cooperative support the establishment of the Commission as the primary channel of certification for transmission siting,

⁵⁸⁸See, e.g., Wisconsin Commission, Industrial Customers and SRP.

construction, and expansion. Detroit Edison states that regional reliability organizations and the RTOs in each reliability region should be permitted to determine necessary changes and additions in transmission with input from transmission owners, control area operators, and other interested parties. It is vital, it states, that a single administrative agency resolve issues related to the siting of transmission facilities on a regional basis and have the authority to approve transmission expansion plans on a timely basis. Detroit Edison believes that the Commission should fill the important role of sole regulator over transmission siting and construction, just as it currently does in approving the siting and construction of natural gas pipelines, and it urges the Commission to work to gain such authority.

Pennsylvania Commission recommends that, if an RTO determines that transmission expansion is necessary, it should file with the Commission to demonstrate that need. Once the Commission determines a need exists within the RTO, the RTO should then file with the appropriate states for a determination of the siting issues. Pennsylvania Commission believes that vesting authority for determining the need for transmission expansion with the Commission solves several problems that are certain to arise in state forums. Federal determination of the need for transmission expansion obviates the burden of filing with multiple jurisdictions and possibly receiving conflicting determinations.

Otter Tail states that Commission should seriously consider whether the public interest would be better served through adoption of a transmission siting policy that is similar to review of interstate natural gas pipelines.

NY ISO claims that in many cases transmission expansion is delayed or blocked entirely by environmental and other transmission siting regulations. Nevertheless, NY ISO supports the NOPR's proposal that RTOs participate in efforts to create multi-state transmission expansion agreements.

East Kentucky believes that there needs to be some regulatory oversight authority for facilities that are deemed necessary by an RTO planning staff. East Kentucky proposes that this regulatory authority be the Commission or a regional regulatory authority.

Conlon recommends that the Commission have the necessary authority to enforce reasonable siting request, or critically needed future transmission lines could be delayed causing a reliability risk. Granting the right of eminent domain to transcos or ISOs in Federal legislation would be another approach. This could be accomplished by the Commission recommending to Congress that it have the right of eminent domain.

LG&E believes that it is important that state authority over system expansion not impede necessary improvements that enhance the efficiency of the regional grid that is, or will be, subject to RTO control. Ultimately there may be a need for a congressional solution to the current balkanized system for authorizing grid expansion. In its

comments, the East Central Area Reliability Council explicitly calls for such legislative action based on its concern that transmission facility expansion requests will fail as they become bogged down in multiple state reviews. LG&E shares this concern. Still, until such time as the statutory framework for transmission expansion is amended, LG&E believes that RTOs represent an opportunity for coordinating regional transmission expansion needs among transmission owners and state authorities.

Project Groups maintains that RTOs should be required to coordinate and lead in the development of comprehensive least cost regional plans for assuring short- and long-term system reliability, and they must coordinate the actions necessary for implementing timely system upgrades and additions pursuant to those plans. For example, RTOs must be given the authority to petition state and local regulators for necessary siting authorizations, including certificates of need or public necessity and environmental permits, as well as the authority to order construction of facilities sited and permitted under state regulatory authorities. The Commission should encourage state reliance on RTO-approved plans as the primary basis for the exercise of eminent domain powers under state law.

Puget notes that state condemnation powers granted to utilities are usually limited for the benefit of the citizens of the state in which the utility operates. It is not clear that a state utility can delegate its state condemnation power to a regional RTO. Therefore,

the final rule should expressly address how state condemnation authority can be legally exercised by a regional RTO.

NASUCA maintains that the RTO regional planning efforts must not displace state government siting authority. NASUCA states that the final rule should specifically recognize state statutory authority to regulate siting of transmission facilities. For other planning and expansion matters, the Commission should require RTOs to establish a process to ensure that the RTO obtains input from state government agencies with respect to the regional transmission plan. Nevada Commission states that it is imperative that the RTO coordinate transmission siting and planning with state agencies. Tri State believes that states should continue to fulfill their traditional roles in siting transmission facilities. However, it notes that it may be necessary for the states to consult with the RTO on transmission facility certification since the RTO will be charged with overall responsibility for transmission planning and will be required to work cooperatively with states and other regional groups.

CP&L supports state and local governments retaining the authority for certification and siting of new transmission facilities. These government agencies are closer to the local residents who will be affected and can best evaluate the great number of factors that must be considered in approving transmission routes.

Several commenters address the issue of eminent domain authority as a component of the transmission planning and expansion function. East Kentucky believes that the

issue of eminent domain needs to be addressed for not only RTOs, but also for the entire open access transmission network. East Kentucky questions whether an entity, if required by an RTO or the Commission to construct a transmission facility, has eminent domain authority that is sufficient to allow the entity to acquire all property rights necessary to construct the required facility. Consequently, East Kentucky argues that, as a general proposition, Congress needs to grant federal eminent domain authority to any entity that is required by the Commission or any form of RTO to build a facility so that such entity can acquire private property rights under Federal law. Because it believes that siting of transmission has become the principal impediment to transmission expansion, EPSA also advocates that the RTO should be delegated sufficient authority to direct transmission owners or others to exercise their eminent domain authority, as necessary, to implement transmission system expansion plans independent of the source of funds or the beneficiary of the project. Under current law, this authority must come from the states. Thus, EPSA also advocates the passage of Federal legislation that vests the Commission with primary jurisdiction over major transmission planning and siting decisions, perhaps subject to a requirement that the Commission consult with a regional siting authority or a consortium of affected state siting boards.

Central Maine disagrees and recommends that the Commission should reject EPSA's comments. Central Maine notes that, if a state government intends that an RTO have the power of eminent domain, the state legislature will grant it. Central Maine

argues that RTOs should not be granted the power to do something indirectly that they may not do directly. Consequently, it believes that EPSA must pursue its proposal through the enactment of state legislation.

Whether Three Years Is an Appropriate Amount of Time for Implementation of This Function

Several commenters support the Commission's proposal to allow up to three years to implement the planning and expansion function.⁵⁸⁹ Some commenters, however, believe that three years is too short.⁵⁹⁰ South Carolina Authority suggests a five-year period. Florida Commission believes that it is premature to set any time limit for implementation of the planning and expansion function.

On the other hand, several commenters believe that three years is too long a period.⁵⁹¹ Most of these commenters believe that the planning and expansion is such an important function that its implementation should not be delayed at all. NYC suggests that implementation should not be delayed more than a year. SRP argues that the uncertainty that currently exists about who ultimately will be responsible for building and paying for new transmission facilities is causing delays in upgrades. According to SRP, requiring the RTO to perform this function upon commercial operation will eliminate this

⁵⁸⁹ See, e.g., Tri State, SoCal Edison and PNM.

⁵⁹⁰ See, e.g., NECPUC, Duke and South Carolina Authority.

⁵⁹¹ See, e.g., Champion, NYC, Turlock, SRP, TDU Systems and Industrial Customers.

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