

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Annual Charges Assessments for Public Utilities) Docket No. AD08-7-000

COMMENTS OF THE NEW ENGLAND POWER GENERATORS ASSOCIATION, INC.

Pursuant to the Notice of Inquiry (“NOI”) dated April 21, 2008, seeking comments on its current methodology for the assessment of electric annual charges to public utilities issued by the Federal Energy Regulatory Commission (the “Commission”) in the above-captioned proceedings, the New England Power Generators Association, Inc. (“NEPGA”) respectfully submits these comments.¹

COMMUNICATIONS

NEPGA is the largest trade association representing competitive electric generating companies in New England, representing approximately 25,000 megawatts of generating capacity throughout the region. NEPGA’s mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA's member companies have been involved in the design and development of all of the competitive wholesale markets in the United States during the last ten years. In furtherance thereof, NEPGA has participated to the greatest extent possible in recent initiatives for market reforms to improve upon the efficiencies of competitive electricity markets and appreciates the opportunities to participate in this proceeding as we feel that it is directly and unavoidably related to the continuing success of the markets.

¹ The comments contained in this filing represent the position of The New England Power Generators Association, Inc. as an organization, but not necessarily the position of any particular member(s) with respect to any statement, concept, issue or position expressed herein.

NEPGA requests that all further correspondence, communications and other documents relating to this matter be served upon the following individuals:

Angela O'Connor, President
Christopher P. Sherman, General Counsel*
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PROCEDURAL HISTORY

In these proceedings, the Commission is seeking comments on its current methodology for the assessment of electric annual charges to public utilities consistent with Parts II and III of the Federal Power Act (“FPA”). Specifically, whether the current methodology of assessments based upon the volume of electricity transmitted is fair and equitable.²

To finance its electric regulatory program under the Budget Act, the Commission in Order No. 472 assessed fees against public utilities based on both a public utility’s transmission and wholesale sales in interstate commerce.³ Public utilities were broadly defined in Order No. 472 as “any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act, and who has rate schedule(s) on file with the Commission and who is not a ‘qualifying small power producer’ or ‘qualifying generator.’...” Subsequently, in Order No. 888, the Commission required the functional unbundling of transmission and generation services in order to remove impediments to competition in the

² Notice of Inquiry, Docket No. AD08-7 (April 1, 2008)

³ *See*, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, Order No. 472, FERC Stats. & Regs. ¶ 30,746, 52 Fed. Reg. 21,263 (June 5, 1987).

wholesale bulk power marketplace and to bring more efficient, lower cost power to the nation's electricity consumers.⁴

As a result thereof, on January 28, 2000, the Commission issued a Notice of Proposed Rulemaking proposing changes to the regulations to establish a new methodology for the assessment of annual charges to public utilities based only upon the volume of electricity transmitted by the public utilities.⁵ In the Commission's Revision of Annual Charges Assessed to Public Utilities issued on October 26, 2000, the Commission held that annual charges will be assessed to public utilities that provide transmission service based on the volume of electricity transmitted by those public utilities. The regulation resulted in the Commission assessing annual charges on transmission rather than, as previously, assessing annual charges on both power sales and transmission.⁶

COMMENTS

A. The Current Assessment Methodology Advances Efficient Price Signals in the Competitive Marketplace.

NEPGA does not believe that there are developments in the Commission's regulatory oversight that are material enough to make it appropriate to revisit Order No. 641, nor do we see a benefit to consumers to changing the existing methodology for assessing annual charges to recover the cost of electric regulatory program. Rather, NEPGA encourages the Commission to continue to collect annual charges consistent with Order No. 641 in order not to interfere with the development of competitive electricity markets.

⁴ Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,654, 61 Fed. Reg. 24,540, 21,551 (May 10, 1996)

⁵ *Id.*

⁶ See Order No. 641, FERC Stats. & Regs. ¶ 31,109, 65 Fed. Reg. 65,757 (Nov. 2, 2000) (codified at 18 C.F.R. § 382.201).

As noted in the NOI, the competitive electric market has undergone significant changes since the Commission originally established its procedures for collecting annual changes under §3401 of the Omnibus Budget Reconciliation Act of 1986. These changes were brought about to advance incremental improvements to the flexibility and efficiency of the market structures. These markets are based on real-time energy markets that reflect the dynamic supply-demand balance of the bulk power system.

Many market participants such as merchant generators would not be able to recover these charges because they operate in competitive markets where there is no guarantee on cost recovery. Merchant generators in many parts of the country sell into highly competitive markets where the prices they sell power at are determined by market forces. Adding the annual charge costs would distort the delivered price of electricity to the ultimate consumer and artificially inflate the price of electricity. Thus, the resulting cost would produce inequitable and unreasonable results and should not be re-introduced. Assessing fixed costs to variable transactions, as was permitted under the previous methodology, is transactionally burdensome and potentially duplicative. The unavoidable result is higher consumer electricity costs; a result that is contrary to the efforts of the Commission and market participants.

Conversely, the allocation of costs and adjustments under the current methodology is straightforward and easily rectifiable, and lends itself to an equitable result as follows:

“The Commission intends that its electric annual charges in any fiscal year will recover the Commission's estimated electric regulatory program costs (other than the costs of regulating Federal Power Marketing Agencies (PMAs) and electric regulatory program costs recovered through electric filing fees) for that fiscal year. In the next fiscal year the Commission adjusts the annual charges up or down, as appropriate, both to eliminate any over- or under-recovery of the Commission's actual costs and to eliminate any over- or under-charge of any particular public utility. The Commission accomplishes this by recalculating the

annual charges and carrying over any over- or under- charge from the prior year as a credit or debit on the next fiscal year's annual charges bill.”⁷

Moreover, when public utilities questioned the Commission in Order No. 641 on how they would recover these costs, the Commission assured them that the annual charge assessments are costs that can be recovered in transmission rates as a legitimate cost of providing transmission service.

In comparison, the competitive market place is a much more fluid trading platform that would not enable the Commission to easily rectify accounts in the manner described above or to provide such assurance. The result could be either unrealized cost recovery or, alternatively, misallocated adjustments that inequitably penalize consumers through inflated electricity costs.

The success of competitive markets is dependent upon a consistent and predictable regulatory structure. While there are elements of competitive markets that can still be improved to achieve the objective of efficient pricing, reverting to the prior methodology for the assessment of electric annual charges would erode the benefits that have been delivered by the Commission’s policies and the hard work of market participants.

B. The Current Assessment Methodology Fairly and Equitably Allocates the Cost to the Activities that are Most Strenuously Regulated

The NOI properly points out that “[t]he Commission continues to devote substantial resources to oversight of transmission service.”⁸ Therefore, it is fair and equitable for the

⁷ Docket No. RM00-7-012 referencing 18 C.F.R. § 382.201 (2006); Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,841-42; accord Annual Charges under the Omnibus Budget Reconciliation Act of 1986 (CNG Power Services), 87 FERC ¶ 61,074 at 61,302 (1999) (CNG); Annual Charges Under the Omnibus Budget Reconciliation Act of 1986 (Phibro Inc.), 81 FERC ¶ 61,308 at 62,424-25 (1997).

⁸ NOI, 123 FERC ¶ 61,063, P. 17. (April 21, 2008)

Commission to assess activities covered by its regulatory program to those industry participants that are subject to greater regulation and that, therefore, cause greater regulatory expense. In fact the Commission has interpreted the legislative intent to be consistent with NEPGA’s view that “Congress intended the annual charges ... to be levied against entities ‘directly affected’ by the regulatory programs.”⁹ While NEPGA acknowledges that no market participant is wholly exempt from the purview of Commission oversight, the Commission addressed this nuance by setting forth that the charges should not be imposed “on every entity conceivably ‘directly affected’ by the regulatory programs.”¹⁰

NEPGA fails to recognize any material change in the Commission’s regulatory oversight that would justify reverting to the previous mechanism for the allocation of costs. NEPGA argues that the regulatory programs that directly affect wholesale power transactions which have developed as a result of Order No. 888 represent a *de minimis* regulatory burden and corresponding cost to the Commission. Accordingly, NEPGA maintains that the existing methodology for allocating costs is fair and equitable and should not be revisited.

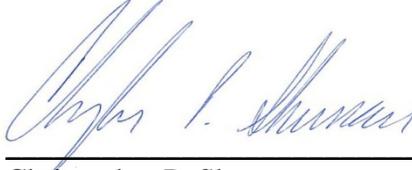
⁹ FERC ¶ 30,746 at 30,635

¹⁰ *Id.*

CONCLUSION

NEPGA requests that the Commission consider its comments as submitted herein.

Respectfully submitted,



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Dated: May 28, 2008

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010(h), of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts on this 28th day of May, 2008.

Respectfully submitted,



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