

Comments by
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**FERC Technical Conference re
Priority Rights to New Participant-Funded Transmission
Docket No. AD11-11-000, *et al.***

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Balancing Transparency and Open Access with the Commercial Need to Secure Anchor Shipper Commitments

1. Tonbridge is very grateful to the Commission for endorsing the concept of Anchor Shipper involvement in power transmission. This is an enormous step forward from the Open Season structure that our MATL project had to rely on.
2. Tonbridge wishes to underscore its commitment to the fair, open, transparent and competitive allocation of transmission resources. As an open access provider, Tonbridge fully understands that these principles are the cornerstone of the Commissions' open access transmission policies. Our comments today are aimed at assisting the FERC to develop policies and procedures to put the Anchor Shipper concept into practice in electrical transmission.

3. I wish to focus on four brief points today:
 - a. We believe the Commission should consider not fixing rigid parameters for the application of Anchor Shipper participation, for example, a defined, “not to exceed” percentage of the project’s transmission capacity. We believe such fixed parameters run directly contrary with the financial market realities facing non-incumbent transmission developers. In short, such artificial parameters would inhibit the achievement of the underlying objective: the development of new transmission;
 - b. Second, we believe that affording “latecomers” (*i.e.*, the second wave of customers, or the “non-anchor” customers) the absolute right to obtain terms and conditions equivalent to those negotiated with early-moving Anchor Shippers, notwithstanding the very different contributions to risk management, is both unjust and impractical. If latecomers are afforded the same rights and opportunities as the pioneering anchor customers, there will be no early movers;
 - c. Thirdly, Tonbridge believes that the Commission should appreciate that independent developers are aligned with the Commission in wanting to build transmission; they merely cannot overbuild projects beyond the revenues that are committed to a particular project. Taken together with the first two points, the Commission will appreciate that the developer’s triangulation between regulatory, shipper and financial constraints will often leave little room to make projects happen; and
 - d. Lastly, we think that it would serve the Commission’s purposes to consider the relationship between the sponsors of independent transmission development and incumbent jurisdictional utilities and to seek to facilitate collaboration between these disparate parties.

Fixed Parameters Do Not Work in a World of Fickle Capital Markets

4. Tonbridge recognizes that the “Anchor Shipper” model for transmission development was introduced to assist project developers in finding both development capital and securitizable revenues against which to finance project construction. In this context, FERC should be mindful that any rigid formula for Anchor Shipper participation will fail to advance the Commission’s policy objectives because the financial markets’ tolerance of development and construction risk is an ever-moving target. Rigid caps on anchor shipper commitment percentages will send the wrong message to would-be lenders and may well quell investment

in this area. Unlike regulatory prescriptions, investor appetites are not fixed and are, in fact, enormously complex and fickle.

5. We would suggest therefore that the Commission consider each proposal for the use of Anchor Shipper contracting in the specific context of the challenges facing the project in question, asking only that the application of the Anchor Shipper commitment percentages not be unduly harmful to the principles of fairness (for both the transmission provider and the customer), competition or open access.

Anchors Should Have Special Rights

6. From a commercial perspective, an Anchor Shipper is not merely a party with different rights, it is also a partner, engaged at the outset of the process, in the development of a project and, critically, one who has accepted the responsibility to shoulder development risks which other, less directly interested parties, have declined to do. A developer does not seek to give away either transmission rights or development influence to an Anchor Shipper because it is convenient to do so. He does so because there are no practical alternatives to raising the development capital and/or ensuring that the project will be aligned with the needs of paying customers.
7. Every prospective project has around it many commentators, often many who express a desire for the project. What is lacking is parties willing to share in the cost and risk of making the project a reality. Anchor Shippers do just that. It is thus critical that Anchor Shippers obtain and retain special rights in a project. Special rights can include favorable rate treatment, greater control over the determination of Transmission Service Rights, contract tenor and size or influence over the nature, timing and cost of the project development itself.
8. Asserting that Anchor Shippers should not enjoy special rights and benefits ensures that all interested parties will hover, like penguins on an ice floe, waiting to see who moves first, and ensuring that nobody will. This is dysfunctional. We need comfort that the Commission will accept that project development arrangements arrived at by developers with Anchor Shippers will hold. Without both an incentive to move early and comfort that FERC will respect commercial arrangements arrived at in arms-length negotiations, Anchor Shippers will not come forward and projects will remain stalled.

Projects Must be Built Incrementally, Not as Industry Solutions

9. Projects simply cannot afford the cost of over-building. Requiring that significant amounts of unallocated transmission capacity is planned for, designed, procured and constructed adds enormous environmental, commercial, political, and financial risk to a project. No commercial developer will deliberately undersize a project. At the same time, projects that are larger than the contracted revenues cannot be financed.
10. Independent transmission developers have accepted the obligation to serve, but they should not be compelled to use their balance sheets to subsidize the provision of unallocated capacity where no shipper stands ready to commit to using it on a commercial (long-term) basis.

Incumbents and Independent Transmission

11. We appreciate that most Investor Owned Utilities operating in a defined service territory have an understandable reluctance about the incursions of newcomers entering 'their' service territory. From the IOU perspective a new entrant may present the potential for reduced revenues and fewer opportunities for investment. They may also complicate system operations and planning.
12. Tonbridge is of the view that the addition of independent transmission is - or can be - to the benefit of the local utility. Customs, traditional business practices and inward-looking corporate cultures skew IOUs away from allowing, facilitating or joining independent transmission ventures however. The Commission could aid in the effort to spur more independent transmission and more cost effective renewable generation if it were to consider ways that IOUs could be incented to encourage and cooperate in the development of independent transmission.

Thank you again for the opportunity to speak today.