

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Barriers to Entry

Docket No. AD08-13-000

COMMENTS OF ROY THILLY
October 14, 2008

Technical Conference

Made on Behalf of
Wisconsin Public Power Inc.
and
Transmission Access Policy Study Group (TAPS)

I would like to thank the Commission for the opportunity to participate on this conference. I am the President and CEO of Wisconsin Public Power Inc. (WPPI), a joint action, bulk power supply utility owned by 41 Wisconsin communities. We also serve 9 communities in the Upper Peninsula of Michigan and in Iowa. We own coal, gas-fired and wind generation and have an ownership interest in the American Transmission Company (ATC). I serve on the Board of Directors of ATC.

I am speaking on behalf of WPPI and TAPS, a group of transmission dependent utilities that has been a strong advocate for 20 years of a robust transmission system, open access and joint ownership. In fact, I remember speaking before this Commission at a similar conference shortly after passage of the Energy Policy Act of 1992 on the need to strengthen our grid substantially. I couldn't find my notes from that meeting, but I suspect there is considerable overlap with today's comments on need.

The topic of today's discussion is barriers to getting transmission built. I will focus on two success stories that demonstrate substantial improvements to the grid can be made. WPPI is part of two joint transmission ownership organizations that have been,

and are, getting major new transmission approved and built, with significant public support.

The first is the American Transmission Company (ATC), which is an inclusive load-serving entity owned transmission company located primarily in Wisconsin. ATC has 5 investor-owned utility, 17 municipal utility and 6 rural cooperative owners. This single purpose transmission company has a legal obligation is to meet the needs of all of the load-serving entities in its footprint and to provide a robust grid to support wholesale competition. To-date, ATC has brought approximately \$2 billion of new transmission into rate base and has plans for an additional investment of \$2.7 billion over the next 10 years. This plan does not include participation in the significant grid expansion program that will be required to access renewable energy from the west to meet state renewable portfolio standards. Nor does it take account of the facilities needed to access Great Lakes wind in the future. ATC has experienced no rejections of its applications to construct, most have proceeded expeditiously, and there have been no complaints filed against ATC at this Commission to my knowledge.

The second success story is CapX 2020. CapX consists of 11 investor-owned, municipal, and rural cooperative utilities in Minnesota and Wisconsin. CapX is seeking to build four 345 kV backbone transmission lines in Phase I to significantly strengthen the Minnesota transmission system. These facilities are designed to meet the load-serving and reliability needs of all 11 participating utilities, and provide the common infrastructure to reach new sources of supply. Phase I is estimated to cost about \$2 billion and there is an additional \$1 billion of “partner” projects, which are related upgrades on individual systems. Three of the four Phase I projects are in the permitting

stage and the fourth will be filed for in the first quarter of 2009. For one of the pending projects no interventions have been filed in the permitting proceeding. For the others, my understanding is that primary issues that have been raised are that use of the lines should be restricted to transmission of renewable energy (which as a lawyer I understand presents a significant engineering challenge) and that the proposed 345 kV lines should be double circuited or possibly upsized to 500 kV. This is certainly a different experience in transmission permitting than the usual.

CapX 2020 is beginning to plan its Phase II projects. They will be focused primarily at enabling area utilities to meet their renewable energy needs under state law. The cost estimates range between \$4 and \$7 billion.

These two examples show that joint ownership arrangements that are inclusive and open have been very successful in meeting the challenge of building new transmission.

I now would like to make two obvious points that were touched on by the Commissioners in their opening statements.

First, we do need a lot more transmission in many places. We need a robust regional grid to provide optionality for utilities to meet their obligations to serve over the long term. We cannot predict the future accurately. Nor can we predict what technologies will be winners. We need a system that provides us with optionality to reach various supply resources and we need a system that is built for a variety of purposes; for reliability, to serve load, to lower power costs and to meet state law requirements, such as renewable portfolio standards.

Transmission is the key infrastructure of the electric industry. A robust grid is essential for markets to work for consumers and it is increasingly clear that a strong transmission system is necessary to address the significant challenges presented by climate change.

When LMP markets were being developed and first implemented, the clear signal of this new system was to build generation close to load to avoid exposure to congestion costs. But the drivers of our decisions today are very different and were not anticipated. Many utilities are focused on obtaining reliable access over the long term to low carbon, location-constraint resources that we will need to meet our supply obligations on a much cleaner basis going forward. Such resources include wind, which must be where the wind blows; coal plants that can capture and sequester CO₂, which will likely be built where the necessary geology exists; nuclear units, which are not likely to be built at load centers; and Canadian hydro, which I suspect will be built in Canada, all regardless of LMP price signals on location. All these resources will need transmission and very few will be built at load centers.

Second, it is truism to state that transmission is hard to build. There are lots of affected landowners. No one wants high-voltage transmission lines going by their home or through their farm or woods, and you can't build a buffer as you can around a power plant. Because we often have to propose alternative routes under state law, we double and triple opposition. We need to recognize that there are legitimate environmental and aesthetic concerns related to transmission facilities and the potential for over-building. There is great uncertainty as to whether the costs of a major build-out will match the benefits received and who will pay the costs.

For these reasons, going forward, I believe that the biggest challenge for the industry - in addition to resolving the regional cost allocation issue in a way that is perceived as fair by multiple participants - is very careful planning and public outreach that convinces state regulators and the public of the need for new transmission. We must be credible, and to be credible, we must demonstrate that we are maximizing available conservation and efficiency opportunities, and taking account of distributed generation opportunities. And we must show that we are not either under- or over-building. This means that we must build for multiple needs and purposes, and that there must be multiple beneficiaries.

While the Commission can assist in addressing barriers in various ways, ultimately it is the job of the transmission owner to do an excellent job in its planning, permitting and public outreach so that need is recognized. A successful project is one where need is a given and the dispute boils down to alternative routes. Then someone needs to make a tough decision and that burden falls generally on state regulators.

I would point out that there is a great deal of discussion today on the need for major 765 kV backbone system across the eastern interconnect. While I believe that a significant build-out is necessary, the proponents of 765 kV will bear a very large burden of proof, given environmental impacts and costs, to convince the public of need. To do so, they are going to have to credibly examine what can be done with 345 double circuiting, 500 kV lines, and other strategies.

In terms of federal support for overcoming the barriers to construction, one-stop shopping for federal permits is very important. I know the DOE is working on this in a rulemaking. Delay can be very expensive.

The FERC has done a good deal in my judgment in limiting risks for transmission development through its rate recovery policies. Substantial certainty of recovery is very important. For ATC and others, the Commission has approved formula rates with true-ups and has permitted construction work-in-progress in rate base, as well as recovery of prudent pre-certification expenses. The major risk on the transmission side is the development stage through permitting. Once a facility is permitted, risk is greatly diminished. Recovery of prudently incurred pre-certification costs, regardless of whether a line is built, is a very major step in overcoming this risk barrier. A number of the other panelists confirmed that cost recovery certainty, such as the formula transmission rates approved by the Commission, will make transmission investments attractive to investors and should reduce the return required to attract needed capital.¹

With the policies described above the Commission has made transmission an extremely attractive business, particularly when you add relatively high equity returns, high equity ratios in capital structures and incentive adders. In the current financial markets, I don't know where you can get close to 12+% return available in the Midwest ISO with as little risk. People would line up from here to Omaha to participate in a transmission investment with this risk/return profile. Or perhaps the guy from Omaha would be at the front of the line. I fear that making transmission too attractive through

¹ See, e.g., Tr. 40, Roy Piskadlo, Merrill Lynch ("the reason for [significant capital being available for transmission] is that transmission assets offer, once they're built, offer stable, annuity-like cashflows from the regulated returns, as Marc [Lipschultz, Kohlberg Kravis Roberts & Co. ("KKR")] was alluding to a moment ago"); Tr. 64, Marc Lipschultz, KKR ("Certainly, as an investor we are drawn to formula-like rate structures, a tracker-type structure, a way to get a near-term recovery, the time value of money, [imparts] more certainty. But I think having the ability to employ capital... and having a way to achieve a return sooner and with certainty will allow you to draw capital at a lower return, all things being equal.") Mr. Piskadlo explained that even given the current market turmoil transmission investment is attractive: "Obviously there are issues in the markets today, but that's what makes the cashflows that come from these types of assets seem more attractive, not less." Tr. 45. Cf. Edward Stern, Neptune Regional Transmission System and Hudson Transmission Partners, preferring "more certainty and a lower rate." Tr. 114.

high (and in my view unwarranted) incentive returns may actually further discourage larger systems from entering into joint ownership arrangements and sharing the bounty. And the added cost may increase state resistance.²

Returning to the benefits of joint ownership, we should recognize it can take multiple forms. It may be a pooled system as in Georgia, Indiana and Minnesota, a load-serving entity transco as in Wisconsin and Vermont, or a joint ownership agreement for new facilities, as we heard about in Arizona and is the case in CapX. The grid is a network and is jointly used by multiple utilities. It must be planned on a joint basis to meet multiple needs to avoid unnecessary duplication of facilities. A joint ownership model aligns ownership structure with the reality of the way the network operates and must be planned.

A joint ownership structure leads to a collaborative and inclusive process for planning and development, which we believe has been proven to be much more productive than a competitive and disjointed process where regulators have to choose between competing projects that meet some but not all needs.

The benefits of joint ownership are many:

1. It makes joint planning real. While I understand that the Commission is seeking to promote regional joint planning through Order 890, there is a big practical difference when you have skin in the game and are at the table as an owner. When diverse parties are owners openness and transparency flows automatically.

² On my panel, Chairman Reishus of the Maine PUC commented: "With all due respect, state regulators have and will continue to argue that this has created an unwarranted bonus to the transmission project that would have been built anyway via ... the opportunities for full cost recovery." Tr. 83.

2. Joint ownership results in a better and more efficient transmission system planned to meet multiple needs. We have seen this in Wisconsin where the combination of five systems into one has certainly lead to a more rationally developed system than balkanized planning and construction. We also see it in CapX where the utilities have taken a proactive approach, looking at all of their load-serving and reliability needs, and different potential generation development scenarios, to develop a common backbone that will best meet their needs, regardless of where generation is developed in the future. This is a far better approach than a reactive approach, planning for discrete transmission or interconnection requests after the requests are made.
3. Diverse ownership provides diverse support for need which enhances credibility, particularly where there is unity among the utilities affected.
4. This diverse support is also very important in siting. All siting is local. By meeting the needs of multiple utilities, a joint project is able to demonstrate multiple local benefits. Although the muni and coop participation maybe relatively small percentage-wise, these utilities bring a wealth of political support to the process. This support can make all the difference in speeding up the permitting process and addressing local concerns.
5. Joint ownership makes the cost allocation issue easier to resolve, although it still remains a thorny issue. For instance, in Wisconsin the transmission rates WPPI pays have gone from \$1.30 per kW up to \$3.40 per kW since ATC was formed because of ATC's major construction program. That's a very large increase, but WPPI and the other muni and coop owners have been able to

offset about 30-40% increase through our ownership. This has made it much easier for us to support the build-out that is necessary. Similarly, investor-owned utilities that are able to participate in projects have an earnings opportunity, which is important, rather than simply an opportunity to pay.

6. Joint ownership spreads the risk of major projects broadly and provides a variety of sources of capital for projects. In a post-financial-crisis world of tightened credit and tougher credit-worthiness standards, the financial diversity and strength achieved through joint ownership arrangements should be increasingly valuable.
7. Joint use proposals such as CapX and the ATC make the job of state regulators much easier. This is very important. Transmission siting decisions are not easy for state commissions. When they can deal with projects that are least-cost because they meet multiple needs, they see unity among the utilities on need and are faced with a broad base of support from diverse stakeholders, it is far easier. I'm sure that if you talk to either Minnesota or Wisconsin state regulators they will affirm this.
8. The broad base of support achieved through joint ownership arrangements can also be essential to securing state legislative action required to better align retail rate recovery with the need for supporting major transmission investment, as has occurred in Minnesota with the full support of the CapX group.

9. Finally, I believe the record will show that where joint ownership - pooled systems, LSE Transcos, or large joint facilities exist - there have been far fewer disputes before FERC.

I am not alone in recognizing that joint ownership arrangements can be of significantly benefit in getting need transmission built. Several of the other panelists have drawn on their personal experiences to confirm these benefits.³

So what more can the Commission do? The Commission should actively reward what works. That is clearly the joint ownership model. Up to this point, the Commission has recognized the benefits of joint ownership arrangements and “encouraged” them, but has failed to make that encouragement meaningful by declining to make joint ownership a key factor to be considered in awarding an incentive return.⁴ We believe that is a mistake. The Commission should reconsider this decision. Utilities respond to incentives. Joint ownership works and what works should be rewarded. The Commission does precisely the opposite when it fails to consider joint ownership in awarding with return incentives – rewarding transmission owners that turn down transmission customer offers to invest in the grid.

Conversely, there should be consequences for failure. Incentives should not work in only one direction. Where we see weak systems that do not meet area needs, where

³ See, e.g., Paul McCoy, Trans-Elect, Tr. 58 (describing as positive Trans-Elect’s experience with public power involvement both in the Western Interconnect and Michigan, and concluding: “[T]o the extent that we would have a willing public power partner in a locale that we could take a walk with and resolve the process, we would view that as very positive.”); Tom Wray, Sunzia Transmission Project, Tr. 59 (“[o]ur experience with Sunzia has been truly positive partnership [with] public power”). See also Richard Hayslip, Salt River Project, Tr. 12-14; 59-60 (describing joint ownership arrangements and the positive experience of working together to address challenges).

⁴ Promoting Transmission Investment through Pricing Reform, Order No. 679, [2006-2007 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,222, PP 354-57 (2006); *order on reh’g*, Order No. 679-A, [2006-2007 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,236, P 102, *order on reh’g*, Order No. 670-B, 119 F.E.R.C. ¶ 61,062 (2007).

there is not proactive planning, where planning has not been inclusive, and partnership opportunities have been denied, the Commission should respond by putting equity returns at the low-end of the zone of reasonableness. The Commission has significant power to help push transmission development in ways that work.

Addendum:

1. During the first panel there was discussion of payments to landowners to lessen opposition. I would caution that with wind, we have seen landowners that host projects and get paid, are strong supporters, but neighbors that do not get aid often lead the opposition. In Wisconsin, we do make some environmental mitigation payments for transmission siting, but the payments go to local communities - towns and counties, through which lines pass. This does help build political support somewhat.
2. In response to questions, I would like to raise one other area where the Commission can reform its policies in a way that will help get transmission built. The current ARR/FTR allocation process at MISO has worked in a very strange way recently. In the MISO Stage 1A ARR (*i.e.*, long-term transmission rights) allocation process this summer, Wisconsin utilities were denied ARRs for almost all of their base load resources located close to load for which have been routinely received FTR allocations in the past. The reason turned out to be a PJM constraint in West Virginia. Where the MISO load flow model showed only very minor impact on this constraint, ARRs were denied. Fortunately for most units, this was corrected in the MISO restoration process. However, WPPI ended up receiving very little long-term right protection for the summer season for one base

load resource it has relied on for many years. After our state has invested more in relieving transmission constraints than probably any other state in the nation, causing our transmission rates to rise dramatically, this make no sense at all. We can't do anything about a constraint hundreds of miles away in West Virginia and the amount of impact on the constraint of our facility (less than 70 kW) is so small, it simply cannot be calculated in any model with accuracy. Yet, we were denied long-term rights based on MISO's model. Where our ability to secure the economic value of our resources is seriously threatened by miniscule modeled impacts on remote constraints we can't do anything about, we are hardly encouraged to invest more in our local grid.

Also discouraging transmission (and generation) investment are recent orders that find RTOs are not accountable for fulfilling the fundamental RTO responsibility of planning and directing the expansion of the grid to maintain the deliverability to a network customer of resources designated (with RTO approval) as its network resources.⁵ Shifting the quintessential RTO/transmission provider burden⁶ to customers (that are in no position to ensure long-term deliverability of their network resources) undermines the basic set of rights and obligations set forth in Orders 888 and 890, not to mention the policy objective of getting needed transmission built, as expressed at this technical conference.

The Commission needs to make the long-term transmission rights allocation and protection mechanisms much simpler, understandable, and consistent with common sense. To spur investment, to strengthen the grid, long-

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 F.E.R.C. ¶ 61,061, P 34 (2008).

⁶ Order 2000 expressly required that an RTO have authority to plan and cause expansion needed to provide transmission service (18 C.F.R. 35.34(k)(7)).

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term rights protection must be real and RTOs must be held responsible for carrying out their planning and expansion obligations. Otherwise, the Commission risks seriously undermining its transmission construction objectives.

Thank you for the opportunity to address the Commission.

Respectfully submitted,

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