

Facilities Inclusion

Option 3 – Seven-Factor Test Plus Wholesale

A close reading of Order 2000 sheds lights on why using the seven-factor test to determine which facilities should be included in RTO West is inappropriate in the first instance. Instead, facilities that are used in wholesale transactions (not including retail access) are transmission facilities that should be included in the RTO.

The Commission states very clearly that: “Our objective is for all transmission-owning entities in the Nation, including non-public utility entities, to place their transmission facilities under the control of appropriate RTOs in a timely manner.” (FERC Order No. 2000, page 4.)

Order 2000 states that among the goals of the order are to 1) to remove remaining opportunities for discriminatory transmission practices, 2) improve market performance, and 3) facilitate lighter handed regulation. (Order 2000, page 3.) In considering the “scope” of an RTO, the Commission is interested in increasing the number of buyers and sellers covered by an RTO. (page 257) FERC is interested in having as many buyers and sellers have access to the RTO as a way to encourage competitive energy markets (page 259) and to ensure that the RTO is not dominated by “ a few buyers or sellers.” (page 261) In fact, the Commission is very explicit about which facilities should be included in an RTO. In the section of Order 2000 entitled “Control of Facilities within a Region,” Order 2000 states:

“To satisfy the scope and configuration characteristic of this Final Rule, all or most of the transmission facilities in a region must be included in the RTO. . . . We do not believe it would be desirable to approve an RTO proposal for a region if the proponents represent only a small portion of the facilities in an otherwise satisfactory region.” (pages 266-267)

What does this mean for RTO West? At issue here is the inclusion of facilities which some owners may not include in their RTO filing (using the seven-factor test as justification) but which never-the-less are used to serve wholesale utilities. This issue also encompasses lower voltage facilities used to transfer wholesale power that some owners will include in their RTO filings. The service provided over "general transfer agreements" (GTAs) is used to frame the issue, but the issue described is not limited to GTAs.

In this Pacific Northwest region of RTO West, there are over 60 utilities that are served via transfer over the facilities of intervening transmission owners. These transfer agreements, as a group, are referred to as general transfer agreements or GTAs.

For decades and currently, wholesale utilities served by GTAs have received and receive the equivalent of direct access to the BPA transmission grid. The RRG is faced with a policy question of whether to reduce the quality and increase the price of access to the transmission system currently afforded these systems. Given the historical treatment, the RTO should not

adopt standards for facilities inclusion which gives lesser access and service than these wholesale customers are currently enjoying.

Utilities served by GTAs are wholesale utilities. Service to wholesale utilities is within FERC's jurisdiction, as asserted by FERC in Order 2000 and affirmed by the recent U.S. Court of Appeals (Transmission Access Policy Study Group v. Federal Energy Reg. Comm'n, No. 97-1715 (D.C. Cir. June 30, 2000)). This decision affirms that facilities used at wholesale are not "local distribution facilities." It also clarifies that "the seven factor test applies only to unbundled retail sales. . ." Therefore, use of the seven-factor test as the determining test as to whether wholesale facilities should be considered transmission and eligible for inclusion in the RTO is not appropriate.

Facilities used to serve wholesale electric utilities are clearly within FERC's jurisdiction as transmission and are not subject to the seven-factor test. Order 2000 is clear that it "all or most" of the transmission facilities of a jurisdictional utility ought to be included in the RTO to achieve sufficient scope. Without inclusion of facilities necessary for service to wholesale loads, RTO West will have difficulty meeting the scope characteristic, encouraging the wholesale market by bringing as many buyers and sellers to the market, eliminating residual discriminatory practices, elimination of pancaked rates, and providing the kind of access which the Commission envisioned for wholesale power buyers. Further, it denigrates the virtual direct access to the transmission system that these utilities served by GTAs have enjoyed for decades.

On discussing facilities inclusions, additional points are necessary. If the facilities used in GTA service are not included in the RTO, we will not be achieving the goal of light-handed regulation. In fact, we will have doubled the regulatory burden. For those facilities within the RTO, wholesale utilities would have to deal with two FERC proceedings: 1) transmission owner rate proceedings setting the price to the RTO, and 2) RTO rate proceedings. Additionally, these utilities will have to deal with either a separate FERC proceeding or with a State proceeding for those facilities used at wholesale but which are not included in the RTO. Creation of additional regulatory hurdles makes access to the wholesale market more difficult and costly for the many small wholesale players because of the associated transaction and regulatory costs.

Although application of the seven-factor test is not appropriate to facilities used at wholesale, let's look at that test for a moment. The factors are as follows:

- 1) Local distribution facilities are normally in close proximity to retail customers.
- 2) Local distribution facilities are primarily radial in character.
- 3) Power flows into local distribution systems; it rarely, if ever, flows out.
- 4) When power enters a local distribution system, it is not re-consigned or transported on to some other market.
- 5) Power entering a local distribution system is consumed in a comparatively restrict geographical area.
- 6) Meters are based at the transmission/local distribution system.
- 7) Local distribution systems will be of reduced voltage.

While wholesale facilities in question may meet some of the criteria to be considered distribution, they fail, on a uniform basis, at least 2 of the tests. For example, power is in fact re-consigned at the distribution system/transmission interface, i.e. the wholesale utility's point of delivery (factor #4). Likewise, the transmission/distribution interface is metered as suggested in factor #6. Meters are at the wholesale utility's point of delivery, the transmission/local distribution interface. Thus facilities upstream of the point of re-consignment are transmission facilities and those downstream are likely to be distribution.

"Radial" is not a valid distinguishing characteristic to distinguish between distribution and transmission in the rural West. Because of the vast distances between generation and load centers, and between load centers, radial transmission lines are much more common in the rural West than in other parts of the country. Many transmission lines are radial simply because of geography: mountain ranges, coasts, and remote load areas. Thus, in the rural West, less reliance should be given to factor #2 in considering whether facilities are distribution or transmission.

Excluding those facilities that serve wholesale utilities would result in additional constraints upon numerous wholesale electric utilities in reaching the wholesale power market. These facilities should be included in the RTO, at a melded company, area, or RTO-wide rate, in order to meet the goals of Order 2000 and to facilitate access to wholesale energy market at un-pancaked rates for the greatest number of buyers.

8/1/00

Aleka Scott