

# FERC Order 1920

July 17, 2024

VSPC

vermont electric power company



# Agenda

- Overview
- Study factors
- Selection criteria
- Other issues
  - GETS
  - ROFR
  - Interregional
- Cost allocation
- Prognosis

# May 13, 2024: “Grid Expansion” Order 1920

FERC majority: “[F]or the same reason that passing around a hat is no way to fund the fire department, roads, or bridges, such an approach to building critical, public interest infrastructure that relies entirely on the voluntary contributions of individual states (or could even be defeated by the refusal to contribute by a single state) will not beget the transmission infrastructure needed to maintain reliability and affordability.”

Commissioner Christie dissenting: “The final rule [exceeds Federal Power Act authority and is] an absurdly complex bureaucratic blizzard of mandates and micromanagement to be imposed on every transmission provider... for the transparent goal of spending trillions of consumers’ dollars on transmission not to serve consumers..., but instead to serve political, corporate, and other special-interest agendas that were never enacted into law.”



# Summary

## **Generational shift in transmission planning, project selection, and cost allocation to address state carbon reduction goals . . . *if it survives.***

- **Longer term planning horizon**—20 years, more state involvement, incorporating state and other energy laws and goals
  - Seven planning factors
  - Other issues
    - Right sizing
    - Extreme weather
    - Interregional coordination, e.g., New York – New England
    - Right of First Refusal (ROFR)
- **Competitive selection** – competitive RFP and weighing of select benefits against estimated costs over longer term
- **Cost allocation** – TBD Load Ratio Share (Vermont = 4%)
- **Significant legal hurdles abound!**

# FERC's 7 factors for longer term studies

- (1) Laws and regulations, including state laws, affecting the resource mix and demand;
  - (2) Decarbonization and electrification laws;
  - (3) State-approved integrated resource plans;
  - (4) Industry trends, e.g. fuel costs, storage, energy efficiency, building and transportation electrification, etc.;
  - (5) Generator retirements;
  - (6) Generator interconnection queues;
  - (7) Corporate commitments and govt policy goals;
- ... and others



# Selection: FERC Order 1920 Criteria

- (1) Avoided or deferred transmission projects;
- (2) Avoided load shedding;
- (3) Production cost savings;
- (4) Reduced line losses;
- (5) Reduced congestion (from outages);
- (6) Mitigation of extreme weather events; and,
- (7) Capacity cost benefits from reduced peak energy losses



# Right-sizing, Interregional Planning, ROFR

- **Consider “right sizing”** proposed solutions that include transmission facilities slated to be replaced in-kind during the next 10 years, if more efficient or cost-effective
- **Encourage interregional planning:** Neighboring transmission planners urged to share information with each other regarding their respective Long-Term Transmission Needs and Solutions, and jointly evaluate proposed interregional transmission facilities
  - Also allow entities to propose an interregional transmission facility in the neighboring transmission planning processes
- **Right of First Refusal** - FERC may take up ROFR reform in a future rulemaking
  - Would likely allow ROFR for projects jointly owned by TO and non-incumbent
  - Goals are to increase competition and to get TOs focused beyond ROFR-protected short term asset condition projects

# Selection (cont'd): FERC Order 1920

- In addition, FERC Order 1920 requires that transmission providers consult with and seek the support of Relevant State Entities regarding evaluation process and selection criteria
- In Vermont, the Relevant State Entities are:
  - Vermont Public Utility Commission
  - Vermont Department of Public Service
- Can but not required to use benefit-to-cost ratio





# Summary Comparison of ISO LTTP vs FERC 1920

	ISO-NE LTTP	FERC Order 1920
<b>Study frequency</b>	As requested by NESCOE, voluntary	Min of every 5 years, mandatory
<b>Potential effective date</b>	July 2024	2 years
<b>Study horizon</b>	20 years	> 10 years
<b>State involvement</b>	Direct and substantial: NESCOE sets study criteria; ISO picks but NESCOE can veto solution	Consulting role: studies must use 7 FERC criteria but states consulted on evaluation/ selection criteria
<b>Right-sizing</b>	Not specifically	Required
<b>GETS</b>	Not specifically	Required
<b>Benefits</b>	5 factors	Same + load shedding, extreme weather, & capacity cost @ peak
<b>Generator interconn. queue</b>	Not specifically	Required

# Summary Comparison of ISO LTTP vs FERC 1920

	ISO-NE LTTP	FERC Order 1920
Who pays	BCR>1 = RNS (socialized)	Customers who benefit, TBD but would allow BCR>1 socialization
Interregional planning	Not specifically	Required
ROFR and rights of way	ROFR not directly addressed but TOs retain full ROW rights	Declined to change ROFR (i.e., ROFR applies to near term reliability projects, all others are competitive bids). Will address ROFR in future rule.

*“We recognize that transmission providers have ongoing efforts to address transmission planning and cost allocation. This final rule is not intended to interfere with the potential progress represented by those efforts, and we encourage transmission providers to continue to innovate to improve their transmission planning and cost allocation processes.”*  
 [FERC Order 1920 introduction]

# Prognosis uncertain but, really, not great

## 48 Requests for Rehearing

- Push for greater State involvement/control—this ranges from more deference to States on study/selection inputs and cost allocation to claims that Order 1920 is an unlawful usurpation of the States’ exclusive authority over generation. Rehearings are considered denied if not granted within thirty days (July 12, 2024), triggering a right to appeal to the D.C. Circuit
- New Commission – hard to tell what they will do

***Loper Bright***: The June 28 Supreme Court’s *Loper Bright* decision overturned *Chevron* doctrine under which agency decisions were reviewed by the courts with a high degree of deference. (Is the interpretation a reasonable one? If yes, upheld.) Now agency decisions will be reviewed by court of non-experts to see if the interpretation is the “best reading” of the statute.

# FERC reacts to *Loper Bright*

Chair Phillips: FERC’s authority “to regulate regional transmission planning and cost allocation has long been recognized by bipartisan majorities of the Commission and [federal Courts] . . . . Both regional transmission planning and cost allocation are practices that have exactly the type of “direct effect” on Commission-jurisdictional rates that the U.S. Supreme Court has held brings a matter within this Commission’s jurisdiction. Indeed, our authority to regulate regional transmission planning and cost allocation is essential to the Commission’s ability to ensure that customers have access to reliable, affordable supplies of electricity—our most fundamental statutory responsibility. Nothing in the Supreme Court’s *Loper Bright* decision overturning the Chevron doctrine calls that conclusion into question.”

Commissioner Christie (Order 1920 dissenter): “Today, in *Loper Bright* . . . the . . . Court overruled Chevron and the deference it allotted to administrative agencies. So the most important legal lifeline that Order No. 1920 needed was pulled away today, and the final rule’s chances of surviving court challenges just shrank to slim to none . . . . The Commission can wait for a court to strike it down – now far more likely given today’s Supreme Court decision doing away with Chevron deference – or it can respond to those many petitions asking for rehearing or amendments with a new opportunity for amendments.”