

Current Topics in Electricity Law

Table of Contents

Part One Transmission: Not Your Grandparents' Monopoly

I.	Regional Transmission Planning Under Order 1000: What's Pending in Court?.....	TRANS-1
A.	Can FERC order transmission providers to create regional plans?	TRANS-1
1.	Order 1000 background	TRANS-1
2.	Questions and comments	TRANS-1
B.	Are FERC's cost allocation principles lawful?	TRANS-3
1.	Judicial principles	TRANS-3
2.	FERC's general principles.....	TRANS-8
3.	Cost Allocation Principle 1: Allocate costs roughly commensurate with benefits.....	TRANS-8
4.	Cost Allocation Principle 2: No involuntary allocation of costs to non-beneficiaries	TRANS-10
5.	Cost Allocation Principle 3: Benefit-to-cost threshold ratio.....	TRANS-10
6.	Participant funding.....	TRANS-11
C.	Can FERC remove the incumbents' "right of first refusal" from transmission tariffs?	TRANS-12
1.	Overview.....	TRANS-12
2.	FERC's legal arguments.....	TRANS-12
3.	Legal arguments against FERC.....	TRANS-14
4.	What about reliability projects?	TRANS-15
5.	Commissioner Moeller's dissent	TRANS-16
6.	<i>Mobile-Sierra</i> issues	TRANS-17

**II. Merchant Transmission:
Who Should Control Access and Pricing?.....TRANS-19**

A. Summary TRANS-19

B. Eligible projects TRANS-19

 1. Merchant transmission project TRANS-19

 2. Non-incumbent, cost-based, participant-funded
 transmission project TRANS-19

C. FERC’s rationales TRANS-20

D. Four factors for assessing merchant transmission..... TRANS-20

E. Ten criteria for justness and reasonableness TRANS-21

F. Open solicitation TRANS-21

G. Post-selection demonstration TRANS-23

H. Affiliate relations TRANS-24

I. Concerns TRANS-24

**III. Transmission "Incentives":
What "Risks" Are Worth Paying For?TRANS-26**

A. Summary TRANS-26

B. Background TRANS-26

 1. Section 219 of the Federal Power Act TRANS-26

 2. FERC's policy in brief..... TRANS-27

 3. FERC's sequential analysis TRANS-28

C. Nexus test..... TRANS-31

D. Risk-reducing incentives..... TRANS-32

E. Applicant obligations TRANS-32

 1. Identify risks and challenges TRANS-32

 2. Minimize risks TRANS-33

 3. Consider alternatives..... TRANS-33

 4. Commit to cost estimates TRANS-34

Part Two
Renewables and Demand Response:
Freed from Discrimination or Grantees of Special Favors?

IV. Integrating Variable Energy:
Intra-Hour Scheduling and Forecast DataRDR-1

A. Background RDR-1
B. Intra-hour scheduling RDR-3
C. Data on variability RDR-9

1. Rationale RDR-9
2. Statutory basis RDR-10

V. Demand Response:
What Compensation? What Market Structure?RDR-12

A. Background RDR-12
B. Rationale RDR-13
C. Cost-effectiveness: The Net Benefits Test RDR-14
D. Allocating cost of demand response payments RDR-14
E. Is LMP compensation overcompensation? RDR-15

Part Three
Market Structure Struggles:
Do We Want Competition or Not?

VI. Wholesale: FERC–State Tensions Over Reliability, Price Protection, and Renewable EnergyMKT-1

A. The states' concerns MKT-1

1. Reliability MKT-1
2. Price protection MKT-1
3. New Jersey's actions MKT-2
4. Maryland's actions MKT-2

B.	FERC's response: The Minimum Offer Price Requirement prevents buyer market power	MKT-3
1.	FERC's concern.....	MKT-3
2.	PJM's solution.....	MKT-4
3.	New England's solution.....	MKT-4
4.	Legal arguments on MOPR.....	MKT-6
5.	Comment.....	MKT-6
C.	FERC's response: Capacity obligation protects against freeridership.....	MKT-8
1.	The issue	MKT-8
2.	The answer	MKT-8
3.	Background on facts and concepts.....	MKT-9
4.	The Court's reasoning	MKT-10
D.	Comments on the MOPR and the capacity obligations	MKT-14

VII. Retail: Demand Response, Smart Grids and Microgrids:

	Are They Eroding the Utility's Exclusive Franchise?	MKT-17
A.	Demand response: What are the market structure options?.....	MKT-17
1.	Demand response bid into retail markets.....	MKT-17
2.	Demand response bid into wholesale generation markets	MKT-17
3.	How do FERC's demand response policies affect states?.....	MKT-21
4.	Legal concerns on demand response.....	MKT-21
5.	Hempling opinion on the compensation debate (i.e., Is LMP for DR "overcompensation"?).	MKT-22
B.	Smart grid: Will incumbents have first-mover advantage?	MKT-22
1.	Last mile.....	MKT-23
2.	Meter data	MKT-24
3.	Interoperability.....	MKT-25
C.	Microgrids <i>et al.</i> : Do traditional state utility laws need adjusting to allow to entrants?	MKT-26
1.	Market structure	MKT-26
2.	Defining obligatory service.....	MKT-30
3.	Universal service.....	MKT-30
4.	Other structural features.....	MKT-31

Part Four
Reliability:
FERC Leads—Where Are the States?

VIII. "Bulk Electric System": The New Bright Line REL-1

A.	Statutory background	REL-1
B.	Summary of the FERC Order.....	REL-2
C.	The NERC definition	REL-3
1.	Core definition	REL-3
2.	Five inclusions	REL-3
3.	Four exclusions	REL-4
4.	FERC comments	REL-5
D.	"Local distribution"	REL-6
E.	Inclusions and exclusions.....	REL-7
F.	Commission authority to re-designate facilities.....	REL-8
G.	Question: What does this mean for determining prudence at the state and federal level?	REL-8

**IX. Solar Storms and Tree Branches:
FERC's Proposals for Preparedness REL-9**

A.	Reliability standards for geomagnetic disturbances.....	REL-9
1.	Statutory background	REL-9
2.	The problem.....	REL-9
3.	Summary of FERC Proposed Rule	REL-11
4.	Costs.....	REL-12
5.	Solutions	REL-12
B.	Reliability standards for vegetation management	REL-15

Part Five The Future

X.	Mergers: Does Anyone Have a Vision?	FUT-1
A.	Characteristics of changes in control	FUT-1
1.	Business purpose.....	FUT-1
2.	Market structure	FUT-2
3.	Transactional form	FUT-5
4.	Structural level	FUT-6
5.	Public or private?	FUT-7
6.	Control and influence.....	FUT-7
B.	Benefit-cost relationship: Is the merger "worth it"?	FUT-10
1.	The merger equation: What is the appropriate relationship between benefits and costs?....	FUT-10
2.	Transaction cost and transition cost	FUT-12
3.	Acquisition premium cost	FUT-13
4.	Benefits: Which ones count?	FUT-16
a.	Types of benefits	FUT-16
b.	Certainty and verifiability	FUT-20
c.	Distant future benefits	FUT-21
d.	Benefits achievable without a merger	FUT-23
XI.	The Federal-State Relationship: How Well Is It Working?.....	FUT-27
A.	Substance: What are the current stress points in the FERC-state relationship?.....	FUT-27
B.	Politics: What institutional factors sustain these stresses?	FUT-28
C.	Future: What are some paths to effective co-regulation?	FUT-29
XII.	Effective Regulators: What Are Their Attributes and Actions? ..	FUT-30
	Purposefulness	FUT-30
	Education	FUT-33
	Decisiveness.....	FUT-37
	Independence	FUT-40

Commissions Are Not Courts; Regulators Are Not Judges.....	FUT-43
The Regulatory Mission: Do We “Balance” Private Interests, or Do We Align Them with the Public Interest?.....	FUT-47
Essential to Effectiveness:	
Community Acceptance of Regulation’s Mission	FUT-50
“Framing”: Does It Divert Regulatory Attention?.....	FUT-53