

CLEAN ENERGY TRANSMISSION WORKING GROUP (CETWG)

MEETING MINUTES

Friday, November 3, 2023

Virtual Zoom Meeting

| | |
|----------------------------|--|
| Members Present: | Jason Marshall, Jamie Van Nostrand, Michael J. Barrett, Jeffrey N. Roy, Johannes Pfeiffenberger, Doug Howgate, Hilary Pearson, Liz Delaney, Sheila Keane, Barry Ahern, Dave Burnham, Ashley Gagnon |
| Members Absent: | Joseph LaRusso, Brooke Thomson |
| DOER Staff Present: | Colin Carroll, Paul Holloway, Sarah McDaniel |
| EEA Staff Present: | Mary Nuara |
| DPU Staff Present: | Shirley Barosy, Gregg Wade |
| Other Participants: | Suedeem Kelly, Partner and Energy Practice Co-Chair, Jenner & Block LLP; Anand Viswanathan, Special Counsel, Jenner & Block LL; TaeHyung Kim, Senior Associate, Jenner & Block LLP |
| Public Speakers: | None |

1. Welcome, Agenda, Roll Call

Holloway called the meeting to order at 09:05 AM. He reviewed the meeting agenda (slide 2) and stated that the CETWG welcomes written comments at any time. Holloway conducted roll call and confirmed a meeting quorum.

2. Review and vote on Meeting Minutes (slide 4)

Holloway introduced the draft Meeting Minutes for the October 13, 2023 joint CETWG/GMAC meeting. Barrett motioned and Burnham seconded to approve the draft Meeting Minutes. By roll call vote the members present voted unanimously to approve the Meeting Minutes.

3. Public comment (slide 5)

Marshall invited members of the public to provide comment. There were no public comments.

4. Presentations on jurisdictional authority and cost allocation (slide 6)

Marshall introduced Suedeem Kelly, Anand Viswanathan, and TaeHyung Kim, from Jenner & Block LLP to present on jurisdictional authority and cost allocation.

Kelly

Kelly presented background information on the evolution of the Federal Energy Regulatory Commission's ("FERC") regulation of electric transmission. She explained that the Federal Power

Act (“FPA”) of 1935 gave FERC jurisdiction over the transmission of electricity, and the sale of electric energy at wholesale, in interstate commerce, but states retained authority over sales of electricity to consumers within their state, as well as intra-state transmission of electricity. She described FERC’s power to review public utility transmission owners’ tariffs filed under Section 205 of the FPA, and FERC’s power under FPA Section 206 to fix any rate, charge, or classification demanded, observed, charged, or collected for transmission by utilities.

Viswanathan clarified that under FPA Section 205, FERC must either accept or reject a filing as proposed, and that the FPA Section 206 process is a two-part test that is quite burdensome for FERC, in that FERC must first find an existing tariff provision unjust and unreasonable before making a determination about a newly proposed provision.

Kelly then described a series of historic rulemakings in which FERC carved out its authority over transmission planning and interconnection. She also highlighted a pending rule that would implement new authority granted by Congress under the 2021 Infrastructure Investment and Jobs Act, which amends the FPA to give FERC greater authority to step in and site certain transmission lines when state authorities deny approval or fail to act. Kelly described FERC’s broad authority over the reliability of the high voltage transmission system, and its coordination with the North American Electricity Reliability Corporation and the Northeast Power Coordinating Council to develop and implement reliability standards.

Discussion

Senator Barrett asked Kelly to define transmission owner. Kelly responded that the transmission owner is the entity that builds and operates the transmission facilities, and that they can operate on different models, including publicly or federally owned utilities, but in New England transmission owners are primarily investor-owned utilities. Senator Barret then asked about the distinction between a transmission operator and user. Kelly responded that the transmission users are broadly defined as a generator or transmission customer taking service over that line, while ISO-NE would be an example of a transmission operator.

Visiwanathan

Visiwanathan presented on ISO-NE’s role in operating and planning the high voltage transmission network in New England. He described how ISO-NE conducts regional transmission planning in New England pursuant to Attachment K of its tariff for network transmission, and considers projects based on reliability, market efficiency, or public policy needs. Visiwanathan stated that incumbent transmission owners plan local projects in New England that do not require formal review or approval by ISO-NE, and develop Asset Condition Project proposals for maintaining or replacing aging or damaged transmission assets, for which the TOs provide notice through presentations to ISO-NE’s Planning Advisory Committee. He noted these projects are not subject to the regional planning process, but are allocated on a pro rata basis across the region. Visiwanathan then summarized a new process that FERC approved last year that authorizes the ISO to conduct longer-term transmission studies that may extend beyond a ten-year planning horizon and that relies on the States to determine the range of scenarios, including drivers, inputs, assumptions, and timeframes to be used in these studies. Finally, he reviewed the mechanisms ISO-NE can employ to enable transmission planning driven by public policy-related needs.

Discussion

Burnham clarified that asset condition projects are reviewed by ISO-NE at the Planning Advisory Committee. Liz Delaney noted that there are a lot of smaller transmission systems that are below 115kv that touch on FERC jurisdiction, and asked Visiwanathan to explain these instances where FERC regulates lower voltage transmission. Visiwanathan and Kelly responded that FERC may have jurisdiction to the extent those systems interconnect to and sell into the wholesale markets. They elaborated that ISO-NE and the distribution system owners work to interconnect those facilities and FERC has jurisdiction over the sales those facilities make into the wholesale market. Kelly stated that as the electricity sector has become more complicated, new types of transactions and uses of the electric system develop that were not foreseen in 1935 when the FPA passed. She said new technologies may entail a case-by-exploration of where the line is drawn between federal and state regulation.

Barrett asked about which planning bucket would encompass an offshore wind farm proposing to connect onshore. Visiwanathan answered that it would depend on the size and purpose of the facility. Marshall clarified there could also be a distinction between the owner of the transmission infrastructure and an entity that contracts for the electric energy traversing that infrastructure. Pfeifenberger stated that the transmission that interconnects an offshore wind project to the onshore transmission system are typically built by the wind project owners themselves, and so are technically part of the wind facility and do not fit into the ISO-NE buckets described, but alternative models have been discussed. Barrett asked whether this would qualify as a merchant-based model. Pfeifenberger said no, that would be a different model, where for example a merchant developer could develop a transmission line and then invite offshore wind facilities to connect to it. Kelly said she agrees with that explanation, but it is common for offshore wind to be developed by two different entities - one that builds the wind turbines themselves and one (often an existing transmission owner) that builds the interconnecting delivery system. Barrett referenced a specific project and asked whether that project was developed by one entity. Kelly answered that her understanding was that Avangrid was the sole entity developing that particular project, because it has the expertise and resources to do so.

Ahern clarified that most offshore wind projects currently have to go through ISO-NE's large generator interconnection process, but this may be impacted by FERC's recent order 2023. Delaney noted that she will present on order 2023 at the next meeting and that Barrett's question highlights that the generator interconnection process is often divorced from transmission planning process, which can create issues. Visiwanathan said that a final rule on regional transmission planning cost allocation is currently pending at FERC, and a number of comments submitted to FERC make the point Delaney made – that better alignment is needed between transmission planning and the interconnection process.

Kelly

Kelly presented on the state's authority over project siting and construction, and ability to delegate authority to local authorities. She highlighted the DPU, DOER and EFSB as the relevant state entities in Massachusetts.

Visiwanathan

Visiwanathan presented on the FERC-mandated cost allocation methods which must align costs with benefits by identifying the beneficiaries of proposed regional transmission facilities and imposing related costs on them. He noted that FERC, in its 2022 Notice of Proposed Rulemaking ("NOPR"),

expressed a concern that regional transmission planning and cost allocation processes may not be sufficiently forward-looking to meet transmission needs driven by changes in the resource mix and demand, and that FERC is likely still debating internally about the content of an expected order on this NOPR.

Kelly

Kelly summarized cost allocation for the three “buckets” of ISO-NE projects: reliability projects and market efficiency projects, public policy projects, and local upgrades.

Marshall noted that states requested, and ISO is implementing, a longer term planning process that is aligned with FERC’s vision in the 2022 NOPR and a final rule could resemble some of the work New England has done. Kelly asked if New England is also working on cost allocation. Marshall said yes, that is part of the second phase of this process.

Visiwanathan said a useful starting point for FERC commissioners to get consensus is pointing to what FERC has already approved, so FERC may build on the foundation of what it has approved for New England.

Kelly asked whether there was a form of review for asset condition projects in New England. Burnham said that the Planning Advisory Committee reviews these projects. Jason that there is an active conversation under way in New England about how to increase transparency in this area.

Kim

Kim presented on various transmission cost allocation approaches taken in different planning regions. Kim overviewed ISO-NE’s two-phased effort to revise its tariff to implement a state-led, proactive scenario-based planning process for longer-term analysis of state mandates and policies as a routine planning practice. Kim stated that phase one of this process comprises longer-term planning changes, which enable the ISO’s performance of state-requested, scenario-based transmission analysis to meet the identified state requirements, and which FERC approved in February 2022, and that phase two, which ISO-NE anticipated completing in the first quarter of 2024, will address rules to enable states to select potential options for addressing issues identified during transmission analysis and cost allocation for the associated transmission infrastructure.

Discussion

Marshall invited additional questions. Barrett asked how New Jersey’s use of PJM’s state agreement approach to cost allocation has worked. Kelly and Kim stated they were not aware. Pfeifferberger said that New Jersey is the only state currently utilizing the state agreement approach, but Maryland is evaluating the approach. Kelly asked Pfeifferberger whether the state agreement approach “jumpstarts” the offshore wind development process by making sure the onshore transmission system has capacity for when offshore connects? Pfeifferberger said yes, that was the outcome in New Jersey, and that solicitation in New Jersey resulted in onshore and offshore options. He explained the state evaluated options and decided to only accept onshore upgrades that would accommodate offshore upgrades.

Barrett stated that New Jersey is likely under a cloud because of Orsted’s cancellation of offshore wind projects, and asked whether it is true that New Jersey agreed to take on all costs of offshore development without confirming whether, in truth, New Jersey ratepayers were getting all benefits. He asked whether New Jersey’s approach was based on optimism

about offshore wind that did not materialize as hoped. Pfeifferberger said that New Jersey gets exclusive rights for the energy produced by the projects in return for funding onshore upgrades. Barrett said that it is no longer clear whether there is a short-term need for onshore upgrades now that Orsted cancelled the offshore projects. Pfeifferberger stated that the plan is a long-term one, and that New Jersey has looked carefully at cost allocation to neighboring states. He stated New Jersey saved around a billion dollars on transmission costs by procuring a large amount of transmission at one time. Barrett said that we will see how the situation develops with changing circumstances. Pfeifferberger replied that we will have to see, but changing circumstances and supply chain issues will impact all jurisdictions on the east coast.

Marshall interjected that the working group needed to move to next agenda item and thanked Jenner & Block team. Van Nostrand also thanked the presenters and noted the discussion was very helpful.

5. Discussion of CETWG report drafting process

Van Nostrand discussed the CETWG drafting process and the schedule for drafting, highlighting new meetings have been added on December 6 and December 21 to review drafts and that the report will likely be issued on December 29.

Discussion

Gagnon asked whether people not drafting Conclusions & Recommendations (“C&R”) sections will have the opportunity to provide feedback and additional/alternative C&Rs between November 17 and December 6. Van Nostrand said yes.

Roy asked if there will be an opportunity for public comment on report before it is finalized. Van Nostrand pointed to slide 8 of the meeting materials and noted the other topics and presentations scheduled for November 17, and clarified that there is opportunity for public comment at the November 17 meeting. He then asked Marshall for his thoughts. Marshall said that we will build in an opportunity for public comment at all meetings. Roy asked if a draft report will be posted in advance for public to review before the December 6 meeting. Marshall said that we will continue to post meeting materials in advance and provide opportunity for public comment, if agreeable to other CETWG members. Van Nostrand reiterated that the draft would be posted prior to the public comment opportunities that would be provided during later meetings.

6. Close and Next Steps

Van Nostrand again noted the presentation topics for the November 17 meeting and there was sufficient time to review draft C&Rs, which would be made available to group on November 14, and discussed on November 17. He noted that revisions will be circulated on November 28 for discussion on December 6.

Discussion

Murray said that Priya Gandbhir had a question. Gandbhir asked if the CETWG would entertain written comments. Marshall said yes, written comments are welcome at any time. Gandbhir clarified

Draft Meeting Minutes – for approval by CETWG

whether there is a specific deadline to submit written comments. Marshall replied that there is no deadline.

Marshall and Van Nostrand thanked everyone for their participation in today's meeting. The co-Chairs adjourned the meeting at 11:00 AM.

Meeting Materials:

- Agenda
- Draft Meeting Minutes for the joint CETWG/GMAC meeting on October 13, 2023
- Jenner & Block Presentation on jurisdictional authority and cost allocation