

FERC: CURRENT ISSUES AND TOPICS

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But First, a Short Commercial About APPA...

- Established in 1940
- Representing 2,000+ municipally owned electric systems
- Our mission: help our members provide reliable, environmentally responsible electric service at an affordable price

APPA Resources

- Staff of 60 plus Professionals
 - Engineers
 - Statisticians
 - Legislative & regulatory experts
 - Legal counsel
 - Educational program specialists
 - Environmental specialists
 - Customer service specialists
 - Communicators

Membership Benefits

- Representation in Washington
- Access to member networks: List serves, and now Twitter and Facebook! 😊
- Powerful information: Daily and weekly electronic newsletters, monthly magazine
- Powerful programs: Subject matter meetings, Leg Rally, National Conference
- APPA Academy: Training for every taste!

Demonstration of Energy-Efficient Developments (DEED)

- DEED is public power's research and grant program started by APPA in 1980 to pool members' resources to invest in the future technologies & best practices
- DEED members use their utilities to pilot innovative technologies improve utility processes and practices.
- Members learn from each other by sharing the knowledge gained via project reports.

The Current FERC Line UP

- Chairman Jon Wellinghoff (D): His “Big Three” issues are: Demand Response, Renewable Generation, and Transmission (for renewable generation)
- Other Commissioners: Phil Moeller (R), Marc Spitzer (R), John Norris (D), Cheryl LaFleur (D) (newest member, former Executive VP of National Grid)

Hot Issues at FERC

- Transmission Planning and Cost Allocation
- Integration of Variable Energy Resources
- Pricing of Wholesale Demand Response
- RTO Responsiveness to Stakeholders and Performance Metrics
- Reliability-related Matters (Federal Power Act (FPA) Section 215)

Transmission Planning and Cost Allocation

- FERC long interested in transmission planning—now with a renewables slant
- FERC issued Notice of Proposed Rulemaking (NOPR) in Docket No. RM10-23 (75 FR 37,884 (6/30/10)); proposes FERC-regulated utilities must participate in FERC-approved regional transmission planning and cost allocation regimes

APPA's Transmission Resolution

- APPA's members have varied positions on these issues, depending on where they are located and what assets they own
- APPA's position on these issues guided by the resolution the membership passed in 2009—a carefully negotiated compromise
- On some issues we must defer to our members, because we love them all

APPA's RM10-23 Comments

- APPA filed comments on 9/29/10; deferred to members on some issues but took a number of positions:
 - Supported regional planning of major transmission (TX) lines based on a “bottom up” approach that looks to the resource plans of Load Serving Entities (LSEs) in the region
 - Concerned about “appropriate qualification criteria” for those proposing TX projects—will they shut out public power LSEs from co-owning transmission facilities?
 - Opposed exempting merchant transmission projects from participation in regional transmission planning

RM10-23 Comments, con.

- Supported FERC’s proposal not to require one “cookie cutter” transmission cost allocation, but to allow regional flexibility
- Supported FERC’s proposal not to require an interconnection-wide cost allocation method (AWEA, Exelon, some others had pushed for this)
- Also joined in separate comments with PUCs, consumer advocates and industrials on issue of transmission rate incentives, arguing that FERC must stop routinely giving out “FERC candy” to transmission developers at expense of consumers

Variable Energy Resources

- FERC in Docket No. RM10-11 issued an NOI on integration of Variable Energy Resources (VERs) into regional transmission systems (75 FR 4316 (1/27/10))
- Do the terms and conditions of Open Access Transmission Tariffs (OATTs) unduly discriminate against VERs? If so, what changes should be made?

APPA VER Comments

- APPA filed comments in April 2010
http://www.appanet.org/files/PDFs/APPARM1011Comments41210a_sfiled.pdf
- FERC should not make sweeping changes to pro forma OATT for VERs; it should support regional VER integration efforts (shortening scheduling intervals, improving wind forecasting techniques, sharing reserves across balancing areas (BAs), etc.)
- FERC should not mandate BA consolidation

RTO Credit Requirements NOPR

- FERC issued NOPR in Docket No. RM10-13 on RTO Credit Requirements (75 FR 4,310 (1/27/10)); trying to show it can deal with credit/financial regulation
- Number of potentially harmful proposals from the perspective of public power
- APPA filed comments on 3/29/2010
- http://www.appanet.org/files/PDFs/APPACommentsRM101332910a_sfiled.pdf

APPA Positions in Credit Comments

- RTOs should differentiate among RTO customers based on risks, financial characteristics and business models
 - Opposed shortened settlement periods
 - Opposed elimination of unsecured collateral, especially for Financial Transmission Rights (public power systems cannot extend credit for third parties)
 - Oppose “minimum market participation criteria”
 - Advocated stronger credit measures for “financial only” players that present a greater risk of default

Connection to Dodd-Frank Act...

- Congress in Section 722(f) of the Dodd-Frank Act included section re FERC-regulated markets; Commodity Futures Trading Commission (CFTC) can decide not to regulate them if in “public interest” (CEA section 4(c)(6)(A)(B)).
- FERC wants to show CFTC that it can regulate credit, so CFTC should defer to FERC--will we be caught in the cross fire?

Compensation of Demand Response in RTO Markets

- FERC issued NOPR in Docket No. RM10-17 (75 FR 15,362 (3/29/10)) on payments to Demand Response (DR) in wholesale RTO-run markets
- FERC wants RTOs to pay the locational marginal price (LMP) in all hours to DR
- Moeller issued partial dissent; wanted to “go slow” with Notice of Inquiry (NOI)

DR Compensation Comments

- Generators oppose paying full LMP as overcompensating DR providers; ISO/RTO Council agrees (both relying on Hogan)
- Industrials and DR providers support it
- APPA/NRECA took middle ground: leave pricing to each RTO and its stakeholders
- <http://www.appanet.org/files/PDFs/APPANRECAJointCommentsRM10170510.pdf>

9/13 DR Technical Conference

- FERC technical conference held on 9/13 to consider possible compromises, but that does not appear to be on the cards:
 - Chairman Wellinghoff strongly supports payment of full LMP, as do industrials and DR aggregators
 - Generators and states believe full LMP is too much—must deduct cost of generation/retail standby service
 - LSEs in regulated states also believe a deduction is needed
 - Moeller supports the states; concerned about cross-subsidies
 - New round of comments on 10/13; APPA considering filing

RTO “Responsiveness”

- FERC in its Order No. 719 in 2008 required RTOs to meet with stakeholders to discuss how RTOs could improve governance and responsiveness to stakeholders; make compliance filings
- RTOs did so in 2009; while there was some fine-tuning, RTOs asserted their stakeholder processes were working well

FERC 2/4 RTO Technical Conference

- FERC held 2/4/10 Technical Conference to consider RTO responsiveness
- APPA asked to participate, no doubt due to our Electric Market Reform Initiative
- APPA witness was Pat McCullar of DEMEC, former head of PJM's Members Committee; his testimony is at <http://www.appanet.org/files/PDFs/CommentsFERCTechConfRTOISO02042010FILEDVERSION.pdf>

McCullar Recommendations

- Direct stakeholder access to RTO/ISO boards with no management filtering
- Open RTO/ISO board meetings, with agendas made public in advance and opportunity for stakeholder comment
- Board member attendance at working group/technical committee meetings
- RTO/ISO hybrid boards with majority independent members and minority stakeholder members
- RTO Mission statement modification to include a specific obligation to provide reliable electricity service at the lowest reasonable cost to consumers

The Usual Suspects Appeared...

- Consumers: there are substantial problems, and they need addressing
- RTOs: Our processes are open and transparent, and nothing need be done
- PSEG: Transmission and generation asset owners need a *greater* voice in RTO stakeholder process because they own the assets

RTO Metrics

- RTO responsiveness issue bleeds over into the RTO metrics issue; both are on FERC's plate right now
- RTO metrics issue grows out of the 2008 GAO report on FERC's regulation of RTOs in response to Lieberman/Collins request
- Full report can be found at <http://www.gao.gov/new.items/d08987.pdf>

GAO Report Finding

- GAO criticized FERC for engaging in “faith-based regulation”:
 - “FERC officials also believe that RTOs have resulted in net benefits to the economy, such as new efficiencies in operating the regional transmission grid; however, FERC has not conducted an empirical analysis of whether RTOs achieved the benefits expected of them or developed a comprehensive set of publicly available, standardized measures to help evaluate such performance.”

FERC Effort to Develop Metrics

- In September 2009, FERC Staff asked the RTO/ISO Council to assist it in developing RTO “metrics” to measure RTO performance over time and across RTOs.
- FERC worked with the Council during remainder of 2009 on this project; some RTOs (including PJM) did let their stakeholders know this was going on

Involvement of Stakeholders

- Major trade associations (EEI, NRECA, APPA, EPSA, ELCON) informed right before Christmas 2009; met with FERC in January 2010 to consider draft metrics
- We did not see the proposed metrics until a few days before the January meeting
- The proposed metrics were presented at FERC's meeting by a PJM representative

FERC's Change of Course

- FERC's original plan was to present the metrics to Commission in late spring
- APPA/NRECA/ELCON made clear their strong concerns about the process used to develop the proposed metrics and “off the shelf” nature of the metrics themselves
- FERC subsequently issued a notice asking for initial and reply comments

The “Big Momma” Metric

- APPA, ELCON, other consumer representatives argued that FERC must compare RTO prices against generator costs to ensure just and reasonable rates
- <http://www.appanet.org/files/PDFs/APPAELCONInitialcommentsAD105352010asfiled.pdf>
- Generators disagree, as does Chairman Wellinghoff (per statements he made at the February 4 Technical Conference)

Where are the Metrics?

- APPA was told in April that FERC staff was working on the metrics issues; item appeared on a FERC open meeting agenda—then was stricken
- The Chairman is interested in the Big Three issues enumerated earlier, and thinks RTOs facilitate renewables and DR, so we do not expect real changes soon

“Transparency” Notice of Inquiry

- FERC suddenly proposed in Docket No. RM10-12 that non-jurisdictional utilities file quarterly reports with FERC on wholesale power sales (75 FR 4,805 (1/29/10))
- Non-jurisdictional utility groups arguing such data collection is unnecessary and if ordered, should be limited to large non-Js
- http://www.appanet.org/files/PDFs/APPARM1012Comments33010a_sfiled.pdf (filed March 30, 2010)

FERC's March Assault on NERC

- At its 3/18 Open Meeting, FERC issued a series of orders that together amounted to a broadside fired at the North American Electric Reliability Corporation (NERC)
- NERC is the FERC-designated “Electric Reliability Organization” (ERO) under FPA Section 215 that develops and enforces reliability standards

A Sampling of the March 18 Orders

- New rulemaking to revise NERC definition of the “bulk electric system” (BES) – would sweep in facilities 100 kV and above unless specifically exempted
- Ordered revisions to NERC Rules of Procedure to prevent the industry from “balloting down” a reliability rule FERC has ordered NERC to develop (who trumps?)

NERC-related Orders, con.

- Issued a Policy Statement on Penalty Guidelines in Docket No. PL10-4-000 (130 FERC ¶ 61,220) that said FERC would reconsider in “serious” cases the penalties NERC assesses for reliability violations; FERC would apply own penalty guidelines based on *US Sentencing Guidelines* (used in federal criminal cases)

The Result: A Unified Industry

- NERC, under leadership of new CEO Gerry Cauley, sought rehearing to defend its role as a standard-setting organization under FPA Section 215
- The industry in an unprecedented show of unity came together to support NERC, filing numerous joint pleadings in response to the March 18 orders/notices

Penalty Guidelines Blowback

- Industry response to Penalty Guidelines was so strongly negative that FERC took comments on it; APPA/LPPC/NRECA filed joint comments in June
- FERC issued revised Policy Statement on 9/16/10, trimming back guidelines' application in reliability-related cases and making a number of other changes

July 6 Technical Conference

- FERC held technical conference on 7/6 to examine reliability-related issues; both Mark Crisson, APPA's CEO, and Allen Mosher of APPA staff appeared
- Broad agreement that better communication among NERC, FERC and industry is needed; more guidance on priorities in setting standards

Other September Reliability Orders

- FERC issued generally positive report card on NERC's performance in its first three years; list of items NERC must report back on in "informational filing"
- But FERC held its ground on the Rules of Procedure matter ; this may be headed to court, as industry and NERC feel strongly that NERC sets standards, not FERC

Cybersecurity—the “Big Momma” of Reliability Issues

- Cyber-related risks to electric grid are rising--Stuxnet is just the latest threat
- Legislators VERY spun up about cybersecurity; it is a bipartisan issue so it could move in lame duck session
- CIP standards out for ballot—if the industry does not handle this, FERC AND CONGRESS WILL

What Does This All Add Up To?

- FERC focused on DR, VERs, renewable transmission; sees RTOs as facilitators
- FERC has been concerned NERC is not doing a good enough job; temptation to “micromanage” reliability issues
- APPA will continue to advocate for its members on all of these issues; we need to help FERC find the policy “middle way”