

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Remedying Undue Discrimination through
Open Access Transmission Service and
Standard Electricity Market Design

Docket No. RM01-12-000

NOTICE REQUESTING COMMENTS ON MERCHANT
TRANSMISSION PROVIDERS' OBLIGATION TO EXPAND

(November 26, 2002)

In the Standard Market Design (SMD) Notice of Proposed Rulemaking, the proposed open access transmission tariff imposes an obligation on an Independent Transmission Provider, if a request for transmission service cannot be accommodated, to use due diligence to expand or modify its transmission system.¹ The Commission invites all interested persons to file comments with respect to whether a merchant transmission provider should have an obligation to expand its merchant transmission facilities (MTF).

In the September 6, 2002 NEPOOL Order,² the Commission approved a tariff provision (Section 7 of Schedule 18) dealing with the TransEnergie U.S. Ltd. (TransEnergie) Cross Sound Cable (CSC) which states:

7. No obligation to build

MTF Provider status under the Tariff shall not impose an obligation to build transmission facilities on the MTF Provider [TransEnergie U.S. Ltd.'s CSC MTF]. The offering of MTF Service under the Tariff shall not impose an obligation to build transmission facilities on the Participants [NEPOOL], [New England] Transmission Owners or System Operator [ISO-New England].

The Commission stated in NEPOOL that, while it accepted Section 7 as exempting the CSC MTF in NEPOOL from the obligation to build and as not expanding

¹See Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 Fed. Reg. 55,452 (Aug. 29, 2002), FERC Stats. & Regs. 32,563 (2002).

²NEPOOL, 100 FERC ¶ 61,259 (2002).

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NEPOOL's

obligation to build, NEPOOL's tariff will be subject to change, pursuant to section 206 of the Federal Power Act, if the Commission's policy changes in the future. In light of the NEPOOL order, we seek comment on the following issues:

1. For independent merchant transmission companies would there be any concerns regarding comparability or undue discrimination that would merit an expansion obligation for merchant transmission providers?
2. Are there non-competitive structural conditions that apply to independent merchant transmission companies such as barriers to entry or economies of scale which would justify an obligation to expand? For example, could the control of certain rights of way, such as underwater trenches, be a barrier to entry in some circumstances? Could the control of certain equipment, such as strategically placed interconnection facilities, be a barrier to entry? If so, is an obligation to expand the appropriate regulatory requirement?
3. If an expansion obligation is extended to merchant transmission providers, is it appropriate to limit it to an obligation to allow or facilitate other parties to use the critical entry barrier facilities to expand transmission capability?
4. Should merchant transmission providers that acquire land rights through the use of eminent domain be subject to different obligations than those that do not?
5. How would an expansion obligation impact new investment in transmission infrastructure? How would an expansion obligation impact a merchant transmission provider's business strategy and financing needs?
6. Are there bases other than market power that are relevant to extending an expansion obligation to merchant transmission providers?
7. How should merchant transmission projects be treated in the SMD rule? If the Commission retains the obligation to expand in the SMD rule, should it nevertheless exempt already-approved merchant projects? Should such projects be "grandfathered" in order to minimize the financial consequences of regulatory risk?
8. The Commission has approved negotiated rates for merchant transmission facilities based on the premise that the negotiated rates would be capped at the cost of transmission expansion. If there is no obligation to build, should the Commission reconsider whether the negotiated rates remain just and reasonable?

All comments are due no later than January 10, 2003, and reply comments are due on February 17, 2003. Comments on this issue should be filed in conjunction with any

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January 10, 2002 comments on transmission planning and pricing (including participant funding).

Comments may be filed in paper format or electronically. Those making paper filings should submit the original and 14 copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission strongly encourages electronic filings. Commenters filing their comments via the Internet must prepare their comments in WordPerfect, MS Word, Portable Document Format, or ASCII format (see <http://www.ferc.gov/documents/electronicfilinginitiative/efi/efi.htm>, in particular "User Guide"). To file the document, access the Commission's website at www.ferc.gov and click on "e-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202-502-8258 or by E-Mail to efiling@ferc.gov. Do not submit comments to the E-Mail address.

The Commission will place all comments in the Commission's public files and they will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the FERRIS link.

Linwood A. Watson, Jr.
Deputy Secretary