

Energy Update

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FERC Issues Notice of Inquiry on Transmission Investment Incentives

Introduction

On May 19, 2011, the Federal Energy Regulatory Commission (the "Commission" or "FERC") issued a Notice of Inquiry seeking comment on the scope and implementation of its transmission incentives regulations and policies under Order No. 679 (the "NOI"). The purpose of the NOI is to ensure that FERC's incentives, regulations, and policies encourage the development of transmission infrastructure in a manner consistent with Federal Power Act ("FPA").

Background

The Energy Policy Act of 2005 added a new Section 219 to the FPA, which required the Commission to establish incentive-based rate treatments to promote transmission infrastructure investment. On July 20, 2006, the Commission issued Order No. 679 adopting a policy for transmission rate incentives.

Pursuant to Order No. 679, FERC may grant an incentive for transmission projects if an applicant demonstrates that: (1) the project meets the statutory threshold set forth in Section 219 of the FPA by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion; and (2) there is a nexus between the incentive sought and the investment being made. Potential

incentives under Order No. 679 include:

1. incentive adders to a base return on equity;
2. inclusion of 100 percent of construction work in progress in rate base;
3. recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors that are beyond the control of the entity building the facility;
4. accelerated depreciation for rate recovery;
5. hypothetical capital structures; or
6. recovery of prudently incurred pre-commercial operations costs.

The NOI

FERC issued the NOI in order to obtain input from stakeholders on the scope and implementation of its transmission incentives policies and on the steps the Commission could take to evaluate future requests for incentives for investment in transmission infrastructure in a manner consistent with FERC's statutory requirements. In the NOI, the Commission presented a number of questions for stakeholders pertaining to the incentive policies under Order No. 679. Stakeholder comments on the NOI must be submitted to FERC by July 26, 2011.

**If you have questions concerning the material contained in this alert,
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