

May 24, 2011

## Review of Transmission Incentive Policies May Prompt Narrower Scope and Fewer Benefits

In a May 19, 2011 Notice of Inquiry (NOI), the Federal Energy Regulatory Commission (FERC) signaled that it may be ready to modify its transmission investment pricing policies. The NOI requests industry comments on whether the rate incentives provided under FERC's transmission investment pricing policies effectively encourage the development of transmission infrastructure. The NOI appears to respond to recent concerns expressed by some Commissioners regarding the broad application of the incentives program, and could lead to a more formal rulemaking aimed at reducing the scope and availability of incentives while increasing the burden placed on applicants that seek those incentives.

The NOI (Docket No. RM11-26) addresses several general topics and poses a number of specific questions related to FERC's rate incentives program. A list of the questions is available [here](#). Areas proposed for comment include:

- The overall effectiveness of the rate incentives program since its inception almost five years ago, including whether the rate incentives appropriately promote investment in transmission and adequately address barriers to construction of new transmission.
- The impact rate incentives have had on consumer rates and transmission investment patterns.
- The criteria used by FERC in evaluating applications; whether FERC should adopt specific eligibility criteria or conditions for each incentive sought by an applicant; and the effectiveness, impact and appropriateness of the specific incentives FERC has historically granted as part of its rate incentives program.
- Suggested changes to the program to more effectively encourage transmission development.
- Whether FERC should focus its efforts on additional goals, such as economic efficiency and improved operations.

### Background

FERC implemented its current transmission rate incentives program shortly after the Energy Policy Act of 2005 directed FERC to encourage transmission development via incentives. To obtain an incentive, an applicant must make two showings. First, the applicant must demonstrate that its proposed transmission project ensures reliability or reduces the cost of power by alleviating transmission congestion. An applicant is entitled to a rebuttable presumption that it satisfies this requirement if its project has been approved through a regional planning process or by a state regulatory commission. Second, the applicant must show a nexus between the incentives sought and the investment being made. In determining whether an adequate nexus exists, FERC reviews the package of incentives sought by the applicant, the interrelationship between any of the incentives, and how the incentives address project-specific risks and challenges.

Traditionally, FERC has granted specific incentives to promote transmission development, such as adders to return on equity (ROE), recovery of 100% of prudently incurred costs of transmission facilities that are cancelled or abandoned, inclusion of 100% of prudently incurred construction work in progress (CWIP) in rate base, recovery of pre-commercial operations costs (such as expenditures for preliminary feasibility surveys), hypothetical capital structures, accelerated depreciation, and deferred cost recovery.

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## What This Means for You

Comments on the NOI are due at FERC within 60 days after the NOI is published in the Federal Register. (A due date for comments is anticipated sometime in late July.) Industry participants should consider submitting comments addressing the specific questions and/or more general issues presented in the NOI. FERC appears poised to make significant changes to its rate incentive program. If industry stakeholders wish to preserve the status quo or seek changes to the program, the submission of constructive comments may help advance those goals.

In particular, entities currently involved in the planning stages of a transmission project should consider submitting comments. At a minimum, these entities should stay tuned for any additional developments. Changes to FERC's transmission incentives policies will impact the benefits that developers of new transmission projects can seek and may prompt these entities to revisit their business models for future transmission projects.



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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