Gone With The Wind?
The Fate Of The Right Of First Refusal

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Vice President Regulatory
PSEG
Harvard Electricity Policy Group
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PSE&G is the Largest Utility in New Jersey Providing Electric, Gas and Transmission Services...

<table>
<thead>
<tr>
<th></th>
<th>Electric</th>
<th>Gas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customers Growth (2005 – 2010)</td>
<td>2.2 Million</td>
<td>1.8 Million</td>
</tr>
<tr>
<td></td>
<td>4.0%</td>
<td>4.0%</td>
</tr>
<tr>
<td>Electric Sales and Gas Sold and Transported</td>
<td>43,645 GWh</td>
<td>3,465 M Therms</td>
</tr>
<tr>
<td>Historical Annual Load Growth Distribution (2006 - 2010)</td>
<td>(0.5%)*</td>
<td>(1.0%)*</td>
</tr>
<tr>
<td>Historical Annual Peak Load Growth Transmission (2006 – 2010)</td>
<td>(0.1%</td>
<td></td>
</tr>
<tr>
<td>Projected Annual Load Growth (2011 – 2013)</td>
<td>1.3%**</td>
<td>0.8%**</td>
</tr>
<tr>
<td>Projected Annual Load Growth Transmission (2011 – 2013)</td>
<td>1.4%</td>
<td></td>
</tr>
<tr>
<td>Sales Mix</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential</td>
<td>33%</td>
<td>61%</td>
</tr>
<tr>
<td>Commercial</td>
<td>57%</td>
<td>36%</td>
</tr>
<tr>
<td>Industrial</td>
<td>10%</td>
<td>3%</td>
</tr>
</tbody>
</table>

* Actual
** Weather normalized = estimated annual growth per year over forecast period

... ten consecutive ReliabilityOneTM Awards for the Mid-Atlantic
PSE&G is in the Process of Implementing a Significant Transmission Investment Plan

<table>
<thead>
<tr>
<th>RTEP Transmission Projects</th>
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</thead>
<tbody>
<tr>
<td>Phase</td>
</tr>
<tr>
<td>Susquehanna-Roseland</td>
</tr>
<tr>
<td>North East Grid</td>
</tr>
<tr>
<td>Burlington – Camden 230kV Conversion</td>
</tr>
<tr>
<td>North Central Reliability</td>
</tr>
<tr>
<td>Mickleton – Gloucester – Camden</td>
</tr>
</tbody>
</table>

[Map of Transmission Projects]
Status of the Federal ROFR

- FERC Order 1000 – Issued July 21, 2011
  - Directed all public utility transmission providers, subject to framework set forth in Order 1000, to eliminate provisions of Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal ("ROFR") for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation P 313
  - FERC found that the ROFR
    - Restricts the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process
    - Unjust and unreasonable because it may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, the inclusion of higher-cost solutions in the regional transmission plan
    - Creates opportunities for undue discrimination and preferential treatment against non-incumbent transmission developers within existing regional transmission planning processes

- Order pending rehearing

- Appeals of FERC Rehearing Order are likely
The ROFR Framework Under Order 1000

- Federal ROFR eliminated for transmission facilities selected in a regional transmission plan for purposes of cost allocation

- Exceptions
  - Local projects – i.e. projects that are not subject to regional planning or cost allocation
  - Upgrades of existing transmission facilities
  - Currently planned transmission projects

- No Change to
  - ROFRs in other jurisdictions
  - Retention, modification, or transfer of rights-of-way

- Implementation
  - Transmission Providers to develop
    - Appropriate qualification criteria to determine an entity’s eligibility to propose, build and own a transmission project. Such criteria “must not be unduly discriminatory or preferential”
    - “back stop” mechanism to reevaluate the regional plan to ensure reliability needs or service obligations can still be met
What Problem was the Commission Trying to Solve?

- It is unclear whether there was any problem that FERC’s action was attempting to address
  - Was it to drive down cost?
  - Encourage more innovation?
  - Build more transmission?
  - Were there concerns about specific regions?
  - Problems with cross-regional projects?

- Regional transmission planning, at least in PJM, is effective today

- There is no evidence to suggest that incumbent transmission owners are using the ROFR to delay needed transmission investment

- Mechanisms already exist to encourage innovation
Challenges with Eliminating the Federal ROFR

- The elimination of the federal ROFR may cause unintended consequences
  - Preferred status to incumbent fully integrated utilities with state ROFRs
  - Disincentive to join or stay in an RTO/ISO and participate in regional planning and cost allocation
  - Disincentive for formula transmission rates and regional cost allocation mechanisms

- Reliability
  - Need to ensure reliability standards, including the CIP Standards, are adequate to address new ownership model to ensure transmission owners are capable and prepared to maintain reliability

- Likely to stimulate disputes and uncertainty

- Ultimately the courts will decide
Appendix
Actual and Planned Transmission Investment By Shareholder-Owned Utilities (2005-2014)

Source: Edison Electric Institute, Business Information Group
Updated as of September 2011
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Quotes from FERC Order 1000

- “…granting incumbent transmission providers a federal right of first refusal with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation effectively restricts the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process. This is unjust and unreasonable because it may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, the inclusion of higher-cost solutions in the regional transmission plan.” P 284.

- “…opportunities for undue discrimination and preferential treatment against nonincumbent transmission developers within existing regional transmission planning processes.” P 285.
PJM’s Regional Transmission Expansion Planning Process

