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SECRETARY

September 29, 2010

By Electronic Filing

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Comments of the Alabama Public Service Commission
Transmission Planning and Cost Allocation
by Transmission Owning and Operating Public Utilities
FERC Docket No. RM10-23-000

Dear Secretary Bose and Deputy Secretary Davis:

The Alabama Public Service Commission appreciates this opportunity to file its attached Comments in this proceeding. Should you require any additional information or have any questions or concerns regarding this filing, please contact the undersigned at (334) 242-9579 so that such information may be supplied expeditiously.

Sincerely,
/s/John D. Free
John D. Free
Advisory Staff
Energy Issues and Policy Advisor
Alabama Public Service Commission

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

**Transmission Planning and Cost Allocation
by Transmission Owning
and Operating Public Utilities**

Docket No. RM10-23-000

**COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (“APSC”) submits these comments in response to the June 17, 2010 Notice of Proposed Rulemaking (“NOPR”) of the Federal Energy Regulatory Commission (“FERC”). The NOPR follows FERC’s earlier Notice of Request for Comments (Docket No. AD09-8, October 8, 2009)¹ and proposes a number of reforms to the transmission planning processes established in Order No. 890 as well as to transmission cost allocation methodologies.

1. Introduction

The APSC appreciates FERC’s goal of increasing efficiency in transmission development. The APSC likewise acknowledges and commends FERC for its commitment in the NOPR to defer to state authority in the implementation of any proposals. Nonetheless, the APSC is troubled by certain proposals included in the NOPR, as they seem to contradict FERC’s acknowledgement of state authority or they are simply unclear. Among the specific proposals that concern the APSC are: (a) the NOPR’s proposal to require separate consideration of “public policy” in planning and cost allocation processes that would apparently be subject to FERC approval; (b) the NOPR’s proposal to grant non-incumbents a federal right to develop sponsored

¹ The APSC submitted comments in that docket as well. See Comments of the Alabama Public Service Commission, Docket No. AD09-8 (December 18, 2009). A copy of those comments has been included at Attachment 1.

transmission projects in the state; and (c) the NOPR's proposal to require public utility transmission providers to participate in regional transmission resource planning processes with cost allocation methodologies that abandon the historic and well-founded cost causation model in favor of an as-yet defined "beneficiary" model.

In the pre-NOPR process, the APSC stressed that the existing integrated resource planning ("IRP") and transmission planning processes used in the state by the public utility subject to the APSC's jurisdiction – Alabama Power Company – have contributed to a robust transmission grid. The APSC also noted that the Order No. 890 planning processes, as well as the efforts of the Eastern Interconnection States' Planning Council ("EISPC") and Eastern Interconnection Planning Collaborative ("EIPC"), have only recently been formed. The APSC further cautioned FERC against forcing merchant transmission into the Southeast, as doing so would seem to presuppose some degree of preemption of State jurisdiction over the transmission component of bundled retail rates. To that end, the APSC stressed that FERC should not force the entry of merchant transmission into a region without the consent of the affected states.²

The APSC is discouraged that the NOPR did not address these comments, and that FERC appears still to be considering action inappropriate for states like Alabama. A public policy choice has been made in Alabama to retain the state-regulated, bundled electricity service model, with planning done on a vertically integrated basis. This model has worked to the direct benefit of retail customers, producing (among other things) a robust, reliable and cost-effective transmission system characterized by little economic or reliability congestion. In the APSC's view, these processes should continue unchanged.

² Attachment 1, pp. 8-9.

While FERC commits to not “infringe upon state authority with respect to integrated resource planning”³ or otherwise “address, propose to change, or seek to preempt any state or local laws or regulations”,⁴ several of the proposals included in the NOPR seem to conflict with these very statements. For this reason, the APSC has difficulty understanding what exactly the NOPR is proposing and how precisely FERC expects the proposals to operate in a real setting. At a minimum, the APSC is concerned that the NOPR allows for the undermining of state authority. Accordingly, the APSC reaffirms its prior positions and calls upon FERC to refrain from actions that would disrupt the current integrated planning process in Alabama or preempt the APSC’s existing jurisdiction.

2. Transmission and Planning in Alabama

The transmission system in Alabama is reliable with limited congestion, a fact confirmed most recently in the 2009 National Electric Transmission Congestion Study performed by the Department of Energy (“DOE”). In that study, DOE stated: “Because the southeastern utilities build aggressively in advance of load, there is little economic or reliability congestion within the region.”⁵ In the APSC’s view, the strength of Alabama’s electric infrastructure stems from the proactive integrated resource planning that takes place under our oversight.

Alabama remains a traditionally regulated state, with Alabama Power planning on an integrated basis and providing bundled electric service pursuant to its duty to serve under the “regulatory compact.” In fulfillment of this duty, Alabama Power studies both generation and transmission (along with distribution, purchased power opportunities, and demand side management) as part of a comprehensive IRP process. Alabama Power does not perform its IRP

³ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Docket No. MR10-23-000, at P 69 (“NOPR”) (citing Order No. 890 at P 479, n.274).

⁴ NOPR at P 98.

⁵ 2009 DOE Congestion Study at p. 61.

process in isolation, but coordinates with the other Southern Company retail operating companies as well as with other affected utilities. This process identifies the most economic and reliable means for satisfying the needs of retail customers. System expansions and improvements are driven primarily by considerations of long-term reliability, with the transmission system planned to enable the economic dispatch of network resources and other long-term commitments, such as third-party power purchase arrangements, without the incurrance of congestion. This “bottom-up” approach strives to achieve the most reliable service that can be provided to consumers on a least-cost basis.

Recent developments at the interregional and interconnection level should enhance these processes. As FERC is aware, EISPC is a DOE-funded effort involving state utility commissions, governors’ offices, and other government representatives. Among the goals EISPC hopes to realize from interconnection-wide studies and planning (and working in concert with EIPC) are projects that will yield the lowest reasonable delivered cost to customers, promote the reliability of the nation’s electric power system, better utilize renewable energy, and foster effective approaches to energy efficiency, new technologies and increased environmental requirements. In the pursuit of these goals, EISPC recognizes the importance of successful collaborations with DOE and FERC. EIPSC also recognizes the importance of state input and the authority states have over the siting and approval of new transmission facilities, as well as the responsibility to consider how those facilities will impact retail customers.

The State of Alabama has been actively involved in the formation and implementation of EISPC. For example, APSC Commissioner Dr. Susan Parker participated in the organization of EISPC’s Executive Committee and Steering Committee. In addition, Seth Hammett, former Speaker of the Alabama House of Representatives, was selected by EISPC to serve as one of the

two Southeastern representatives on EISPC's Steering Committee that, in turn, represents the states on the EIPC Stakeholder Steering Committee. Thus, Alabama has and will remain active in interconnection-wide planning efforts. As EISPC and EIPC have prescribed for themselves time-tables that call for the delivery of reports and recommendations in 2011-2012, the APSC believes that no new reforms are needed at this time. The APSC is confident (at least for purposes of maintaining reliable and cost-effective electric service to Alabama ratepayers) that sufficient transmission planning coordination is ongoing.

3. The APSC's Concerns with the NOPR

At a general level, the APSC is concerned that the NOPR will impair state authority. A very real risk of this outcome arises if FERC creates a federal process for non-incumbent transmission developers to sponsor transmission facilities and receive rate recovery from retail customers without APSC approval. The APSC sees a similar risk in the establishment of a top-down, regional planning approach that does not defer to ongoing, state-supervised IRP and transmission planning. A top-down, federal tariff-based transmission planning process would upend Alabama's bottom-up, integrated planning process. And as the APSC understands the NOPR, such a top-down approach appears to be the goal, at least to the extent it would require the development of regional planning criteria and intraregional and interregional cost allocation methodologies that are subject to FERC approval.

A. Consideration of Public Policy Requirements

One proposal included in the NOPR that is of particular concern to the APSC is the requirement that local and regional public policies that drive transmission needs must be included in transmission planning processes.⁶ While the APSC can appreciate why FERC might

⁶ NOPR at P 64.

see value in such a proposal, it is the APSC's position that such a requirement falls within the bounds of state jurisdiction. Specifically, the APSC's regulatory authority includes the monitoring and enforcement of applicable state laws and regulations. These laws and regulations define the applicable public policies, and include not only the sorts of policies identified by FERC in the NOPR (to the extent applicable), but also the fundamental policies embedded in the utilities' legal duty to render adequate service to the public and to make such reasonable improvements and enlargements to facilities as may be necessary to meet the growth and demand of the territory.

The existing IRP and transmission planning processes utilized in Alabama are founded on these policies, and the APSC is confident that those policies have been, and will continue to be, incorporated into the electric system planning processes. It is the duty of the APSC to ensure this is so and, when necessary, enforce compliance. This duty has been delegated to the APSC by the Alabama Legislature, and it cannot be transferred to a regional planning body or, for that matter, the federal government. Yet, the APSC understands the NOPR to require just this type of transfer, as the NOPR would require transmission providers to include in their OATT an express statement providing for the consideration of such public policy requirements. This requirement would then operate alongside the proposed regional planning processes and proposed cost allocation methodologies that must be agreed upon on an intraregional and interregional basis. This seems to create the very real possibility for encroachment on state authority.

Specifically, the APSC sees a strong possibility for conflict when multiple states' public policies are forced to compete in regional planning processes. Presumably, the regional processes would attempt to work through disputes in an attempt to reach compromise. But in instances where conflicts cannot be resolved on a principled basis (that is, without one or more

states yielding to the demands of others in an effort to reach compromise), it is likely that the regional planning process would attempt to resolve the impasse by maximizing “regional” benefits, thereby creating winners and losers.⁷ If the product of such a process was then brought to the APSC for approval, the APSC would be required by law to review the application to confirm, among other things, the extent to which Alabama public policies are respected in the project. The APSC would possess the authority to approve, reject or condition any approval as it deemed appropriate in its discretion – unless its authority to do so had been modified or circumvented as a result of any final rule arising out of the proposals appearing in the NOPR.

B. The Non-Incumbent Proposal

The NOPR proposes to create a federal right for non-incumbent and merchant transmission developers to sponsor, construct and own transmission projects in an incumbent transmission provider’s service territory. The APSC finds this proposal difficult to reconcile with the commitments elsewhere in the NOPR to honor state authority with respect to integrated resource planning and other state laws and regulations. At best, the NOPR is simply unclear as to how FERC intends for this non-incumbent “right” to coexist with IRP and transmission planning processes like those used in Alabama. This leaves the APSC to wonder whether non-incumbent projects that include segments within the state of Alabama would trump or foreclose “substantially similar” projects identified as part of the bottom-up planning process, or would the APSC retain its traditional authority to determine which project is in the best interest of retail consumers. Similarly, the APSC is unsure what would happen if a transmission line sponsored by a merchant developer was selected through the proposed FERC-regulated transmission planning process but then failed to receive all requisite state approvals.

⁷ The NOPR is silent on whether FERC would accept an impasse in such a situation, or whether FERC might attempt to assert jurisdiction over the actual planning process itself and, through litigated proceedings, direct some form of resolution.

In addition, the NOPR's proposals to provide nonincumbent developers with federal construction and ownership rights encroach upon the state public policies embodied in Alabama's "duty to serve" statute.⁸ If non-incumbent and merchant transmission developers are federally empowered to construct and own the transmission lines in Alabama, the use of which ultimately is attributed to retail consumers in Alabama as "beneficiaries", and those developers are somehow exempted (in whole or in part) from regulatory oversight by the APSC, then the policies underlying the duty to serve statute will be frustrated. The APSC would lack the ability to ensure that the proposed line is the best option for the supply of least-cost and reliable service to retail customers. Instead, customers would apparently be compelled to accept service from facilities that may not have been certificated by the APSC or whose resulting rates have not been reviewed by the APSC.

Presently the APSC reviews long-term, merchant generation proposals before they are included in retail rates. This review is accomplished as part of the APSC's consideration of certificate applications for power purchase arrangements entered into by the regulated utility. As such, the APSC is able to perform a prudency review before the merchant generators' proposed costs are recovered from retail customers. FERC has not been clear in the NOPR as to whether its proposal contemplates the usage of a comparable process for merchant transmission. If anything, the extension of rights to non-incumbents to develop a project would seem to indicate that FERC does not contemplate such a process, as the non-incumbent developer would apparently be able to by-pass APSC rate review by recovering its costs directly from the local utility through the NOPR's proposed cost allocation methodologies.

⁸ Ala. Code § 37-1-49; *see also Continental Tel. Co. v. APSC*, 479 So. 2d 1195, 1214-15 (Ala. 1985).

The APSC does not support any federal policy that would have the direct or indirect result of forcing merchant transmission upon retail customers. Leaving aside the intrusion into existing IRP and transmission planning, the APSC is concerned that the NOPR's proposed imposition of merchant transmission would only increase costs to Alabama consumers, as they would apparently be entitled to "incentive rates" under FERC precedent while possibly not being subject to APSC prudence review for cost recovery purposes. Accordingly, the APSC does not see the proposal to allow non-incumbents the right to develop a project in the territory as providing much in the way of competitive benefits for customers.

C. The Cost Allocation Proposals

Finally, the APSC is very concerned by the proposal in the NOPR that transmission providers establish cost allocation methods on an intraregional and interregional basis. Under the proposals, non-incumbents, merchant transmission developers, and possibly even other transmission providers could recover the costs of an intraregional or interregional project from an incumbent utility and its customers if they are found to "benefit from the facilities in a manner that is at least roughly commensurate with estimated benefits."⁹ Such beneficiaries would include those that benefit either in the present "or in a likely future scenario."¹⁰ The NOPR does not expand upon the contemplated meaning of "costs", "benefits" and "beneficiaries" other than to emphasize that one can be a beneficiary even if he is not a customer of the transmission owner, leaving the development of those terms and related mechanics to the intraregional and interregional participants. What particularly concerns the APSC is that the terms are broad enough to contemplate cost recovery from a transmission provider's *retail* customers.

⁹ NOPR at P 164(1).

¹⁰ NOPR at P 164(2).

The APSC stringently objects to such a proposal, as it would intrude upon APSC's rate jurisdiction over the transmission component of bundled retail rates and allow the imposition of costs without a prudency review by the APSC. It would be unfair, unjust and unreasonable for retail ratepayers in Alabama to be forced to pay for the costs to construct a transmission system in other areas of the country beset with congestion. It would likewise be unfair and inappropriate for retail ratepayers in Alabama to be shouldered with the costs of new facilities, the construction of which are not caused by or necessary to serve the needs of those customers.

The APSC appreciates FERC's acknowledgment in the NOPR that the identification of "benefits" and "beneficiaries" "can be difficult and controversial."¹¹ This recognition, coupled with FERC's commitment elsewhere in the NOPR to respect state public policies and to not infringe upon state regulatory authority, is indicative of more than just the potential hurdles that await any implementation. Rather, it underscores the fact that the NOPR is intruding into areas that have traditionally been, and continue to be, the prerogative of state decision-makers like the APSC. The APSC cannot reconcile the NOPR's proposal for the adoption of top-down cost allocation methodologies with the commitment to respect state public policy. Unless FERC intends to permit regional and interregional methodologies to appropriately assign costs using a true cost causer allocation model, then the APSC foresees ongoing, material conflict with the state policies it is charged to uphold. In such a circumstance, the APSC has trouble anticipating any agreement with a cost allocation methodology, which under the NOPR will result in litigation before FERC and eventually a federal mandate as to how costs are to be allocated.

In this respect, the APSC also is troubled by the NOPR's proposal that FERC holds the right to approve the intraregional or interregional cost allocation methodologies in the event

¹¹ NOPR at P 158.

agreement cannot be reached on them. Conflicts inevitably will arise over the respect due state public policies or the extent to which a proposed interstate transmission facility “benefits” retail consumers, and may make “agreement” on a particular proposal difficult, if not impossible. The only resolution to such an impasse proposed in the NOPR is the pursuit of litigation before FERC, which very likely will be time-consuming and costly, and which will require the state to dedicate resources to defend its own policies – resources stretched due to the current economic downturn. In the end, state determination of whether proposed costs are commensurate to prospective benefits could be preempted, which would be an unacceptable result.

The APSC strongly encourages FERC to continue to recognize the cost causer principle, which is a proven and effective way of encouraging the development of necessary transmission facilities and ensuring costs are allocated directly to those who benefit. The costs for new transmission facilities that are not otherwise needed for bulk system reliability should be borne by the entity requesting it, and should not be shifted to retail ratepayers. To the extent there are regions in this country whose legislatures and retail ratepayers are willing to engage in such cost subsidization, those regions should be free to adopt cost allocation approaches that achieve that end. However, FERC should also honor its statement in the NOPR that a one-size-fits-all approach is not contemplated so that, in areas like Alabama, the traditional cost allocation approach of cost causer pays may continue unimpeded.

4. Conclusion

The Alabama Public Service Commission supports the existing transmission and integrated resource planning processes that have been used to develop a robust transmission system in the State of Alabama for the benefit of its industrial, commercial and residential retail customers. The APSC does not support action by FERC that would, directly or indirectly,

preempt state authority, undermine these effective processes, and subject retail customers to unnecessary costs. The Notice of Proposal Rulemaking in part promises that such action is not contemplated, nor is a one-size-fits-all approach. The APSC calls upon FERC to uphold that promise as it considers the need for any final rule in this proceeding.

Sincerely,

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John D. Free
Advisory Staff
Energy Issues & Policy Advisor
Alabama Public Service Commission

Attachment 1

Comments of the Alabama Public Service Commission
Docket No. AD09-8
December 18, 2009



State of Alabama
ALABAMA PUBLIC SERVICE COMMISSION
P. O. BOX 304260
MONTGOMERY, ALABAMA 36130-4260

LUCY BAXLEY, PRESIDENT

JAN COOK, ASSOCIATE COMMISSIONER

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WALTER L. THOMAS, JR.

SECRETARY

December 18, 2009

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Alabama Public Service Commission Comments
Transmission Planning Processes Under Order No. 890
FERC Docket No. AD09-8, Request for Comments

Dear Secretary Bose and Deputy Secretary Davis:

The Alabama Public Service Commission appreciates this opportunity to file its attached Comments in this proceeding. Should you require any additional information or have any questions or concerns regarding this filing, please contact the undersigned at (334) 242-9579 so that such information may be supplied expeditiously.

Sincerely,
/s/John D. Free
John D. Free
Advisory Staff
Alabama Public Service Commission

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

**Transmission Planning Processes
Under Order No. 890**

Docket No. AD09-8

**COMMENTS OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (“APSC”) is hereby submitting these comments in response to the Federal Energy Regulatory Commission’s (“FERC”) October 8, 2009, “Notice of Request for Comments” (“Request”) concerning transmission planning processes under Order No. 890. The APSC files these comments in support of the existing transmission planning (and other electric planning) processes that have well-served the industries and citizens of this state. The APSC is providing these comments largely in response to attempts by certain commenters in this proceeding to convince FERC to take extreme actions that, if adopted, would threaten the effective transmission and resource planning processes used in this state and force Alabama consumers to subsidize certain generation and transmission developers as well as ratepayers in other regions. For these reasons, the APSC recommends that FERC continue with its Order No. 890 planning processes that ensure that transmission planning is performed in an open, transparent, and coordinated manner and reject such extreme calls that would substantively interfere with existing planning processes and harm consumers.

I. Current Planning Processes Have Resulted in a Robust Transmission System in Alabama

The integrated resource planning (“IRP”) and transmission planning processes used in the Southeast have produced a transmission system in Alabama that is characterized by high

reliability and low congestion. The former President of the APSC, Commissioner Jim Sullivan, provided testimony in this regard at the regional workshop conducted by the Department of Energy (“DOE”) in Atlanta, Georgia on July 29, 2008 in preparation of DOE’s 2009 Transmission Congestion Study,¹ with the APSC providing comments in support of that testimony.² As discussed in those comments, due to Alabama’s current planning processes, Alabama has little congestion, with the electric utility that is regulated by the APSC in this state, Alabama Power Company (“Alabama Power”) having invested significant amounts in its transmission system.³ Specifically, and using currently available investment data, Alabama Power has invested nearly \$500,000,000 in its transmission system from 2005-2008, and has budgeted to invest an additional \$162,600,000 in transmission in 2009.

“Furthermore, Alabama has experienced significant economic development opportunities over the last ten years and has become a preferred siting location for a great deal of new industry. Much of this success is, in large part, attributable to the strength of our electric infrastructure. For example, over the last ten years, the following major companies have located in Alabama, and most of these cited low electric rates and high reliability as a consideration for locating in Alabama.”

“Company Name	Year Operations Began	Industry
Mercedes Benz	1995	Automotive
Tuscaloosa Steel (NUCOR)	1995	Primary Metals

¹ See U.S. Department of Energy Pre-Congestion Study Regional Workshops for the 2009 National Electric Congestion Study, Atlanta, GA (July 29, 2008) (“Atlanta Transcript”).

² See Alabama Public Service Commission Comments on DOE’s Preparation of the 2009 Transmission Congestion Study and the Atlanta Regional Workshop (October 15, 2008) (“APSC Comments”). Given the relevance of those comments to the issues raised in this proceeding, a copy of those comments is attached hereto as Exhibit 1.

³ APSC Comments at p. 2.

Mitsubishi Polysilicon	1997	Chemicals
IPSCO Steel	2000	Primary Metals
Honda	2001	Automotive
Fortier Yarns	2002	Textile
Hyundai	2004	Automotive
Berg Steel	2007	Primary Metals
Kronospan	2007	Wood Products
Louisiana Pacific – Thomasville	2007	Wood Products
ThyssenKrupp Steel	2009	Primary Metals”

“Lastly, and as discussed by Commissioner Sullivan at the Atlanta Workshop:

I’ve been a commissioner in Alabama for 25 years. And I think because our transmission system is in such good shape, we’ve been so far ahead of the curve, this [congestion issue] has never come up as one of the major issues that reaches, frankly, the commissioner level. And I think that’s a good indication that our region of the country is doing a good job of being proactive.

Atlanta Transcript, at 18.”⁴

In its comments to DOE, the APSC further explained that the foregoing successes are largely the result of the IRP and transmission planning processes that are used in this region:

[T]he major reason for this lack of long-term congestion is that Alabama remains a state in which both generation *and transmission*, along with distribution and demand side management, are all jointly studied through the integrated resource planning process to provide service to consumers on a least-cost basis. In this process, reliability and long-term economic dispatch are the primary drivers for transmission system improvements and expansion plans. This integrated process reduces congestion by ensuring that new and existing generation resources committed

⁴ APSC Comments at pp. 2-3.

[footnote 1 moved to text below] to serving the citizens of this region on a long-term basis can be delivered without congestion. In contrast, so called “organized markets” generally no longer engage in such integrated planning but instead have largely separated transmission planning from generation development planning.

As further discussed by Commissioner Sullivan at the Atlanta Workshop, Alabama Power does not perform this integrated resource planning in isolation. Rather, Alabama Power does so in coordination with the other retail operating companies within Southern Companies’ system as well as with other affected utilities. The results of this integrated resource planning are incorporated into SERC studies so as to ensure reliability and simultaneous feasibility. In this manner, transmission providers are able to address long-term congestion that might otherwise arise due to changes on other transmission systems, and such coordinated planning facilitates the addressing of significant congestion throughout the region.

It also bears noting that outside of planning for long-term economic dispatch for native load customers, there is also a process in place to provide long-term firm transmission service to third parties. Should a third party desire to have a transmission improvement made to address a congestion problem that it has identified, all that such a customer has to do is to commit to taking long-term service under Southern Companies’ OATT. If such a commitment is made, then Southern Companies will move forward to make the transmission enhancements necessary for that third-party to receive long-term firm service without congestion. Pursuant to this transmission tariff process, third parties can determine for themselves whether it makes economic sense to commit to the costs of long-term firm service so as to pursue market opportunities or to forego the transaction.

/footnote 1/ The transmission system is planned to enable an economic dispatch of network resources and other long-term commitments without incurring congestion. Network resources include committed Alabama Power generators, generators of Southern Companies’ affiliates, and IPP generators that are committed to serving consumers through Purchase Power Agreements. In addition, as discussed further below, third parties can similarly receive long-term delivery service without

congestion if they commit to long-term service under Southern Companies' Open Access Transmission Tariff ("OATT").⁵

II. FERC Should Not Adopt Calls to Significantly Restructure These Planning Processes or to Force a Broad Cost Socialization

Accordingly, the current IRP and transmission planning processes are working well in this region. Importantly, FERC's Order No. 890 transmission planning requirements served to largely make the current transmission planning processes more open and transparent to third parties without otherwise substantively interfering with the effective means by which such transmission planning or resource planning are performed. FERC is to be commended for striking such a balance. However, several entities have filed comments in this proceeding that would have FERC take extreme actions that would almost certainly interfere with these planning processes and thereby harm Alabama consumers. While these comments do not attempt to address every proposal that could prove harmful given the sheer volume of comments filed in this proceeding, the following addresses some of the more high level arguments that are being made.

A. Interconnection-Wide Planning and Broad Cost Socialization Proposals Would Undermine Current IRP Planning Processes

Several commenters make arguments that would have the transmission planning process effectively make resource procurement decisions. In particular, several commenters argue for "top down," interconnection-wide planning⁶ and broad cost socialization⁷ approaches. These

⁵ APSC Comments at p. 4 and n. 1 (footnote moved to text).

⁶ See, e.g., Comments of MidAmerican Energy Holding Co. ("MidAmerican") at pp. 8, 12; Comments of American Electric Power Services Corp. ("AEP") at pp. 8, 16.

⁷ See, e.g., Comments of American Wind Energy Association ("AWEA") at pp. 4-8; Comments of the Solar Energy Industries Association at pp. 21-26; Comments of Starwood Energy Group Global LLC, p. 7; Comments of BP Energy Co. at pp. 5-7. The Commission should note that many commenters attempt to disguise the socialization of costs by promoting a "beneficiary pays" approach where nearly everyone in a region (or interconnection) would be deemed to be a "beneficiary" of transmission construction.

proposals would likely frustrate the effectiveness of current IRP processes that Alabama and others use to render low cost and reliable service to their citizens. As indicated above in the APSC's comments to DOE, the results of the state-regulated, IRP processes that select the incremental resource additions on a least-cost basis are incorporated into the transmission planning processes. This means that the resources selected as the least-cost option through the IRP processes are incorporated into the transmission planning processes to ensure that their output can be delivered on a long-term basis without long-term congestion.

Requiring the adoption of a top down, interconnection-wide transmission planning process would turn these processes on their head. Instead of having the state-regulated IRP processes drive, at least in part, the transmission planning processes, an interconnection-wide, top down transmission planning process would almost certainly drive resource selection decisions. For example, those who are arguing for interconnection-wide planning also generally argue for the construction of an Extra High Voltage ("EHV") system in at least certain parts of the Eastern Interconnection. The location of such EHV lines would have a tremendous impact on future resource procurement decisions by providing resources that would be served from those lines a tremendous competitive advantage. This advantage would only be compounded if the costs of those EHV lines are required to be broadly socialized. As such, rather than the state-regulated IRP processes selecting the true least-cost option, those approaches would be skewed in favor of selecting resources served from such subsidized, EHV lines.

Under the Federal Power Act ("FPA"), generation decisions are largely the domain of the states, with FPA Section 201 providing that FERC "shall not have jurisdiction, except as specifically provided ... over facilities used for the generation of electric energy." 16 U.S.C. § 824(b)(1)(2006). In addition, the Energy Policy Act of 2005 requires FERC to exercise its FPA

authority “in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities....” 16 U.S.C. § 824q(b)(4). Adopting policies that would undermine the IRP processes that load serving entities use to meet their load obligations would be counter to this statutory requirement. Furthermore, since these approaches would frustrate state-IRP processes, they would be inconsistent with the FERC’s holding in Order No. 890 that:

The transmission planning processes we require in this Final Rule are not intended in any way to infringe upon state authority with regard to integrated resource planning. Rather, we believe that the transparency provided under an open regional transmission planning process can provide useful information which will help *states* to coordinate transmission and generation siting decisions, allow consideration of regional resource adequacy requirements, facilitate consideration of demand response and load management programs *at the state level*, and address other factors *states* wish to consider. Order No. 890, n. 274 (2007) (emphasis added).

Likewise, these approaches would be inconsistent with FERC’s holding in Order No. 717 that FERC intends to promote, not create barriers to, long-term planning (including integrated resource planning.). See Order No. 717 at PP 9, 77.

B. A Broad Cost Socialization Approach Would be Patently Unfair and Inappropriate.

As discussed above, Alabama has, at great expense, constructed a robust transmission system. It would be patently unfair, unjust and unreasonable for the citizens of Alabama to also now have to pay for the costs to construct a similarly robust transmission system in other areas of the country that are currently characterized by high congestion. Indeed, most of the EHV, interconnection-wide transmission planning proposals that are currently being circulated have the vast majority of the new EHV lines being constructed outside of the Southeast, with the AEP's "Interstate Transmission Vision for Wind Integration" proposal⁸ and DOE's "20% Wind Energy by 2030" study⁹ showing no such new lines being constructed in this region. It would also be patently unfair and inappropriate for the citizens of Alabama to have to pay for the costs of facilities that they do not cause to be constructed and that are not used and necessary to provide them electric service, thereby failing basic principles of cost causation and the requirement that facilities be "used and useful" before being incorporated into a consumer's rates. FERC should thus reject calls to impose a broad socialization of transmission costs.

C. FERC Should Not Attempt to Force the Adoption of Merchant Transmission.

In order to promote merchant transmission developers, several commenters argue that FERC should not allow incumbent transmission owners a right of first refusal for new transmission. See, e.g., Comments of Renewable Energy Systems Americas, Inc. at pp.1-2; Comments of Green Energy Express at pp. 5-10; Comments of Transmission Access Policy Study Group at p. 20; Comments of NextEra Energy Resources, LLC at pp. 20-21. The APSC is

⁸ This proposal is available at:
<http://www.aep.com/about/i765project/docs/WindTransmissionVisionWhitePaper.pdf>

⁹ This study is available at http://www.20percentwind.org/20percent_wind_energy_report_revOct08.pdf

concerned that adopting these arguments could weaken the APSC's ability to protect ratepayers in this state. In this regard, the APSC regulates Alabama Power Company, a vertically integrated utility, with a key aspect of this regulatory oversight being rate regulation to ensure that retail ratepayers bear only just and reasonable electric rates. See Code of Ala. §§ 37-1-31 and 37-1-80. The advent of merchant transmission would seem to weaken the effectiveness of this rate regulation and consumer protections because the transmission assets that such merchant would own might be beyond the scope of the APSC's jurisdiction, even though Alabama retail ratepayers might bear such transmission costs. Given these considerations, FERC should not take actions that could force the entry of merchant transmission in this region, and should only adopt policies that could encourage their entry if the state Commissions in this region concur that such an approach is appropriate.

D. FERC Should Allow the Newly Created Order No. 890 Planning Processes and the EIPC and EISPC Efforts Time to Meaningfully Develop Before Embarking Upon Additional Transmission Planning Requirements

The Order No. 890 planning process have been in effect for barely two (2) years. As such, those processes are still in their infancy, with compliance filings to implement Order No. 890's transmission planning requirements still pending before FERC. Furthermore, the Eastern Interconnection Planning Collaborative ("EIPC") and the Eastern Interconnection States' Planning Council ("EISPC") have only recently been formed, with the APSC participating in the EISPC process. Given these recent and significant developments, it would be premature for FERC to embark upon any new, major changes in transmission planning.

CONCLUSION

The Alabama Public Service Commission supports the existing transmission and resource planning processes that have been used to develop a robust transmission system for the benefit of

Alabama industries and citizens. As FERC considers the issues raised in this proceeding, FERC should ensure that any actions it might take will not weaken the effectiveness of these planning processes or otherwise weaken the states' ability to effectively regulate the provision of retail service to consumers.

Sincerely,

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John D. Free
Advisory Staff
Energy Issues & Policy Advisor
Alabama Public Service Commission

Wednesday, October 15, 2008 10:27 AM
Congestion Study Comment 81356

Attachments: 2009XMCONGESComentz_81356.doc



Thank you for your comment, Eugene Hanes.

Your comment has been successfully received and entered into the comment tracking system. Please note that there is no need to send a duplicate set of comments via mail or other means.

The comment tracking number that has been assigned to your comment is 81356. Once the comment document has been published, please refer to the comment tracking number to locate the response.

Comment Date: October 15, 2008 10:26:55AM CDT

Congestion Study
Comment: 81356

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Questions about submitting comments over the Web? Contact us at: congestion09@anl.gov or call the Congestion Study Webmaster at (630)252-6182.



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SECRETARY

October 15, 2008

VIA ELECTRONIC FILING

Mr. David Meyer
U.S. Department of Energy,
Office of Electricity Delivery and Energy
Reliability
1000 Independence Avenue, SW
Washington, DC 20585.

Re: Alabama Public Service Commission's Comments on DOE's Preparation of the 2009
Transmission Congestion Study and the Atlanta Regional Workshop

Dear Mr. Meyer:

The Alabama Public Service Commission ("APSC") appreciates this opportunity to provide these comments regarding the Department of Energy's ("DOE") preparation of its 2009 Transmission Congestion Study ("2009 Study") and regarding its Regional Congestion Workshop that was held in Atlanta, Georgia on July 29, 2008 ("Atlanta Workshop"). The APSC is more than willing to provide assistance as may be needed by DOE to prepare its 2009 Study, with Commissioner Jim Sullivan, the President of the APSC, having participated in the first panel of speakers at the Atlanta Workshop concerning policy issues. These comments memorialize and supplement the major themes discussed by Commissioner Sullivan at the Atlanta Workshop.

Consistent with Commissioner Sullivan's presentation at the Atlanta Workshop, these comments, following a brief background discussion, address the following major issues: DOE's 2006 Transmission Congestion Study results as they pertain to Alabama and the Southeast; trends in Alabama that have continued and/or developed since the 2006 Study; and the manner in which congestion is addressed in Alabama. In addition to these issues specifically raised by Commissioner Sullivan at the Atlanta Workshop, these comments also address several other matters raised at the workshops.

Background

In Alabama, the two predominant electric service providers are Alabama Power Company and the Tennessee Valley Authority ("TVA"). Alabama Power serves primarily the lower two-thirds of the state while TVA serves the upper one-third of the state. In addition, various cities and rural areas are served by municipal organizations and electric cooperatives. The APSC is charged with regulating all investor owned utilities ("IOU"), and for electric service, Alabama Power is the

only IOU in the state. Alabama Power, along with Georgia Power, Mississippi Power and Gulf Power (collectively, “Southern Companies”) are subsidiaries of The Southern Company and provide retail electric service to portions of Alabama, Georgia, Florida and Mississippi.

2006 Transmission Congestion Study: No Findings of Significant Congestion in Alabama Power’s Service Territory

In general, the APSC concurs with the 2006 Transmission Congestion Study in that it correctly concluded that Alabama Power Company does not have any major congestion problems. 2006 Transmission Congestion Study, at 24-25. In fact, the only congested flows that the study identified in Alabama involved TVA and its transmission into north Mississippi and north Georgia. Importantly, even those findings were identified during the historical review and modeling processes portions of the study and were not included in any of the study’s three classes of congestion areas. See *id.*, at 39-58.

Recent Trends Demonstrate a Continued Lack of Significant Congestion

The 2006 Study’s finding of no significant congestion in Alabama Power’s service territory did not come as any major surprise to the APSC. While there are no per se metrics for measuring congestion in Alabama, there are several major indicators that demonstrate that the integrated resource planning process used in Alabama is working and has helped provide an absence of congestion. Major indicators include: 1) transmission and distribution reliability ratings in excess of 99%, 2) low retail prices which consistently rank below the national average, and 3) exceptional fuel diversity (based on installed capacity plus committed capacity acquired under Power Purchase Agreements), as indicated below:

Coal	47.43%
Nuclear	12.40%
Natural Gas	16.11%
PPAs (natural gas fired)	12.65%
Hydro-generation	<u>11.41%</u>
Total	100.00%

In an effort to mitigate any significant transmission congestion, Alabama Power continually invests in its transmission infrastructure. Specifically, Alabama Power has invested \$365,800,000 for the period 2005 – 2007 (see below) and has budgeted an additional \$120,000,000 for transmission infrastructure investment in 2008.

2005	\$117,900,000
2006	\$126,700,000
2007	\$121,200,000
2008 Budget	<u>\$120,000,000</u>
Total	\$485,800,000

Furthermore, Alabama has experienced significant economic development opportunities over the last ten years and has become a preferred siting location for a great deal of new industry. Much of this success is, in large part, attributable to the strength of our electric infrastructure. For

example, over the last ten years, the following major companies have located in Alabama, and most of these cited low electric rates and high reliability as a consideration for locating in Alabama.

Company Name	Year Operations Began	Industry
Mercedes Benz	1995	Automotive
Tuscaloosa Steel (NUCOR)	1995	Primary Metals
Mitsubishi Polysilicon	1997	Chemicals
IPSCO Steel	2000	Primary Metals
Honda	2001	Automotive
Fortier Yarns	2002	Textile
Hyundai	2004	Automotive
Berg Steel	2007	Primary Metals
Kronospan	2007	Wood Products
Louisiana Pacific – Thomasville	2007	Wood Products
ThyssenKrupp Steel	2009	Primary Metals

Lastly, and as discussed by Commissioner Sullivan at the Atlanta Workshop:

I’ve been a commissioner in Alabama for 25 years. And I think because our transmission system is in such good shape, we’ve been so far ahead of the curve, this [congestion issue] has never come up as one of the major issues that reaches, frankly, the commissioner level. And I think that’s a good indication that our region of the country is doing a good job of being proactive.

Atlanta Transcript, at 18.

Why Long-Term Congestion is Not a Major Issue in Alabama: Integrated Resource Planning

At the Atlanta workshop, several other speakers on the first panel all similarly emphasized that significant congestion is not an issue in their respective service territories/jurisdictions. In response to this theme, Mr. David Meyer of DOE asked,

I wonder if some of you have ideas about why is that so? I mean, why is your process working, or it has worked in the past and now you’re reaping the benefits, but is there some particular reason that comes to mind as to why that – as compared to other areas?

Atlanta Transcript, at 18.

As discussed by Commissioner Sullivan at the Atlanta Workshop, the major reason for this lack of long-term congestion is that Alabama remains a state in which both generation and transmission, along with distribution and demand side management, are all jointly studied through the integrated resource planning process to provide service to consumers on a least-cost basis. In this process, reliability and long-term economic dispatch are the primary drivers for transmission system improvements and expansion plans. This integrated process reduces congestion by ensuring that new and existing generation resources committed¹ to serving the citizens of this region on a long-term basis can be delivered without congestion. In contrast, so called “organized markets” generally no longer engage in such integrated planning but instead have largely separated transmission planning from generation development planning.

As further discussed by Commissioner Sullivan at the Atlanta Workshop, Alabama Power does not perform this integrated resource planning in isolation. Rather, Alabama Power does so in coordination with the other retail operating companies within Southern Companies’ system as well as with other affected utilities. The results of this integrated resource planning are incorporated into SERC studies so as to ensure reliability and simultaneous feasibility. In this manner, transmission providers are able to address long-term congestion that might otherwise arise due to changes on other transmission systems, and such coordinated planning facilitates the addressing of significant congestion throughout the region.

It also bears noting that outside of planning for long-term economic dispatch for native load customers, there is also a process in place to provide long-term firm transmission service to third parties. Should a third party desire to have a transmission improvement made to address a congestion problem that it has identified, all that such a customer has to do is to commit to taking long-term service under Southern Companies’ OATT. If such a commitment is made, then Southern Companies will move forward to make the transmission enhancements necessary for that third-party to receive long-term firm service without congestion. Pursuant to this transmission tariff process, third parties can determine for themselves whether it makes economic sense to commit to the costs of long-term firm service so as to pursue market opportunities or to forego the transaction.

Other Congestion Study Issues: DOE Should Remain Focused on its Statutory Mandate to Perform a Congestion Study and Should Ignore Calls to Expand its Study Process to Address Other Issues

In performing the 2009 Congestion Study, the APSC recommends that the DOE remain focused on performing a straight-forward analysis of “electric transmission congestion”² and refrain from expanding the study to address other matters. At virtually all of the workshops, one or more speakers have argued that DOE should expand its analysis to address issues other than just transmission congestion. For example, at the Atlanta workshop, one speaker argued that the DOE’s next congestion study might be “a good place” to question the ownership of transmission facilities by vertically integrated utilities, noting a preference for stand-alone transmission companies.

¹ The transmission system is planned to enable an economic dispatch of network resources and other long-term commitments without incurring congestion. Network resources include committed Alabama Power generators, generators of Southern Companies’ affiliates, and IPP generators that are committed to serving consumers through Purchase Power Agreements. In addition, as discussed further below, third parties can similarly receive long-term delivery service without congestion if they commit to long-term service under Southern Companies’ Open Access Transmission Tariff (“OATT”).

² See 16 U.S.C. § 824p(a)(1)(“[T]he Secretary of Energy ..., in consultation with affected States, shall conduct a study of electric transmission congestion.”).

Atlanta Transcript, at 28. DOE should refrain from addressing such extraneous topics. Not only would such inquiries prove unnecessarily divisive,³ but they would also be beyond Congress' mandate that DOE perform a study of electric transmission congestion. While other speakers have raised extraneous issues that are arguably more germane to the performance of an "electric transmission congestion" study, such as analyses of the costs and benefits of addressing identified congestion or obstacles to addressing congestion, DOE would be well-served to remain within its statutory mandate of performing a straight-forward congestion study of historical and current congestion, as DOE has appropriately proposed for purposes of the 2009 Study.⁴

Conclusion

The APSC believes that DOE's 2006 Transmission Congestion Study validates the benefits of an integrated planning process. The benefits are demonstrated by positive trends in areas such as: low prices, high reliability, fuel diversity and economic development. In moving forward with the preparation of the 2009 Transmission Congestion Study, the APSC has high expectations that such trends will continue and that long-term congestion will not be identified as an issue in Alabama.

Sincerely,

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Eugene G. Hanes
Advisory Staff
Federal Affairs Advisor
Alabama Public Service Commission

³ Substantively on this issue regarding form of transmission ownership, as discussed above, the APSC notes that the vertically-integrated paradigm of transmission ownership has worked well in Alabama. Furthermore, it is largely due to the integrated planning of both transmission and generation that has lead to the lack of significant transmission congestion in Alabama, and the adoption of a stand-alone transmission company would appear counter to such integrated planning and, instead, would appear to focus upon transmission-only solutions to identified problems.

⁴ Congress directed DOE to address several criteria when it considers designating a national interest electric transmission corridor ("NIETC"). 16 U.S.C. § 824p(a)(4). Addressing such additional matters in the more focused context of considering designating a specific NIETC makes much more sense than globally expanding the scope of the Eastern Interconnection- and Western Interconnection-wide congestion studies that are performed as a precursor to any NIETC designation.