

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation
by Transmission Owning and Operating
Public Utilities

Docket No. RM10-23-000

**Comments of the
Electricity Consumers Resource Council, American Chemistry Council,
Association of Businesses Advocating Tariff Equity, Carolina Utility
Customers Association, Coalition of Midwest Transmission Customers,
Florida Industrial Power Users Group, Georgia Industrial Group-Electric,
Industrial Energy Users – Ohio, Oklahoma Industrial Energy Consumers,
PJM Industrial Customer Coalition, West Virginia Energy Users Group and
Wisconsin Industrial Energy Group (“*ELCON and the Associated Industrial
Groups*”)**

The Electricity Consumers Resource Council (ELCON) together with the American Chemistry Council, the Association of Businesses Advocating Tariff Equity, the Carolina Utility Customers Association, the Coalition of Midwest Transmission Customers, the Florida Industrial Power Users Group, the Georgia Industrial Group-Electric, Industrial Energy Users – Ohio, the Oklahoma Industrial Energy Consumers, the PJM Industrial Customer Coalition, the West Virginia Energy Users Group, and the Wisconsin Industrial Energy Group (the “Associated Industrial Groups”),¹ appreciate the opportunity to comment on the Notice of Proposed Rulemaking (NOPR) regarding transmission planning and cost allocation. ELCON and the Associated Industrial Groups support the Commission’s goal of more streamlined and

¹ See Appendix A to these Comments for descriptions of ELCON and the Associated Industrial Groups.

rationalized regional transmission planning processes that will enable the transmission grid to “better support wholesale power markets and thereby ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable.”² That said, cost allocation proposals resulting from these processes must strictly adhere to the “cost causation” principle, with costs and benefits assessed based on substantial evidence. The driving force behind transmission investment should be the needs of consumers rather than nebulous public policy objectives. Deviation from these principles would contradict decades of precedent and would violate the Federal Power Act’s requirement of “just and reasonable” rates.

EXECUTIVE SUMMARY

The NOPR addresses three topics of particular interest for members of ELCON and the Associated Industrial Groups: (1) transmission planning; (2) cost allocation; and (3) right of first refusal for incumbent utilities. ELCON and the Associated Industrial Groups recognize the interrelated nature of these issues and are cognizant that FERC policy must respond to the changing demands placed on the grid. Yet ELCON and the Associated Industrial Groups are concerned that critical elements of the NOPR are premised on a view that renewable resources such as wind generation should receive special dispensation during transmission planning processes and special rate treatment. This premise is most evident in the introduction into the transmission planning process of nebulous “public policy” considerations. Instead, ELCON and the Associated Industrial Groups urge that transmission planning and cost allocation adhere to well-established legal precedent and principles of prudent regulation. Application of the bedrock principle of “cost causation” would be resource neutral and driven by the needs of consumers

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) at 1.

and their willingness to face allocated costs to achieve measurable benefits. To do otherwise is a recipe for inefficient planning and investment.

Transmission Planning

ELCON and the Associated Industrial Groups support more rational and effective regional and interregional planning processes with improved coordination as well as increased and more meaningful stakeholder involvement. However, any such processes must not bypass the core function of transmission planning that underlies the requirement for “just and reasonable” rates – the assessment of costs and benefits based on substantial evidence. The touchstone of this analysis is cost causation, which provides an important feedback loop to policymakers and state regulators on the cost consequences of their policies by identifying the total delivered costs of alternative resource choices.

ELCON and the Associated Industrial Groups are particularly concerned with the NOPR’s mandatory interjection of state “public policy” considerations into the transmission planning process and how, in practice, this is expected to work. There is currently no consensus among the states on renewable energy policy, presumably though not explicitly stated to be a key public policy of relevance to the NOPR. Some states have rejected renewable portfolio standards (RPS), some have voluntary programs and others have enacted binding programs. Yet even those states that have adopted mandatory programs set dramatically different goals and limits. For example, some states emphasize development of in-state or offshore wind resources to the exclusion of imports from other regions. The NOPR fails to address how a regional or interregional planning process is to account for differences among the public policies of the participating states. Any FERC directive that would favor one state’s policies over another state,

or impose costs of one state’s policy on another state that has chosen not to adopt the policy, would violate basic tenets of state sovereignty and federalism.

ELCON and the Associated Industrial Groups urge reworking of the proposed rule to avoid any implication that long-standing cost causation principles are to be displaced by “public policy” considerations or that the mandates of one state respecting, for example, a RPS, may justify allocation of costs to consumers in another state.

Cost Allocation

With respect to cost allocation, the NOPR would: (1) establish principles for allocating the costs of new intraregional and interregional transmission facilities in a manner that is at least roughly commensurate with the distribution of benefits; (2) require each public utility transmission provider to have a cost allocation method for new transmission facilities in the regional transmission plan that satisfies certain proposed cost allocation principles; and (3) require each public utility transmission provider to have a cost allocation method for new transmission facilities resulting from the planning agreements implemented by neighboring regions that satisfies certain proposed cost allocation principles.

ELCON and the Associated Industrial Groups recognize that the grid will require new transmission and upgrades to existing transmission to maintain reliability in coming years. However, these impending investments do not necessitate deviation from long-standing cost allocation principles. ELCON and the Associated Industrial Groups believe that transmission resources should be developed at the lowest possible cost, and this requires that a cost allocation method that sends appropriate price signals for efficient siting decisions. Broad cost spreading, absent substantial evidence of benefits, would mask or distort price signals and, as a result, lead to poor resource selection and siting decisions—as well as rates that are not “just and

reasonable.” Indeed, courts have developed a carefully crafted body of law to guide the allocation of the costs of transmission investment, centering on the principle that the beneficiaries of a service are to pay for it. These cases, going back over seventy years, have reaffirmed time and again that a pricing scheme will not pass muster if it subjects ratepayers to costs for facilities from which they derive no benefits, or benefits that are insufficient in relation to the costs sought to be shifted to the ratepayers.

ELCON and the Associated Industrial Groups are supportive of innovative cost allocation methodologies, so long as they conform to the guiding principle of “cost causation”. However, the NOPR does not provide sufficient or balanced guidance to the transmission planning entities, and it could be interpreted to depart from cost causation. Although the NOPR would adopt the Seventh Circuit’s recently-enunciated “at least roughly commensurate with the benefits” language, it fails to define the nature and extent of the data needed in practice to support the “substantial evidence” threshold. The NOPR also singles out the “postage stamp” rate methodology as an approach that may be appropriate in a broad range of circumstances, implying that broad cost spreading is the default or preferred methodology.

Political pressure for inter-regional transmission projects, such as may be considered in conjunction with the development of renewable projects, is not a reason to depart from the long-standing approach to cost allocation that implements the doctrine of “just and reasonable” rates. In fact, given the high costs and uncertainties associated with the construction of long transmission lines, careful application of “cost causation” will help to ensure that the costs of such projects are justified by their benefits. This will implement FERC’s recently-reiterated central mission to “assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost”

When new generation projects are driving the need for new transmission, cost causation principles require the recovery of those new transmission costs from the generation projects. Cost allocation comes into play only with respect to recovery from transmission customers of any transmission costs that are not directly assigned to generators. The initial step of directly assigning transmission costs will: (1) help ensure that only facilities that are cost justified get built; (2) make new generators sensitive to location; and (3) protect customers from projects that don't benefit them.

Finally, ELCON and the Associated Industrial Groups urge that FERC adhere to two additional principles related to any costs that are allocated: (1) an explicit requirement that the costs of new transmission investments be allocated on a representatively-determined capacity (MW) basis, not on an volumetric (MWh) basis; and (2) periodic adjustment of cost allocation, if and when needed to reflect changes in power flows. The first principle flows naturally from the fact that a transmission system is sized on the basis of peak demand, and that peak demand is a question of capacity, not volume. The second principle simply recognizes that as a system usage changes, costs should be reallocated to maintain an accurate linkage between cost causation and cost allocation.

Right of First Refusal

The NOPR would remove from FERC-approved tariffs or agreements any right of first refusal (ROFR) that provides an incumbent public utility with an undue advantage over a non-incumbent transmission project developer, while preserving state authority. ELCON and the Associated Industrial Groups in large part support this aspect of the NOPR. However, any change to ROFR should establish a true level playing field and not merely shift undue entitlement from incumbents to non-incumbent developers. To the extent that incumbent

transmission has cost advantages, as often is the case, such benefits should be fully recognized when assessing the net benefits to consumers.

COMMENTS OF ELCON AND THE ASSOCIATED INDUSTRIAL GROUPS

I. If Broadly Interpreted, the NOPR's Public Policy Directives Would Depart from Established Law and Conflict with Principles of Federalism and State Sovereignty

ELCON and the Associated Industrial Groups support the introduction of more streamlined and rationalized regional and interregional transmission planning processes, with improved coordination of legitimate regional or interregional planning objectives. It is essential, however, that improved coordination not alter the fundamental character or traditional limits placed on such processes. The owners of the existing transmission system still must bear the twin responsibilities of prudently planning for the future needs of ratepayers and responding to reasonable requests by developers to accommodate new or upgraded facilities. The "adequacy" of such planning must be closely monitored by the regulators overseeing a transmission owner, who should continue to balance the interests of utility shareholders with the utility's ratepayers. In the ISOs and RTOs, the not-for-profit regional administrators ought to retain responsibility for maintaining independence from the transmission asset owners. All parties must continue to strive to correct for the perverse economic incentives created by joint ownership of transmission and generation. The ultimate goal should be transmission projects that: (1) deliver measurable and verifiable economic and reliability benefits, and (2) are timely planned, constructed and operated.

ELCON and the Associated Industrial Groups are concerned that the regulatory language in the NOPR could be interpreted to depart from these objectives by mandating planning processes that "account for transmission needs driven by *public policy requirements* established

by state or federal laws or regulations.”³ Although the Commission “does not propose to identify the public policy requirements ... that must be considered in individual local and regional transmission planning process,” the accompanying discussion makes clear that integration of renewable resources in the form of RPS and similar state policies is, unsurprisingly, at the forefront. If the NOPR authorizes transmission planners to approve investments on the basis of public policy objectives unrelated to the provision of reliable and cost-effective service, then the NOPR would be inconsistent with the directives of the Federal Power Act and the Commission’s implementing regulations. In particular, under Section 215 of the Federal Power Act, as enacted in the Energy Policy Act of 2005, the Commission’s transmission siting authority is focused on projects to maintain the reliability of the bulk power system. There is no statutory basis for expansion of transmission planners’ authority to include the authorization of investments “driven by” other federal or particular state public policies that as a political matter a transmission planner might wish to support.

What is more, the delegation of such far-reaching discretion and authority to unelected and unaccountable planning bodies would pose significant issues of federalism, particularly in view of the vast differences in “public policy requirements” such as RPS from state to state. Indeed, some states have rejected RPS, some have voluntary programs, and others have enacted binding programs but with dramatically different goals and limits. Any FERC directive that would favor one state’s policies over another state, or impose costs of one state’s policy on consumers in another state that has chosen not to adopt the policy, would violate basic tenets of state sovereignty and federalism.

³ Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253 (2010) at 36 (emphasis added).

Accordingly, ELCON and the Associated Industrial Groups urge reworking of the proposed rule. First, there should not be any implication in a final rule that long-standing cost causation principles are to be displaced by “public policy” considerations. Reference to consideration of formally enacted statutory or regulatory directives, rather than “public policy,” would go a long way toward ensuring that, for example, individual viewpoints of state representatives are not accorded undue weight. Second, a final rule should recognize that the state statutory or regulatory directives will differ and that the directives of one state may not be used to justify imposition of costs on consumers in another state. Third, under no circumstances may public policy considerations displace the principles of “prudently incurred” costs or dismiss the focus on consumer interests that underlie “just and reasonable” ratemaking.

A. The Federal Power Act Mandates a Focus on Consumer Interests

The traditional interpretation of Section 205 of the Federal Power Act, which directs that “all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential,” is that all investments must be “prudently incurred”.⁴ FERC should explicitly reaffirm that utilities have the burden of establishing that a transmission investment will yield benefits to consumers that will outweigh the costs. As FERC has previously stated:

The Supreme Court of the United States early recognized that the determination of what is just compensation for a public utility involves consideration of the utility’s conduct in incurring its costs. . . . [W]e reiterate that managers of a utility have broad discretion in conducting their business affairs and in incurring costs necessary to provide services to their customers. In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management (or that of another jurisdictional entity) would have made, in good faith, under the same circumstances, and at the relevant point in time. We note that while in hindsight it may be clear that a management decision was wrong, our task is to review the

⁴ See e.g., *Public Utilities Comm’n of the State of California v. FERC*, 24 F.3d 275 (D.C. Cir. 1994); *Cities of Batavia, et al. v. FERC*, 672 F.2d 64 (D.C. Cir. 1982).

prudence of the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or at the time the utility became committed to incur those expenses.⁵

Naturally transmission investments must comply with the directives of federal and state law. Such compliance is a tangible benefit to consumers. To the extent that the NOPR refers to a more nebulous concept of "public policy requirements", however, ELCON and the Associated Industrial Groups question whether such a concept can be sufficiently defined and consensus can be reached that would establish a cognizable "benefit" to consumers under the prudently incurred standard.

In this regard, reference to Section 35.35 of the Commission's regulations is instructive. There, the Commission established very specific criteria governing when transmission infrastructure investments qualify as prudently incurred. Section 35.35(i)(ii) then establishes a rebuttable presumption that "[a] project that has received construction approval from an appropriate state commission or state siting authority," applying the specified criteria, qualifies as being prudently incurred. Such approval would represent the culmination of a stakeholder process managed by a regulatory body with a consumer protection mandate that would carefully assess the impact to consumers.

The NOPR, by contrast, may represent a departure from this precedent. Interpreted broadly, perhaps beyond what the Commission intended, the NOPR would vest transmission planning entities – groups that are ill equipped to understand and respond to consumer needs – with legislative-like authority to make judgments among competing state policies. This inquiry is complicated by the differing extent to which "public policy requirements" may reflect consideration of consumer costs. States that have adopted some form of RPS or other renewable

⁵ *New England Power Company, Opinion 231*, 31 FERC ¶61,047, at 61,081-61,084 (1985).

energy resource requirement have not necessarily quantified the economic consequences of their policies on the going-forward costs of planning and operating the interconnected grid. Indeed, most states simply lack the analytic resources necessary to model the regional or interregional cost impacts of their policies and the resulting effect on retail electricity rates.⁶ If the NOPR planning process is to respect the interests of all ratepayers, it must help to ensure that the right resource choices are based on total delivered costs. Those who will directly benefit from the development of renewable resources should also bear the true costs of the resource if they are to make a fair assessment of the pros and cons.

B. Favoritism Toward Policies of a Particular State Would Be Inconsistent with Regulatory Federalism

By allowing one state’s public policy agenda to adversely affect electricity prices in other states that do not share that agenda, the NOPR raises significant federalism concerns. The problem again originates with the NOPR’s provision that “transmission needs driven by public policy requirements established by state or federal laws or regulations should be taken into account in the transmission planning process.” Rather than establishing a national policy at the Commission level, with the attendant procedural protections, this provision could be viewed as delegating to ISOs and RTOs, which generally encompass multiple states,⁷ the authority to impose the “public policy requirements” of one state on another state – or more particularly to

⁶ External assessments suggest, however, that the potential implications are substantial. The potential effect of widespread adoption of RPS on average utility costs were estimated in a January 2010 report by the National Renewable Energy Laboratory (NREL), which concluded that 20% penetration of wind generation within the Eastern Interconnection is “technically feasible” but requires significant expansion of the transmission infrastructure (\$93 billion), and is only “manageable” with the establishment of large regional operating pools (i.e., consolidated balancing authorities) and “significant market, tariff, and operational changes” (i.e., “integration costs” of \$5.13/MWh). National Renewable Energy Laboratory, Eastern Wind Integration and Transmission Study, prepared by EnerNex Corporation, NREL/SR-550-47078, January 2010.

⁷ The New York ISO, which has a single-state footprint, has recently adopted, and FERC has conditionally approved, a series of “Broader Regional Markets” initiatives intended to reduce uplift costs and lower total system operating costs.

impose costs on consumers in the second state – without sufficient democratic or procedural checks and balances. Such an outcome would effectively reverse the concept of regulatory federalism embodied in the Federal Power Act and subsequently reiterated with the Energy Policy Act of 2005.

This issue is particularly acute in the case of renewable resources and RPS, where there is little consistency among the states – policies run the gamut from opposition to RPS to adoption of comprehensive and stringent standards. For example, of the states that have enacted binding RPS, the percentage of or renewable resources targeted ranges from 10 percent to 40 percent.⁸ Furthermore, the definition of a qualifying resource can differ dramatically between states, including for example advanced nuclear power (Ohio) and clean coal technology (West Virginia).⁹

The transmission planning functions of the ISOs and RTOs should not be tasked with having to reconcile inconsistent, and in some cases mutually exclusive, state policies¹⁰. The result is that if an ISO or RTO decides to construct transmission on the basis of one state’s public policy, all customers of the ISO or RTO will be forced to adopt by proxy that state’s policy agenda regardless of whether they have voted against such a policy in their home state. Thus, ratepayers in one state may be forced to subsidize the public policy decisions of neighboring

⁸ Pew Center on Global Climate Change, <http://www.pewclimate.org>. As of January 2009, 28 states had enacted RPS. Target years for meeting the portfolio percentage target also vary widely; aside from California and Massachusetts which already have initial targets in place, the earliest target year is 2013 and the latest is 2025.

⁹ *Id.*

¹⁰ The NOPR states that the “proposed requirement is not intend in any way to infringe upon state authority with respect to integrated resource planning,” but does not specify how an ISO or RTO could possibly comply with this injunction. The purpose of RPS is to privilege certain forms of resources over others. Unless a transmission planning authority is located entirely within a single state, it would be impossible to avoid favoring one state’s resource plan over another’s.

states. Worse, voters in the subsidizing states will be left without political recourse because they lack a vote in the RPS enacting state.

One of the primary virtues of federalism is that it allows for clear political accountability. Citizens know who is responsible for any given policy and they have the power to vote for new representation if they do not support the policy. In order to ensure that the lines of accountability remain clear, the Supreme Court has been vigilant in prohibiting the federal government from commandeering state legislatures and state executives in the name of federal interests.¹¹ As the As the Supreme Court noted in the landmark case *New York v. United States*,

[W]here the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished. If the citizens of New York, for example, do not consider [the policy at issue] in their best interest, they may elect state officials who share their view. That view can always be pre-empted under the Supremacy Clause if it is contrary to the national view, but in such a case it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular.”

By contrast, the Commission has in this case declined to make any decision at all, placing the determination as to which public policy to follow solely at the discretion of the ISOs and RTOs. While the law at issue in New York merely blurred the lines of political accountability, the proposed regulation here would go further, obscuring political accountability altogether.

Under the proposal, citizens in a non-RPS state whose rates increase because of the public policy of a neighboring state have no recourse whatsoever because they lack a vote in the neighboring state’s elections. Moreover, the decision as to which state’s public policy should prevail is left to transmission planning entities that are insulated from the checks and balances of electoral politics. This regulatory sleight-of-hand permits the federal government to burden state

¹¹ See e.g. *New York v. United States*, 505 U.S. 144 (1992) and *Printz v. United States*, 521 U.S. 898 (1997).

taxpayers with onerous and unpopular policies without facing the political accountability that principles of federalism demand.

II. The NOPR Would Improperly Depart from Traditional Cost Allocation Principles for New Transmission Projects

With respect to cost allocation, the NOPR would: (1) establish principles for allocating the costs of new intraregional and interregional transmission facilities in a manner that is at least roughly commensurate with the distribution of benefits; (2) require each public utility transmission provider to have a cost allocation method for new transmission facilities in the regional transmission plan that satisfies certain proposed cost allocation principles; and (3) require each public utility transmission provider to have a cost allocation method for new transmission facilities resulting from the planning agreements implemented by neighboring regions that satisfies certain proposed cost allocation principles.

ELCON and the Associated Industrial Groups urge the Commission to reiterate that the bedrock function of regional and inter-regional transmission planning should be the assessment of costs and benefits based on substantial evidence. The touchstone of this assessment is cost causation, which provides an important signal to transmission planners and state regulators on the cost consequences of their policies by identifying the total delivered costs of alternative resource choices. ELCON and the Associated Industrial Groups also urge the Commission to adhere to two additional principles related to cost allocation: (1) an explicit requirement that the costs of new transmission be allocated on a representatively-determined capacity (MW) basis, not on a volumetric (MWh) basis; and (2) periodic adjustment of cost allocation on an as needed basis should there be any changes in power flows.

A. Cost-Causation Is the Touchstone for Any Legal Analysis of FERC-Approved Rate Schemes.

The principle of “cost-causation” is well established by case law and Commission adjudications and rulemaking. As the touchstone in any legal analysis of FERC-approved rate schemes, it requires that all approved rates reflect to some degree the costs actually caused by the consumer who must pay them. Although the Commission need not allocate costs with exacting precision, it may depart from the principle of cost causation only in extraordinary circumstances and for a limited purpose. A rate design that results in some ratepayers subsidizing the service of others is *prima facie* inconsistent with cost-causation and presumptively invalid. The claim of “generalized system benefits”, such as amorphous reliability improvement, is insufficient to justify regionalized charges; rather, there must be a tangible, non-trivial benefit supported by substantial evidence in the record.

This “cost causation” model of cost allocation results in greater economic efficiency by retaining a direct tie between the costs and the benefits of a given project, enabling the potential beneficiaries to appropriately determine whether the costs are worthwhile. Under this approach, the Commission should allocate costs to a region or sub-region only if the costs are proportionate to the measurable economic and reliability needs that the investments are designed to satisfy for each region or sub-region. The surest way of protecting consumer interests is to require any party proposing new transmission to fully justify their investment with concrete evidence as to the likely needs that will be met and the corresponding benefits provided. On the other hand, broad cost spreading disproportionate to benefits tends to mask the cost signal and lead to poor resource selection and siting decisions – and rates that are not “just and reasonable”. In the experience of ELCON and the Associated Industrial Groups, unquantifiable costs or benefits that will purportedly be realized as a result of an investment are all too often a fig leaf justification

for a project that does not otherwise make economic sense.

The cost causation issue is particularly salient given the Commission's proposal to bar the assignment of costs to transmission planning regions in which a facility is not located.¹² Disallowing export charges or other forms of cost transfer to beneficiaries in other planning zones will result in unjust and discriminatory rates. For example, to the extent that one transmission planning area has extensive wind resources relative to others that are taking the load, the ratepayers of the generating transmission planning area will be forced to subsidize end users in other transmission planning areas with no effective recourse. The problem is made evident by MISO's proposed cost allocation scheme for what it calls Multi Value Projects, which are designed to integrate wind resources. MISO currently has 60 GW in its interconnection queue, but only about a third of this amount would be needed to fulfill RPS mandates within the MISO footprint. Under MISO's proposal, load and exports would bear the costs of the integration of wind resources. Aside from the fact that 100% cost spreading is unreasonable in a footprint that includes states that have decided not to enact RPS, disallowance of export charges will only create high subsidies (and profits) for wind generators.

Getting transmission cost allocation right is essential to ensuring that all consumers benefit from the lowest cost energy alternatives. The NOPR quotes language from the Seventh Circuit's recent decision to the effect that benefits should be "at least roughly commensurate" to the costs. ELCON and the Associated Industrial Groups concur that this is a critical concept, but the NOPR fails to adequately address the next important issue – the nature and extent of the required inquiry. Following the Seventh Circuit's decision, the Commission is obligated to review and approve cost allocation proposals from RTOs to ensure that there is a reasonable

¹² NOPR at ¶ 174 (4).

consideration of benefits, and to compare the costs assessed against a party to the burdens imposed or benefits drawn by that party, *based on substantial evidence in the record*. If the benefits cannot be reasonably quantified, then there must be “articulable and plausible” reasons to believe that the benefits are at least roughly commensurate with those utilities’ share of total electricity sales.¹³

The principle of “cost causation” is well established by both court cases and Commission cases. The judicial application of the principle first developed in early natural gas pipeline cases, which have a similar investment profile to the long transmission lines currently under proposal. Likewise the statutory “just and reasonable” standard for rates is the same under the Federal Power Act. The long line of “cost causation” cases trace their origin to *Colorado Interstate Gas Co. v. Federal Power Commission*, a seminal 1945 Supreme Court decision, which stated, in an opinion frequently cited by FERC, that “[t]he problem [to be addressed by a rate case] is to allocate to each class of the business its fair share of the costs.”¹⁴

The Colorado Interstate Gas principles subsequently were elucidated in a series of D.C. Circuit cases, including *Algonquin Gas Transmission Co. v. FERC*,¹⁵ *Complex Consolidated Edison Co. of New York v. FERC*¹⁶ and *Transcontinental Gas Pipe Line Corp. v. FERC*.¹⁷ All three cases involved allocating the costs of new facilities, with the D.C. Circuit addressing

¹³ “We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars... If it cannot quantify the benefits to the Midwestern utilities from new 500 kV lines in the East ..., but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities’ share of total electricity sales in PJM’s region, then fine; the Commission can approve PJM’s proposed pricing scheme on that basis.” 576 F.3d at 477.

¹⁴ 324 U.S. 581, 588 (1945).

¹⁵ 948 F.2d 1305 (D.C. Cir. 1991).

¹⁶ 165 F.3d 992 (D.C. Cir. 1999).

¹⁷ 518 F.3d 916 (D.C. Cir. 2008).

whether the costs of the new or expanded facilities should be allocated to the beneficiaries (“incremental pricing”) or to all of the gas company’s customers (“rolled-in pricing”).

In all three cases, the court required FERC to “outline[] with reasonable particularity the system-wide benefits which each new facility produces” to justify rolled-in pricing.¹⁸ Under these cases, there must be substantial and specific benefits to the system as a whole for just and reasonable rates to widely spread the costs of new facilities; otherwise, those ratepayers that do not benefit subsidize those that do.¹⁹

The courts consistently have applied the principle of “cost causation” in subsequent electricity cases. As the D.C. Circuit has explained, although “just and reasonable” provides a “spartan” statutory standard, “FERC and the courts have added flesh to these bare statutory bones, establishing what has become known . . . as the ‘cost-causation’ principle.”²⁰ The cost causation principle is the “touchstone in any legal analysis of FERC-approved rate schemes,” and it requires “that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”²¹ Reiterating the point made by the Seventh Circuit, the D.C.

¹⁸ *Algonquin*, 948 F.3d at 1313, 1315 (this is not a theoretical exercise, but a question of fact dependent on “the impact the order would actually have on ultimate consumers”). *See also*, *Complex Consol.*, 165 F.3d at 998, 1006 (affirming FERC’s holding that rolled-in rates were not just and reasonable based on FERC’s conclusion that “the alleged system benefits postulated by JMC Power [were] insubstantial”); *Transcontinental*, 518 F.3d at 920 (affirming FERC’s order adopting incremental rates where “FERC . . . correctly concluded that existing customers would have . . . subsidized the Cherokee shippers if [the gas company] had been allowed to roll in rates”).

¹⁹ *See, e.g., Transcontinental*, 518 F.3d at 921 (“Rolling in the power costs of the Cherokee compressors forced existing Transco customers to subsidize the power costs of compressors they had no need for . . .”), *Algonquin*, 948 F.2d at 1313 (“What we do require, however, is that the Commission, before ordering a roll-in . . . offer more than a conclusory statement that the existence of system-wide benefits renders it unjust to allocate facilities costs incrementally.”); *Complex Consol.*, 165 F.3d at 997 (“[T]he weight of the evidence favored the conclusion that the [new] facilities provided neither operational benefits nor additional reliability to Tennessee’s system customers.”).

²⁰ *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

²¹ *Id.*; *see also Village of Bethany v. FERC*, 276 F.3d 934, 937 (7th Cir. 2002) (“The overriding policy concern in a ratemaking proceeding is to establish rates that require each customer to bear a fair and proportional share of . . . costs.”).

Circuit has stated that compliance with the cost causation principle must be evaluated “by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”²²

The court in *Midwest ISO* described FERC’s cost causation principle as “requir[ing] that all approved rates reflect to some degree the costs actually caused by the customers who must pay them.... Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or the benefits drawn by that party.”²³ Although FERC need not “allocate costs with exacting precision,” it may depart from the principle of cost-causation only in extraordinary circumstances and for a limited purpose.²⁴ A rate design that results in some ratepayers subsidizing the service of others is prima facie inconsistent with cost-causation and presumptively invalid.²⁵

Cost causation principles also govern choice of rate structure.²⁶ The importance of rate structure as part of the cost causation analysis was emphasized in the recent Seventh Circuit decision in *Illinois Commerce Commission v. FERC*.²⁷ In that case, the court reversed a FERC

²² *Midwest ISO Transmission Owners*, 373 F.3d 1361, 1368-69 (D.C. Cir. 2004).

²³ *Id.* (Citations omitted); see also, *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1188-89 (D.C. Cir. 1996) (“[c]ost causation correlates costs with those customers for whom a service is rendered or a cost is incurred”); and *Cities of Riverside and Colton, California v. FERC*, 765 F.2d 1434, 1439 (9th Cir. 1985).

²⁴ *Midwest ISO Transmission Owners*, 373 F.3d at 1369; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 707 (D.C. Cir. 2000); see also *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) (remanding to FERC to explain why it did not apply “a different method of refunds, based more closely on cost-causation principles”).

²⁵ *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 188 (D.C. Cir. 1986); *Nat’l Ass’n of Sec. Dealers, Inc. v. SEC*, 801 F.2d 1415, 1420 (D.C. Cir. 1986) (“Avoidance of cross-subsidization of services is a legitimate, non-arbitrary reason for requiring difficult cost allocations.”).

²⁶ See e.g., *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,209 (2007) (Applying cost causation analysis to proposed revisions to MISO’s Open Access Transmission and Energy Markets Tariff that included special cost allocation for regionally beneficial projects, which were defined in part as facilities with voltages of 345 kV or higher).

²⁷ *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009).

decision approving PJM’s proposed pricing mechanism for new transmission facilities having a capacity of 500 kV or higher, in part because FERC had not adequately applied cost causation analysis to justify differential treatment of lines with capacity above 500 kV.

The Commission has described its “long standing policy” on utility cost allocation in these words: “Properly designed rates should produce revenues from each class of customers which match, as closely as practicable, the cost to serve each class or individual customer.”²⁸ FERC has treated as black-letter law the principle that customers using a facility or service, or benefiting from a facility or service, must pay their fair share of the costs of the facility or service. FERC refers to this principle as “cost causation.”²⁹ Implicit in the cost-causation analysis is the principle that each “customer pay[s] for the service [it] receive[s] and do[es] not subsidize service rendered on behalf of others.”³⁰

Moreover, the Commission has found that a claim of “generalized system benefits” is insufficient to justify charges, there must be a tangible, non-trivial benefit supported by the record.³¹ The Commission also has acknowledged that the principle of fairly allocating

²⁸ *New Dominion Energy Cooperative*, 122 FERC ¶ 61,174, P 41 (2008), citing *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

²⁹ See, e.g., *California Power Exchange Corp.*, 106 FERC ¶ 61,196, P 17 (2004), (the “well-established principle of cost causation requires that costs should be allocated, where possible, to customers based on customer benefits and cost incurrence”). See also *CAISO*, 103 FERC ¶ 61,114, P 26 (“[w]hile this fundamental idea of matching costs to customers is often referred to in terms of cost causation, it has also often been described in terms of the costs which ‘should be borne by those who benefit from them’” (quoting *Gulf Power Co. v. FERC*, 983 F.2d 1095, 1100 (D.C. Cir. 1993))).

³⁰ *Empire State Pipeline and Empire Pipeline, Inc.*, 116 FERC ¶ 61,074 at P 115 (2006).

³¹ See e.g., *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289 at P 50 (2008) (noting that “[e]very addition to the system could be characterized as providing some possible intangible system benefit by adding transmission capacity redundancy”); *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170, 61,924-25 (2005).

transmission costs among those who use and benefit from transmission facilities fully applies to RTO transmission rates.³²

Practical considerations of economic efficiency and public policy also counsel in favor of a “cost causation” cost allocation methodology. In a nutshell, this methodology establishes more economically justified incentives for new construction than cost allocation models that widely spread transmission costs, while also minimizing public opposition to potentially beneficial projects.

B. “Cost Causation” Has Practical Advantages Not Shared by Wide Cost-Spreading.

The “cost causation” model of cost allocation results in greater economic efficiency by retaining a direct tie between the costs and the benefits of a given project, enabling the potential beneficiaries to appropriately determine whether the costs are worthwhile. Wide spreading of costs distorts the economic incentives of participants by insulating the beneficiaries from the full costs.³³ When market beneficiaries are not required to bear the full costs of a proposed project, they may push forward with a project even if it is economically inefficient (*i.e.* total costs exceed total benefits) because their private gain exceeds their reduced costs. On the other hand, those who are allocated costs based on actual, demonstrable benefits are less likely to object to the construction of new transmission facilities than those who are allocated costs based on an assumption that they will receive some general, unquantifiable benefit. The “cost causation” model is, therefore, more likely to reduce controversy and assure that future transmission would

³² See *Alliance Companies*, 94 FERC ¶ 61,070, 61,311-13; *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105, PP 50-51; *Ameren*, 105 FERC ¶ 61,216, PP 32, 57; *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,262, P 6 n.10 (2004) (approving the Going Forward Principles).

³³ See *Certification of New Interstate Natural Gas Pipeline Facilities*, 90 FERC ¶ 61,128, at 61,391-93 (2000) (Clarified Policy Statement) (recognizing that subsidies send the wrong price signals to the market, leading to inefficient investment decisions).

be built where the costs truly are justified. The construction of transmission is perhaps the most controversial form of energy investment, and wide spreading of costs simply increases the coalition of interests that will oppose potentially beneficial system upgrades.

In its suggestions that unintended beneficiaries should be addressed and that a “postage stamp” cost allocation methodology may be appropriate for greater than 345 kV transmission, the NOPR could be interpreted to advocate a watering down of traditional cost allocation principles. The NOPR’s main justification for expansion of cost spreading is to capture any “free riders” who may be unintended beneficiaries of a project. However, the NOPR overstates the “free rider” issue and in many cases broad spreading of costs is equally or more likely to reach customers who are harmed by a project. For every stakeholder that receives some unintended benefit of a new transmission project, there may be others that are harmed. For example, in the case of development of transmission projects that are primarily intended to relieve congestion, such projects often reduce average rates for some ratepayers, but increase average rates for others. It is exceedingly difficult (if not impossible) to quantify the net effects for any one ratepayer of all externalities – both positive and negative.

Accordingly, the Commission should carefully adhere to the “cost causation” principle that assumes that non-trivial benefits can be reasonably identified, reasonably measured and reasonably assigned to beneficiaries – including unintentional beneficiaries. This by necessity is a case-by-case determination that requires a showing based on tangible, substantial evidence. References to the appropriateness of one particular methodology, such as postage stamp, should be deleted so as not to inappropriately skew the outcome by suggesting a default or preferred methodology. The bottom line is that, under the Federal Power Act, in no case may costs be assessed to customers unless there is a specific and substantial showing of commensurate

benefits.

When new generation projects are driving the need for new transmission, cost causation principles require the recovery of those new transmission costs from the generation projects. Cost allocation comes into play only with respect to recovery from transmission customers of any transmission costs that are not directly assigned to generators. The initial step of directly assigning transmission costs will: (1) help ensure that only facilities that are cost justified get built; (2) make new generators sensitive to location; and (3) protect customers from projects that don't benefit them. More generally, the direct assignment methodology is an administratively efficient way to address those many cases where costs cannot be readily allocated to true beneficiaries based on substantial evidence. Direct assignment to the cost causer is preferable because it avoids resorting to subjective judgment on what billing determinants should be used to allocate the costs once they are put in the common cost bucket. There is precedent for use of the direct assignment model in various circumstances. For example, in the case of a state-mandated generating plant, the cost of the generating plant has been assigned to the state that adopted the mandate rather than allocating the costs through the holding company's affiliate pooling agreement. Applying direct assignment to the transmission needs of a wind project, for example, may mean that the transmission costs would simply be assigned to the developer of the wind project or to a utility that has a requirement to supply renewable power. Such direct assignment would be more readily implemented and less susceptible to challenge than complex, subjective cost allocation proceedings.

C. Costs of New Transmission Investments Should Be Allocated On A Capacity Basis.

To the extent that any costs are allocated rather than directly assigned, ELCON and the Associated Industrial Groups believe that it is time to revisit cost causation principles for

variable energy resources (VARs) such as wind farms. The cost of new transmission investment should be allocated on a representatively-determined capacity (MW) basis rather than a volumetric (MWh) basis. The superiority of cost allocation on a capacity basis flows directly from the fundamental causal relationship at the heart of transmission planning – system peak demand determines investment in capacity. Wind energy resources are intermittent, variable energy resources. As such, this class of low capacity factor resource tends to be more capacity intensive relative to the volume of delivered energy. Allocating the fixed costs of transmission facilities intended to wheel wind energy to load centers on a volumetric basis has the effect of an inappropriate subsidy to wind energy. Allowing such a subsidy would be inconsistent with resource neutrality and economically efficient resource allocation. There is simply no convincing reason for the fixed costs of these sorts of variable resources receive to be treated differently from other supply resources.

D. The Final Rule Should Provide for Periodic Adjustment of Cost Allocation to Reflect Changes in Power Flows.

Power flows change as loads grow or decline, as new generators are added to the grid (or retired), and as a result of new or upgraded transmission infrastructure. The changes in flows cannot always be anticipated, and therefore a transmission cost allocation methodology should be recalculated on a periodic basis. There is no substitute for such a mechanism for ensuring fair and nondiscriminatory allocation of costs over the life of assets. Periodic review does not change the amount of total costs that are recovered and therefore adds no regulatory uncertainty to cost recovery. Only the mix of and allocation to beneficiaries changes. There is precedent for periodic review of the manner in which cost recovery is allowed for network upgrades under FERC's Pro Forma Open Access Transmission Tariff (OATT). Under the OATT, most recently revised in Order No. 890, the generator must initially finance the costs of network upgrades, but

upon completion of the project the transmission provider spreads the cost among customers and rebates to the generator its initial investment by providing it with transmission credits against its tariff expenses. This mechanism in effect enables a review to properly allocate costs to beneficiaries of the investment.

III. FERC Should Adopt a More Balanced Approach to Right of First Refusal

ELCON and the Associated Industrial Groups largely support the NOPR's proposed elimination of the right of first refusal (ROFR) for incumbent transmission development projects. However, any change to ROFR should establish a true level playing field and not merely shift undue entitlement from incumbents to non-incumbent developers. To the extent that incumbent transmission has cost advantages, as often is the case, such benefits should be fully recognized when assessing the net benefits to consumers.

There is a need for a balanced approach and opportunity for flexibility to address this difficult issue, as circumstances may differ from case to case. The NOPR noted several legitimate reasons where it may be appropriate for an incumbent transmission provider to have a ROFR, including that the incumbent transmission owner: (1) has a legally enforceable obligation to maintain reliability on its systems and faces penalties for noncompliance; (2) is obligated under state law to provide reliable service at the lowest reasonable cost; (3) may be required to build facilities included in an RTO's or ISO's regional plan, an obligation that merchant and independent transmission developers lack; (4) is best situated to develop transmission facilities within its service territory, as it is most familiar with the design and operation of its system, its customers' needs, and state and local permitting and siting processes; and (5) may be able to provide transmission services at a lower cost than a merchant or independent transmission developer because it enjoys economies of scale with respect to the staff and resources necessary

to maintain and operate new transmission facilities. In fact, the experience of ELCON and the Associated Industrial Groups to date is that the service they provide often is more costly to consumers than comparable service from incumbent transmission companies because the net effect of the financial incentives that FERC routinely gives to the merchants is to transfer all the economic benefits from consumers to the merchants.

On the other hand, the NOPR also identifies several legitimate reasons for eliminating ROFR, including that it: (1) provides a disincentive for a merchant or independent developer to propose a project, especially a proposal for a transmission facility that spans multiple utilities' service territories, because any investment that it makes in developing a proposal may be lost if an incumbent transmission owner can exercise its right of first refusal or otherwise delay the project or prevent construction of the project; (2) likely increases costs to ratepayers by discouraging competition and new entry; and (3) may increase the obstacles faced by a merchant or independent transmission developer in obtaining for a new project.

Accordingly, ELCON and the Associated Industrial Groups advocate a true level playing field that enables unfettered consideration of net benefits to consumers, but would oppose any efforts to shift entitlements or other advantages to non-incumbent developers such as merchants. As part of the neutral, case-by-case assessment, the Commission should properly recognize that the incumbent's cooperation and support for necessary facilities may promote cost-effective development of the projects. Incumbents should be allowed a reasonable opportunity to study the options and reveal any concerns regarding the merits of the project before merchants are given the opportunity to offer a counter proposal. The non-incumbent then should have an opportunity to establish that it offers cost advantages and other benefits to consumers over the incumbent. The time period that is adequate for these reviews will depend on the complexity

and other circumstances of the project; there should not be generic time limits. More generally, it would be sensible to establish appropriate qualification requirements for project developers and require them to provide sufficiently detailed information to enable evaluation of the project.

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Respectfully submitted,

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CAROLINA UTILITY CUSTOMERS ASSOCIATION

COALITION OF MIDWEST TRANSMISSION
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FLORIDA INDUSTRIAL POWER USERS GROUP

GEORGIA INDUSTRIAL GROUP – ELECTRIC

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OKLAHOMA INDUSTRIAL ENERGY CONSUMERS

PJM INDUSTRIAL CUSTOMER COALITION

WEST VIRGINIA ENERGY USERS GROUP

WISCONSIN INDUSTRIAL ENERGY GROUP

Dated: September 29, 2010

APPENDIX A

Description of ELCON and the Associated Industrial Groups

The *Electricity Consumers Resource Council (ELCON)* is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. As operators of hundreds of major facilities and major consumers of electricity, ELCON members are significantly impacted by charges imposed for the cost of new transmission.

The *American Chemistry Council (ACC)* represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care[®], common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$674 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

The *Association of Businesses Advocating Tariff Equity (ABATE)* is a nonprofit business association formed to represent industrial and other large volume energy customers in gas and electric regulatory and legislative matters. Among ABATE's members are some of the largest industrials in Michigan, employing hundreds of thousands and paying nearly \$500 million in state taxes each year. The most recent data shows that ABATE members collectively accounted

for over 37% of all industrial electricity usage and over 21% of all industrial natural gas usage in Michigan, consuming nearly 11 million MWh and over 51 million Mcf.

The *Carolina Utility Customers Association (CUCA)* is a full-time, statewide manufacturers trade association consisting of 55 members. CUCA monitors, reports, and addresses electrical, natural gas, and telecommunications issues that impact industrial consumers, actively representing the interests of its members in all pertinent energy matters before the appropriate regulatory, legislative and judicial bodies. CUCA is considered the primary voice of industrials in most energy proceedings. CUCA's core function is intervention in utility matters to protect the interests of manufacturers and ensure a dependable supply of utility and energy services at equitable, cost-based rates.

The *Coalition of Midwest Transmission Customers (CMTC)* is an *ad hoc* association of large industrial end-users of electricity. All CMTC members operate one or more manufacturing facilities in the Midwest and purchase electric delivery service or bundled electric service from at least one of the transmission owners encompassed by the Midwest ISO.

The *Florida Industrial Power Users Group (FIPUG)* is an organization of industrial high-load factor consumers of electrical energy. Many members of the group receive non-firm electric service. FIPUG members participate on an *ad hoc* basis in those dockets before the Florida Public Service Commission or other regulatory bodies as their interests warrant. The organization has been active since 1973.

The *Georgia Industrial Group-Electric* was formed in the early 1970s to intervene and participate in regulatory matters before the Georgia Public Service Commission on behalf of industrial electric users. Randall D. Quintrell serves as the group's counsel and J. Pollock, Incorporated serves as the group's consultant. The group functions as an informal

unincorporated association of approximately 30 large industrial companies. It does not have articles of association or bylaws, but it has a chairman, vice chairman, and a steering committee. The entire group usually meets at the Atlanta law offices of Randall D. Quintrell, P.C. at least once a year and more frequently if there are active matters at the Georgia Public Service Commission.

Industrial Energy Users-Ohio (IEU-Ohio) is an association of large Ohio-based energy consumers. IEU-Ohio has been an active participant in state and federal regulatory proceedings involving member transmission owners participating in the Midwest ISO and PJM Interconnection, LLC ("PJM").

The *Oklahoma Industrial Energy Consumers (OIEC)* is an unincorporated voluntary association of companies that own and operate industrial facilities or other facilities served under utility industrial rate schedules or tariffs. Its purpose is to provide a forum for Oklahoma industrial firms and other similarly-situated firms to promote and protect their interests in matters concerning government regulations affecting natural gas and electric issues including, but not limited to, appropriate cost of service ratemaking principles and competition in the utility industry. OIEC members desire to achieve the greatest energy efficiencies possible in their respective operations by accessing the lowest cost energy in the United States while preserving a high quality of service.

The *PJM Industrial Customer Coalition (PJMICC)* is an *ad hoc* association of large commercial and industrial end-users of electricity. PJMICC members operate manufacturing and institutional facilities throughout the PJM footprint, which encompasses all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

The *West Virginia Energy Users Group (WVEUG)* is an ad hoc association currently comprised of 19 large, energy-intensive industrial, chemical, manufacturing, and institutional concerns receiving electric service from Monongahela Power Company, The Potomac Edison Company, Appalachian Power Company, and Wheeling Power Company. WVEUG members collectively consume millions of MWh of electricity and employ thousands of West Virginians. WVEUG represents the interests of its members principally through active participation in proceedings before the Public Service Commission of West Virginia.

The *Wisconsin Industrial Energy Group (WIEG)* is a voluntary association of companies, which are large users of energy in Wisconsin. Organized in the 1970's WIEG represents many of Wisconsin's largest employers in advocating with the State Legislature, the Governor's office, the Public Service Commission of Wisconsin and the Federal Energy Regulatory Commission to support policies and actions that will ensure the reliable and affordable energy supplies needed to grow the statewide economy and create jobs. WIEG current membership consists of 41 Wisconsin companies that serve as key drivers of economic growth and development through the state. Those businesses employ more than 60,000 Wisconsin residents, each of whom is a state taxpayer and utility ratepayer. WIEG members represent more major manufacturing industries including but not limited to: paper, printing, malting, automobile, plastics, food processing, chemical, insurance, metal casting and fabricating.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: September 29, 2010

/s/ MARK W. WALKER
Mark W. Walker