

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Competitive Transmission Development)
Technical Conference) Docket No. AD16-18-000

Opening Statement by John Cupparo,
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Panel 2: Commission Consideration of Rates That Include Cost Containment Provisions
and Result from Competitive Transmission Development Processes

Good afternoon Chairman Bay, Commissioners, Staff and Panelists. Thank you for the opportunity to provide BHE U.S. Transmission’s perspective on the issue of cost containment in the context of competitive transmission and its relationship to the ratemaking process.

In issuing Order No. 1000, the Commission took a fresh approach to development of transmission projects. To effectuate the reforms in Order No. 1000, we believe that the Commission needs to take the next step in completing its work by taking a fresh approach to ratemaking to further realize the goals of Order No. 1000. Today’s panel discussion regarding the rate-making treatment of cost containment provisions is therefore particularly important, because although cost containment provisions directly benefit customers by allowing developers to assume all or some of the risk associated with potential cost overruns, those same provisions do not fit neatly within the cost-of-service framework established by the Commission.

To address this issue, BHE U.S. Transmission recommends that the Commission establish a rebuttable presumption that rates set by an effective competitive process are just and reasonable. This approach would produce a balanced outcome that provides solicitation participants with an incentive to contain costs while preserving stakeholders’ ability to challenge rate outcomes that they believe may be unjust or unreasonable. Moreover, the Commission could provide a degree of certainty to developers without binding its hands with the *Mobile-Sierra* doctrine or requiring that stakeholders overcome the heightened *Mobile-Sierra* standard of review.

In creating this rebuttable presumption, the Commission would not cede its ratemaking authority to any other entity, but would instead shift its focus toward promoting effective competitive processes and away from adjudicating debates over individual outcomes.

In this regard, BHE U.S. Transmission has proposed in our pre-conference comments specific criteria for evaluating whether a selection process is competitive, focusing on whether the process was open, clear and objective. These criteria are consistent with those enumerated in Order No. 784, with an additional emphasis on transparency.

We would like to emphasize that these proposed criteria should only be used for ratemaking purposes and should not be used to litigate the outcome of a selection process. Additionally, this proposal would not obligate planning organizations to assign any particular level of value to cost or cost containment. BHE U.S. Transmission's proposal makes it possible for developers to offer a wide array of options in this regard, the selection of which would always be subject to the preferences of a particular region and its stakeholders. However, by adopting the proposed evaluation criteria, the Commission would lend support and guidance to regional planning organizations that are already taking steps to improve competitive solicitations along the same trajectory.

Thank you again for the opportunity to participate on this panel. We share the Commission's goal in ensuring that the most efficient and cost-effective transmission solutions are developed; we believe that our proposal furthers that goal. We appreciate the opportunity to discuss the issues and questions on the agenda with the Commission's goal in mind and further unlocking the benefits of competition for customers. I look forward to your questions.