“ROUGH JUSTICE” Cost Allocation for Regional and Interregional Transmission

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Illinois Commerce Commission v. FERC (General Rule)

- This case establishes the rule, adopted by FERC in Order 1000, that expansion costs must be allocated in a manner "roughly commensurate" with the benefits of a project.
- The prior FERC rule was that all network facilities on the integrated transmission system benefit all users and therefore the costs must be rolled-in (socialized).
  - This is probably still the rule for transmission expansions on a single system approved under local transmission plans.

Illinois Commerce Commission v. FERC (Factual Basis For Decision)

- The Court's reasoning points out one of the difficulties in this area. The Court said: "The objections… pivot on an assymetry between western and eastern PJM….as far as appears, few if any (500kV or higher) facilities will be built in… the Midwest…in the foreseeable future."
- This is wrong (*e.g.*, RITELine), and it illustrates the fragility of *ex ante* determinations about who benefits from new transmission based on circumstances at a particular time.

Illinois Commerce Commission v. FERC (What does the decision require?)

- Cannot make someone pay for a facility from which he/she derives only trivial benefits.
- FERC does not have to quantify benefits, even to the hundreds of millions.
- Articulable and plausible reason to believe benefits are at least roughly commensurate with utilities' "share of total electric sales in PJM." (What exactly does that mean?)
- FERC can rely on presumption that new transmission lines benefit the entire network, but it cannot use this presumption to avoid a "comparison of burdens imposed and benefits drawn."
- THE COURT EXPECTS ROUGH JUSTICE BASED ON AN ARTICULABLE METHODOLOGY.
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A Potent Reminder From The Supreme Court

"…where… several classes of services have a common use of the same property, difficulties of separation are obvious. Allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science ... neither does the separation of properties which are not in fact separable because they function as an integrated whole."

"[The] circumstances illustrate that considerations of fairness, not mere mathematics, govern the allocation of costs."

Colorado Interstate Gas Co. v. FPC, 324 U.S. 581 (1944).

Problems With *Ex Ante* Comparisons of Costs and Benefits

- Transmission is built to enable sellers and buyers in the competitive market to transact. Expanding the transmission grid creates opportunities that become tangible only after the facilities are built.
- The beneficiaries of new transmission lines will change over time as the economics of generation change, new resources are added to the system and transmission topography changes.
- The need for transmission to integrate public policy projects (renewables) is not based on economics in the first place, so cost/benefit analysis seems inherently misplaced.

Additional Problems

- The reliability regime does not permit cost-benefit analysis: There are rules and you must comply.
- Some RTOs (CaISO and MISO) are moving to a portfolio approach to regional transmission planning rather than evaluating individual line proposals.
- Exporting areas benefit in the form of increased economic activity, as west Texas experience attests.
- The benefits of a new line are the result of its interaction with the existing network (which is being paid for differently).
- Requiring cost-benefit analysis with respect to approval of individual projects would at least bog down, and threatens to derail, the regional planning process.

Beware The Stalking Horse

- Cost allocation debate is often a stalking horse for:
  - Disagreements over energy policy, especially the role of renewables and whether states can favor local renewables over imports.
  - Assertions of parochial interests that change from project to project and over time.
  - Disagreements over whether electricity is primarily a local or regional and interregional business and related jurisdictional issues.
  - NIMBY concerns.

Judge Cudahy was correct in raising the concern that the majority's decision could stand in the way of building a stronger nationwide transmission grid, and he might also have noted that some stakeholders do not support this goal – and even if they support it generally, might have reasons for blocking individual lines.

Two Points To Carry Forward

- I am not arguing that identifying beneficiaries of individual projects in advance in order to allocate costs with quantitative precision is hard (although it is). I am arguing that it is wrong.
- The Courts do not require a detailed quantitative analysis of costs and benefits in connection with cost allocation decisions for individual lines.

Step One of My Proposal

- Cost allocation methods for the highest voltage lines (i.e., 345kv and above) should be based on modest adjustments to regional socialization of costs, based on objective factors, in order to move in the direction of rough justice.
- Among the factors to be considered as a basis for adjusting cost responsibility are:
  - The location of a reliability problem that is being addressed.
  - The location of changes in ATC
  - The location of congestion reductions.
  - Whether a proposed line entirely bypasses an area.
- Each of these factors could result in a weighting of cost responsibility toward one subregion or away from another.

Step Two of My Proposal

- The cost allocations resulting from the above-described rough justice calculations would be “default” cost allocations that would allow projects to move forward.
- Aggrieved parties would have the right to make a Section 206 filing at FERC contesting the resulting cost allocation with respect to an individual project on the basis that it is unjust and unreasonable, but:
  – Any such filing must include a detailed and comprehensive cost/benefit analysis demonstrating that the default allocation is sufficiently skewed to be unjust and unreasonable; and
  – The filing party would be required to show that application of its own cost/benefit test would not result in the allocation of more costs to itself (or the area it represents) than the existing allocation used with respect to other facilities .