

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Priority Rights to New Participant-Funded  
Transmission

Docket No. AD11-11-000

**PREPARED STATEMENT OF JOEL D. NEWTON  
ON BEHALF OF NEXTERA ENERGY RESOURCES, LLC**

Three NextEra Energy Resources, LLC (“NextEra”) affiliates have, or soon will have, open access transmission tariffs (“OATTs”) on file with the Federal Energy Regulatory Commission (“Commission”). The current policy for radial generation lead line owners require that, within 60-days of a third-party request, the owner of a radial tie line file a *pro forma* OATT and justify *each* deviation from the *pro forma* OATT. NextEra urges the Commission to revisit this policy. Many might be surprised to learn that the obligations in the OATT used by Southern Company, Entergy and Florida Power & Light are suitable for a radial tie line. Rather than starting with the *pro forma* OATT designed for network transmission systems and granting case-by-case waivers – which runs the risk of inconsistent decisionmaking – the Commission should begin with a blank sheet of paper and adopt a slimmed down “radial OATT.”<sup>1</sup> Such a tariff would recognize the limited service available over radial tie lines and would allow the fashioning of comparable service.

In the rulemaking underlying the issuance of Order No. 888, the Commission’s clear focus was on traditional vertically integrated utilities. Because some vertically integrated utilities sought to deny comparable access to new independent generators and network transmission service users, the Commission adopted nondiscriminatory terms and conditions for network transmission service, point-to-point transmission service and ancillary services, and required that all users of the transmission system be subject to the same terms and conditions of

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<sup>1</sup> While NextEra believes that bilateral negotiations as called for in the Commission existing regulations for good faith requests for interconnection and transmission services (*see* 18 C.F.R. § 2.26) can lead to just and reasonable end results, NextEra accepts that the Commission has made a policy determination supporting a *pro forma* tariff over the use of individual negotiations. *See Sky River LLC*, 134 FERC ¶ 61,064 (2011). Nevertheless, it is worth noting that in the Notice of Proposed Rulemaking leading up to Order No. 888, the basis given by the Commission for moving away from using section 211 of the Federal Power Act (“FPA”) were the following: (1) delay was inherent in obtaining service under section 211; and (2) discrimination was “inherent in the current industry.” *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities; Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking*, 60 Fed. Reg. 17662 at 17668 (Apr. 7, 1995), Order No. 888, 61 FR 21,540 at 31,745 (1996), FERC Stats. & Regs. 31,036 (“Order No. 888”), *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 ¶ 61,046 (1998), *aff’d sub nom., New York v. FERC*, 535 U.S. 1 (2002). Neither of these predicates has been found by the Commission vis-à-vis radial tie lines. In the case of Sky River, for example, the parties reached a mutual agreement under the Commission regulations implementing section 211. Further, the Commission has never found under section 206 of the FPA that discrimination is inherent among radial tie line owners, as the focus in the Order No. 888 proceeding was solely on traditional vertically integrated utilities.

service. Many of these standard terms and conditions, however, make little sense for radial tie lines.

At the outset, a single circuit radial tie line has little in common with an integrated transmission system. Technically, all that is available at anytime is *conditional* firm and non-firm transmission service. Under Commission-approved requirements, Total Transfer Capability (“TTC”) must be calculated using a method consistent with NERC Standards MOD-028-1 (Area Interchange Methodology), MOD-029-1a (Rated System Path Methodology) or MOD-030-2 (Flowgate Methodology). Each of these methodologies require transmission operators to take into account N-1 criterion. In the case of a single circuit radial tie line – few generation tie lines have double circuits due to their expense – the loss the transmission line itself *is* the N-1 criteria as there is no redundancy. Accordingly, TTC by definition is zero, and because TTC is zero, by definition Available Transmission Capacity (“ATC”), Capacity Benefit Margin (“CBM”) and Transmission Reliability Margin (“TRM”) also are zero.

Moreover, a radial tie line cannot provide network service. And, as the Commission has recognized, such lines cannot provide ancillary services, including reactive supply and voltage control, regulation and frequency response service, energy imbalance service, and operating reserve services. In addition, unless the radial tie line owner is a control area operator (and few are), the tie line operator is specifically prohibited under Schedule 1 of the OATT from providing Scheduling, System Control and Dispatch Service. Instead, such services only can be provided by the interconnecting control area operator. This issue was the subject of some confusion in the *Sagebrush* proceeding,<sup>2</sup> and the Commission should clarify that the interconnecting transmission provider – the control area operator – must provide this service.

While the Commission generally has accepted these deviations, I want to highlight two others. Transmission is inherently “chunky” and few developers plan to use 100% of a tie line’s capacity because line losses become increasingly costly. As the peak capacity of the line is closer to being fully utilized, line losses increase exponentially, causing significant incremental losses to previously interconnected generators. When a line is fully loaded, losses can approach 10% and possibly higher. Radial tie lines are not being constructed in order to interconnect generation to the thermal limits of the line, but instead as part of the economic decisions associated with a particular generation project(s). As a result, some lenders have begun requiring incremental losses be applied to incremental generation. The Commission’s policy, however, requires the use of average line losses under the *pro forma* OATT. Not only is this policy costly, but it actually can result in an undue preference for third party generators. For example, where the transmission service requestor is bidding against an affiliated generator, applying average losses may well advantage the third party over the incumbent who must assume incremental losses. The Commission’s pricing policies, including line losses, should focus on comparability.<sup>3</sup> NextEra urges the Commission to revise its policy and allow a radial tie line owner to designate the use of average or incremental losses for all new interconnected generation under an OATT – whether by a third party or an affiliate – at the time of a third party request.

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<sup>2</sup> *Sagebrush, a California partnership*, 130 FERC ¶ 61,093 at P 34, *order on reh’g*, 132 FERC ¶ 61,234 (2010) (“*Sagebrush*”). Admittedly the proponents failed to articulate the issue optimally.

<sup>3</sup> *See, e.g., Inquiry Concerning the Commission’s Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Policy Statement*, FERC Stats. and Regs. ¶ 31,005 (1994); 59 Fed. Reg. 55031, Nov. 3, 1994.

In addition, application of the Commission’s Attachment K transmission planning process makes little sense vis-à-vis radial tie lines. Underlying the planning process is an assumption that the transmission provider owns a transmission *system*. A single circuit radial line is a far cry from a system. Rather, the provision of transmission service is ancillary to the production of generation. Such radial lines, in most cases, have been built because (i) the transmission provider has no interest in owning or constructing the line, or (ii) the generation owner can build it cheaper. Instead of focusing on the radial tie line owner having its own planning process, the Commission should direct the radial tie line owner to participate in the interconnecting transmission provider’s Attachment K process and direct the interconnecting transmission provider to consider whether the radial line should be further integrated into the transmission provider’s system. Requiring the interconnecting transmission provider to take the radial line into account will result in the most efficient use of all existing transmission elements.

The adoption of a slimmed down “radial OATT” would save the Commission’s limited administrative resources, companies’ resources,<sup>4</sup> and would give third parties greater certainty on the terms of service. In addition, rather than requiring that an OATT be filed within 60-days after receiving a request, the radial OATT should simply require the owner to determine its point-to-point transmission service rate and designate incremental or average losses within 60-days, with the OATT being filed after a service agreement is executed. The Sagebrush OATT filing provides important lessons. After the Commission issued orders on the initial filing, the rehearing request and two compliance filings, there is no interconnection customer. All Sagebrush ever received was a single letter with no follow-up whatsoever. The Commission’s implementing regulations certainly can be sufficiently robust to limit the need for meaningless filings.

Finally, with regard to transmission priority rights, there remains significant uncertainty, in part due to confidential filings, notwithstanding the Commission’s orders in *Aero*, *Milford* and *Alta Wind*.<sup>5</sup> Moreover, the threshold enunciated in these orders for the granting of priority rights is high: the Commission requires “the existence of specific, pre-existing generation expansion plans with milestones for construction of generation and . . . material progress toward meeting those milestones.”<sup>6</sup> The standard is substantially greater than that which is required for traditional vertically integrated utilities. Specifically, in Order No. 888, the Commission allowed transmission providers to reserve only such capacity as was needed to serve existing native load demand, or that would be needed to serve *reasonably forecasted* native load growth.<sup>7</sup>

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<sup>4</sup> In addition to any outside counsel costs required to demonstrate deviations from the *pro forma* OATT, the Commission’s eTariff system had added new challenges. NextEra has over 80 market-based rate tariffs and two OATTs on file with the Commission. Needless to say, NextEra’s paralegal who makes these filings has experience with the eTariff system. Recently, in filing the OATT for Peetz Logan Interconnect, LLC (Docket No. ER11-2970-000 (pending)), our paralegal estimates that it took 12-13 hours to sectionalize, load, confirm accuracy and file the tariff in accordance with the eTariff rules and procedures.

<sup>5</sup> See *Aero Energy LLC*, 115 FERC ¶ 61,218, order granting modification, 116 FERC ¶ 61,149 (2006), final order directing interconnection and transmission service, 118 FERC ¶ 61,204, order denying reh’g, 120 FERC 61,188 (2007) (“*Aero*”); *Milford Wind Corridor Phase I, LLC*, 129 FERC ¶ 61,149 (2009) (“*Milford*”); *Alta Wind I, LLC*, 134 FERC ¶ 61,109 (2011) (“*Alta Wind*”).

<sup>6</sup> *Alta Wind*, 134 FERC ¶ 61,109 at P 16 (*citing Aero*, 116 FERC ¶ 61,149 at P 28; *Milford*, 129 FERC ¶ 61,149 at P 22).

<sup>7</sup> Order No. 888 at 31,745.

A transmission priority right based on “reasonably forecasted” growth is a far different threshold than requiring the filing of a request for declaratory order setting forth specific, pre-existing plans with milestones and material progress toward meeting those milestones. The Commission should seek to level these standards. In order to ensure that an undue preference for the reservation of transmission priority rights is not given to one set of transmission providers, transmission priority rights for radial tie line affiliates should be based on reasonably forecasted growth too. In the case of generator-owned radial tie lines, it is reasonable to assume that companies seek to utilize the capacity of the line over a five to seven year period. This time period is in essence the equivalent of reasonably forecasted growth. The Commission should adopt a presumption granting transmission priority rights in favor of the entity constructing the radial tie line for such an initial period – thus abrogating the need to file a request for declaratory order. After the expiration of such time, the owner then either could seek an extension of such priority rights under the Commission’s current rules or simply provide third parties with firm transmission service under terms and conditions of an appropriate tariff.