

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

Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities)
)
) **Docket No. RM10-23-000**

**COMMENTS OF ANBARIC HOLDING, LLC AND POWERBRIDGE, LLC
ON NOTICE OF PROPOSED RULEMAKING**

Anbaric Holding, LLC (“Anbaric”) and PowerBridge, LLC (“PowerBridge”) (together, the “Respondents”) herein provide comments on the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Notice of Proposed Rulemaking (“NOPR” or “Proposed Rule”) on Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities proposing to amend the transmission planning and cost allocation requirements for public utility transmission providers established in Order No. 890 to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. Anbaric and PowerBridge strongly support the Commission’s positions taken in the Proposed Rule. The Proposed Rule is a pivotal document that will enable and strengthen transmission development in an open and transparent environment that will benefit transmission providers, transmission developers, and ratepayers.

I. Description of Anbaric and PowerBridge

Anbaric, a Massachusetts-based independent transmission company established by Edward N. Krapels, and PowerBridge, a Connecticut-based independent transmission company established by Edward M. Stern, develop independent transmission projects.

Under their present and previous corporate identities, Anbaric and PowerBridge have been and remain Principals in the development of numerous independent transmission projects, including:

- **Neptune Regional Transmission System** (see www.NeptuneRTS.com), a 660MW High Voltage Direct Current (HVDC) system connecting the PJM transmission system (at Sayerville, New Jersey) with the NYISO transmission system (at a site in Nassau Country on Long Island, in operation since the summer of 2007);
- **Hudson Transmission Project** (see www.HudsonProject.com), also a 660MW HVDC system connecting the PJM transmission system (at Ridgefield, New Jersey) with the NYISO transmission system (at a substation in mid-town Manhattan). Hudson was selected in the fall of 2006 pursuant to a request for proposals (RFP) from the New York Power Authority. It has been under development since then, is expected to start construction in late 2010, and go into operation in early 2013;
- **Green Line Project** (see www.GreenLineProject.com), a proposed 800MW HVDC transmission line to connect northern Maine to coastal southern Massachusetts which is being developed under the New England Independent Transmission Company (“New England ITC”), the first non-incumbent transmission developer that has successfully gone through the process of meeting various eligibility criteria, including qualifying as an Independent Transmission Company under the ISO-NE OATT and entering

into an operating agreement with ISO-NE, such that the developer-- New England ITC -- is now in a position of being able to develop transmission projects in the region as an Independent Transmission Company under the ISO-NE Tariff;¹

- **West Point Project**, a 2000MW HVDC system from central to southeastern New York;
- **Champlain Wind Link**, a 600MW interregional connector between New York and New England; and
- **Hawaii Infrastructure Partners**, which seeks to develop up to 400MW DC intertie between the islands of Lanai and Molokai with Oahu, in the state of Hawaii.

Generally, Anbaric leads or participates in the incubation stages of transmission projects. As the projects reach later stages of development, PowerBridge completes the development, manages the construction, and operates the system once it is built. Anbaric and PowerBridge are both developers and owners of the transmission projects they have developed and are developing. They seek to participate as ITCs in all kinds of transmission projects, from those that further reliability to those that promote economic and environmental objectives.

¹ See *April 26, 2010 Letter Order Accepting Operating Agreement*, Docket No. ER10-637-001; *New England Independent Transmission Company, L.L.C.*, 118 FERC ¶ 61,127 (2007) (finding that NEITC meets the eligibility criteria for an Independent Transmission Company under Attachment M of the ISO-NE OATT).

Anbaric and PowerBridge have brought substantial amounts of new capital into the transmission sector. Combining both developed and proposed projects, they are developing transmission assets that have added or intend to add more than 2500MW of transmission capacity to the Northeast and elsewhere, and provide investment opportunities exceeding \$5 billion. Their equity investors are among the largest energy-oriented investments firms in the United States, and also seek additional investment opportunities in transmission.

The activities of Anbaric and PowerBridge have come as a direct result of previous Commission Orders providing open access, fair and balanced procedures for the interconnection process, and rules governing transmission tariffs for non-incumbent transmission projects – both traditional cost-of-service tariffs and newer negotiated rate authority tariffs. The Respondents’ Neptune, Hudson, and New England ITC initiatives have made substantial contributions to the Commission’s program to develop a more open and competitive transmission system in the United States.

II. Communications

Anbaric and PowerBridge respectfully request that all correspondence and communications concerning this docket be directed to the following persons:

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III. The Context of the NOPR

The Commission issued the Proposed Rule on Transmission Planning and Cost Allocation By Transmission Owning and Operating Public Utilities to deal with a series of transmission issues:

- the lack of a clear requirement for regional transmission plans, without which the construction of new transmission facilities could be inhibited;
- the fact that transmission needs are not being driven by public policy requirements established by state or federal laws or regulations, especially state policies to promote increased reliance on renewable energy resources, such as the renewable portfolio standards, which accentuate the need for transmission to deliver electricity from location-constrained renewable energy resources to load centers;
- that transmission planning does not have to account for the use of energy efficiency or demand response, which may lower load forecasts within a given load zone and thereby affect transmission planning determinations;
- that states may adopt economic development policies associated with meeting energy needs that may be relevant to assumptions made in a transmission planning process;

- that obstacles may exist to non-incumbent transmission project developers' participation in regional transmission planning and development processes; and
- that there is still a relative lack of coordination between transmission planning regions, particularly for inter-regional transmission projects.

Anbaric and PowerBridge agree with the Commission's analysis of the deficiencies, constraints, and obstacles in the transmission planning and development processes in the U.S. power markets. We believe the Commission's Final Rule that this NOPR foreshadows is likely to join the other seminal acts of Congress and of the Commission that have compelled the American power markets to modernize and become more innovative. The NOPR and the resulting Final Rule will stand on the shoulders of PURPA (1978), which unleashed the independent power industry; the Energy Policy Act of 1992 (EPACT 1992), which created exempt wholesale generators; FERC Order No. 888 (1996), which created non-discriminatory open access requirements, and Order No. 889 (2008), which created a code of conduct for vertically integrated utilities as well as requiring them to post transmission capacity (TTC and ATC) calculations; FERC Order No. 2000 (2000) which encouraged the creation of Regional Transmission Organizations ("RTOs"); FERC Order No. 2003 (2003) which established standard Interconnection Procedures and Agreements for all transmission providers; the Energy Policy Act of 2005 (EPACT 2005) which aimed to enhance transmission development by allowing incentive ratemaking, and provided the Commission limited "backstop" siting authority; and FERC Order No. 890 (2007) which began to establish more uniform transmission planning and cost allocation requirement.

Anbaric and PowerBridge evolved as a result of these historic actions. We therefore strongly support the principles of ever-increasing but **regulated** competition in the national power market. The Respondents strongly believe FERC should sustain and promote the arc of restructuring (rather than “deregulation”) from PURPA in the 1970s to development of the IPP and EWG industry in the 1980s to Open Access to transmission in the 1990s to the development of RTOs in the 2000s. The NOPR is the next logical step towards a truly competitive transmission business.

The Respondents are not, however, advocates of *unregulated* electric markets. American economic history of the last 30 years provides ample evidence that the lack of regulation, and poorly designed regulation, can lead to unintended and destructive consequences that the electric industry – which is crucial to national security and fundamental human needs – cannot tolerate. Therefore, we agree with the Commission’s search for a pragmatic combination of persistent and enlightened regulation on the one hand, and the benefits of competitive markets and innovation on the other. The transmission sector is one of the last bastions of American industry where competition and its benefits are virtually absent.

The Commission can take this step with confidence because of the lessons from the past. PURPA’s encouragement of independent generators demonstrated in fact that non-utility players could produce electricity as cheaply as (or more cheaply than) regulated power companies.² As Congressman Phil Sharp said more than 20 years ago,

² From Richard F. Hirsh, *Power Loss: The Origins of Deregulation and Restructuring of the American Electric Utility System*, The MIT Press, 2001 (second printing), p. 123.

*“those who advocate continuing a natural monopoly in the area of generation or otherwise bear the burden of demonstrating that the technologies and economies of 1987 continue to justify an exception to the rule of competition.”*³ In other words, it should not be up to the proponents of competition -- the norm in American business -- to defend the Commission’s intention to allow competition in transmission; it is up to the proponents of the continuation of the doctrine that electricity is the last of the so-called “natural monopolies” – with all of the attendant incumbent privileges such a doctrine confers -- to make the case for their continuation.⁴

To that end, the Commission should establish a consistent set of policies for transmission planning that applies to every transmission provider subject to the Commission’s jurisdiction – including RTOs/ISOs and transmission providers in non-RTO regions, as well as those transmission providers that are subject to “reciprocity” requirements under Order No. 888 and its progeny. Appropriate transmission planning and cost allocation criteria should not be restricted to only RTOs and ISOs. Just like Order No. 888 and Order No. 2003, which applied standard OATT and interconnection requirements to *all* transmission providers, so should the Final Rule in this proceeding apply to *all* transmission providers.

In addition, effective transmission system planning requires effective transmission system operations to make use of the transmission system. There is little point in

³ *Ibid*, p. 123.

⁴ We subscribe to the view that emphasizes the need for regulations to ensure that the free market produces results close to its theoretical potential. We suggest that *regulated competition* in electric policy is consistent with the view of most mainstream economists and legal scholars.

rationalizing transmission planning across the country and spending significant sums on renewable energy development if the transmission system cannot be operated efficiently. Much of transmission planning today is motivated to develop the Nation's rich renewable resources. Renewable resources are often intermittent. This offers the opportunity to optimize the use of existing and new transmission infrastructure by a combination of renewable and traditional firming resources, if appropriate dynamic market signals are provided. Smart grid and other innovative technologies likewise rely on a dynamic environment to optimize the use of the transmission system. In addition, many states are planning to develop large-scale offshore wind resources that are likely to require— not traditional generator leads, but separate and innovative transmission systems that over the next decade could connect huge amounts of large-scale off-shore wind. In some European countries, that transmission development is being procured on a competitive basis and new entrants and new capital are welcome. As a companion to these efforts, the Commission should consider a renewed need for competitive wholesale power markets that will optimize the use of the transmission system.

Finally, the Proposed Rule naturally requires the development of a number of processes and standards to implement the Rule. While the Commission in the first instance has asked each separate transmission provider to propose their own unique approach to implement the Rule, Respondents believe that it is appropriate for the Commission to establish a consistent framework and structure for these processes and criteria.

IV. Comments on the Proposed Rule

In the absence of federal energy legislation, more than half of the states have implemented Renewable Portfolio Standards and other policies aimed at reducing greenhouse gas emissions and diversifying the portfolio away from fossil fuels and towards sustainable energy resources. At the same time, the Commission is responsible for maintaining federal standards and governance over the interstate electric transmission system. The potential for a mismatch here is obvious: via this Proposed Rule, the Commission seeks to adapt federal electricity regulations governing transmission so that they enable states to meet their own public policy requirements. In pursuit of that objective, the Commission has asked for comments in the regulatory areas enumerated below.

As over-arching comments, we respectfully suggest that the Commission make very clear who would be subject to the Proposed Rule. The Respondents strongly believe it should be clearly stated that the Proposed Rule will apply to all entities, whether or not within organized wholesale power markets, and RTOs, ISOs, and Transmission Providers outside of RTOs and ISOs. We also suggest “transmission planning regions” be defined clearly: where ISOs and RTOs exist, they should constitute adequately defined planning regions; where they do not, the Commission should establish the regions and require all Transmission Owners to coordinate their planning activities and comply with the Final Rule in a manner (where possible) consistent with ongoing professional practice in the industry. It is essential that the principles and requirements of the Final Rule apply to all transmission providers subject to FERC jurisdiction, as well as transmission providers

operating under the “reciprocity” requirement of Order No. 888. There is no basis for limiting the scope of the Proposed Rule to only RTOs and ISOs. The transmission planning and cost allocation issues in the Rule are important to transmission developers, transmission providers, public policy makers, and ratepayers across the nation. Just like Order No. 888 and its progeny and Order No. 2003, the requirements in the Final Rule should apply to all transmission providers.

We provide more detailed responses and recommendations in the pages that follow.

1. The Commission Should Require Every Transmission Provider to Participate in a Regional Transmission Planning Process with Open and Transparent Planning and Cost Allocation Procedures

The Commission’s NOPR states that one deficiency that has arisen in the wake of Order No. 2000 and Order No. 890 is the lack of a requirement for a regional transmission plan in the various electric transmission regions of the United States. The Commission is correct in emphasizing that the absence of such regional plans and their constituent protocols and participation attributes is hindering the construction of new transmission facilities within and between transmission planning regions.

We support the Commission’s deference to the differences in the characteristics of the different electrical regions. Under the Proposed Rule, each region can have its own distinct regional planning process, as long as these processes have embedded in them the foundational principles of the Commissions most important Orders (creating open access, transparency, no undue discrimination and so forth).

Anbaric and PowerBridge generally do business in the organized markets of PJM, New York, and New England precisely because previous legislation and Commission Orders have created more independent, transparent and clear-cut rules and regulations than exist in traditional non-RTO or ISO transmission regions.

We agree that all transmission providers – including ISOs and RTOs and non-RTO regions - should engage in long-term transmission planning (10 and even 20 years into the future), but they should not be asked to make a single long-term “Transmission Plan” that would not be changed, revisited or amended for many years. Instead, transmission planners should develop regional transmission plans over 18 to 24 months, and then allow additions, modifications, and amendments to these Plans in future planning cycles. Long term “Master Plans” developed under prior planning models and criteria and that are not revisited are more likely to lead to stranded transmission investments, precisely because the Commission is so successfully developing a more competitive and vibrant transmission industry.

In addition, it is essential that these regional planning efforts be *transparent* and *open to all transmission developers* – both incumbent and non-incumbent transmission developers, including independent transmission companies. Many transmission planning processes today are in practical effect closed to non-incumbent transmission developers. Incumbent transmission developers are permitted to participate throughout the regional transmission planning at an exclusive “club” level not available to non-incumbent transmission developers. The potential for such discrimination is particularly accentuated in non RTO/ISO regions in which the incumbent transmission owner acts as

developer/planner/decision-maker/and constructor of every new transmission project eligible for cost-of-service rate recovery. This erects an insurmountable barrier to entry that eliminates competition and thereby harms ratepayers. All regions should have open and transparent transmission planning with a consistent set of processes and criteria that allows participation by both incumbent and non-incumbent transmission developers as entities eligible to construct, own, and finance new transmission facilities, and use Commission-reviewed cost-of-service rate recovery.

2. The Commission Should Require That Transmission Planning Take Into Account Reliability, Economic, and State or Federal Public Policy Requirements

We support the Commission's Proposed Rule that transmission planning take into account public policy requirements. This need exists because prior to this time transmission providers have been permitted, but not required, to plan their transmission systems taking into account public policy requirements – such as renewable portfolio standards – of the states in their region, and potentially of the federal government, when pending legislation is enacted. In fact, most if not all transmission providers have not included such legal requirements in their transmission planning criteria. The Commission needs to correct this oversight. The fact is that few transmission projects have been executed on any basis other than “reliability needs,” which are typically so narrowly defined that other policy requirements – for example, meeting state renewable portfolio standards (RPS) – are not going to be met. Many transmission projects have been developed to meet changing reliability requirements, and that success can be taken

as an indication of what could be achieved if public policy requirements – like RPS – are taken equally seriously and included in regional planning criteria.

3. The Commission Should Defer To Regional Planning Entities -- With Input from the States -- On The Planning Criteria Selected To Enable Public Policy-Driven Transmission Projects

The Commission has asked for comments on how planning criteria based on public policy requirements should be formulated, including whether it is more appropriate to use flexible criteria instead of “bright line” metrics when determining which projects are to be included in the regional transmission plan, whether the use of flexible criteria would provide undue discretion as to whether a project is included in a regional transmission plan, and whether the use of “bright line” metrics may inappropriately result in alternating inclusion and exclusion of a single project over successive planning cycles and therefore create inappropriate disruptions in long-term transmission planning.

The few economic transmission projects that have been built in the last 10 years have in fact been driven by the public policy intentions of federal, state or municipal governments. In these cases, the sponsors of these projects have assumed the obligation to conduct the cost-benefit study justifying commitment to the project. Since it is state laws and regulations that will typically drive the public policy requirements and therefore stand behind these transmission commitments, we believe the Commission and regional planning entities should work with the states (or groups of states like the New England State Committee On Electricity) in developing and selecting the planning criteria used to establish the need for public policy-driven transmission projects.

The few public policy-oriented transmission projects that have been built (most of them in New York, California, and Texas) have uncovered a variety of approaches to cost-benefit studies of electric transmission projects. The studies can have narrow or broad scopes. They can include “shadow prices” of carbon impacts or of employment or even macro-economic effects. In the absence of federal legislation, and it is hoped federal funding or other support for public policy-driven transmission projects, Respondents suggest that the Commission and the transmission providers allow input on the cost-benefit analysis to “go with the money.” If a federal agency (like TVA or WAPA) is driving the need for public policy-driven transmission, then it should be integral to defining the cost-benefit treatment of transmission project analysis. Conversely, and more typically, if a state or states is driving the need for public policy driven transmission projects (whether through a Renewable Portfolio Standard or through a state-required RFP for renewable power by a state-designated load serving entity), then it should be integral to defining the criteria for such transmission projects. For example, a state may want to impose only a metric as narrow as the impact of a transmission project on generation production costs, or a metric as broad as the transmission project’s impact on employment and macro-economic activity. Either way, these metrics need to be taken into account in the regional planning process in order for public policy-driven transmission projects to succeed.

4. The Commission Should Remove ROFRs For Incumbent Transmission Developers To Develop Projects Identified In The Regional Transmission Plan

We support the Commission’s proposal in the Proposed Rule to “Remove from FERC-approved tariffs or agreements any right of first refusal that provides an incumbent public utility with an undue advantage over a non-incumbent transmission project developer, while preserving state authority.” Incumbent utilities have an advantage in the development of transmission. In many areas, transmission planning processes, usually through non-tariff-based practice, assign to incumbent transmission owners the exclusive opportunity to construct and own any and all new cost-of-service transmission facilities in the regional plan. This process is anti-competitive and a clear barrier to entry by other non-incumbent transmission developers. These ROFRs stifle ingenuity and creativity, and drive new sources of investment out of transmission and into other industries. Anbaric and PowerBridge have seen the inhibiting effects of these incumbent utility ROFRs on transmission development first hand. In the last decade, however, a substantial number of “ITCs” have emerged in the U.S. power industry. Some of these developers – like Anbaric and PowerBridge – are true independents and non-incumbent transmission developers. Others are constituted by the bundling of transmission assets from incumbent utilities (e.g., VELCO, ATC, ITC). Yet others are newly-formed affiliates of very large incumbent utility companies (e.g., NextEra, transmission subsidiaries of AEP, Mid-America, Exelon) that are choosing to operate, to the benefit of the market, as non-incumbent transmission developers outside of their incumbent affiliate’s footprint. And yet other new transmission developers have evolved out of the

financial, power-marketing, and independent power producer communities (e.g., Brookfield, LS Power). Many of these new transmission developers are highly competent professional transmission organizations and they have built or are in the process of constructing complex transmission infrastructure projects.

The ITC community has the capability – like the independent generation community that preceded it – to offer transmission services using rate structures different from those of the traditional incumbent utilities. The paradigm for transmission development by incumbent transmission developers has been that they recover one hundred percent of all prudently incurred cost of transmission development, regardless of the initial cost estimate for the transmission project. That recovery is made by adding the cost of transmission expenses to the recovery of capital costs plus a return on capital invested. It is not at all unusual – indeed it may in fact be the norm – that the final cost of a transmission project proposed by an incumbent transmission developer to regulators turns out to be higher – often much higher – than was originally estimated when the project was approved. This is not surprising: it is fairly unusual for regulators to deny the utilities full cost recovery, even when the ultimate project cost is much higher than originally estimated. This is -- in the absence of financial pain – an unsurprising result.

ITCs can play under the same rules and in the same spaces as their incumbent transmission developer cousins. However, ITCs often come from the world of competition where financial discipline is enforced. That means that many ITCs are used to working within Request for Proposal, fixed price, and capped price environments. Accordingly, by removing non-competitive ROFRs and allowing non-incumbent

transmission developer ITCs to participate in transmission development, the Commission – and regional planners – will have the opportunity to utilize a variety of new cost-containment tools that will save money for ratepayers. For example, regional planners could determine the entities to construct some new projects based on a “market pricing” alternative, such as a fixed fee. In response to competitive procurements from state power authorities and other utilities, ITCs have already agreed under contract to build transmission projects for a fee and take full financial responsibility for the outcome. If – between the time a project is bid and the time construction starts – the costs of material or labor or the interest rates on money, or exchange rates on components acquired abroad change in such a way as to raise the cost of the project, the ITC has to absorb those costs. If events move costs in the opposite direction, the ITC obtains the benefits of its good luck, or good judgment. The ratepayer obtains the same transmission facility at a lower cost than the cost-plus environment that is typical of almost all transmission development today.

In transmission there are, as the Commission has long recognized, alternatives to cost-of-service rate recovery. That understanding, in turn, connects the Proposed Rule on transmission planning to the Commission’s prior actions with respect to the wholesale generation sector, and also to the decisions made by another Commission in the telecommunications industry. As noted M.I.T. professor of economics Paul Joskow observed twenty years ago, “[i]f the United States wants to encourage competitive entry of . . . suppliers into generation and meaningful competition to supply . . ., the suppliers . . . must be exempted from cost-of-service regulation in much the same way as

nondominant long-distance telephone companies have been exempted from it by the Federal Communications Commission.”⁵ By eliminating ROFRs that stand in the way of market entry by non-incumbent transmission developers, the Commission will open the door for innovative thinking and creativity that will result in more, better, and less expensive transmission.

ROFRs that hoard transmission opportunities for a small set of incumbent transmission developers serve no valid purpose. They stifle competition and creativity and drive sources of financing out of the electric power field. They result in an underbuilt, underfunded, and uninspired transmission system. Anbaric and PowerBridge strongly support the Commission’s proposal to remove ROFRs and to allow incumbent and non-incumbent transmission developers to participate in the construction, ownership, and financing of transmission facilities in regional plans.

5. While Any ROFR Would Be An Exception, A Limited ROFR May Be Appropriate In Certain Limited Circumstances

ROFRs by definition are anti-competitive and erect barriers to new market entry. As a general rule, all ROFRs should be eliminated. Respondents support their elimination. However, there may be one limited circumstance in which a ROFR could be appropriate. A limited ROFR could be granted to the owner of transmission facilities for the repair, replacement, or reconductoring of the existing transmission facilities. The ROFR would be granted to the owner of the facility, regardless of whether the owner is

⁵ Paul L. Joskow, Douglas R. Bohi, Frank M. Gollop, “Regulatory Failure, Regulatory Reform, and Structural Change in the Electrical Power Industry,” *Brookings Papers on Economic Activity. Microeconomics*, Vol. 1989 (1989), pp. 125-208. Stable URL: <http://www.jstor.org/stable/2534721>, Accessed: 27/09/2010.

an “incumbent” or “non-incumbent” transmission developer. Conversely, even this ROFR is subject to challenge, as the existing transmission owner is not harmed in any way even if its facilities are replaced, since the owner will still recover the costs of the prior facilities through the ratebase. Any ROFR for the expansion of transmission facilities would crush innovation and is untenable.

Similarly, any proposal for a “time-limited” ROFR is *per se* unreasonable (e.g., proposing a ROFR that must be exercised “within 30 days”). This type of ROFR is a wolf in sheep’s clothing. To potential competitors, it looks and operates just like a complete ROFR, since the incumbent would have complete discretion to seize every project coming out of a regional plan. Hence, non-incumbent transmission developers would have no motivation to expend any effort on developing projects for that regional plan, with the result that the transmission provider, the customers, and the ratepayers suffer. To make matters worse, after driving out all competition, the incumbent transmission developer then has the express right to simply walk away from the project, leaving everyone else in the lurch. The Commission should ensure that this type of “time-limited” ROFR is eliminated.

6. The Commission Should Establish Standards For All Transmission Developers That Seek To Build Transmission Under Regional Transmission Plans

Respondents agree that, to become full participants in and entitled to construct and own transmission projects identified by regional transmission plans, *all transmission developers* – including incumbents and non-incumbents – must demonstrate sufficient technical and financial capability to construct, own and finance their proposed projects.

The transmission planner is relying on the designated developer to complete the transmission facility. It is appropriate that the transmission planner have confidence that the transmission developer is capable of completing the work. Such qualifications need to be fair, transparent, and applied to all proposed developers. Such a qualification process would need to be developed and implemented by a neutral party. It certainly should not be used by the incumbents utilities as a “back-door ROFR.” We suggest the Commission itself be the entity that determines whether a transmission developer has demonstrated the requisite technical and financial capability to construct, own, and finance transmission projects. This is particularly important where the transmission provider is also a transmission owner. The process should be objective and transparent.

Anbaric and PowerBridge have gone through such a process at the Commission with their affiliate, the New England Independent Transmission Company (New England ITC). NEITC navigated a process to meet the eligibility criteria as an ITC under Attachment M of the ISO-NE OATT. Because it involved a FERC filing, negotiations with ISO-NE and the incumbent transmission owners of New England, this was an arduous and expensive process. The Commission’s Order in the New England ITC proceeding establishes a model that can be used in the future for determining that a transmission developer has the requisite capability.⁶ Making the Commission the final arbiter of this decision removes some of the regional disparities that might otherwise exist, disparities that would otherwise inhibit progress towards developing ITCs that

⁶ *New England Independent Transmission Company, L.L.C.*, 118 FERC ¶ 61,127 (2007).

could be national standard-setters in transmission development. It also ensures that such determinations are made in an open, fair and unbiased forum.

Among the qualification requirements the Commission might impose on both ITCs and incumbents alike is an obligation to be responsible for the agreed-to cost of constructing transmission projects. ITCs can make particularly important contributions to this dimension of the U.S. transmission sector. As has been shown by 30 years of experience, the independent, project finance-oriented mode of building generation, and more recently transmission, infrastructure will shift the responsibility for cost overruns from the ratepayer to the developer or owner of the asset being constructed. Many of the transmission projects built by incumbent utilities under rate-based cost recovery mechanisms have been built over budget and behind schedule. The track record of independent power producers and of independent transmission developers is better, by necessity, because in the typical development of such assets, cost overruns and the consequences of failure to adhere to schedules are borne by the developer/owner's shareholders, not by ratepayers. There is every reason to believe this experience will be repeated by the independent transmission sector.⁷

7. The Rights Of A Project Sponsor Should Be Protected When A Regional Planner Has Revealed the Project To The Public Or To Other Developers

Anbaric and PowerBridge support a limited version of the Commission's proposal to protect the rights of a project sponsor in the event that a proposed project is not

⁷ The Respondent's Neptune Project is an example. It was developed on time and on budget, and its experience shows the capital markets will support well-structured multi-jurisdictional transmission endeavors whose risks are borne by investors, not rate-payers.

included in a regional transmission plan. Generally, granting unlimited five-year protection of all project rights for every sponsor could create a large administrative burden on regional planners and an opportunity for gaming by project sponsors. Respondents recommend that all project proposals be held confidential by the RTO/ISO/or other regional planning entity. Any projects that are not selected for the regional plan would remain strictly confidential. Such confidentiality eliminates the need to protect project sponsors rights for resubmission of the same project in future planning cycles. Moreover, since the projects are confidential, other transmission developers would not be on notice as to what is protected and could, in fact, be legitimately developing a similar transmission project on a wholly independent basis.

In the competitive transmission development environment proposed by the Commission, project proposals normally would be made public by the RTO/ISO/or other regional planning entity only when they are selected to become part of the transmission plan. At that stage, the protection proposed by the Commission would attach to prevent other developers from simply copying the project. Thus, a transmission project will become public when it is proposed for inclusion in the regional transmission plan, in which case there is no competitive harm to the sponsor. If the project is not included in the plan, the RTO/ISO/or other regional planning entity may not make public any information about the project. In this manner, the proposed Rule would be entirely consistent with normal business practices pursuant to competitive bidding: winners are selected and announced, information about projects that are not selected is not revealed.

However, the protection must also apply where the RTO/ISO/or other regional planning entity has revealed the proposed project to other incumbent or non-incumbent transmission developers. In practice, this means that regional planning processes in which the review and selection of projects is conducted by incumbent transmission developers must provide the protection proposed by the Commission for project sponsors. Otherwise, the incumbent and competing transmission developers can simply expropriate other developers' intellectual property, which would remove any incentive to develop new transmission projects, contrary to the objectives of the Proposed Rule.

This process will require the RTO/ISO/or other regional planning entity to develop (or continue, in the case of RTOs and ISOs that already maintain such confidentiality) internal procedures to treat the information about proposed projects on a strictly confidential basis. As stated, this process is routinely done with Requests for Proposals run for generation, and clearly can be implemented. Regional planning entities that choose not to implement confidentiality provisions to protect the proposed projects must then implement the five year protection of project rights proposed by the Commission in the Proposed Rule.

This proposal ensures that valuable intellectual property rights created by an incumbent or non-incumbent transmission developer will not be lost upon submittal to the regional planning process. If these rights are not protected and are instead revealed to competitors or the public, transmission developers will be hesitant to invest the intellectual and financial capital needed to create new transmission projects.

8. Both Incumbent And Non-Incumbent Transmission Developers Should Be Permitted To Recover Costs Through A Regional Cost Allocation Method

We agree with the Commission's proposal that, if an incumbent transmission project developer may recover the cost of a transmission facility for a selected project through a regional cost allocation method, a non-incumbent transmission project developer must enjoy that same eligibility, including the opportunity to recover costs incurred during the development phase once the project has been selected.

9. Both Incumbent And Non-Incumbent Transmission Developers Should Participate In Regional Planning Processes

We agree with the Commission that non-incumbent ITC transmission developers proposing projects that are part of Regional Transmission Plans should participate in regional planning processes, and, conversely, that these regional planning processes must be open to ITCs. At present, there are forums where incumbent transmission owners discuss transmission policy issues where ITCs are excluded. We recommend that – once an ITC is deemed “qualified” by the Commission – it have access on an equal basis with incumbent transmission developers to all discussions about regional transmission planning.

That inclusion, in turn, will help define how ITC's “sponsor” projects. We support the Commission's emphasis seeking further clarification on how an ITC's project “sponsorship” constitutes a legitimate form of market participation. ITCs can participate in transmission development along three different tracks. Thus, sponsorship of a new transmission project may include: (1) putting a project into the interconnection queue; (2) proposing a project in the Regional System Plan (or comparable regional transmission

planning process), as long as the proponent has been deemed as a “qualified” incumbent or non-incumbent transmission developer; or (3) proposing a “bundled product” including new transmission and generation (*e.g.*, a renewable generation and transmission project) into a state utility or state authority RFPs or other procurement processes, as long as the proponent meets the qualification requirements of the sponsor of the RFPs.

Finally, the Proposed Rule is likely to lead to the creation of joint ventures between ITCs and incumbent transmission developers, which are likely to benefit both sides. ITCs will get the benefit of the detailed knowledge the incumbents have of their service area, and the incumbents will get the benefit of the experience ITCs may have from working on transmission projects in other areas. Moreover, ITCs’ access to capital markets is likely to complement the resources available to incumbents whose access may be more limited. Anbaric and PowerBridge currently are working with several incumbent utility joint-venture partners in pursuit of precisely these joint and mutual benefits.

10. The Commission Should Establish Procedures Under Which Transmission Opportunities Are Available To Both Incumbent and Non-incumbent Transmission Developers

The Commission’s Final Rule should require each regional transmission planning entity to develop procedures and criteria for the selection of the transmission projects needed to meet reliability, economic, and state and federal policy requirements. That procedure should be open to both qualified incumbent and non-incumbent transmission developers. The identified transmission needs for which all transmission developers –

incumbent and non-incumbent - may submit proposals should be published by the regional planning entity as part of a regularly scheduled regional planning process.

Once the transmission system needs have been identified and published, the regional transmission planning entity (RTO/ISO/or other regional planning entity) must establish an open, transparent, and competitive process in which both qualified incumbent and non-incumbent transmission developers can participate. This requirement is consistent with other federally-regulated industries where competition is the norm, rather than the exception, to the designation of entities to provide substantial infrastructure development.

In the Final Rule, the Commission should establish a construct for the procedures and criteria that every RTO/ISO/or other regional planning entity will required to follow in its regional transmission planning process. The use of a standard construct or structure is similar to, although much more flexible than, the standard approaches created in Order No. 888 (and its progeny) and Order No. 2003. While some RTOs or ISOs may have certain or many of these processes in place, all regional planning entities should show that they conform to a standard construct of procedures. (This is similar to what has occurred in the past for Order No. 2003 and Order No. 890, in which certain regional planning entities were farther ahead than others, but all entities were required to comply.) The Commission should establish and require a construct that, at the least, includes the following steps:

- 1) **Establish and Publish Needs** – the regional planning entity must first establish transmission system needs based on modeling and analysis of the system.

The needs should address reliability, economic, and public policy requirements. These are transmission system needs, not specific project solutions. After the needs have been established, they must be published and made available to all transmission developers (and other interested entities). Because transmission planning is a time-consuming process, the Commission should consider permitting this to be a multi-year process (*e.g.*, 2 or 3 years), rather than starting over each year.

2) Open Window for Submittal of Proposals – some time after the needs have been published, the regional planning entity should open a window (*e.g.*, 3 to 6 months) in which both incumbent and non-incumbent transmission developers can submit project proposals as solutions to the transmission system needs. All project proposals would be treated as confidential by the regional planning entity while the window is open.

3) Provide Back-Up Documentation – the Commission would require a standard form to be used to submit project proposals, as is done in analogous situations today (*e.g.*, generator interconnection). The project submittal would need sufficient engineering, technical, and cost documentation to demonstrate that it is a viable project and allow the regional planning entity to perform a meaningful review and comparison of proposal. A strong documentation requirement will avoid the submittal of, and need to review, frivolous proposals.

4) Establish Qualifications – every transmission developer submitting a proposal would need to establish that it has the technical and financial qualifications to

construct, own and finance the project that it has proposed. The qualifications could be established by internal staff or outsourcing by contract, as is done for incumbent transmission developers today. Every developer, both incumbent and non-incumbent, would need to demonstrate that it is qualified. The demonstration could be included in the project proposal or made separately. The criteria and evaluation of qualifications must be open and transparent, and completed by an unbiased and neutral entity.

5) **Submit Deposit** – in order to ensure that transmission developers really support and stand behind their proposals, the regional planning entity would require a deposit to be submitted with each project proposal. The deposit could be on the order of \$50,000 per project. Similar to what has been done for the generator interconnection process, a meaningful deposit requirement would ensure that only serious proposals are submitted, and it would help demonstrate that developers are financially qualified to construct the project. If the project proposal is not selected, the deposit could be refunded. If the project is selected, the deposit could be retained and treated as a cost of the project.

6) **Evaluate and Select Projects** – after the window closes, the RTO/ISO/or other regional planning entity would evaluate the project proposals and select the best proposals to meet the transmission needs identified at the beginning of the process. All projects submitted during the window would have equal priority. The planning entity would select projects and designate the project sponsor to construct, own, and finance the transmission project. Incumbent and non-

incumbent transmission owners would have a level playing field in the selection, with no right of first refusal. Where projects are similar, but no project is identical to the project the regional planning entity identifies, the regional planning entity would determine and select the sponsor with the most similar project.

7) **Application of Tie-Breakers** - In the unlikely event that more than one identical project meets a transmission system need, the regional planning entity could employ a transparent and fair tie-breaker system to select the developer designated to construct and own the project. The Commission has experience with such tie-breakers in regulation of hydro development opportunities, where multiple parties propose to develop the same hydro project. The Commission could apply a similar process to tie-breakers here. To make developers in such an instance whole, the losers in the tie-breaker scenario could recover their documented development costs (which they would have been able to recover if they had won the tie-breaker). In that way, developers continue to have a motivation to develop and propose worthwhile transmission projects.

8) **Second Window for Projects with No Sponsor** – in the unlikely event that the regional planning entity identifies transmission projects for which no similar proposal was submitted, the regional transmission entity would include these projects in a second window and seek proposals to construct, own, and finance these projects. Anbaric and PowerBridge are confident that every one of these projects will be spoken for by qualified developers. Regional planning entities

could consider using this step as a basis for competitive bidding among qualified entities, although that is not necessary.

9) **Establish the Regional Transmission Plan** – the regional transmission plan would include a project proposals selected by the regional transmission planning entity and would identify the sponsor of those projects as the entities to construct, own, and finance the projects. The sponsors, whether incumbent or non-incumbent transmission developers, would be eligible for cost-of-service rate recovery through rates approved by the Commission and collected by the transmission provider from transmission customers pursuant to a regional cost allocation methodology.

As part of this process, the Commission should require the regional planning entities to establish guidelines to prevent incumbent transmission utilities from having any undue advantage in the selection process. For example, if the incumbent utility has a transmission project in the review process, it should not be in the group of selectors of the projects selected to meet transmission system needs.

Finally, once a transmission project has been selected, designated to its sponsor, and included in the regional plan pursuant to procedures consistent with the construct established in the Final Rule, the transmission developer (whether non-incumbent or incumbent) should have procedural confidence that its expenditures on the approved project will be recoverable. With that, the transmission developer can attract equity and debt capital to develop and construct the project on a timely basis. In other words, as has always been the case for the incumbent transmission owners, there must be clear

procedures whereby transmission developers win or lose. If a non-incumbent transmission developer is selected and included in the regional plan, it should be able to go ahead promptly without fear of yet another proceeding requiring it to reverse course. Likewise, projects that are included in the regional plan through this procedure should be assured of abandoned project cost recovery, in the event that the regional planning entity later modifies the regional plan. While this certainty generally is provided only to incumbent transmission developers today; it should be provided to all transmission developers when their projects are included in the regional plan. This equal treatment will help ensure that needed transmission infrastructure will be financed and constructed in a timely manner. Regulatory uncertainty is the greatest impediment to raising capital for transmission development.

11. There Is No Connection Between An “Obligation to Build” And ROFRs; If The Commission Retains An “Obligation To Build,” The Obligation Should Apply To All Transmission Developers, Both Incumbent And Non-Incumbent

The Commission seeks comment on the relationship or lack of relationship between a right of first refusal and an obligation to build. Anbaric and PowerBridge agree with the Commission that there is no linkage between ROFRs and any obligation to build. Nor should there be any linkage.

The “obligation to build” itself is somewhat of a misnomer. Every obligation, of course, is also an opportunity. Indeed, the “obligation to build” – as proposed by some incumbent transmission developers - is really the “opportunity to build” since along with the obligation comes a guaranteed return on investment for the transmission developer.

Most non-incumbent transmission developers would readily sign up for this so-called “obligation.” Anbaric and PowerBridge certainly would. We see no reason why ITCs that have the best transmission project and/or the low cost solution should be precluded from the opportunity to construct whenever and wherever the regional planning entity of the electric system decides there is a need to build transmission, regardless of whether someone has signed up for an “obligation to build.”

If the Commission determines that a formal “obligation to build” is determined to be appropriate, Anbaric and PowerBridge recommend that the obligation to build be applied to *all transmission developers*, including both non-incumbent and incumbent transmission developers. Respondents suggest a two-fold “obligation to build” that would apply to all transmission developers. First, a sponsor proposing a project would be required to commit to an “obligation to build” the project should it be selected by the regional planning entity and included in the regional plan. Second, every transmission owner with transmission projects constructed through the regional plan would commit to an “obligation to build” expansions or additions to their own transmission facilities that are identified by the regional planning entity. These “obligations to build” would be subject to the similar provisions and limitations currently on obligations to build, include the ability to obtain necessary permits and financing. As stated above, this two-fold “obligation to build” would treat all transmission facility developers equally.

12. The Commission Should Establish Greater Interregional Integration As A National Policy Goal And Require Interregional Coordination Of Transmission Planning

Anbaric and PowerBridge have had the opportunity to engage in a number of inter-ISO projects between New England, New York, and PJM. Managing a transmission project interconnection process into a single ISO or RTO is difficult. Managing two parallel processes for a transmission project increases that difficulty exponentially. Even though there has been a considerable amount of well-intentioned “interregional coordination,” these efforts have not resulted in a body of consistent regulations or a synchronized process for inter-regional transmission development.

The Commission’s NOPR asks for comments on how interregional coordination might be improved. We suggest that the Commission’s Proposed Rule define “greater interregional transmission coordination” -- to the extent which it believes it may do so under existing federal electricity policy – as a national policy goal. A clear statement from the Commission that the development of interregional transmission ties across seams are desirable would form a useful context for the development of specific transmission projects. The fact is that seams between RTOs, ISOs, and other regional planning areas are artificial boundaries for planning that interrupt what would otherwise be a rational flow of electricity from generation to load. These seams have a number of deleterious effects and the Proposed Rule offers the opportunity to encourage and enable the development of needed transmission infrastructure to bridge these artificial chasms. The desirability of a new policy goal to expand interregional transmission coordination should take into account the existence of numerous state and regional environmental

policy goals set forth in regulation and statute (for example, the collective force of Renewable Portfolio Standards and Regional Greenhouse Gas Initiative goals of the states of the Northeast) that further accentuate the need for interregional transmission ties between regions.

From that foundation, we recommend the Commission direct the transmission providers to develop a new transmission planning process explicitly for interregional transmission projects that will synchronize planning processes, formulate uniform regulations, and address cost allocation for interregional projects. Given the complexities of developing these interregional projects, once selected to go ahead, an interregional project should be pulled out of the normal processes on either end, and the interregional team should be developed to expedite and oversee the project. In that way, both the regions and the developer can plan and count on the needed interregional transmission projects being developed in a timely way.

13. The Commission’s Final Rule Should Enable Each Region To Develop Its Own Intra-Regional Cost Allocation Methodology

Respondents agree with the Commission that each region should be permitted to develop a cost allocation methodology that is tailored to its needs and circumstances. Of course, such methodology must allocate costs that are “roughly commensurate” with the benefits that the new transmission facilities provide, and the methodology must be reviewed and approved by the Commission.

In developing individual regional intra-regional cost allocation methodologies, we believe that the Commission should require regional planning entities to expressly

consider and address the input and advice of the States in their region. This requirement would be similar to the requirements for the Commission to address comments in rulemaking. The regional planning entity could still reach a different conclusion, but it would need to expressly take into account and respond to comments from the States.

In the absence of further federal legislation on electric transmission planning and renewable energy standards, Respondents believe that state government requirements and state government input will play a critical role in the completion of most transmission projects, particularly large regional transmission projects and those intended to address public policy objectives. State governments will naturally pursue state interests when they consider whether to apply the instruments of regulation (most importantly, the power of long-term Transmission Service Agreements from regulated utilities or state agencies and state Authorities) as a basis to finance or enable new transmission projects. The Commission and the regional planning entities need not define how benefits and costs should be measured by the States, nor how a state or group of states in an organized market will view the allocation of costs of transmission projects pursued for public policy purposes. Rather, the Commission and regional planning entities need to listen closely to the States. In addition, we believe, it is up to the transmission developer to propose and sponsor projects that attract the States' attention, compete in State issued and/or regulated RFPs, and meet the State's micro or macro-economic policy goals. The Commission's Final Rule should be designed to eliminate or minimize the likelihood that rules and regulations over which the Commission has authority will interfere with the state's ability to pursue its public policy objectives for renewable energy.

If a state, for example, desires to pursue development of offshore wind resources of its coast, and therefore does not offer an RFP for on-shore transmission that would be required to import renewable energy from other states or territories, the regional planning entity should address transmission plans that are consistent with the state's public policy objectives, as demonstrated through the state's willingness to commit its ratepayers to such a project. Similarly, the regional planning entity should not attempt to dictate public policy on renewable energy to the states. Incumbent and non-incumbent transmission developers then would develop and propose projects that fill that public policy objective. It is likely that public policy objectives will differ from state to state, and therefore it is appropriate, as the Commission has proposed, for each region to develop its own intra-regional cost allocation methodology that take into account these and other regional differences.

14. The Commission Should Require Transmission Providers On Both Sides Of An Interregional Transmission Project To Agree On A Cost Allocation Between the Two Regions – And If They Are Unable To Do So, The Commission Should Impose A Settlement

The Commission's Proposed Rule would allow methods for allocating the costs of new interregional facilities to differ among pairs of transmission planning regions, as long as each method satisfies the proposed interregional cost allocation principles listed above. The Commission seeks comments on how this would affect inter-regional transmission development. Respondents agree with the Commission's proposal to allow each region to have a different intra-regional cost allocation methodology for its share of the costs. However, Anbaric and PowerBridge urge the Commission to also address the

directly related issue of the inter-regional cost allocation between the two regions. As discussed below, Anbaric and PowerBridge believe that the allocation should be apportioned based on the project's benefits to each region. That said, the regions should, in the first instance, be given an opportunity to agree on a cost allocation. If they cannot agree, the Commission can impose an agreement based on the facts and circumstances of the project.

As already noted in this filing, Anbaric and PowerBridge have participated in the development of numerous inter-regional transmission projects. We believe that the Proposed Rule should require the transmission providers on both sides of an interregional transmission project to agree on a cost allocation as between the two regions – and if they are unable to do so, the Commission should impose a Settlement. Under this proposal, the transmission developer would be required, as part of its proposal, to estimate the costs and benefits of the proposed project and present those estimates to the transmission planning regions on both sides of the project. The developer also would have to make cost allocation proposals to both regions, and each region would respond to those proposals as part of the overall inter-regional interconnection review process.

To avoid disagreements between the regions on the costs and benefits from excessively delaying the project, the Commission's Proposed Rule should stipulate a reasonable period of time for reaching an agreement on the proposed cost allocation between the two regions. We are aware that this will add another up front process to those that ISOs, RTOs and other transmission providers have in their interconnection

processes, but it will offer the regions an opportunity to reach mutual agreement on cost allocations prior to Commission involvement.

We also recommend that the Commission's Final Rule explicitly enable the developer to conduct its own cost-benefit analysis, instead of adding that to the schedule of the ISOs and RTOs. This analysis would then be reviewed by the two transmission providers. It is important that such cost and benefits analysis for the purpose of allocation between the two regions reflect the full spectrum of benefits that an inter-regional transmission project provides, and that the same methodology be applied to both regions. This will remove the concern that one region will develop a separate methodology to skew its measured benefits downward in an attempt to shift costs away from itself and onto the other region. Fair and equitable allocation of costs based on benefits will also avoid the "free rider" effect.

When an inter-regional project is evaluated by the two regions for inclusion in their transmission plans, it is absolutely essential that the analysis take into account the overall costs and *the overall benefits to both regions*. As long as the overall benefits exceed the overall costs by a certain ratio (1:1 or up to 1.25:1 in some regions), then the project should be included in both regional plans. If each region is instead permitted to compare the overall costs to its own separate benefits (not the overall benefits), then a transmission project with "macro-benefits" to ratepayers will be lost by the death of a thousand cuts. This is yet another reason why the Commission needs to require an inter-regional process for the analysis of inter-regional transmission projects.

In addition, we note that in order to infuse new sources of capital into transmission development, the financial and regulatory market places need to converge on acceptable cost and benefits metrics that apply on a consistent and predictable basis.

V. Conclusion

For the reasons stated herein, Anbaric and PowerBridge strongly support the Commission's Proposed Rule. Where appropriate, Respondents have proposed ways to clarify the Rule and make it even more effective in enabling construction of much needed new transmission infrastructure across the country.

Anbaric and PowerBridge believe the Commission's Proposed Rule will yield major changes in our economy. One need only look at the telecommunications industry. While a few may be nostalgic about the simplicity of the old Bell System, most Americans are thrilled with the array of new telephonic services that followed the breakup of AT&T in 1984 and the Telecommunications Act of 1996. Today, the companies that are driving technological change – Apple, Google, and the rest – started as innovators, endured the scouring travails of an uber-competitive process, and have earned public acceptance and respect for their products.

The federal legislation introduced in 2009 and 2010 might have been a useful next step towards a more competitive transmission industry, but the legislation has not yet emerged (like the Telecommunications Act of 1996) that addresses planning and competition in the electric power and transmission industry. Under the Federal Power Act, of course, legislation is not needed to address problems in transmission planning and cost allocation. The Commission already has that authority. The Commission's

Proposed Rule will remedy problems in transmission planning and cost allocation that have bedeviled the development of new transmission infrastructure and kept new ideas and sources of funding on the sidelines. With competition in transmission, the development of a huge renewable power sector and its associated infrastructure will be open to the competitive sector, including the affiliates of traditional incumbent utilities operating both within and outside their traditional franchised service territories. As a result, material additional human and financial capital – and ideas - will flow into the space, leading to sustained upgrades and transformational expansion of the Nation’s critical electrical infrastructure.

Respectfully submitted,

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Dated: September 29, 2010