

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Promoting Transmission Investment Through
Pricing Reform

Docket No. RM11-26-000

**COMMENTS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES**

The New Jersey Board of Public Utilities (“NJBPU”) appreciates the opportunity to provide comments to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in accordance with the Commission’s May 19, 2011, “Notice of Inquiry”¹ (“NOI”) and its June 8, 2011 and August 12, 2011 “Notices Extending Comment Period” issued in the above-noted docket on the Commission’s transmission-incentive regulations and policies under Order No. 679.²

I. Background

The Energy Policy Act of 2005 (“EPAAct 2005” or the “Act”) added a new Section 219³ to the Federal Power Act (“FPA”), which mandates that not later than one year after the enactment of Section 219, the Commission shall establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities.

¹ 76 Fed. Reg. 30, 869 (May 27, 2011).

² Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 Fed. Reg. 43294 (Jul. 31, 2006), FERC Stats. & Regs. 31,222 (2006), order on reh’g, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. 31,236, order on rehearing, 119 FERC ¶ 61,062 (2007).

³ 16 U.S.C. §824 (a).

On July 20, 2006, the Commission implemented its statutory mandate by issuing Order No. 679, *Promoting Transmission Investment through Pricing Reform*, which was further refined in Order No. 679-A, and in subsequent orders, issued in December 2006, and April 2007, respectively. In Order No. 679, the Commission required that each applicant seeking transmission incentives first satisfy the statutory threshold set forth in section 219(a) by demonstrating that a proposed project for which it seeks incentives either ensures reliability or reduces the cost of delivered power by reducing transmission congestion.

In this NOI, FERC seeks comment on the scope and implementation of its transmission incentives regulations and policies under Order No. 679. Since Order No. 679 was promulgated, the Commission has received over seventy-five applications for transmission incentives with a total estimated cost of \$50 billion. The average return of equity (“ROE”) adder granted for those projects was roughly 130 basis points, which amounted to approximately \$650 million each year.

The NJBPU is charged with the general supervision and regulation of, and jurisdiction and control over all public utilities within New Jersey.⁴ The cost of additional capital investment in new transmission capacity is important to the NJBPU because such investment and the associated incentives are a cost that increases electric prices for customers in New Jersey. Therefore, the NJBPU has a significant interest in the Commission’s policies on incentive structures for transmission investments.

⁴ N.J.S.A. 48:2-13.

II. Comments

The NJBPU is filing separate comments with an Ad Hoc Coalition of state public utility commissions, state consumer advocates, public power systems, rural electric cooperatives and end users, but is supplementing those comments with additional comments that are the NJBPU's alone. The following is a discussion emphasizing the need for FERC to consider incentives for supply-side alternatives as a complement to its transmission incentive policies.

The NJBPU encourages the further development of a more robust transmission network that will enable customers to save money by reliably accessing more efficient generation than is possible with the current transmission system. The NJBPU, however, is concerned that while new transmission lines delivering mostly coal-powered electricity from older plants may reduce the delivered cost of power, they do so at the cost of increased air emissions from these older, less efficient plants. These issues must be taken into account in the discussion of possible reforms to the Commission's rules on financial incentives to support additional transmission investments.

Coal plants produce a significant portion of the greenhouse gas emissions that impact New Jersey. While coal plants have historically provided reliable electrical service and have balanced the technology mix of generation resources in New Jersey, coal is a major source of CO₂ emissions and, therefore, New Jersey will no longer accept dirty coal as a new source of power for the State. Many coal plants in PJM have been required to retrofit and install expensive emission control equipment to meet State and Federal air quality requirements. Many will likely

no longer operate as the cost of compliance is too high. Moreover, in light of the reduction in natural gas prices, energy produced from coal plants is no longer significantly less expensive than energy produced from new cleaner and more efficient natural gas-fired Combined Cycle (“CC”) plants, or even old-style gas-fired steam turbine generators. The NJBPU submits that building clean generation can eliminate or lessen the need for new transmission lines and upgrades, and therefore, on March 29, 2011, the Board awarded contracts under its Long Term Capacity Agreement Pilot Program (“LCAPP”)⁵ to three CC generators.

It bears emphasis that most of the transmission projects that have been the subject of the Commission’s incentive orders have involved facilities installed to satisfy the reliability needs of the regions in which they have been built. The NJBPU notes that federal incentives to encourage the development and construction of new transmission facilities to address reliability issues that utilize state-of-the art technologies is encouraged by and acceptable to the Commission, but, efforts to encourage the development of new state-of-the-art, efficient, environmentally friendly gas-fired generation to address reliability needs through incentives has been thwarted and impeded by the Commission by its recent ruling on the Minimum Offer Pricing Rule (“MOPR”), which specifically discriminates against this technology.

The NJBPU asserts that the construction of new transmission facilities may be an effective means to address supply and demand but it may not always be the most efficient means to do so. Areas that have high electric usage but lack adequate generation, referred to as “load

⁶ 76 Fed. Reg. 155 (August 11, 2011).

pockets,” are areas that are generation-deficient, as is the case in highly-congested urban areas that exist in New Jersey. This congestion, coupled with stress on existing transmission lines that bring power into these areas, create areas prone to overloads. Thus, the potential for reliability issues and increased congestion costs arise if the existing transmission lines are unavailable. There are, however, other ways besides simply building new transmission lines to address these potential reliability issues and the related congestion costs created by load pockets. Indeed, FERC has recognized this point by requiring under Order 1000⁶ the comparable consideration of transmission and non-transmission alternatives in regional transmission planning processes (Order 1000 at 155).

If the demand for electricity within a load pocket exceeds the available supply of electricity, one of two things must happen in order to keep the system in balance – supply must go up or demand must go down. New Jersey is already at the forefront with regard to Demand Response. Further reducing demand in New Jersey to keep the system in balance is not a practical reality especially as the state recovers from the current economic downturn. New Jersey has recognized that the development of a new supply of generation is key to maintaining reliable service in the State. FERC, however, continues to rely heavily on transmission solutions, often laden with significant and costly rate incentives. These incentives can have the effect of suppressing needed generation, which when properly located, could be a cheaper, more environmentally-friendly and efficient solution to existing supply needs. Transmission only

⁶ 76 Fed. Reg. 155 (August 11, 2011).

incentives, especially when so freely provided, give economic advantage to transmission solutions over possible non-transmission solutions to reliability needs.

The NJBPU asserts that the Commission's asymmetrical application of allowing incentives to transmission infrastructure, while rejecting incentives to generation infrastructure, is arbitrary and capricious, unduly discriminatory, unjust and unreasonable, and requires the immediate remedial attention of the Commission.

III. Conclusion

The NJBPU incorporates by reference the comments of the Ad Hoc Coalition to which the NJBPU is a signatory and furthermore respectfully asks that the Ad Hoc Coalition comments, as well as the NJBPU's comments set forth herein, be considered by the Commission in its analysis of the proposal at issue.

Respectfully submitted,

PAULA T. DOW

ATTORNEY GENERAL OF NEW JERSEY

By: ____/s/_____

Brian O. Lipman
Deputy Attorney General
State of New Jersey
Office of the Attorney General

All communications with respect to this matter should be addressed as follows:

Brian O. Lipman
Office of the Attorney General
Division of Law
Department of Law and Public Safety
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
P (973) 648-4726
brian.lipman@dol.lps.state.nj.us

Andrea Sarmentero
Counsel's Office
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
P (973) 648-2587
andrea.sarmentero-garzon@bpu.state.nj.us

John Garvey
New Jersey Board of Public Utilities
Division of Economic Development
& Energy Policy
44 S. Clinton
P.O. Box 350
Trenton, NJ 08625-0350
P (609) 292-1995
John.Garvey@bpu.state.nj.us

Dated: September 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 12th day of September, 2011, caused the foregoing document to be served upon each party designated on the official service list compiled by the Secretary in this proceeding.

Respectfully submitted,

PAULA T. DOW

ATTORNEY GENERAL OF NEW JERSEY

By: _____/s/_____

Brian O. Lipman
Deputy Attorney General
State of New Jersey
Office of the Attorney General

Dated: September 12, 2011