



Harvard Electricity Policy Group Fifty-Seventh Plenary Session

Transmission Cost Allocation:
The Seventh Circuit Decision and The Proposed Corker Amendment

*Harvard Electricity Policy Group
December 10-11, 2009
Austin, Texas*



Who is ITC Holdings Corp.?



- ◆ ITC is the first and only fully independent transmission company in the U.S.
- ◆ ITC is the eighth largest transmission-owning company in the U.S.
- ◆ Transmission systems in Michigan's lower peninsula and portions of Iowa, Minnesota, Illinois, and Missouri
 - Serves combined peak load in excess of 25,000 megawatts (MW)
 - Approximately 15,000 transmission line miles
- ◆ Recently announced "Green Power Express" designed to facilitate the interconnection of 12,000 MW of wind in the Dakotas, Iowa, and Minnesota to population centers in the East
- ◆ Also actively seeking opportunities to build, own, operate and maintain transmission in Kansas, Oklahoma and Texas (SPP region)
 - KETA, V-Plan, and Hugo to Valliant projects in advanced stages of development

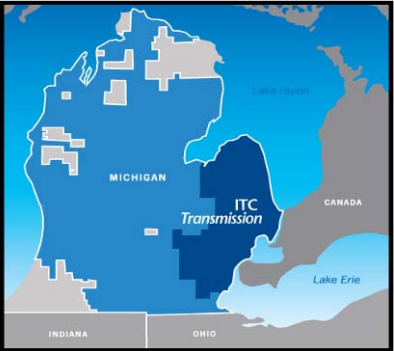
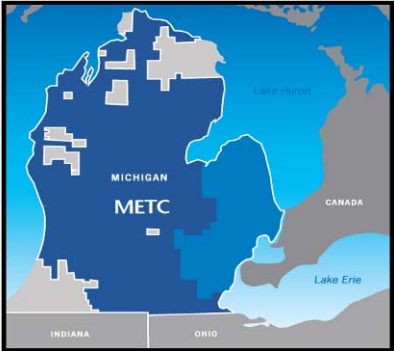

ITC = Independent



- ◆ ITC focuses on ownership, operation, maintenance, and construction of transmission facilities as a single line of business
- ◆ There is no internal competition for capital; it is dedicated for prudent transmission investment
- ◆ ITC is singularly focused on transmission and aims to bring significant benefits to customers
- ◆ Our Goals:
 - Improve reliability
 - Reduce congestion, improve efficiency
 - Increase access to generation, including renewable resources
 - Lower cost of delivered energy

ITC System Statistics



<i>Subsidiary</i>	<i>ITC Transmission</i>	<i>METC</i>	<i>ITC Midwest</i>
<i>Service Area</i>			
<i>System Peak Load</i>	12,745 MW	9,469 MW	3,100+ MW
<i>Total Transmission Miles</i>	More than 2,700	Approximately 5,400	Approximately 6,800
<i>Membership</i>	Midwest ISO	Midwest ISO	Midwest ISO
<i>ITC Acquired Transmission Assets</i>	March 1, 2003	October 10, 2006	December 20, 2007

The Seventh Circuit Decision



- ◆ In April 2007, a FERC decision allowed PJM to regionally distribute the costs for all new transmission lines above 500kV.
 - Under the “postage-stamp” rate regime every utility in PJM would bear new transmission line costs, even if the transmission would not directly benefit a given utility.

- ◆ On August 6, 2009, the U.S. Court of Appeals for the 7th Circuit overturned the FERC ruling by finding that the FERC failed to demonstrate that its decision was based on substantial evidence; the Court remanded the matter back to the FERC for further proceedings.
 - The Court dismissed the FERC’s first argument since only a limited set of the current PJM members agreed to share costs.
 - The FERC’s second argument was rejected because the FERC failed to demonstrate that the difficulty in measuring the benefits of lines rated 500 kV and above exceeds that of measuring the benefits of lower voltage lines.
 - The third basis presented by the FERC also failed the Court’s scrutiny because the FERC did not demonstrate that PJM members will receive sufficient benefits to justify shifting the costs of high-voltage lines upon them.

The Seventh Circuit Decision



- ◆ **Does this decision support the Amendment on cost allocation adopted by the Senate Energy Committee?**
 - No. This decision demonstrates that under the current Federal Power Act, consumers are protected from paying for the costs of transmission that does not benefit them, or that benefits them in a “trivial” way compared to the costs.

- ◆ **Does this decision mean that broad cost allocation for large transmission facilities is illegal?**
 - No. The authors of the majority opinion emphasized:

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. “ (Slip Op. at pp. 11-12, citations omitted).

The Seventh Circuit Decision



- ◆ **The Court’s opinion will likely increase the costs of transmission, encourage the opposition, and continue to slow the pace of development.**
 - Currently, RTO/ISO project queues are not sufficiently streamlined to manage the transmission requirements over the next decade.
 - Generators, transmission developers, and wind developers are looking for more guidance and clearer principles from the FERC, yet the Court’s August decision will likely have the opposite effect.
 - The inability to allocate costs will challenge the economic viability of delivering distant wind resources to market and significantly prolong project timelines.
 - Even if FERC does as the Court states and submits a more thorough analysis of the benefits to individual utilities, its conclusions will likely be continually challenged in court.
 - State regulators in transit regions may also be emboldened by the decision and increase their opposition to broad cost-sharing schemes, essentially slowing the pace of development further.
 - The current regulatory obstacles surrounding high voltage, cross-country “green transmission” construction now appears ever-more daunting and makes the process incapable of meeting renewable energy policy goals.

The Seventh Circuit Decision



- ◆ **Other federal initiatives are also hampered by lack of regulatory authority, while regional initiatives show the need for transmission planning and cost structure clarity.**
 - The Department of Energy's ability to designate National Interest Electric Transmission Corridors (NIETCs) is non-binding and advisory and has not led to any transmission being constructed. The NIETCs are not able to preempt state authority; the corridors only serve to spotlight congestion or constraint problems.
 - On a state level, efforts to coordinate and collectively plan for new transmission construction, such as the Upper Midwest Transmission Development Initiative and the Eastern Interconnection Planning Collaborative, have brought stakeholders together to proactively avoid siting disputes and prioritize the most necessary and cost effective transmission. However, these groups are much less capable, and lack the authority, to determine the cost allocation of new transmission lines.

The Corker Amendment



- ◆ The Senate Energy and Natural Resource Committee adopted an amendment offered by Senator Corker (R-TN) that significantly changes the standard used by FERC for many years for allocating costs and would effectively thwart transmission upgrades.
- ◆ The Corker Amendment:
 - Requires direct assignment of transmission upgrade costs to generators, as FERC is prohibited from spreading cost to a region or sub-region unless it can measure distinct benefits on an integrated network – which is not possible;
 - Ignores the future by only focusing on benefits that are measurable today rather than looking over the long-term life of the asset and future benefits as the system changes (new generators interconnected, other transmission upgrades made, shifts in load);
 - Reduces competition through the direct assignment of costs to new generation thereby stifling new generation development, particularly renewable generation, and favoring incumbents.
 - For the limited transmission that is built via such allocation, ensures that those who benefit from the transmission will not pay -- there will be “free riders,” as only one beneficiary pays for all the costs that many will benefit from.

The Seventh Circuit Decision & The Corker Amendment



- ◆ **How does the standard for cost allocation articulated in this Seventh Circuit decision compare with the language adopted by amendment to S. 1462?**
 - The Corker Amendment language is much stricter.
 - Rather than requiring FERC to have “an articulable and plausible reason to believe that the benefits are at least roughly commensurate,” the Amendment would prohibit the allocation of costs to “a region or subregion, unless the costs are reasonably proportionate to measurable economic and reliability benefits.”

National Energy Policy



- ◆ We need a national energy policy that will guide decisions on the planning of our future energy delivery system.
- ◆ This would provide the foundation upon which energy policy would be based (e.g., national RES, carbon pricing, etc.).
- ◆ An energy policy vision is an important input specifically as it relates to regional planning, cost allocation and siting.

National Energy Policy & Transmission



- ◆ **Independent Regional Planning:** To ensure that needed transmission is planned in the most cost effective manner, building on existing plans and processes while avoiding duplication, legislation should:
 - direct the FERC to approve one or more qualified planning entities in each Interconnection;
 - ensure the process builds on planning already undertaken by RTOs, utilities, states and multistate organizations;
 - require that planning entities be independent and that their activities be conducted in an open, transparent and non-discriminatory manner; and
 - authorize FERC to conduct the necessary regional or interconnection-wide planning if the Commission does not receive applications from qualifying entities within time frames specified.
- ◆ Independence – preventing market participants from exerting undue influence in the planning process – requires that the function be mandatory and it be funded through an assessment, (similar to the funding system for NERC), not via voluntary dues as done today.

National Energy Policy & Transmission



- ◆ **Federal Transmission Siting Authority:** States are best situated to make optimum routing decisions and the process is more likely to be cooperative if states maintain a leadership role.
 - FERC should be given new authority under the Federal Power Act to certify interstate transmission facilities needed to support regional electricity markets and delivery of renewable resources to load centers that are identified through the new planning process on the basis of public convenience and necessity.
 - Once an applicant has received a certificate of public convenience and necessity from the Commission, it would constitute sufficient evidence of public need and no additional state or other approvals would be required.
 - Projects not identified in the new planning process would remain subject to existing processes for need determination.
- ◆ States should retain the ability to do the actual routing of these certificated facilities, with a FERC backstop authority if the state does not act in a timely manner, or acts in a manner that makes the certificated facilities either physically or economically impractical to construct.

National Energy Policy & Transmission



- ◆ **Cost Allocation:** Federal legislation must address the issue of cost allocation.
 - EHV transmission lines are inherently regional in nature and they confer significant regional as well as local benefits.
 - If encouraging the development of location-constrained renewable resources is a national priority, as ITC believes it is, there are national benefits associated with the development of these resources.
 - Since the benefits of EHV lines extend well beyond the states in which they are located, their costs should be widely allocated as well.
- ◆ FERC should be given the authority to allocate the costs of these facilities either on a regional or Interconnection-wide basis.

Conclusion



- ◆ Transmission needs to be a market enabler and not just a necessary means to deliver bulk power from central generators to load centers – transmission expansion is a must!
- ◆ We need to continue to address the economic project process from a public policy perspective
 - Economic projects should be treated no different than reliability projects for cost allocation or pricing since there is no such thing as a purely economic project
- ◆ Regional transmission expansion needs regional siting and it is time to promote FERC siting for such projects
- ◆ The time for change is now if we truly want to be in the national forefront for wind energy and a robust transmission system
- ◆ Industry, regulators, and policymakers must move towards encouraging independence, regional planning, and regional pricing as a means to provide a robust transmission system that enhances customer service and reliability
- ◆ Transmission is environmentally friendly which helps overcome “not in my backyard” syndrome

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