

Friday, July 22, 2011

FERC releases Order 1000, final rule on transmission

FERC at its regular meeting yesterday released Order 1000, the highly anticipated final rule on transmission cost allocation and planning. The rule in its final form does not differ much from the proposal issued last year, though the commission did carve out some exceptions to the elimination of the rights of first refusal (ROFRs) among other tweaks.

"This rule is an important step forward, building on FERC's successful market reforms over the past 15 years," said Chairman Jon Wellinghoff. "Our action today promotes efficient and cost-effective transmission planning and the fair allocation of costs for new transmission facilities."

Transmission planning will have to take public policy into account now along with reliability and economics. The order does not spell out exactly which policies will have to be addressed, leaving those debates up to the regions. Some regions have already addressed public policy in their planning processes.

The commission's NOPR drew significant interest from the industry and Congress, some supportive and some strong opposition by many who worried that the costs of new lines would be spread to those who do not benefit.

"If there are no benefits, there will be no costs," said Wellinghoff.

The language Order 1000 adopts is that costs have to be "roughly commensurate" with benefits, which can and almost certainly will be interpreted in many different ways.

FERC did not lay out a laundry list of specifics for the regions to deal with in their cost allocation and planning rules. It set broad categories and principles that regions will have to follow but many of the specifics will be left up to compliance processes.

The order lays out six cost-allocation principles that are generally designed to ensure costs are roughly commensurate with benefits, that only beneficiaries pay and that projects with positive net benefits are

not excluded due to unrealistic cost-benefit determinations. The principles are meant to ensure costs are not allocated outside of a region unless the other region agrees.

The principles call for transparency in cost allocation decisions and allow for different cost allocation methodologies for different types of transmission.

ISO/RTOs and planning regions outside of them will have a year to come up with new planning and cost allocation methods or show their existing processes are in compliance with the order.

Each pair of neighboring regions will have 18 months to come up with planning

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NEM offers detailed clarifications for CFTC's definition of 'swap'

NEM filed comments yesterday on the CFTC's NOPR implementing the Dodd-Frank Act, "to give them some really easy-to-understand clarifications to the definition of swap so they don't unduly increase the cost of energy or make it more difficult or risky to fulfill existing contracts or new contracts for energy," NEM President Craig Goodman told us yesterday. The filing asked CFTC to include RECs in the definition of swaps for non-financial industry entities, too.

Various energy stakeholders have been struggling to make sure CFTC does not saddle their use of swaps with definitions meant to describe practices in very different fields (RT, [Jun-14](#)).

CFTC's proposal would take away an exemption for energy that was designed "with the recognition that our business

is, day-in and day-out, to provide energy for physical consumption to an end user," Goodman explained. That is very different from a farmer taking corn to market, someone selling gold bullion on the market -- and different from making a market in default swaps for mortgages, he added.

As has been amply reported elsewhere, his latter example referred to the practice that brought about the Dodd-Frank Act -- that the CFTC is now trying to implement. The sort of speculation involved in those financial instruments, said Goodman, is "not rampant in our business. The only time that we have what is called a 'book-out' is if temperatures go up or down and we need more or less energy to fulfill our contracts," he added.

"That's where I think the CFTC is going. They are trying really hard to

acknowledge the realities of this business but because regulations for our business have to fit all non-financial commodities," finding a "one-size-fits-all regulatory language" to fit the energy business model perfectly is a challenge.

What is NEM hoping for?

NEM's comments were on the definition of "swap," in particular the commission's proposed forward contract exclusion using the Brent Interpretation and the exemption of environmental commodities from the definition.

The Brent Interpretation describes underlying contracts that create a binding obligation to make or take delivery without providing any right to offset, cancel or settle on a payment-of-differences basis -- and that are between market participants

that regularly make or take delivery of said commodity in their ordinary course of business, said the dodd-frank.com website maintained by Leonard, Street & Deinard.

The term “swap” is defined in the Commodity Exchange Act and is the linchpin of the framework set forth in the Dodd-Frank Act for the regulation of swaps, said the NEM filing. As such, the commission’s decisions on this rulemaking will inform all of the other rulemakings it has instituted to implement the Dodd-Frank Act.

NEM asked in previously filed comments for the commission to consider a safe harbor or transitional period for compliance under Dodd-Frank, especially since the key term “swap” had remained undefined and thus would interfere with the ability of those affected by the rules to predict their own compliance obligations.

CFTC in this NOPR said it believes the statutory definitions of “swap” and other relevant terms were detailed and comprehensive (NOPR at 29821). The commission is using the rulemaking to provide guidance as to what constitutes excluded transactions from the statutory definition of “swap.”

CFTC reply helped

NEM was especially interested in the commission’s proposal of interpretive guidance on the scope of the forward contract exclusion. CFTC believes excluding forward contracts from the swap definition for nonfinancial commodities “should be interpreted in a manner that is consistent with the CFTC’s historical interpretation of the forward contract exclusion from the definition of the term ‘future delivery,’” NEM’s filing quoted a CFTC document in the docket (NOPR at 29829).

“Intent to deliver is an essential element of a forward contract excluded from both the swap and future delivery definitions,” NEM quoted. “Book-out transactions in nonfinancial commodities that meet the requirements specified in the Brent Interpretation, and that are effectuated through a subsequent, separately-negotiated agreement, should qualify for the forward exclusion from the swap definition,” NEM quoted CFTC.

Due to its proposal to extend the Brent Interpretation to all non-financial commodities, said NEM, the commission is thus proposing to withdraw the energy exemption.

NEM lists clarifications

The association supports the CFTC’s decision to apply the forward contract exclusion to non-financial commodities

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and cost allocation methods for lines that cross regional boundaries.

In both cases, if consensus cannot be reached on the inter-regional or cross-regional planning and cost allocation processes, FERC will step in. A region might bring a proposal to the commission without 100% stakeholder approval -- as did MISO and Cal-ISO last year -- then ask for action. That could end up in settlement talks or FERC could just decide what should happen.

Moving ahead on compliance will be critically important, noted FERC Commissioner John Norris, but the order will help build a modern electrical system.

ROFRs mostly gone

Order 1000 eliminated ROFRs with some exceptions such as transmission lines not selected in a regional plan will still leave utilities with a ROFR. That does not apply to upgrades and nothing in the requirement is meant to affect state or local laws on transmission construction.

If reliability is threatened by a delay in a line that is to be built by a third party, the incumbent utility could build an alternative it proposed to meet its reliability needs and service obligations.

Commissioner Phil Moeller wondered about the ultimate effects of all the exceptions to ending the ROFR and whether an “overwhelming number in any regional plan would continue to retain their existing right of first refusal, notwithstanding today’s ruling?”

That is possible, said the Office of General Counsel’s John Cohen, in any given region but it depends on factors

that are not known today such as which projects are included in regional plans for cost allocation.

Moeller dissented in part on the ruling, largely over ROFR issues. He wanted to make sure that exemptions to that right did not make it permanent so that an incumbent could not thwart competitive options by refusing to upgrade its transmission system. Even with the partial dissent, Moeller offered “substantial praise” for the rule.

Rule has supporters

Supporters of FERC’s rule were quick out of the gate yesterday with reactions.

“The rule removes one of the obstacles to developing the grid that the US needs for the 21st century -- narrow cost allocation that does not recognize the way the grid operates and impedes cost recovery for grid investment,” said WIRES President Jolly Hayden. “Under this new rule, no one who does not benefit from new transmission projects will pay for grid expansion. But the rule recognizes the broad reliability, economic and public policy benefits from grid expansion and avoids the mistake of adopting a rigid benefits test.”

AWEA voiced support for Order 1000 as it will facilitate access to wind energy. “Allocating costs is a core responsibility of FERC and this initiative is well founded on a large body of law,” said AWEA Senior VP for Public Policy Rob Gramlich. “There is really no alternative to this policy other than letting the grid continue to weaken and deteriorate -- an outcome that many companies profit from but which is not in the public interest.”

[\[Comments\]](#)

under the Brent Interpretation subject to some energy industry-specific clarifications, meant to help the commission implement the rule, said the NEM filing. The clarifications included:

- The commission should not set a minimum contract size -- for a transaction in a nonfinancial commodity -- for that transaction to qualify as a forward contract under the Brent Interpretation with respect to the future delivery and swap definitions;

- The forward contract exclusion from the definition of swap should apply to environmental commodities such as

carbon offsets/credits and renewable energy certificates.

- Capacity contracts should be excluded from the definition of swap.

No minimum contract size

Energy marketers can buy power at 1/100 of the standard lot size in wholesale power markets, said NEM. For example, NYMEX and Intercontinental Exchange have “mini-lots.” Plus, an energy marketer may add and subtract from a base contract many times before the transaction is completed -- but this does not fundamentally alter

the underlying obligation to deliver under the contract.

For example, it is not unusual for an energy marketer to have a deal to sell physical natural gas to an industrial or commercial user who due to unforeseen changes in production or the economic climate, no longer needs the same amount and has to sell some back to the marketer. Subjecting such an ordinary business transaction in physical gas to the complex regulatory treatment proposed for swaps would be extremely burdensome to both the user of gas and the energy marketer, said NEM.

And it would not further any of the purposes for which Dodd-Frank was adopted. What is more, it would be injurious to the US economy as a whole, the association warned. "NEM questions the reasonableness in instituting a system by which there would be a minimum contract size below which a transaction would become regulated but otherwise would not. This

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seems contrary to the purposes of Dodd-Frank in regulating transactions that would affect systemic risk."

Include RECs/DR, too

The forward contract exclusion from the definition of swap should apply to environmental commodities such as carbon offsets and credits, renewable energy certificates (RECs) and demand response "because these transactions are

increasingly being required of physical energy companies to perform their normal operations," often due to state renewable portfolio standards.

The commission asked how such transactions can be physically settled where the commodity lacks a physical existence -- or lacks physical existence except on paper. Environmental commodities are a part of the physical

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6 stories in 3 minutes

MISO breaks all-

time peak record: MISO set an all-time peak demand record Wednesday as heat pushed up power use to 103,975 MW across its 12-state footprint. The previous record was 103,246 MW in 2006. MISO has demand surge over several days due to a heat-wave. The hot weather continued yesterday and MISO predicted it could see another peak day, said its VP of Operations Richard Doying.

Illinois seeks more

comments on PEVs: The Illinois Commerce Commission (ICC) last week asked for supplemental comments on its PEV initiative, an attempt to find and fix all impediments to PEV proliferation. ICC wants opinions about the appropriate regulatory paradigm, if any, for private and public charging stations, for example. "What metering options and charges should be considered while taking into account the existence of competitive retail suppliers?" it asked. "In order to facilitate the charging of electric vehicles -- that provides the maximum societal environmental and economic benefits -- what modifications, if any should be made to existing utility rates?" said an ICC document with the relevant details titled "[ICC Requests Supplemental Comments on Plug-In Electric Vehicles in Illinois](#)." The ICC [PEV](#) page has a link to that document and others.

Gas futures seem

untouched by heat: NYMEX August natural gas futures dropped just a few cents Wednesday as opposing forces of abundant supplies and high temperatures kept each other in check, analyst Jackson Mueller reported. The contract lost 3.3¢ to close at \$4.50/MMBTU. The bears had more news to run with yesterday after EIA's storage report came in near expectations at 60 BCF, leading the contract to lose value just after its release and deep into the afternoon. Gas supply is still growing at a greater rate than use despite the heat and continued outages from nuclear plants, said Mueller. Storage injections should leave inventories well stocked for winter.

TVA programs boosted

solar deployments: TVA yesterday touted two programs that gained 10 power firms it works with, ratings as top providers of solar power in the region. The Green Power Switch and Generation Partners programs worked in a kind of balance, said Bob Balzar, TVA VP for energy efficiency & DR. "From the start, these two programs were designed to work together to stimulate small scale renewable projects in the TVA region, jump start the market for local renewable power and provide customers with a low cost renewable option."

Wind gear maker

Vestas to use solar: Portland, Ore Mayor Sam Adams announced high-performance solar panels from SolarWorld, reportedly the largest US manufacturer of solar technology for over 35 years, were picked to power the North American headquarters of Vestas, a leader in high-tech wind power systems. SolarWorld is based in Bonn, Germany and Vestas is from Denmark -- and both have their headquarters for the Americas in the Portland area.

Stirling engine maker

gets help, funding: Cool Energy said yesterday it joined the Idealab network of operating companies and received significant funding from Idealab, creator and operator of pioneering technology firms with breakthrough technologies in industries such as robotics, renewable energy, automotive design, search and internet media and services, among others. Cool Energy is working on a low-temperature Stirling engine that can recover waste heat and turn it into power. "Cool Energy's technology is in a sweet spot for clean energy, enabling low-temperature waste heat recovery and novel solar and biomass systems for distributed power generation," said Idealab CEO Bill Gross in a prepared statement.

[\[Comments\]](#)

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commodity sale and delivery obligation, noted NEM. RECs are traded as a physical commodity that has to be physically settled through a REC registry, such as RGGI and WREGIS, the filing added.

The REC registries ensure a physical MWH from a green generator is "behind" the REC. The EEI Master Power Agreement, in common use in the energy industry, includes a REC Annex which treats RECs as a physical commodity.

A comparable effort is underway for carbon off-sets and for DR where load shedding is being "delivered." Futures and swaps can be built off these commodities just as did they for power

and natural gas but these underlying environmental commodity contracts are physical, the filing added.

Exclude capacity contracts

The CFTC should include capacity contracts within the forward contract exclusion even though there is an "optionality" on whether there is a right to delivery. Such capacity contracts include natural gas pipeline transportation and storage contracts plus electricity transmission contracts.

NEM believes a commission finding that capacity contracts are excluded from the definition of swap would be consistent with its reasoning in the Brent Interpretation, where it recognized that the buyer and seller to the transaction has to be prepared at any time to make or take delivery based on

physical market conditions. Such capacity contracts are already subject to pervasive regulation by FERC, said NEM.

Leaving ISO/RTOs out

NEM supports CFTC's proposal to exempt regulation of RTO/ISOs under the public interest standard in Section 722 of Dodd-Frank. RTO/ISOs and the market participants that do business with them are subject to the oversight and regulation of FERC and state public utility commissions that have the extensive subject matter expertise as well as long-standing precedent to ensure the proper functioning of competitive energy markets, said NEM. As such, imposing an added, duplicative regulatory framework to govern their transactions is not needed.

[\[Comments\]](#)

NARUC to ask EPA for more flexibility for power-plant compliance

NARUC passed a resolution at its Summer Committee Meetings in Los Angeles this week asking for more flexibility in EPA's pending rulemakings on power plants. The resolution does not give NARUC an official position on any rulemaking or any piece of legislation.

The resolution named EPA's rules on the interstate transport of SO₂ and NO_x, cooling water intake, emissions of hazardous air pollutants and greenhouse gases, the release of toxic and thermal pollution into waterways and the management of coal combustion solids.

NARUC staff will now be able to lobby for the position in the resolution before Congress and other branches of government.

The resolutions asked, for example, that utilities be allowed to coordinate the retirements and retrofits of existing units in an orderly way to allow the continued supply of power. Another

asked that power generators be allowed to upgrade their facilities in the most cost effective way. That should be done while achieving attainable efficiency gains and environmental compliance, it said.

The rules should be implanted to give regulatory options to units that are needed for grid reliability that commit to retire and repower -- and allow an EPA-directed phasing-in of the requirements.

State commission should encourage utilities to plan for EPA regulations and explore all options for complying with them to lessen costs to ratepayers.

The resolution asked FERC to work with the EPA to develop a process that requires generators to give notice to the economic regulator, systems operators and state commissions -- of the expected effects of complying with the rules. That would allow a chance for meaningful assessment and response to reliability issues, said the resolution.

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