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NEWS RELEASE

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PSC Seeks Reconsideration of Federal Rule on Electric Transmission Improvements

Says Kentucky could bear costs without receiving commensurate benefits

FRANKFORT, Ky. (Sept. 2, 2011) – The Kentucky Public Service Commission (PSC) has asked the Federal Energy Regulatory Commission (FERC) to reconsider a rule that governs the planning and cost allocation for new or upgraded regional electric transmission lines.

Kentucky was among about 60 entities asking FERC for a rehearing of its Order 1000. Rehearing requests have come from several states, utilities and interest groups, including the National Association of Regulatory Utility Commissioners, of which the PSC is a member.

FERC Order 1000, issued July 21, outlines rules for interstate electric transmission planning. All electric transmission providers are required to take part in the process. The rule also outlines how utilities must allocate costs of new transmission lines approved through the new planning process.

Although similar FERC rules have been in place for years, the PSC is concerned that Order 1000 requires all transmission-owning utilities under its jurisdiction to form and participate in regional and interregional transmission planning processes. It also appears to require development of cost allocation rules that spread the costs of projects built to meet public policy purposes, including state or federal requirements to use renewable energy sources.

“We believe that the core provisions of Order 1000 may override the traditional role of state regulators in deciding when and where transmission lines will be built and who will pay for them,” PSC Chairman David Armstrong said in a statement. “The new FERC processes fundamentally alter Kentucky’s long-standing and successful planning, approval and cost-recovery processes for new or expanded electric generation, transmission and distribution facilities.

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“Kentucky’s current processes are designed to insure that regulated utilities in Kentucky build only those facilities needed to provide reliable service to customers at the lowest cost,” Armstrong said.

The PSC is seeking rehearing on the order on two grounds: the infringement upon state authority and FERC’s failure to clearly define how project costs should be allocated.

FERC Order 1000 infringes on Kentucky’s authority over long-range planning by regulated electric utilities and their construction of new facilities such as transmission lines, Armstrong said. Under current Kentucky law, the PSC reviews proposed generation, transmission and distribution facilities to insure that they are needed to provide reliable service to customers at the lowest cost and will not result in wasteful duplication. Only after such determination is made may the PSC issue a Certificate of Public Convenience and Necessity, which authorizes construction and recovery of costs.

Only the Kentucky General Assembly can change state policy to require consideration of other factors, such as the need to access renewable energy resources, in the construction of new transmission lines, the PSC said in the request for rehearing. However, under FERC Order 1000, transmission planning would be regionalized and costs could be borne by all utilities in that region.

“That could lead to policies enacted by other states imposing costs on ratepayers in Kentucky,” Armstrong said.

When this aspect of FERC Order 1000 is combined with its lack of clarity regarding cost allocation, the result could be that Kentucky ratepayers bear a portion of the cost of projects intended to meet policy decisions in other states but which are not needed by Kentucky and from which Kentucky may not receive commensurate benefits, the PSC argued in the rehearing request.

“Ratepayers in Kentucky could find themselves paying for projects that may be located in other states and that are designed to meet public policy requirements not mandated or endorsed by Kentucky,” Armstrong said.

The PSC is an independent agency attached for administrative purposes to the Energy and Environment Cabinet. It regulates more than 1,500 gas, water, sewer, electric and telecommunication utilities operating in Kentucky and has approximately 100 employees.

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FOLLOW THE PSC ON TWITTER AT KYPSC

PSC PETITION FOR REHEARING FOLLOWS

III. DISCUSSION

A. The FERC erred by infringing upon state jurisdiction over integrated resource planning through its failure to require transmission planning and cost allocation processes mandated by Order 1000 to allow for the unique role of state regulatory authorities in determining which projects will be constructed and who will pay for the projects.

The KY PSC, like many state utility regulatory agencies, has authority over integrated resource planning ("IRP") by its regulated electric utilities pursuant to Kentucky Administrative Regulation 807 KAR 5:058. Currently, regulated electric utilities in Kentucky submit Integrated Resource Plans every three years in which the utility forecasts its load, typically for 15 years in the future. The utility presents its plan for meeting future load through current and expanded generation capacity, by purchasing power, by demand side management, or by some combination thereof. The Kentucky PSC reviews the plans. If additional generation capacity or transmission facilities are needed, the utility must, in separate proceedings, request the Commission to issue a Certificate of Public Convenience and Necessity (CPCN) upon a demonstration of the need for a new facility and then request recovery in rates of the costs of construction and operation. Likewise, the KY PSC approves a utility's Demand Side Management plans, either in conjunction with a rate application filed under KRS 278.190 or on a stand alone basis under KRS 278.285.

Generation, transmission, or distribution facilities required to provide reliable service to customers of Kentucky's regulated utilities must be reviewed by the KY PSC under KRS 278.020 for a determination of need and an absence of wasteful duplication. Only upon a finding by the KY PSC that facilities are needed and will not create wasteful duplication can a CPCN be issued. This process is designed to ensure that utilities construct only facilities that are determined, by an open process involving all interested parties, to be needed to provide reliable service to customers at the lowest cost, and it has worked well for many years,

In some states the least cost principle for ensuring reliable electric service in effect has been altered to achieve the particular state's public policy goals for using certain proportions of specific energy resources in electricity generation. This may result in use of energy resources that may not be lowest cost but are nonetheless favored because they have public policy attributes such as being renewable or low carbon. Only the Kentucky legislature can decide if utilities in Kentucky must utilize certain proportions of the various types of energy resources. Only the Kentucky legislature can decide whether the citizens of the state will pay higher or lower rates to achieve the goals of the energy policy established by the legislature or even the energy policies of other states.

FERC, in Order 1000, requires the establishment of stakeholder decision-making processes concerning which transmission projects should be constructed and which projects are to be eligible for cost allocation among all ratepayers in the affected regions. This process threatens to fundamentally alter the traditional state utility planning, approval, and cost recovery processes relating to new or expanded utility generation, transmission, or distribution facilities. Instead of citizens being required to pay for transmission facilities only after they have been determined by processes open to all affected parties to be needed to provide reliable service to those paying for them, now, under Order 1000, citizens may be required to pay for transmission projects that are not even in their own states and for which benefits need not be determined any more concretely than being "roughly commensurate" to costs (Paragraph 585). Further, FERC in Order 1000 allows a regional transmission planning process to determine the beneficiaries of transmission facilities by considering benefits of meeting public policy requirements

established by state or federal laws or regulations that may drive transmission needs regardless of whether the project also meets reliability needs, provides production cost savings, or provides congestion relief (Paragraph 585). This appears to allow a project to be designated for cost allocation even if its only benefit is meeting a state or potential federal public policy requirement. Also, in allowing the regional group to allocate costs to projects in aggregate, Order 1000 in effect makes it very difficult for a state authority to determine the effect of an individual project and, consequently, to ensure that rates paid by its ratepayers are fair, just, and reasonable.

Also, regardless of how a regional planning process may determine that a project is most efficient or effective, only a utility, not a group of stakeholders, has an obligation to serve and the responsibility to provide reliable service at the lowest cost. It is not clear what might happen if a project is later found not to provide reliable service at the lowest cost.

Finally, FERC has no authority to choose among non-transmission alternatives for ensuring reliable service. This is strictly within the authority of the state IRP process. It is clear that a current decision to develop a transmission facility might de facto make decisions about types and locations of generation resources.

Order 1000 replaces the unique role of the state regulatory authority as the ultimate decider in a state of what facilities will be built and who will pay for them with the role of being one many members of a stakeholder process. In the event that a state regulatory authority disagrees with the prevailing “consensus” about the need for a project and that project’s being chosen for cost allocation, Order 1000 does not clarify how the disagreement will be resolved.

B. The FERC erred in failing to define in any meaningful way the meaning of “cost causer” and “beneficiary.”

In Order 1000, FERC greatly expands the open transmission planning requirements of Order 890 to include the requirement that transmission providing public utilities develop regional and interregional cost allocation rules. In doing so, FERC erred in failing to provide guidance concerning how a beneficiary is to be defined. In recent years, there has been considerable dispute concerning the meaning of cost causer and when an entity becomes a beneficiary from a new or expanded facility developed by others. In Order 1000, FERC expresses concern that some entities might be “free riders” and benefit unfairly.

To resolve its concerns that beneficiaries should pay and free riding should be prevented, FERC in Order 1000 simply refers the matter to the regional and interregional entities that are to take form to develop cost allocation processes that meet certain principles. There is no requirement that cost allocation processes account for proximity to a project which, in turn, is likely to directly affect the project’s actual benefits in terms of improving reliability, reducing congestion, and opening markets.

There appears to be no requirement in Order 1000 that a project to be approved for cost allocation have a positive benefit to cost ratio since a project may be eligible for cost allocation solely due to its being for the meeting of public policy requirements of state or federal governments. Paragraph 585 states: “In determining the beneficiaries of transmission facilities, a regional transmission planning process may consider benefits including, but not limited to, the extent to which transmission facilities, individually or in the aggregate, provide for maintaining reliability and sharing reserves, production cost savings and congestion relief, and/or meeting public policy requirements established by state or federal laws or regulations that may drive transmission needs.” (Emphasis added).

There is no requirement that a state have a need for a project. Ratepayers in states like Kentucky will find themselves paying for projects that may not even be located within their state and that are designed to meet public policy requirements that their legislatures have not mandated or endorsed. To exempt a state's ratepayers from cost allocation only if they will not benefit at present or in a "future scenario" (Paragraph 585) appears to enable the majority in a regional planning entity to decide that a particular state's legislature will, or should, ultimately enact certain public policies or that the federal government will do so. This appears arbitrary and, at any rate, is certain to lead to widespread overbuilding of facilities that may never be used and useful.

FERC leaves these difficult questions to be resolved by the inevitably political process of decision-making in the regional bodies and in their interregional relationships. The due process requirements of the state IRP and CPCN processes is replaced by majoritarian processes backed by the threat in Paragraph 607 of Order 1000 that FERC will determine cost allocation processes if the regional group cannot. Ratepayers in Kentucky and other states will see a constant paying out of real dollars in cost allocations while possibly never seeing commensurate concrete benefits from projects. Not being under a legislated RPS, Kentucky ratepayers are not likely to benefit from transmission of power generated from renewable resources that will likely always be higher cost than the cost of electricity generated from the Commonwealth's current resources or from indigenous renewable resources that may be developed in the future.

IV. CONCLUSION

Wherefore, the KY PSC respectfully requests that the FERC grant rehearing of FERC Order 1000 in the above-captioned docket.

Respectfully submitted,

David L. Armstrong /s/

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On behalf of the Kentucky Public Service Commission

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