UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost	)	
Allocation by Transmission Owning	)	Docket No. RM10-23-000
And Operating Public Utilities	)	

JOINT REPLY COMMENTS OF AMERICAN ELECTRIC POWER CORP., AMERICAN WIND ENERGY ASSOCIATION, ENERGY FUTURE COALITION, IBERDROLA RENEWABLES, ITC HOLDINGS CORP., LS POWER TRANSMISSION LLC, MESA POWER GROUP, LLC, NEXTERA ENERGY, INC., SOLAR ENERGY INDUSTRIES ASSOCIATION AND WESTERN GRID GROUP

Pursuant to the Notice Establishing Reply Comment Period issued by the Federal Energy Regulatory Commission ("Commission") in this proceeding on September 29, 2010,[1] the Joint Commenters[2] hereby offer these comments in response to arguments presented in initial comments filed in this docket.

I. THE COMMISSION MUST ACT NOW

The Joint Commenters urge the Commission not to be swayed by those who assert that merely because there has been a welcome acceleration in the pace of transmission investment in the last few years, current transmission planning and cost allocation processes are fine, and the Commission need not do anything more. The comments of the Coalition for Fair Transmission Policy are representative of this view.[3]

The fact that there has been more transmission spending over the last few years does not mean that *enough* transmission is being built for the demands being placed on the grid, currently

[1] 75 Fed. Reg. 62,023 (Oct. 7, 2010).
[2] For purposes of these reply comments, the Joint Commenters are: American Electric Power Corp.; American Wind Energy Association; Energy Future Coalition; Iberdrola Renewables; ITC Holdings Corp.; LS Power Transmission LLC; Mesa Power Group, LLC; NextEra Energy, Inc.; Solar Energy Industries Association and Western Grid Group.
[3] Comments of the Coalition for Fair Transmission Policy ("Coalition Comments") at p. 2. *See also* Comments of Southern Company Services, Inc., ("Southern Comments") at pp. 62-64.

and for the future, especially given the need to interconnect renewable resources and the likely future retirement of tens of thousands of megawatts of coal-fired generation.[4] In addition to the fact that much "planned" transmission is not constructed,[5] national aggregations of actual and planned transmission investment mask significant variations in investment from region to region.[6] Moreover, those who contend that this NOPR is not necessary cannot point to a single inter-regional transmission project being constructed today, because there are none. The North American Electric Reliability Corporation ("NERC") in its 2010 Long Term Reliability Assessment analyzed projected transmission additions to conclude that "large, cross-Regional transmission lines are not being projected during the next ten years."[7]

The shortcomings of the current grid are reflected in the sizable interconnection queues throughout the country. Information compiled by the American Wind Energy Association shows that a total of 297,808 megawatts of potential wind power was waiting in interconnection queues as of March 2010.[8] Transmission to interconnect these new renewable resources is needed in every region of the country.

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[4] *See* Comments of Exelon Corporation, at p. 19.

[5] *See e.g.*, Comments of PJM Interconnection, L.L.C. ("PJM Comments"), p. 17, indicating that only two of six backbone transmission projects approved through PJM's Regional Transmission Expansion Plan process between 2006 and 2009 are under construction.

[6] *See* "Transmission Investment Needs and Cost Allocation: New Challenges and Models," a presentation to FERC staff by Johannes Pfeifenberger, Peter Fox-Penner and Delphine Hou of The Brattle Group, December 1, 2009, at slide 6, which shows the wide variations from region to region in under-construction and planned transmission additions. The presentation is available at: http://www.brattle.com/_documents/UploadLibrary/Upload823.pdf. *See also* the opening remarks of Johannes Pfeifenberger at the October 12, 2010 panel discussion on Renewable Energy Development and Transmission Expansion – Who Benefits and Who Pays, at the EUCI Conference, which 1) shows on page 1 the transmission expansion underway for utility-specific and regional reliability investment, 2) describes on page 2 some $180 billion of planned and conceptual transmission projects (as of September 2010), but notes that many of these regional projects will not be realized due to, *inter alia*, cost allocation challenges, and 3) estimates on page 4 that as much as $130 billion in incremental transmission could be needed U.S.-wide through 2025 to integrate renewables. The presentation is available at: http://www.brattle.com/_documents/UploadLibrary/Upload887.pdf.

[7] North American Electric Reliability Corporation, 2010 Long-Term Reliability Assessment, October 2010 ("LTRA"), p. 24. The LTRA is available at: http://www.nerc.com/files/2010%20LTRA.pdf.

[8] *See* Exhibit 1 to these Joint Reply Comments.

The increase in congestion costs being experienced, for example, in PJM and the Midwest ISO offers another measure of the need for new transmission. The Department of Energy's 2009 Congestion Study found that PJM-wide congestion costs increased to $2.12 billion in 2008, an amount representing nearly 6% of total electricity billings.[9] The Congestion Study reported that new transmission projects and upgrades designed and approved through PJM's Regional Transmission Expansion Plans with in-service dates ranging from mid-2008 through 2012 could reduce congestion costs to $250 million by 2012.[10]

The large number of projects being proposed validates the position that more transmission is needed, rather than disproves it. It does not change the reality that the current jumble of cost allocation policies is preventing needed projects from moving forward. The Joint Commenters' initial comments described the barrier that cost allocation presents to planned major transmission projects.[11] Indeed, the EEI report cited by the Coalition acknowledges the challenges facing planned large interstate projects – siting, permitting, cost allocation and cost recovery.[12] Some of the projects discussed in the EEI report cited by the Coalition as representative of this project category – MAPP and the Canada-Pacific Northwest-California transmission projects, for example – are a long way from being built.[13] The forward looking policies proposed by the Commission here are essential if we are to have a robust transmission system capable of meeting current and future system needs.

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[9] U.S. Department of Energy, National Electric Transmission Congestion Study (December 2009) ("Congestion Study"), p. 47. The Congestion Study is available at: http://congestion09.anl.gov/documents/docs/Congestion_Study_2009.pdf.

[10] *Id*., p. 48.

[11] *See* initial joint comments at pp. 7-9, discussing cost allocation as the major impediment to major interregional transmission projects including Green Power Express and Pioneer Transmission.

[12] Edison Electric Institute and Navigant Consulting, "Transmission Projects: At A Glance" (February 2010), at p. viii. The report is available at: http://www.eei.org/ourissues/ElectricityTransmission/Documents/Trans_Project_lowres.pdf.

[13] *See e.g.*, discussion of MAPP in PJM Comments, p. 17, n. 34.

Since our initial comments were filed in this proceeding, NERC has issued a Special Reliability Assessment of four potential Environmental Protection Agency regulations. According to this Special Assessment, accelerated retirement of more than 70 gigawatts of fossil-fueled power plants by 2015 as a result of these regulations could substantially affect reserve margins in a majority of NERC Regions/subregions.[14] Such a significant loss of generation resources over the next five years would create even more near-term transmission needs. Indeed, NERC advises that "more transmission resources may be needed as the industry responds to resolve identified capacity deficiencies."[15]

This NERC Special Assessment drives home two critical points. First, the public policies to be considered in transmission planning and cost allocation decisions must include the types of environmental policies discussed in the NERC Special Assessment. Second, the Commission must move forward to finalize the Notice of Proposed Rulemaking ("NOPR") on the schedule proposed. Without bold action by the Commission to promote more uniformity in cost allocation and planning process enhancements, the industry may be unable to meet the needs for new transmission infrastructure.

It is within the Commission's power to address critical impediments to the modern, resilient grid that we need by establishing a preferred cost allocation methodology that will allocate broadly to those who benefit the costs of extra high voltage transmission projects, without regard to utility service territory or RTO boundaries.

[14] NERC, "2010 Special Reliability Scenario Assessment: Resource Adequacy Impacts of Potential U.S. Environmental Regulations" (October 2010), at p. IV. The Special Assessment is available at: http://www.nerc.com/files/EPA_Scenario_Final.pdf.
[15] *Id*., p. 28.

II. THE COMMISSION HAS THE LEGAL AUTHORITY TO ACT AS PROPOSED HERE.

Certain commenters question the Commission's authority to implement its transmission planning proposals.[16] The Commission's authority here is a direct outgrowth of its plenary jurisdiction over transmission in interstate commerce under Section 201 of the Federal Power Act ("FPA"), and its responsibility under Section 205 of the FPA to assure that "[a]ll rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges" are just and reasonable and not unduly discriminatory or preferential.[17] The Commission has established principles and requirements for transmission planning since Order No. 888 in 1996; transmission planning necessarily affects the rates, terms and conditions of transmission service subject to the Commission's jurisdiction. The NOPR is grounded expressly in the need to reform current transmission planning and cost allocation processes to address identified deficiencies that threaten to result in unjust and unreasonable rates or undue discrimination or preference, such as the undue preference enjoyed by incumbent generation owners in transmission-constrained markets if inadequate transmission planning and cost allocation policies lead to under-building of transmission. There is no intent in the NOPR to infringe upon areas of state jurisdiction, and any incidental impacts on matters of state jurisdiction are permissible when the Commission exercises its broad jurisdiction under the FPA.

[16] *See, e.g.*, Southern Comments at p. 17; Comments of the Large Public Power Council at p. 17.
[17] 16 U.S.C. § 824d(a).

A. The NOPR Is Well Within The Commission's Plenary Authority Over Transmission in Interstate Commerce, And The Commission Appropriately Has Chosen To Establish Generally Applicable Rules.

Section 201(b) of the FPA unambiguously authorizes FERC to assert jurisdiction over transmission of electricity in interstate commerce. *New York v. FERC*, 535 U.S. 1 (2002)("*New York v. FERC*"). In upholding Order No. 888, the Court agreed with the Commission that "transmissions on the interconnected national grids constitute transmissions in interstate commerce."[18] Congress imposed no qualification on its grant to the Commission of economic regulatory jurisdiction over transmission in interstate commerce.[19]

As the Court observed in *New York v. FERC*, FPA Section 201, and the Commission's resulting jurisdiction over transmission in interstate commerce, has been construed broadly, due to the interconnected nature of the grid. *See FPC v. Florida Power & Light Co.*, 404 U.S. 453 (1972). *See also Jersey Central Power and Light v. FPC*, 319 U.S. 61 (1943);[20] *FPC v. Southern California Edison*, 376 U.S. 206 (1964).[21]

Nor does Section 201(a) impose any limitation on the scope of the Commission's jurisdiction to act here:[22] "Section 201(b) embodies a clear grant of power, and we have held that § 201(a) was merely a 'policy declaration . . . of great generality. It cannot nullify a clear and specific grant of jurisdiction, even if the particular grant seems inconsistent with the broadly

[18] *New York v. FERC*, 535 U.S. 16, *citing FPC v. Florida Power & Light Co.*, 404 U.S. 453, 466-7 (1972).
[19] "It is true that FERC's jurisdiction over the *sale* of power has been specifically confined to the wholesale market. However, FERC's jurisdiction over electricity *transmissions* contains no such limitation." *New York v. FERC*, 535 U.S. 20.
[20] "Subsection (b) declares that the provisions of this part apply 'to the transmission of electric energy at wholesale in interstate commerce.' This subsection gives jurisdiction over facilities used for such transmission. The business of transmitting and selling electric energy is said to be affected with a public interest, and federal regulation of a portion of that business is declared necessary." 319 U.S. 72-73.
[21] "We hold that § 201(b) grants the FPC jurisdiction of all sales of electric energy at wholesale in interstate commerce not expressly exempted by the Act itself." 376 U.S. 210.
[22] Southern argues that the Commission cannot regulate transmission planning without straying impermissibly into matters reserved for the states under FPA Section 201. *See* Southern Comments at pp. 17-18. This argument ignores both the courts' broad construction of the Commission's authority over transmission under FPA Section 201 and the Commission's authority under FPA Sections 205 and 206 to assure that transmission service is provided on a just, reasonable and not unduly discriminatory basis.

expressed purpose.'"[23] "Because the FPA contains such 'a clear and specific grant of jurisdiction' to FERC over interstate transmissions . . . the prefatory language [of Section 201(a)] does not undermine FERC's jurisdiction."[24]

B. The Commission Has The Authority And The Responsibility Under the FPA to Assure That Rates, Terms And Conditions Are Just, Reasonable, And Not Unduly Discriminatory Or Preferential.

FPA Section 205(a) requires that all rates and charges for or in connection with the transmission or sale of electric energy at wholesale shall be just and reasonable; FPA Section 205(b) bars undue preference or advantage in the provision of transmission services or wholesale sales. If the Commission finds that rates, charges or classifications for transmission, or rules, regulations, practices or contracts affecting such rate, charge or classification, are unjust and unreasonable or unduly discriminatory or preferential, FPA Section 206 directs the Commission to fix the just and reasonable rate, rule, regulation, practice or contract. The Commission explained in the NOPR that "these proposed reforms are needed to protect against unjust and unreasonable rates, terms and conditions and undue discrimination in the provision of Commission-jurisdictional services."[25] The Commission's action thus is grounded in its authority under Section 206 to modify rates, terms and conditions that are unjust, unreasonable, or unduly discriminatory or preferential.

In *New York v. FERC*, the Court upheld Commission regulations to remedy undue discrimination in the provision of transmission services. The opinion of the D.C. Circuit, affirmed by the Supreme Court, confirmed that Section 206 of the FPA gives the Commission

[23] *FPC v. Southern California Edison Co.*, 376 U.S. 215, *quoting Connecticut Light & Power Co. v. FPC*, 324 U.S.515, 527 (1945), *cited in New York v. FERC*, 535 U.S. at 22.
[24] *New York v. FERC*, 535 U.S. 22.
[25] NOPR, P 4.

authority to prescribe a market-wide remedy for a market-wide problem.[26] The D.C. Circuit in *TAPS* did not require the Commission to make individualized findings of discrimination by specific transmission providers, but rather relied on the Commission's "identification of a fundamental systemic problem in the industry."[27] In Order No. 888, the Commission relied on the undue discrimination language of FPA Section 206 as the basis for imposing a generic remedy for this systemic problem.[28] Likewise, here the Commission has proposed generic remedies to respond to identified systemic deficiencies in transmission planning and cost allocation.

The Commission's stated objective in the NOPR is "to address remaining deficiencies in transmission planning and cost allocation processes so that the transmission grid can better support wholesale power markets and thereby ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory or preferential."[29] These remaining deficiencies include:

- The lack of a requirement for a regional transmission plan, which could inhibit the construction of new transmission facilities (NOPR, P 35);
- Failure to account for public policy requirements in the transmission planning process, which may result in undue discrimination and rates, terms and conditions of service that are not just and reasonable (NOPR, P 37);
- The relative lack of coordination between planning regions and the resulting need for greater coordination in interregional transmission planning (NOPR, P 39); and

[26] *Transmission Access Policy Study Group v. FERC*, 225 F. 3d 667, 687 (2000) ("*TAPS*"), *aff'd sub nom. New York v. FERC, supra*.
[27] *TAPS*, 225 F.3d 683.
[28] *TAPS*, 225 F.3d 687.
[29] NOPR, P 33.

- Existing cost allocation methodologies that may inhibit the development of efficient, cost-effective transmission facilities and may not appropriately account for benefits associated with new transmission facilities, therefore resulting in rates that are not just and reasonable or are unduly discriminatory or preferential (NOPR, PP 40, 154).

Requirements for transmission planning and cost allocation are necessary for fully competitive wholesale markets, and fall squarely within the Commission's jurisdiction. Order No. 888 and the *pro forma* open access transmission tariff set forth minimum requirements for transmission planning as part of the effort to remove barriers to competitive wholesale electric markets. The Commission subsequently addressed requirements for transmission planning and cost allocation in both Order No. 2000 and Order No. 890. The NOPR is a logical and necessary extension of those rules.

With respect specifically to interregional planning, in the NOPR, the Commission identified a deficiency in the planning requirements under Order No. 890 stemming from "the relative lack of coordination between transmission planning regions."[30] This deficiency, the Commission found, may make the Order No. 890 transmission planning requirements unjust and unreasonable "in that they may not be sufficient to address the need for greater coordination in interregional transmission planning."[31] To address this deficiency, the Commission was fully within its authority under FPA Section 206 to propose principles and requirements for interregional planning.

[30] NOPR, P 39.
[31] *Id*.

C. The Commission's Transmission Planning And Cost Allocation Proposals Do Not Preempt State Jurisdiction Over Siting/Construction Or Resource Acquisition Decisions.

As with Order No. 888, the Commission here has taken care in its proposals not to impinge on states' jurisdiction over matters such as transmission siting, construction and generation resource planning.[32] Any effects of the Commission's exercise of its authority here on matters of state jurisdiction would be only incidental. Commission regulations are not invalidated by the fact that such regulation may affect matters regulated by the states. *See National Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2006).

At most, the planning requirements at issue here would have indirect impacts on matters (siting/construction) reserved for the states. Contrary to the arguments of some commenters,[33] such indirect impacts do not constitute direct regulation by FERC in violation of the FPA. In *Connecticut Dep't of Pub. Util. Control v FERC*, 569 F.3d 477 (D.C. Cir. 2009),[34] for instance, the court acknowledged that while a higher installed capacity requirement might provide a market incentive to construct additional generation facilities, it was not a direct regulation of generation facilities that is barred by FPA Section 201. *Cf. Southern California Edison Co. v. FERC.*[35]

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[32] *See, e.g.*, NOPR, P 67 (discussing the role of open transmission planning processes in providing "useful information that would help states to coordinate transmission and generation siting decisions"); NOPR, P 69 (proposed requirement to consider public policy requirements "is not intended in any way to infringe upon state authority with respect to integrated resource planning").

[33] *See e.g.*, Southern Comments at p. 17, where Southern argues that the Commission lacks authority to require transmission plans because such plans "could place FERC in the place of adjudicating disputes over what should and should not be constructed based upon a plan." Apart from being pure speculation, the Southern argument fails because any Commission exercise of its jurisdiction over transmission planning would have only an incidental impact on transmission siting and construction.

[34] The court upheld the Commission's authority to review installed capacity requirements ("ICR") for ISO-New England as part of the Commission's review of the ISO-NE transmission tariff against claims that Commission review of the ICR constituted impermissible direct regulation of electric generating facilities. 569 F.3d 481-2.

[35] 603 F.3d 996, 1001 (D.C. Cir. 2010). The D.C. Circuit overturned a Commission order on the calculation of retail charges for station power, finding that the order in question did not "just sideswipe state jurisdiction," but rather attacked it frontally.

D. FPA Section 202 Is Not A Constraint On This Rulemaking.

Section 202 is not drafted to impose a limitation on the Commission's Section 206 jurisdiction.[36] Rather, that section authorizes specific Commission actions, including dividing the country into regions and requiring physical interconnection of transmission facilities. The NOPR does not divide the country into regions or require physical interconnection of transmission facilities. The Commission has not based the NOPR on its authority under Section 202, and any limitations on Commission authority to act under Section 202 thus are irrelevant in considering the Commission's exercise of its authority under FPA Section 206.

Section 202 certainly does not prohibit the Commission from requiring that interregional transmission planning be done according to established principles.[37] Rather, to the extent that it is relevant at all, Section 202(a) should be read as an expression of Congress's intent to promote and encourage interconnection and coordination within and among regional districts.[38] The

[36] The Congressional purpose behind Section 202(a) was to encourage regional coordination of electric power systems by means of regional power pools. *Central Iowa Power Coop. v. FERC*, 606 F.2d 1156, 1167-68 (D.C. Cir. 1979)("*Central Iowa*"). As explained in *Central Iowa*, Congress through FPA Section 202(a) "concluded that regional coordination of electric power systems by means of regional power pools is in the public interest." 606 F. 2d. 1167. The court in *Central Iowa* affirmed a Commission order approving the Mid-Continent Area Power Pool ("MAPP") Agreement in the face of challenges, *inter alia*, that the agreement was anticompetitive and that the Commission should have considered requiring MAPP participants to construct larger generation units. The D.C. Circuit said that "Congress has decided, as a matter of general policy, that power pooling arrangements, rather than unrestrained competition between electric facilities are in the public interest," *citing* FPA Section 202(a). 606 F.2d 1162.

[37] *See, e.g.*, Comments of Southern California Edison at p. 56. Southern California Edison cites *Atlantic City Electric Co. v. FERC*, 295 F.3d 1(D.C. Cir. 2002) ("*Atlantic City*"), a case construing the Commission's authority under FPA Section 203 to require approval of the withdrawal of an RTO member, for the proposition that Section 202 does not provide the Commission with the authority to compel particular interconnections or techniques of coordination. The D.C. Circuit commented on Section 202 in *Atlantic City* only to support its holding that RTO withdrawal need not be approved under Section 203 because "it would be anomalous for FERC to have jurisdiction under Section 203 to prohibit the utility petitioners from ending their voluntary coordination and interconnection through the PJM ISO." 295 F.3d at 12. And in any event, the Commission has *not* grounded the NOPR in any exercise of its authority under Section 202.

[38] *See Municipalities of Groton et. al. v. FERC*, 587 F.2d 1296 (D.C. Cir. 1978) at note 2 ("Congress' intention in adopting [Section 202(a)] is explained in Senate Report No. 621, 74th Cong., 1st Sess. (1935) at p. 49: Under this subsection the Commission would have authority to work out the ideal utility map of the country and supervise the development of the industry toward that ideal. . . .").

Commission through the NOPR is carrying out this duty to promote interconnection and coordination through its proposal for interregional transmission planning agreements.

E. The Costs Of A New Transmission Project May Be Allocated To Those Who Benefit From The Project, Regardless Of Whether They Have A Voluntary Agreement With The Transmission Owner.

The preamble to the NOPR contains a well-reasoned discussion of the Commission's authority to implement the cost allocation proposals contained in the NOPR.[39] That discussion addresses cost allocation within RTO/ISO structures,[40] and then describes the Commission's authority to allocate costs to beneficiaries outside of the RTO/ISO context.[41]

We remind the Commission that, in addition to the authority outlined in the preamble to the NOPR, the Commission may have additional means at its disposal for implementing the critical cost allocation elements of the NOPR in areas outside the RTOs.[42] First, as was noted in the NOPR, the failure to allocate costs for transmission expansion projects that emerge from a robust regional planning process in rough proportion to the distribution of the benefits will lead to a significant free rider problem.[43] Failing to address the free rider problem can lead to unjust and unreasonable rates by, for example, imposing disproportionate costs on load in the zone or zones in which transmission is constructed while allowing others to reap benefits without bearing any share of the cost.[44]

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[39] NOPR at PP 139-147.
[40] *Id.* at P 141.
[41] *Id.* at P 142-147.
[42] There is no question about the Commission's authority and responsibility to oversee cost allocation within the RTOs. The Commission has exercised its cost allocation responsibilities under the Federal Power Act within the RTO framework on numerous occasions, and in some cases, has been subject to judicial review.
[43] *See* NOPR at P 142.
[44] This is what has happened in the Midwest ISO, where certain Load Serving Entities in the western part of the Midwest ISO region have threatened to leave the ISO, rather than be burdened with the costs of Network Upgrades necessary to enable the interconnection and export of renewable generation to customers in the eastern part of the ISO. The Midwest ISO's most recent effort to address this problem is pending before the Commission in Docket No. ER10-1791.

When a utility located outside of an RTO builds new transmission, it typically allocates the costs of the transmission project to native load in retail rates, and then credits back to retail load any unbundled transmission revenues from the project received under its open access transmission tariff ("OATT"). Where a transmission project provides significant reliability, economic or other benefits to neighboring utilities in the region, the failure to capture those benefits and credit that value to native load that paid for the transmission through a Commission-jurisdictional transmission tariff is not just and reasonable from the perspective of the transmission developer or its native load. For an independent project developer outside of an RTO, failure to capture revenues from all significant beneficiaries will undermine cost recovery, and thus threaten the ability to proceed with project development. There will, of course, be case-specific debates about whether a particular transmission project provides significant benefits to load outside the zone in which the facilities are built, and if so, the magnitude of those benefits. But where broad benefits have been demonstrated, there should be no dispute that allowing the recipients of those benefits to free ride on the investments made by others is not just and reasonable.

Second, once the NOPR is finalized and the regions move to implementation of the new rules, there will need to be arrangements among the transmission owners within a planning region about the planning process, the governance structure, and the mechanisms for cost allocation. To the extent that these regional arrangements are embodied in Commission-jurisdictional agreements, the Commission has the authority to ensure that those agreements, and the arrangements embodied in those agreements, are just and reasonable under Section 205 of the FPA. As noted above, agreements that allow for "free riding" unfairly shift costs and thereby create a significant obstacle to regionally planned transmission investment needed to support

regional electricity markets. For these reasons, regional agreements that do not address the free rider problem are not just and reasonable.

Third, if the Commission concludes that a traditional customer relationship is needed to support regional cost allocation to beneficiaries outside of an RTO, it can take action in this rulemaking to create such a relationship. The Commission could, for instance, deem that each load serving entity in a region is taking "regional transmission expansion service" to the extent that it is interconnected to the regional grid and is determined in the regional planning process to be a beneficiary of jointly planned grid expansion projects. The specific rates (based on a benefits-based cost allocation) and terms for such service could be set out in a common regional addendum to the OATTs of transmission providers in the region. The load serving entities take this service by means of their interconnection with the regional grid and their receipt of significant benefits from regional transmission expansion projects. Each region will have to work out, with oversight from the Commission, important details for such arrangements, such as whether the entities bearing a share of the cost allocation for a transmission expansion project receive specific transmission service rights or transmission revenue credits in exchange for paying that allocation.

Finally, beyond these direct mechanisms for implementing cost allocation as envisioned in the NOPR, the Commission has a long history of using conditions on Federal Power Act authorizations as a means for advancing the public interest. For example, in Order No. 888, the Commission used a reciprocity requirement to encourage non-jurisdictional entities to provide open access comparable to that provided under the Order No. 888 *pro forma* OATT.[45] The

[45] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, pp. 31,691, 31,755, 31,760-2 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶

Commission has imposed transmission-related conditions on market-based rate authority, requiring, for instance, that public utilities seeking market-based rates and their affiliated transmission owners provide open access transmission service. The Commission also has imposed requirements – such as requirements to join an RTO – as conditions on approval of mergers and other corporate transactions requiring prior approval under Section 203 of the FPA. In this circumstance, where the Commission has concluded that implementation of regional cost allocation for new transmission projects is in the public interest, the Commission can reinforce the policy by requiring participation in regional cost allocation as a condition on Commission authorizations. Such conditions can be justified under Sections 203, 205 or 206 of the FPA, as applicable, because appropriate regional cost allocation (and the transmission expansion it will enable) is necessary to address undue discrimination, to mitigate market power, and to protect the public interest. The Commission should not be bashful about using its conditioning authority to support implementation of the NOPR's cost allocation principles.

F. The Benefits of Extra High Voltage Transmission Investments Are Broadly Distributed.

With its initial comments in this proceeding, the Joint Commenters submitted an analysis prepared by Charles River Associates ("CRA") demonstrating the broad regional benefits of extra high voltage transmission. CRA analyzed how the usage of transmission lines at various voltages is affected by regional power flows over interfaces between balancing authority areas, to determine whether lines of a particular voltage would provide benefits for all those served by the regional grid, including reliability, reserve sharing and area-wide economic dispatch.[46] CRA

61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[46] *See* "Assessment of the Regional Grid Participation of Transmission Lines Classified by Voltage Level," prepared by Charles River Associates, Inc., Exhibit 1 to the Joint Comments of American Electric Power Corp.; American Wind Energy Association; Energy Future Coalition; Iberdrola Renewables; ITC Holdings Corp.; LS Power

also enumerated the technical and power system design benefits of higher voltage lines that are part of the regional network, including the reduced losses from these lines and their ability to carry substantially more power.

CRA performed a Transmission Distribution Analysis similar to the one relied upon by the Commission in approving the Southwest Power Pool's Highway/Byway cost allocation methodology. This analysis supported the finding that lines of 345 kV and above as a class support regional power flows across a range of different regions with different transmission topologies.[47] The strong uniformity in the results of the CRA Assessment justify the establishment of a rebuttable presumption that 345 kV and higher facilities have region-wide benefits.[48]

Given this factual demonstration, the Commission's proposal to allocate costs in a manner commensurate with this broad distribution of benefits is entirely appropriate.

Transmission LLC; Mesa Power Group, LLC; NextEra Energy, Inc.; and Solar Energy Industries Association filed in this proceeding on September 29, 2010, at p. 2.

[47] *Id*., p. 6.

[48] *Id.*, p. 4. CRA also cautioned that in some regions, lower voltage, e.g. 230 kV lines, also may be regional in nature. *Id*., p. 8. A rebuttable presumption would allow for the consideration of lower voltage lines as regional lines with broad regional benefits where analysis demonstrates this to be the case.

III. CONCLUSION

Joint Commenters urge the Commission to finalize the cost allocation provisions of this rulemaking, with the revisions recommended in their Initial Comments, and to adhere to the compliance filing schedule outlined in the NOPR.

Respectfully Submitted,

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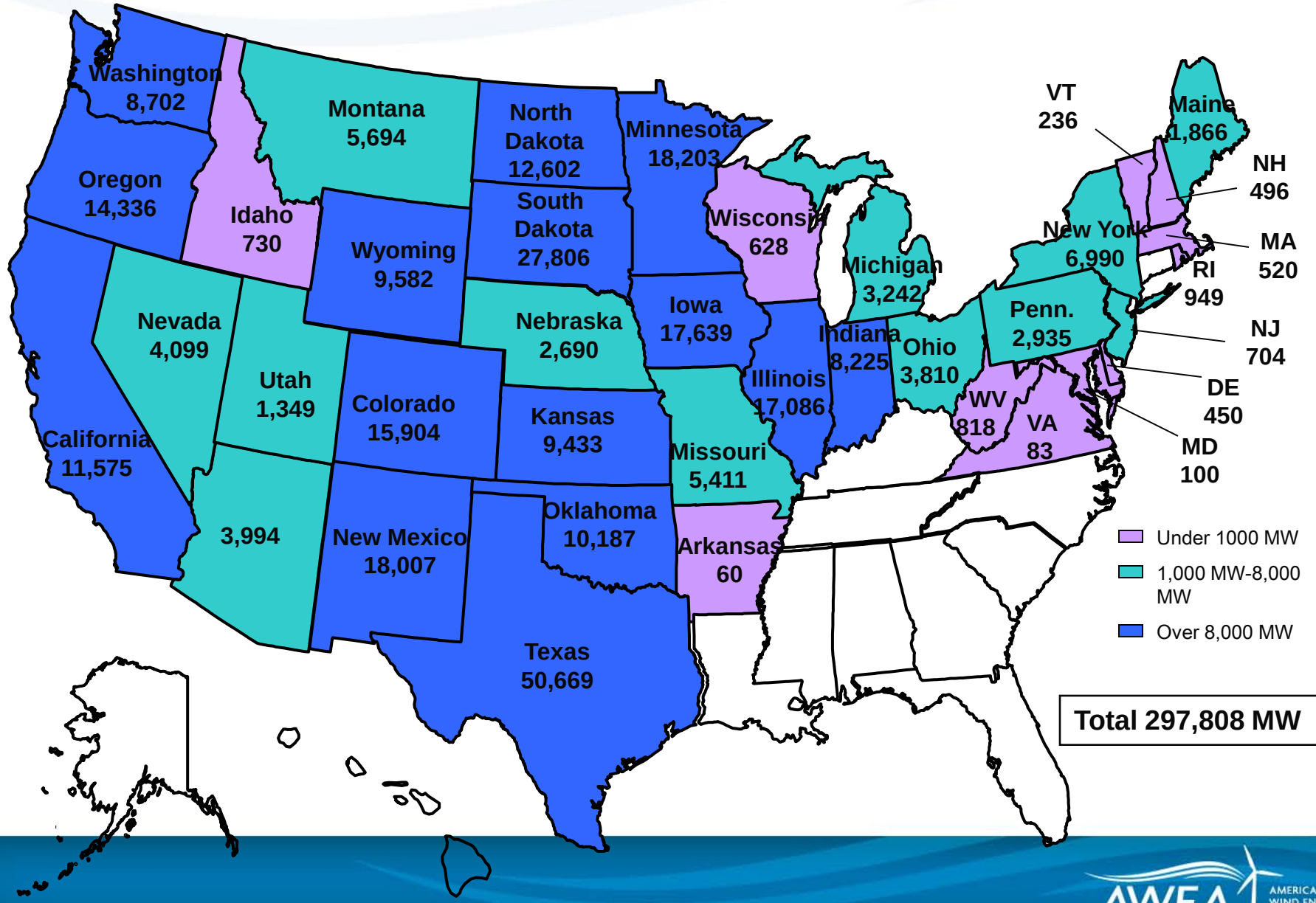
Docket No. RM10-23-000

EXHIBIT 1

TO THE

JOINT REPLY COMMENTS OF AMERICAN ELECTRIC POWER CORP., AMERICAN WIND ENERGY ASSOCIATION, ENERGY FUTURE COALITION, IBERDROLA RENEWABLES, ITC HOLDINGS CORP., LS POWER TRANSMISSION LLC, MESA POWER GROUP, LLC, NEXTERA ENERGY, INC., SOLAR ENERGY INDUSTRIES ASSOCIATION AND WESTERN GRID GROUP

Wind Power in Queues (MW)



AWEA AMERICAN WIND ENERGY ASSOCIATION